

## Decisions of the United States Court of International Trade

**Slip Op. 07-63**

**BEFORE: SENIOR JUDGE NICHOLAS TSOUCALAS**

**ELKEM METALS COMPANY and GLOBE METALLURGICAL INC.,  
Plaintiffs, v. UNITED STATES Defendant, RIMA INDUSTRIAL  
S/A, COMPANHIA BRASILEIRA CARBURETO DE CALCIO and  
COMPANHIA FERROLIGAS MINAS GERAIS-MINASLIGAS Defen-  
dant-Intervenors.**

Court No. 03-00020

May 3, 2007

**Held:** This action is stayed pending the final outcome of the companion case *Elkem Metals v. United States*, Court No. 02-00232.

*DLA Piper US LLP*, (Clifford E. Stevens, Jr.; William D. Kramer) for Plaintiffs Elkem Metals Company and Globe Metallurgical, Inc.

*Peter D. Keisler*, Assistant Attorney General Civil Division, United States Department of Justice; *Jeanne E. Davidson*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice; International Trade Section, Commercial Litigation Branch, Civil Division, United States Department of Justice (*Michael D. Panzera*); United States Department of Commerce, Office of Chief Counsel for Import Administration (*Marisa Beth Goldstein*), of counsel, for Defendant.

*Greenberg Traurig, LLP*, (Phillipe M. Bruno) for Defendant-Intervenors Rima Industrial S/A; Companhia Brasileira Carbuerto de Calcio and Companhia Ferroligas Minas Gerais-Minsasligas.

### **MEMORANDUM OPINION & ORDER**

Tsoucalas, Senior Judge: This matter is before the Court upon Plaintiffs' Elkem Metals Company and Globe Metallurgical Inc., (collectively "Plaintiffs") motion for judgment upon the agency record. Although styled as a Rule 56.2 motion, Plaintiffs' memorandum in support thereof puts forth little argument advancing its position regarding judgment on the agency record. *See generally* Pl.s' Br. Supp. Mot. J. Agency Rec. ("Pl.'s Br."). Instead, Plaintiffs devote the majority of their brief to advocating the issuance of alternative declaratory judgments or a stay of proceedings. *See* Pl.s' Br. at 8-12. For the reasons set forth below, the Court finds that a stay is warranted.

## JURISDICTION

Jurisdiction is had pursuant to 28 U.S.C. § 1581(c) (2000) and 19 U.S.C. §§ 1516a(a)(2)(A)(i)(I) and (B)(iii) (2000).

## STATUTORY FRAMEWORK

In order to properly understand the relevance of the procedural history and factual background, the Court first sets forth the pertinent statutory framework. Title 19, section 1675 of the United States Code (“the Statute”) provides that Commerce “may revoke, in whole or in part,” an antidumping duty order upon completion of either an administrative or “changed circumstances” review. 19 U.S.C. § 1675(d).

While Congress has not specified the procedure that Commerce must follow in revoking an order, Commerce, in its regulations, has established such a procedure. *See* 19 C.F.R. § 351.222 (“the Regulation”). The Regulation requires, *inter alia*, that a company requesting revocation must submit: (1) a certification that the company has sold the subject merchandise at not less than normal value (“NV”) in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request; and (3) an agreement to reinstatement of the order, as long as any exporter or producer is subject to the order, if the Secretary [of Commerce] concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV. *See* 19 C.F.R. § 351.222(e)(1).

Upon receipt of a request for revocation, the Regulation further instructs that Commerce consider the following in determining whether to revoke the order: (1) whether the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping; and (3) whether the producer or exporter requesting revocation has agreed in writing to the immediate reinstatement of the order, as long as any exporter or producer remains subject to the order, if Commerce concludes that the exporter or producer, subsequent to revocation, sold the subject merchandise at less than NV. *See* § 351.222(b)(2).

Both subsections of the Regulation are relevant in that both implicate a three-year requirement, i.e., § 351.222(e)(1) requires a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request; and § 351.222(b)(2) requires that the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years (“three year

period”). *See generally* § 351.222. A determination by Commerce to revoke an antidumping duty order may only be sustained if the company requesting revocation has demonstrated three consecutive periods of review of sales at not less than NV. *Id.* In other words, the term “consecutive” in the Regulation controls, and if one of Commerce’s three determinations in the underlying reviews is invalidated, Commerce’s revocation is no longer in accordance with the Statute or Regulation.

### BACKGROUND

The administrative determination under review in the instant matter is *Silicon Metal from Brazil: Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part*, 67 Fed. Reg. 77,225 (Dec. 17, 2002) (“Revocation Determination”). This is the tenth administrative review of silicon metal from Brazil covering the period of review (“POR”) from July 1, 2000 through June 30, 2001. Plaintiffs, however, do not contest the final results in the administrative review for the 2000–2001 POR. Instead, they contend that the Revocation Determination would not be in accordance with law if Commerce’s determination under review in a separate action, *Elkem Metals v. United States*, Court No. 02–232 (“*Elkem Metals 02–232*”) is reversed and remanded. This companion case reviews Commerce’s determination for the 1999–2000 POR. Although not directly at issue in this case, the 1999–2000 POR at issue in *Elkem Metals 02–232*, is relevant to the extent that in order to qualify for partial revocation of an order, the producer or exporter requesting revocation must have sold the subject merchandise at not less than NV for a period of at least three consecutive years. *See* § 351.222(b)(2).

#### A. *Elkem Metals 02–00232 (1999–2000 POR)*

*Elkem Metals 02–232* involves the POR which is the second year in the necessary three year period. As such, if Commerce’s determination finding sales at not less than NV is found to be invalid, the statutory and regulatory requirement of three consecutive years may not be met.

Commerce issued its final results of the administrative review on silicon metal from Brazil on February 12, 2002. *See Final Results of Antidumping Duty Administrative Review of Silicon Metal from Brazil*, 67 Fed. Reg. 6,488 (Feb. 12, 2002). Following a series of motions, this Court found that “Commerce improperly calculated CV [constructed value] by excluding the VAT paid by [the producer/exporter] on inputs from CV.” *Elkem Metals Co. v. United States*, 28 CIT \_\_\_, \_\_\_, 350 F. Supp. 2d 1270, 1273 (2004). The Court of Appeals for the Federal Circuit (“CAFC”) disagreed, however, and reversed and remanded the judgment of this Court. *See Elkem Metals Co. v. United States*, 468 F.3d 795, 797 (Fed. Cir. 2006). Pursuant to the remand

ordered and the CAFC's mandate, this Court ordered that this matter be again remanded to Commerce. *See Elkem Metals Co. v. United States*, 30 CIT \_\_\_, \_\_\_, Slip Op. 06-189 at 4 (Dec. 22, 2006) (not reported in the Federal Supplement). In accordance with the Court's instructions, Commerce filed its Third Remand Results on March 14, 2007. As per the Court's order, comments to the Remand Results are due on May 4, 2007 and replies to such comments are due on May 19, 2007. *See id.*

**B. *Elkem Metals* 03-00020 (2000-20001 POR)**

*Elkem Metals 03-00020* involves the third POR necessary to meet the regulatory three year period requirement. On December 17, 2002, Commerce determined that silicon metal from Brazil produced by Defendant-Intervenor RIMA Industrial S/A ("RIMA") was sold at not less than NV during the 2000-2001 POR. *Revocation Determination*, 67 Fed. Reg. at 77,226. Following this finding, Commerce determined to revoke the AD order as to RIMA, explaining that:

RIMA has demonstrated three consecutive years of sales at not less than NV. Furthermore . . . RIMA's aggregate sales to the United States were made in commercial quantities during each of those three years . . . (1998-1999, 1999-2000, and 2000-2001). . . . [B]ased on our review of the record, there is no basis to find that the continued application of the AD order is necessary to offset dumping.

*Id.*

In October 2003, Plaintiffs filed a Motion for Judgment Upon the Agency Record pursuant to USCIT Rule 56.2. Plaintiffs, however, do not contest the results of this administrative review but take issue with the revocation of the antidumping duty order. *See Elkem Metals Co. v. United States*, Ct. No. 03-00020, Compl. at 7 (Feb. 18, 2003) ("Plaintiffs challenge [Commerce's] revocation of the order as to RIMA in the Final Results."). As indicated *supra*, Plaintiffs maintain that Commerce's revocation determination would not be in accordance with law if the determination under review in *Elkem Metals 02-00232* is found to be unsupported by substantial evidence or otherwise not in accordance with law. *See id.* Thus, the disposition of the issue upon which judgment upon the agency record is currently sought is dependent upon the disposition of the Second Administrative Review, concurrently being challenged in a separate action, *Elkem 02-232*.

Following a full briefing by all parties, on February 6, 2004 the Court stayed this proceeding for all purposes until August 6, 2004. *See Elkem Metals Co. v. United States*, No. 03-00020 (Feb. 5, 2004) (Carman, J.)(order staying proceedings). No further action has been taken by any of the parties since the entry of the stay.

### ANALYSIS

Both Plaintiffs and Defendants maintain that the Court should stay these proceedings pending final judgment in *Elkem Metals 02-232*<sup>1</sup>. See Pl.'s Br. at 12; Def.'s Br. at 12 (“[W]e respectfully join in plaintiffs’ request that the Court stay proceedings . . . until a final judgment has been entered in *Elkem Metals 232* with respect to the 1999–2000 review period.”). The Court agrees and finds that a stay is warranted. See *Landis v. North American Co.*, 299 U.S. 248, 255 (1936).

Although the final results of the 2000–2001 POR are at issue herein, the disposition of this matter is also contingent upon whether the 1999–2000 determination is sustained. Indeed, if the administrative review covering the 1999–2000 POR is found to be unsupported by substantial evidence or otherwise not in accordance with law, there cannot be three consecutive years of no sales at less than NV, a requirement for revocation. See § 351.222. The issue of whether Commerce properly determined the dumping margin in the 1999–2000 POR, however, is not currently before this Court. As indicated *supra*, the Remand Results covering the 1999–2000 POR were recently filed, with comments thereto due on May 4, 2007 and replies to such comments due on May 19, 2007. See *Elkem Metals*, 30 CIT at \_\_\_, Slip Op. 06–189 at 2. As such, no final judgment has yet been entered.

Due to the parallel litigation described herein, the Court finds that a stay of the proceedings in this action is appropriate. Accordingly, this matter shall be stayed until final judgment has been entered in *Elkem Metals 02-232*. An action is final when a decision has been issued that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” *Catlin v. United States*, 324 U.S. 229, 232 (1945).

### CONCLUSION

Therefore, upon consideration of the Plaintiffs’ Brief In Support of Motion for Judgment on the Agency Record, as well as the opposition thereto, all papers herein, and for the foregoing reasons, it is hereby **ORDERED** that proceedings in this action are **STAYED** pending the outcome of *Elkem Metals v. United States*, Court No. 02–00232.

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<sup>1</sup>Both parties also agree that Plaintiffs were required to appeal Commerce’s revocation determination in order to preserve this Court’s jurisdiction to review the determination. See Pl.’s Reply at 3; Def.’s Br. at 12.

Slip Op. 07-64

WAGNER SPRAY TECH CORPORATION, INC., Plaintiff, v. UNITED STATES, Defendant.

Before: WALLACH, Judge  
Court No.: 04-00521

[Plaintiff's Rule 56 Motion for Summary Judgment is DENIED and Defendant's Cross-Motion for Summary Judgment is GRANTED.]

Dated: May 4, 2007

*Neville Peterson LLP, (Margaret R. Polito and Curtis W. Knauss)* for Plaintiff Wagner Spray Tech Corporation, Inc.

*Peter D. Keisler*, Assistant Attorney General; *Barbara S. Williams*, Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Amy M. Rubin*); and *Chi S. Choy*, Office of Assistant Chief Counsel, International Trade Litigation, U.S. Customs and Border Protection, of Counsel, for Defendant United States.

**OPINION**

**Wallach, Judge:**

**I  
INTRODUCTION**

This matter is before the court on Plaintiff's Rule 56 Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment. Plaintiff, Wagner Spray Tech Corporation, Inc. ("Wagner") challenges the United States Customs and Border Protection's ("Customs") classification of its imported merchandise under Heading 9603 of the Harmonized Tariff Schedule of the United States (2003) ("HTSUS") as "paint rollers" and "paint pads" at a duty rate of 7.5% or 4% *ad valorem*, respectively. Plaintiff contends that the subject merchandise is properly classified at lower rates or duty free under HTSUS Headings 8413 and 8424 as "[p]umps for liquid . . ." and "[m]echanical appliances . . . for projecting, dispersing or spraying liquids." The court has jurisdiction over this action pursuant to 28 U.S.C. § 1581(a). Because the subject merchandise can be classified as paint rollers and pads under HTSUS Heading 9603, Plaintiff's Motion for Summary Judgment is denied and Defendant's Cross-Motion for Summary Judgment is granted.

**II  
BACKGROUND**

Plaintiff is the patent holder of component parts of a painting system designed to hold paint in a reservoir within the handle of the painting device and express the paint upon contact with the surface

to be covered.<sup>1</sup> According to Plaintiff, the purpose of its products is “to allow painters and homeowners to apply paint or stain to a surface without being required to repeatedly bend down to fill the pad or roller with paint or stain.” Complaint ¶ 12. Between November 15, 2002 and July 17, 2003 Wagner entered subject merchandise known as “Paint-N-Roll,” “PaintMate Plus,” “StainMate” and “Trim-It” (collectively “Wagner products”) through the port of Minneapolis, Minnesota. Summons, Court No. 04–00521 (October 14, 2004); Amended Summons, Court No. 04–00521 (May 10, 2005). Customs liquidated all entries between April 11, 2003 and May 28, 2004 and classified the subject merchandise under HTSUS Heading 9603, Subheadings 9603.40.2000 or 9603.40.4020,<sup>2</sup> as “Paint Rollers” and “Paint Pads,” assessing a duty of 7.5% or 4% on the merchandise depending on whether the products were classified as rollers or pads. Complaint ¶ 18; *see also* Defendant’s Memorandum in Support of its Cross-Motion for Summary Judgment and in Opposition to Plaintiff’s Motion for Summary Judgment (“Defendant’s Motion”) at 1. Plaintiff paid all liquidated duties, taxes and fees associated with the entries at issue. Complaint ¶ 3; Answer ¶ 3. Wagner filed a protest on June 16, 2003 contesting Customs’ classification of its imported merchandise.<sup>3</sup> Amended Summons. Customs denied Plaintiff’s protest on May 26, 2004.<sup>4</sup> *Id.* Plaintiff filed another protest

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<sup>1</sup> *See* United States Patent No. 4,732,503, Reservoir Fluid Dispenser with Control Valve 4:15–16 (March 22, 1988), Defendant’s Appendix, Tab E (“The present innovation provides a paint roller that includes a self-contained paint supply. A reservoir in the paint roller can be easily filled yet the roller provides a means for preventing the accidental expulsion of paint through the filling port.”); United States Patent No. 4,71,552, Modular Manual Roller Handle, Defendant’s Appendix, Tab F.

<sup>2</sup> HTSUS Heading 9603 and Subheadings 9603.40.2000 and 9603.40.4020 provide:

9603	Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees):
	* * *
9603.40.2000	Paint rollers
	* * *
9603.40.4020	Paint pads

<sup>3</sup> In its Protest Wagner asserted that its merchandise is properly classified in any of HTSUS Subheadings 8424.20.90, 8424.89.7090, or 8413.50.90. In Count 3 of its Complaint Wagner argued that its merchandise is also properly classified in Subheadings 8424.20.1000 and 8413.20.0000, omitting Subheading 8413.50.90. Complaint ¶ 29. Because Plaintiff does not reassert the contention that its products are classifiable in Subheading 8413.50.90 neither in its Complaint and in its Motion for Summary Judgment the court assumes that Plaintiff has abandoned this argument.

<sup>4</sup> Protest Number 3501–03–100028 concerns Entry Numbers: 336–4175029–6, 336–4175096–5, 336–4175099–9, 336–4175098–1, 336–4025526–0, 336–4175100–5, 336–4175030–4, 336–4174443–0, 336–4025516–4, 336–4025519–8, 336–4174446–3, 336–4175602–0, 336–4025225–2, 336–4025227–8, 336–4025371–4, 336–4025517–2, 336–4175031–2, 336–4175028–8, 336–4174543–7, 336–4175032–0, 336–4175033–8, 336–

concerning the importation of identical merchandise classified under HTSUS Heading 9603 on August 11, 2004, which was denied on August 18, 2004.<sup>5</sup> *Id.* On October 14, 2004, Plaintiff timely commenced a civil action contesting Customs' denial of these protests pursuant to 28 U.S.C. § 1581(a). In Plaintiff's Motion, it asserts that the merchandise is properly classified in any of HTSUS Subheadings 8413.20.00,<sup>6</sup> 8424.20, 8424.20.10 or 8424.20.90.<sup>7</sup> Both parties to this case submitted motions for summary judgment. The court may only grant a motion for summary judgment in classification cases where there is no genuine issue as to what the merchandise is, or where none of the articles' "pertinent characteristics" are in dispute. *Rollerblade, Inc. v. United States*, 112 F.3d 481, 483 (Fed. Cir. 1997). The parties' disagreements on the issues of fact are not material to the outcome of this case and therefore do not preclude entry of a summary judgment.<sup>8</sup> Oral argument was held on February 7, 2007.

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4175095-7, 336-4175034-6, 336-4175097-3, 336-4175101-3, 336-4175315-9, 336-4175599-8, 336-4175601-2, 336-4175603-8, 336-4176239-0, 336-4175915-6, 336-4176241-6. Amended Summons.

<sup>5</sup> Protest Number 3501-04-100033 concerns Entry Numbers: 336-4494937-4, 336-4495220-4, 336-4494952-3. Amended Summons.

<sup>6</sup> HTSUS Heading 8413 and subheading 8413.2000 provide:

8413	Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; part thereof: Pumps fitted or designed to be fitted with a measuring device: * * *
8413.2000	Hand pumps, other than those of subheading 8413.11 or 8413.19

<sup>7</sup> HTSUS Heading 8424 and subheadings 8424.20, 8424.20.10 and 8424.20.90 provide:

8424	Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; stream or sand blasting machines and similar jet projecting machines; parts thereof: * * *
8424.20	Spray guns and similar appliances:
8424.20.10	Simple piston pump sprays and powder bellows * * *
8424.20.90	Other

<sup>8</sup> An issue of material fact could arise were the court to proceed to a General Rules of Interpretation ("GRI") 3 analysis which would require the court to make a factual determination regarding whether Wagner products contain a pump for purposes of HTSUS Heading 8413. Because all subject merchandise in question fall within the scope of Heading 9603 pursuant to a GRI 1 analysis, no issue of material fact exists based on the papers, pleadings and oral argument in this case.

### III STANDARD OF REVIEW

A motion for summary judgment shall be granted if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” USCIT R. 56(c). Where both parties have moved for summary judgment the court need not grant either motion because “summary judgment for either party is not proper if disputes remain as to material facts.” *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1391 (Fed. Cir. 1987). However, “the Court of International Trade has not hesitated to decide classification cases on summary judgment when that was appropriate.” *Bausch & Lomb, Inc. v. United States*, 148 F.3d 1363, 1365 (Fed. Cir. 1998). In classification cases, summary judgment is appropriate where there is no underlying factual issue of what the merchandise is, because “the proper classification under which [an article] falls . . . has always been treated as a question of law.” *Id.* at 1366; *see also Mead Corp. v. United States*, 283 F.3d 1342, 1345–46 (Fed. Cir. 2002). The court employs a two-step analysis when deciding classification cases: “the first step concerns the proper meaning of the tariff provisions at hand . . . [t]he second step concerns whether the subject imports properly fall within the scope of the possible headings.” *Universal Elecs. Inc. v. United States*, 112 F.3d 488, 491 (Fed. Cir. 1997). In addition, because Customs’ factual determination is statutorily presumed to be correct, “the party challenging the classification . . . bears the burden of proof.” *Totes, Inc. v. United States*, 69 F.3d 495, 498 (Fed. Cir. 1995) (citing 28 U.S.C. § 2639(a)(1)). The court reviews *de novo* classification cases brought pursuant to § 1581(a) in accordance with 28 U.S.C. § 2640(a).

### IV ANALYSIS

#### **The Imported Wagner Products Were Properly Classified by Customs under the *Eo Nomine* Designation of HTSUS Heading 9603**

#### **A General Rules for Classification of Goods**

The proper classification of merchandise entering the United States is governed by the General Rules of Interpretation (“GRI”) of the Harmonized Tariff Schedules of the United States. *See, e.g., Orlando Food Corp v. United States*, 140 F.3d 1437, 1439 (Fed. Cir. 1998). GRI 1 in pertinent part states that “for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes.” GRI 1, HTSUS. For clari-

fication of the scope of a tariff heading, the court may refer to the Explanatory Notes (“ENs”) accompanying each heading, which is the Customs Cooperation Council’s official interpretation of the HTSUS. See, e.g., *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1378 n.1 (Fed. Cir. 1999). Although the Explanatory Notes are not controlling “they should be consulted for guidance” and are “generally indicative of the proper interpretation of the various provisions of the [HTSUS]” and “thus useful in ascertaining the classification of merchandise under the system.” H.R. Conf. Rep. No. 100–576 at 549 (1987), reprinted in Legislative History of the Omnibus Trade and Competitiveness Act of 1988 (1988); see also *Carl Zeiss*, 195 F.3d at 1378 n.1.

An *eo nomine* provision describes goods according to “their common and commercial meaning.” *Carl Zeiss*, 195 F.3d at 1379. A court may “rely upon its own understanding of the terms used” or consult lexicography or other reliable sources to define the tariff term. *Id.* In addition, “[a]n *eo nomine* provision that names an article without terms of limitation, absent evidence of a contrary legislative intent, is deemed to include all forms of the article.” *Chevron Chem. Co. v. United States*, 23 CIT 500, 505, 59 F. Supp. 2d 1361 (1999) (citing *Nootka Packing Co. v. United States*, 22 CCPA 464, 469–70 (1935)). Furthermore, “an article which has been improved or amplified but whose essential characteristic is preserved or only incidentally altered is not excluded from an unlimited *eo nomine* statutory designation.” *Casio, Inc. v. United States*, 73 F.3d 1095, 1098 (Fed. Cir. 1996) (citing *Robert Bosch Corp. v. United States*, 63 Cust. Ct. 96, 103–04 (1969)). If classification is not resolved satisfactorily by application of GRI 1, the court will refer to the succeeding GRIs in numerical order. See, e.g., *Conair Corp. v. United States*, Slip Op. 05–95, 2005 Ct. Int’l Trade LEXIS 104, at \*7 (CIT August 12, 2005).

When goods are *prima facie* classifiable under two or more headings, classification is resolved by application of GRI 3. GRI 3, HTSUS; see also *Bauer Nike Hockey USA, Inc. v. United States*, 393 F.3d 1246, 1252 (Fed. Cir. 2004). GRI 3(a) provides that the more specific description of a good shall be preferred over a more general description. *Id.* To discern which is the more specific description “a court ‘looks to the provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy’” in accordance with the “relative specificity” analysis mandated by GRI 3(a). *Len-Ron Mfg. Co., Inc. v. United States*, 334 F.3d 1304, 1313 (Fed. Cir. 2003) (quoting *Carl Zeiss*, 195 F.3d at 1380). The Explanatory Notes to GRI 3(a) provide that “[a] description by name is more specific than a description by class.” Explanatory Note, Rule 3(a) (2003). GRI 3(b) assumes that the article is a composite good, not encompassed by a single heading, which will be classified according to the component of the subject merchandise which imparts the good with its “essential character.” GRI 3(b).

**B**  
**The Court Need Not Consider Classification of Wagner  
Products Beyond GRI 1 Because HTSUS Heading 9603  
Encompasses the Subject Merchandise in its Entirety**

Wagner's principal argument is premised on the court finding that no single HTSUS heading describes its products in their entirety, and that the court must therefore proceed to a GRI 3 analysis. *See* Memorandum of Points and Authorities in Support of Plaintiff's Rule 56 Motion for Summary Judgment ("Plaintiff's Motion") at 19. Plaintiff does not entertain the possibility that the court may resolve classification by application of GRI 1, stating "the unique features of the Wagner Products result in these Products being described in more than one heading." *Id.* at 11. Wagner attempts to distinguish its products from what it calls "traditional" paint rollers and pads by attributes such as the pump that transports paint from the paint can into the handle of the paint roller, the existence of a reservoir in the handle and the metric capacity of the product to hold paint. *Id.* at 2. Wagner asserts that its products cannot be classified as paint rollers and pads because such items do not traditionally contain trigger devices, reservoirs, intake valves, outlet valves and pistons, nor do traditional rollers project paint from inside the roller core. *Id.* at 5-6.

Defendant argues that the imported articles were appropriately classified by Customs in Heading 9603 as "Paint rollers" or "Paint pads" and that because the subject merchandise is wholly encompassed by a single tariff provision, no analysis beyond GRI 1 is needed. Defendant's Motion at 10; HTSUS Heading 9603. The Government asserts that Heading 9603 is an *eo nomine* provision encompassing "specifically identified products" including "paint pads and rollers." *Id.* In support of its contention that Wagner products contain identical features to traditional paint rollers and pads, Defendant cites to the Explanatory Notes accompanying Heading 9603 which describe paint rollers as containing "a roller" and "a handle."<sup>9</sup> *Id.* at 10-11.

Defendant refutes Plaintiff's attempt to distinguish its products from traditional paint pads and rollers, arguing that Wagner products' added features do not transform the products, but are merely improved versions of traditional paint pads and rollers. *Id.* at 11. Defendant also notes that Plaintiff periodically refers to its own prod-

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<sup>9</sup> The Explanatory Notes to Heading 9603 describe paint rollers and pads as follows:

Paint rollers consist of a roller covered with lambskin or other material mounted on a handle.

Paint pads consist of a flat surface, for example, of woven fabric attached to a hard back, usually of plastics; they may have handles.

Explanatory Note 96.03(F) (2003).

ucts as “paint rollers” or “paint pads” both in its patents and in its regular marketing. *Id.* (citing Patent No. 4,732,503; Defendant’s Appendix, Tabs P, Q).

The role of the court in a classification case is to construe the proper meaning of the tariff terms at issue and then to determine whether the subject imports fall within the scope of the heading. *See, e.g., Universal Elecs. Inc. v. United States*, 112 F.3d at 491. Heading 9603 is an *eo nomine* provision, which describes the goods according to their “common and commercial meaning.” *See Carl Zeiss*, 195 F.3d at 1379. An article which has also been “improved or amplified” is not excluded from an *eo nomine* designation. *See Casio*, 73 F.3d at 1098; *JVC Co. of Am. v. United States*, 234 F.3d 1348, 1352 (Fed. Cir. 2000). Absent terms of limitation or a “demonstrated contrary legislative intent, judicial decision, or administrative practice,” an *eo nomine* designation includes “all forms of the product, including improved forms.” *Chevron Chemical Co. v. United States*, 23 CIT 500, 505, 59 F. Supp.2d 1361 (1999); *Normura (Am.) Corp. v. United States*, 62 Cust. Ct. 524, C.D. 3820 (1969), *aff’d*, 58 CCPA 82, 435 F.2d 1319 (1971). Here, Plaintiff’s products are improved versions of traditional paint pads and rollers. Webster’s Dictionary defines a paint roller as one that “consists typically of a rotating cylinder . . . covered with an absorbent material and mounted on a handle so that the cylinder can be dipped into paint or otherwise . . . be supplied with paint and rolled over a flat surface . . . so as to apply the paint.” WEBSTER’S THIRD NEW INT’L DICTIONARY 1622 (1986). Each Wagner product contains a paint pad or a paint roller, which resembles a conventional pad or roller, and the function of each product is identical to traditional pads and rollers, to spread paint onto surfaces. The method by which this is accomplished does not warrant classification based on only component parts of the products, nor does it render the products *prima facie* classifiable in more than one heading. Heading 9603 properly classifies the products according to their common and commercial meaning as paint pads or paint rollers, albeit amplified by the patented Wagner roller core and handle. Therefore Customs properly classified the subject merchandise.

### C

#### **Wagner Products are Not Classifiable Under Heading 8424 or 8413 of the HTSUS**

Wagner argues that although its products appear “at first blush” to be described in Heading 9603, they are *prima facie* described by more than one heading due to their “unique features” and are classifiable under Headings 8413 and 8424. Plaintiff’s Motion at 11.

**1**

**HTSUS Heading 8413**

Plaintiff argues that each Wagner product is a “pump” and therefore properly classified under Heading 8413, providing for “[p]umps for liquids, whether or not fitted with a measuring device; liquid elevators; part thereof.” *Id.* at 12. Wagner contends that its products share characteristics with pumps and other appliances that are properly classified under Heading 8413, rendering its painting devices *prima facie* classifiable as “pumps.” *Id.* at 12–13. Wagner describes the mechanics of its products in detail, arguing that the internal functioning of its products amount to a legally accepted definition of a pump. *Id.* at 13–15 (citing *Hancock Gross, Inc. v. United States*, 64 Cust. Ct. 97, C.D. 3965 (1970); *Fedtro, Inc. v. United States*, 65 Cust. Ct. 35, C.D. 4050 (1970)). Plaintiff asserts that the existence of an intake valve, an outlet valve and a piston renders each Wagner product a “pump” for purposes of classification. *Id.* at 14–15. Plaintiff further contends that this court’s decision in *Conair Corp. v. United States* establishes that a product may be classified as a “pump” even where the product is composed of many other elements. *Id.* at 14.

In opposition to Plaintiff’s assertion, Defendant argues that in order for a product to be *prima facie* classifiable as a pump in Heading 8413, the merchandise must “continuously displace[ ] volumes of liquid” as spelled out in the ENs to the heading. Defendant’s Motion at 22; *see also* Defendant’s Reply to Plaintiff’s Response to Defendant’s Cross-Motion for Summary Judgment (“Defendant’s Reply”) at 10.<sup>10</sup> Defendant notes that in *Rainin Instrument Co., Inc. v. United States*, 288 F. Supp. 2d 1360, 1367 (CIT 2003), the court held that “ ‘intermittently carrying minute amounts of liquid from a source container to a destination container simply is not the equivalent of continuously displacing volumes of liquids by means of a pump’ ” and that pumps thus are defined by the “activity they create” and not by the absence or existence of a valve. Defendant’s Motion at 22–23 (quoting *Rainin*, 288 F. Supp. 2d at 1367). Further, Defendant notes that the *Rainin* court held classification in that case was “controlled by what the imported article was constructed and designed to do” and that the pipettes in question were not designed to “pump” liquids. *Id.* Defendant furthermore notes that Wagner does not sell its painting system as “pumps” and that while a product need not be exclusively

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<sup>10</sup>The ENs to Heading 8413 state that:

This heading covers most machines and appliances for raising or otherwise continuously displacing volumes of liquids (including molten metal and wet concrete), whether they are operated by hand or by any kind of power unit, integral or otherwise.”

Explanatory Note 84.13 (2003).

referred to in the marketing or product description of the article as its HTSUS designation, Plaintiff appears to only designate its product as a pump for purposes of this lawsuit. *Id.* at 24.

It is obvious to the court that “pump” in and of itself does not adequately describe the products at issue. Plaintiff’s reliance on *Conair* is misplaced because the court did not classify the subject merchandise under an *eo nomine* provision, having determined that no HTSUS heading provided an adequate description of a decorative fountain as an “article in all its forms.” *Conair*, 2005 Ct. Int’l Trade LEXIS 104, at \*10. Based on this finding the court designated the article as a composite product and undertook a GRI 3(b) analysis from which it concluded that the “essential character” of the decorative fountains at issue was not imparted by various simulated rocks and bamboo, but by the pump. *Conair* at \*21.

In this case, even if Wagner products contain a “pump” as defined in Heading 8413, such a pump would not impart the products with their “essential character” because the subject merchandise is made for painting, not pumping, and the object of Plaintiff’s product is not to remove paint from a bucket, but to spread it on walls. Furthermore, as the court stated in *Fedtro*, “[w]ith respect to [articles having dual or multiple end uses], ‘the question is not so much what . . . [the imported article] does as what it primarily was constructed and designed to do,’ insofar as classification of the article is concerned . . .” *Fedtro*, 65 Cust. Ct. at 44 (quoting *United Carr Fastener Corp. v. United States*, 54 C.C.P.A. 89, C.A.D. 913 (1967), *aff’g* 56 Cust. Ct. 347, C.D. 2648 (1966)). However, because classification of Wagner products can be resolved under a GRI 1 analysis, the court need not reach a GRI 3 analysis.

2

**HTSUS Heading 8424**

Wagner maintains that its products are also described in Heading 8424 as “Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders.” Plaintiff’s Motion at 15; HTSUS Heading 8424. Wagner contends that its “patented roller core” projects, disperses and sprays the liquid in “five streams or jets” and “by the feed channels inside the roller core.” Plaintiff’s Motion at 17–18. In support of its contentions, Wagner explains that pumps often are mechanisms causing the projection, dispersion or spray of liquids and that Customs routinely classifies, for example, spray bottles for household use and condiment dispensers under Heading 8424. *Id.* Plaintiff also argues that, absent legislative intent to the contrary, the use provision is preferred where a product is described by both a use provision and an *eo nomine* provision. *Id.* at 19 (citing *United States v. Siemens Am., Inc.*, 68 C.C.P.A. 62, 653 F.2d 471, 478 (1981)).

The Explanatory Notes to Heading 8424 provide in part that “spray guns . . . are usually designed for attaching to compressed air or steam lines . . . [and] are used for spraying paint,” none of which applies to the subject merchandise. Defendant’s Motion at 19.<sup>11</sup> Defendant points to the fact that in discovery Plaintiff affirmatively concluded that its products “are not paint sprayers” and do not work like “paint sprayers” and that Plaintiff has offered no evidence that its painting devices act as paint sprayers. *Id.* at 18 (citing Interrogatory no. 29, Defendant’s Appendix, Tab H). Defendant further refutes that Wagner products propel liquid onto a surface, arguing that the products instead cause the paint to flow through the holes of the applicator, and contrary to a paint sprayer, do not break down the paint into fine particles that are “thrown, scattered or strewn” out of the product. *Id.* at 19; *see also* Defendant’s Reply at 12. Defendant also notes that in order for Wagner products to be *prima facie* classifiable in Heading 8424, the product as a whole is at issue and not only the way in which liquid is expressed from the product. Defendant’s Motion at 20.

\_\_\_\_\_ Plaintiff’s assertion that the subject merchandise is appropriately classified as a “spray painter” is contradicted by Plaintiff’s statement in response to Defendant’s interrogatories, that paint is “dispersed only from the roller core and onto the roller (or pad),” and the paint distributed from the roller to the surface is achieved by means of “friction and surface tension.” Defendant’s Appendix, Tab H, Pl.’s Response to Def.’s First Interrogatories and Request for Production at 14–15 (November 15, 2006). More importantly, if Plaintiff’s proposed designation were accepted, Heading 8424 would include all paint rollers and pads because all such products are designed to project, disperse, or spray liquids in order to achieve the objective of getting paint on a surface. However, since there is a separate paint roller provision in the HTSUS which is a more specific designation of the article, such a designation is preferred. The Explanatory Notes to GRI 3 provide that a description “by name is more specific than a description by class.” Explanatory Note, Rule 3(a) (2003). Mechanical goods for the purpose of “projecting, dispersing or spraying liquids” clearly refer to a class of goods, whereas

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<sup>11</sup> The ENs to Heading 8424 provide:

Spray guns and similar hand controlled appliances are usually designed for attaching to compressed air or steam lines, and are also connected, either directly or through a conduit, with a reservoir of the material to be projected. They are fitted with triggers or other valves for controlling the flow through the nozzle, which is usually adjustable to give a jet or more or less divergent spray. They are used for spraying paint or distemper, varnishes, oils, plastics, cement, metallic powders, textile dust, etc.. They may also be used for projecting a powerful jet of compressed air or steam for cleaning stonework in buildings, statuary, etc.

Explanatory Note 84.24(B) (2003).

“paint pads” and “paint rollers” are a designation of goods by name. Wagner’s attempt to distinguish its products from traditional paint pads and rollers is not persuasive because it is well established that even improved versions of the goods may be covered by the *eo nomine* designation of the article. *See, e.g., Casio*, 73 F.3d at 1098. In its Reply, Wagner elaborates on how its products fit the mechanical description of Heading 8424, still ignoring the fact that even under a GRI 3(a) analysis, a more specific heading is preferred, which in this case is Heading 9603.

#### D

#### **Wagner Products are Not Precluded from Classification Under Heading 9603 by *Bausch & Lomb, Inc. v. United States***

Wagner argues that its products are precluded from classification under Heading 9603 because case law has narrowly construed this heading to include only brushes, rollers and pads as separate items, and not appliances that incorporate rollers and pads. Plaintiff’s Motion at 20. Plaintiff’s argument is based on the Federal Circuit’s holding in *Bausch & Lomb*, in which the court held that electrical toothbrushes were excluded from classification under Heading 9603, and that only if the brush was imported separately would it fall under this provision. *Bausch & Lomb*, 148 F.3d at 1367. Plaintiff argues that this supposed limitation on the scope of the provision is further supported by the Explanatory Notes to Heading 9603. Plaintiff’s Motion at 21. Wagner also argues that the existence of other HTSUS headings covering different types of paint rollers is indicative that not all products that incorporate paint rollers are within the scope of Heading 9603. *Id.* at 22.

Defendant counters that *Bausch and Lomb* concerned language in Heading 9603 pertaining only to “brooms and brushes” and that the court’s decision was appropriate given the nature of merchandise at issue. Defendant’s Motion at 14–15.

Heading 9603 contains four distinct groupings of merchandise separated by semicolons, which in tariff provisions “create a wall around each grouping of items, preventing the qualifying language from one grouping from applying to another.” *JVC Co. of Am. v. United States*, 23 CIT 523, 62 F. Supp. 2d 1132, 1136 (1999), *aff’d* 234 F.3d 1348 (Fed. Cir. 2000). Heading 9603 provides for the following four categories of merchandise: (1) “Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters;” (2) “prepared knots and tufts for broom or brush making;” (3) “paint pads and rollers;” (4) “squeegees (other than roller squeegees).” HTSUS Heading 9603. The fact that brushes imported separately from machines, appliances or vehicles are appropriately classified in Heading 9603, does not give rise to the conclusion that only paint rollers and pads imported separately from

machines, appliances or vehicles are covered by this provision. Furthermore, nothing in the Explanatory Notes to Heading 9603 expressly excludes paint pads or rollers with other features in addition to the applicator and handle. As a result, Plaintiff's argument is at odds with the canons of statutory construction and misapplied to the tariff provision at issue.

**V**  
**CONCLUSION**

For the foregoing reasons Plaintiff's Motion for Summary Judgment is denied and Defendant's Motion for Summary Judgment is granted. Accordingly, Customs' classification of Wagner products, Paint-N-Roll, PaintMate Plus, StainMate and Trim-It in HTSUS Heading 9603, Subheadings 9603.40.2000 and 9603.40.4020 is affirmed.

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WAGNER SPRAY TECH CORPORATION, INC., Plaintiff, v. UNITED STATES, Defendant.

Before: WALLACH, Judge  
Court No.: 04-00521

*ORDER AND JUDGMENT*

This case having come before the court upon the Motion for Summary Judgment filed by Plaintiff Wagner Spray Tech Corporation, Inc. ("Plaintiff's Motion"), and the Cross Motion for Summary Judgment filed by Defendant United States Government ("Defendant's Motion"); the court having reviewed all papers and pleadings on file herein, having heard oral argument by each party, and after due deliberation, having reached a decision herein; now, in conformity with said decision, it is hereby

ORDERED, ADJUDGED and DECREED that Plaintiff's Motion is DENIED; and it is further

ORDERED, ADJUDGED and DECREED that Defendant's Motion is GRANTED; and it is further

ORDERED, ADJUDGED and DECREED that the imported items at issue in this case are properly classified under Heading 9603, Subheadings 9603.40.2000 and 9603.40.4020 of the Harmonized Tariff Schedule of the United States (2003), at a duty of 7.5% and 4% *ad valorem*; and it is further

ORDERED, ADJUDGED and DECREED that judgment be, and hereby is, entered in favor of Defendant and against Plaintiff.

**Slip Op. 07-66**

BEFORE: SENIOR JUDGE NICHOLAS TSOUCALAS

UNITED STATES, Plaintiff, v. FORD MOTOR COMPANY, Defendant.

Court No. 02-00116

*Peter D. Keisler*, Assistant Attorney General, *Jeanne E. Davidson*, Director, *Patricia M. McCarthy*, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (*David A. Levitt* and *David S. Silverbrand*); of counsel: *Jeffrey E. Reim* and *Katherine Kramarich*, United States Bureau of Customs and Border Protection, for the United States, Plaintiff.

*Grunfeld, Desiderio, Lebowitz, Silverman, & Klestadt, LLP* (*Steven P. Florsheim*, *Robert B. Silverman*, *David M. Murphy*, and *Frances P. Hadfield*); of counsel: *Paulsen K. Vandever*, Ford Motor Company, for Ford Motor Company, Defendant.

Dated: May 7, 2007

**ORDER**

This matter comes before the court pursuant to the August 30, 2006 decision of the United States Court of Appeals for the Federal Circuit (“CAFC”) in *United States v. Ford Motor Co.* (“CAFC Decision”), 463 F.3d 1267 (Fed. Cir. 2006) affirming in part, reversing in part and remanding the judgment of this court in *United States v. Ford Motor Co.* (“Negligence Decision”), 29 CIT \_\_\_, 395 F. Supp. 2d 1190 (2005).

In *Negligence Decision*, this Court held Ford Motor Company (“Ford”) liable for negligent misrepresentation of the value of import entries and, as such, imposed a penalty of \$17,151,923.60 upon Ford. See *Negligence Decision*, 29 CIT at \_\_\_, 395 F. Supp. 2d at 1222. The maximum penalty for negligent violations of 19 U.S.C. § 1592(a), is the lesser of the domestic value of the merchandise or twice the loss of duties. See 19 U.S.C. § 1592(c)(3)(1988); 19 C.F.R. § 162.73(a)(3) (1992). This Court found that the actual loss of revenue (“LOR”) to the United States (“Plaintiff” or “Government”) was \$8,575,961.80. See *Negligence Decision*, 29 CIT at \_\_\_, 395 F. Supp. 2d at 1221. In calculating the penalty imposed on Ford, this Court assessed the statutory maximum penalty for negligence pursuant to 19 U.S.C. § 1592(c)(3) by doubling the loss of duty amount. See *Negligence Decision*, 29 CIT at \_\_\_, 395 F. Supp. 2d at 1222.

The CAFC remanded in order to recalculate the penalty amount. See *CAFC Decision*, 463 F.3d at 1285–86. The CAFC stated that this Court erred in including “in its damage calculations tenders that did not violate § 1592.” *Id.* at 1285. Specifically, the CAFC stated that:

D) The “lump-sum payment relating to the 1991 Capri reported on August 26, 1991, appears to have been disclosed to [the Bu-

reau of Customs and Border Protection (“Customs”)<sup>1</sup>] “within the period allowed by the Reconciliation Agreement, and therefore did not violate § 1485.”

II) “The same appears to be true for the payment relating to the 1993 Taurus SHO reported on November 18, 1992.”

III) This court “appears to have included in its calculations tenders that occurred outside the scope of the investigation – specifically, tenders relating to model years 1992 and 1993. Those tenders should have been excluded from the penalty calculation.”

IV) “[T]he penalty must be recalculated to reflect the absence of § 1484 liability. . . .”

*Id.* at 1285–86.

### **I. 1991 Capri**

In April 1990, Ford began to purchase and import Capri vehicles from Ford of Australia. In connection with the importation of the Capri vehicles, Ford filed 23 entries between April 1990 through July 1991. On September 5, 1992, Ford complied with the summons issued at the June 1991 Meeting and provided Customs with the requested documents. Ford provided a copy of the supply contract for the Capri vehicles, which indicated that transfer prices would be adjusted every six months to reflect increases or decreases in a market basket of similar vehicles. Ford made lump sum payments to Ford of Australia for the 1991 model year Capri vehicle, which were in addition to the payments reflected on the commercial invoices at the time of entry. Ford disclosed these lump sum payments, totaling \$5,570,900, to Customs in a letter dated August 26, 1991 and tendered a check for \$155,708 for duties and fees. *See Negligence Decision*, 29 CIT at \_\_\_\_, 395 F. Supp. 2d at 1199 (citation omitted).

### **II. 1993 Taurus SHO**

Ford informed Customs that there were \$14,779,026 in prototype and development costs for the 3.2 liter SHO engine for the 1993 model year. In a letter dated November 18, 1992, Ford tendered \$404,100 for duties associated with those design and development costs. *See Negligence Decision*, 29 CIT at \_\_\_\_, 395 F. Supp. 2d at 1201 (citation omitted).

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<sup>1</sup>The United States Customs Service was renamed the Bureau of Customs and Border Protection of the Department of Homeland Security, effective March 1, 2003. *See Homeland Security Act of 2002*, Pub. L. No. 107–296, § 1502, 116 Stat. 2135 (2002); *Reorganization Plan for the Department of Homeland Security*, H.R. Doc. No. 108–32 (2003).

### III. Post-1991 Model Year Tenders

During a telephone conference held on February 2, 2007, this Court ordered the Government and Ford to confer regarding the CAFC remand. The parties were instructed to attempt to come to a consensus as to which entries “occurred outside the scope of the investigation – specifically, tenders relating to model years 1992 and 1993.” *CAFC Decision*, 463 F.3d at 1285–86.

Shortly thereafter, the parties advised the Court that they agreed that the minimum LOR<sup>2</sup> for calculating the penalty amount is \$5,877,912.64.<sup>3</sup> *See* Pl.’s Mem. in Supp. of Revised Penalty Calculation in the Amount of \$12,522,638.08 (“Pl.’s Mem.”) at 1; Def.’s Post-Remand Br. (“Def.’s Mem.”) at 4–6. The parties agreed, with one exception, on which duty tenders are in scope, and which are out of scope. *See* Pl.’s Mem. at 2; Def.’s Mem. at 6.

The only LOR remaining in dispute between the parties relates to Ford’s \$695,874 duty tender for 4.0 Liter V-6 German engines. *See* Pl.’s Mem. at 2–3; Def.’s Mem. at 6. The parties both recognize that \$313,468.60 of the \$695,874 LOR relate to 1992 model year engines, thereby making them out of scope. *See* Pl.’s Mem. at 3; Def.’s Mem. at 6. The Government, however, argues that the remaining \$383,405.40 should be included within LOR calculations. *See* Pl.’s Mem. at 3; Def.’s Mem. at 6. The disagreement concerns whether the LOR is related solely to 1992 model year engines, or whether it encompasses pre-1992 engines as well. *See* Pl.’s Mem. at 2–3; Def.’s Mem. at 6–7.

The issue of the proper application of Ford’s \$695,874 duty tender has, however, already been considered by this Court. In the *Negligence Decision* this Court stated that:

Ford disclosed on May 6, 1993, that it had made lump sum payments to Ford of Germany for 1992 model year 4.0 liter V-6 engines in the amount of \$25,782,651. Ford tendered \$695,874 in unpaid duties and fees in connection with these payments.

*Negligence Decision*, 29 CIT at \_\_\_\_, 395 F. Supp. 2d at 1202. Additionally, the CAFC referenced the “V-6 engines for the 1992 model year (payment of \$695,874)” while commenting that “the trial court appears to have included tenders related to the 1992 and 1993 model years.” *CAFC Decision*, 463 F.3d at 1282. As both this Court, and the CAFC have referenced the \$695,874 duty tender total as applying to the 1992 model year, that entire amount is thus out of the scope of the investigation. As such, the remaining \$383,405.40 is not in-

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<sup>2</sup>Ford did not reference the \$5,877,912.64 amount as being a “minimum.” *See* Def.’s Mem. at 4–6.

<sup>3</sup>The \$5,877,912.64 amount includes deductions for both the 1991 Capri and the 1993 Taurus SHO.

cluded in the LOR. The total LOR for calculating the penalty amount is thus \$5,877,912.64.

#### **IV. 19 U.S.C. § 1484 Liability**

In *Negligence Decision*, this Court found “that Ford violated 19 U.S.C. § 1592.” *Negligence Decision*, 29 CIT at \_\_\_, 395 F. Supp. 2d at 1213. The CAFC affirmed this Court’s decision that Ford negligently violated 19 U.S.C. § 1485 in accordance with 19 U.S.C. § 1592.<sup>4</sup> *CAFC Decision*, 463 F.3d at 1279. The CAFC, however, stated that the penalty must be recalculated to reflect the absence of 19 U.S.C. § 1484 liability and any other adjustments required by their opinion. *CAFC Decision*, 463 F.3d at 1286.

For negligent violations of 19 U.S.C. § 1592(a), the maximum penalty is the lesser of the domestic value of the merchandise or twice the loss of duties. *See* 19 U.S.C. § 1592(c)(3); 19 C.F.R. § 162.73 (a)(3). The plain language of the statute only sets maximum penalties and does not establish minimum penalties. *See* 19 U.S.C. § 1592(c)(3). The statute does not require the court to begin with the maximum possible penalty and reduce that amount in light of mitigating factors. *See United States v. Modes, Inc.*, 17 CIT at 627, 635, 826 F. Supp. 504, 512 (1993). Furthermore, in its remand, the CAFC clearly ruled that this Court’s “decision to impose the maximum penalty was within its discretion.” *CAFC Decision*, 463 F.3d at 1285.

This Court’s Conclusion in *Negligence Decision* stated:

Ford negligently violated 19 U.S.C. §§ 1481, 1484, 1485 and 1592 by failing to advise Customs that the transaction values in the entry documents were not final. Ford violated 19 U.S.C. § 1485 by failing to adhere to the requirements of the Reconciliation Agreement of reporting lump sum payments.

*Negligence Decision*, 29 CIT at \_\_\_, 395 F. Supp. 2d at 1222. This Court did not declare the § 1484 violation as being the primary basis for imposition of maximum penalties. This Court stated that the degree of harm to Customs, the duration of Ford’s violations, and whether Ford made a good faith effort to fulfill its statutory obligations were all clear factors supporting the imposition of maximum penalties. *See id.* at 1221. Furthermore, as this Court previously found, “[t]he significant public interest in the enforcement of Customs’ regulations also weigh in favor of the imposition of a heavy penalty.” *Id.* at 1222. As such, this Court finds that even with the absence of § 1484 liability, Ford’s penalty does not warrant mitigation.

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<sup>4</sup>“Statutory negligence under § 1592, unlike common-law negligence, shifts burden of persuasion to the defendant to demonstrate lack of negligence.” *CAFC Decision*, 463 F.3d at 1279 (citing 19 U.S.C. § 1592(e)(4)).

Consequently, the Court assesses the statutory maximum penalty for negligence pursuant to 19 U.S.C. § 1592(c)(3).

### CONCLUSION

The total LOR for calculating the penalty amount is \$5,877,912.64. The Court assesses the statutory maximum penalty for negligence pursuant to 19 U.S.C. § 1592(c)(3). The CAFC has clearly ruled that this Courts "decision to impose the maximum penalty was within its discretion." *CAFC Decision*, 463 F.3d at 1285. For negligent violations of 19 U.S.C. § 1592(a), the maximum penalty is the lesser of the domestic value of the merchandise or twice the loss of duties. *See* 19 U.S.C. § 1592(c)(3); 19 C.F.R. § 162.73(a)(3). Pursuant to 19 U.S.C. § 1592, the Court grants judgment for plaintiff and assess a civil penalty against defendant in the amount of \$11,755,825.28 (twice the LOR) plus interest from the date of judgment. Judgment shall be entered accordingly.

BEFORE: SENIOR JUDGE NICHOLAS TSOUCALAS

UNITED STATES, Plaintiff, v. FORD MOTOR COMPANY, Defendant.

Court No. 02-00116

### JUDGMENT

This case having been duly submitted for decision and the Court, after due deliberation, having rendered a decision herein; now, in accordance with said decision, it is hereby

**ORDERED** that Plaintiff shall recover unpaid duties from Ford in the amount \$5,877,912.64 plus all legal interest; and it is further

**ORDERED** that Plaintiff shall recover against Ford an assessed civil penalty in the amount of \$11,755,825.28, plus interest from the date of judgment, for negligent violations of 19 U.S.C. § 1592; and it is further

**ORDERED** that this case is dismissed.

Slip Op. 07-67

ROCKWELL AUTOMATION, INC. f/k/a ROCKWELL AUTOMATION/ALLEN-  
BRADLEY CO., LLC, Plaintiff, v. UNITED STATES, Defendant.

Before: Richard K. Eaton, Judge  
Court No. 03-00007

[Plaintiff's motion for summary judgment granted, in part; Defendant's cross-motion for summary judgment denied.]

Dated: May 7, 2007

*Neville Peterson LLP (John M. Peterson and Curtis W. Knauss)*, for plaintiff.  
*Peter D. Keisler*, Assistant Attorney General; *Barbara S. Williams*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice (*Bruce N. Stratvert*), for defendant.

OPINION AND ORDER

Eaton, Judge: At issue is the proper classification of merchandise described by plaintiff Rockwell Automation, Inc. ("plaintiff" or "Rockwell") as short body timing relays. Before the court are the cross-motions for summary judgment of plaintiff and defendant the United States ("Government"). Jurisdiction is had pursuant to 28 U.S.C. § 1581(a) (2000). For the reasons set forth below, the court grants plaintiff's motion for summary judgment, in part; denies the Government's cross-motion for summary judgment and finds that plaintiff's merchandise, with respect to which plaintiff supplied samples to the court, is properly classified as relays under the Harmonized Tariff Schedule of the United States ("HTSUS") Heading 8536, which covers "[e]lectrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V," subject to a duty of 2.7% ad valorem.<sup>1</sup>

BACKGROUND

Plaintiff's merchandise is solid state electrical timing devices imported from Japan ("subject merchandise")<sup>2</sup> used as components of integrated electrical systems that may include several other electri-

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<sup>1</sup>Reference is made to the 1999 version of the HTSUS and chapter notes, which were in force at the time the subject merchandise was entered.

<sup>2</sup>The parties' briefs describe the subject merchandise in substantially similar language. See Pl.'s Revised Mem. Supp. Mot. Summ. J. 1-5; Def.'s Mem. Supp. Mot. Summ. J. & Opp'n Pl.'s Mot. Summ. J. ("Def.'s Mem.") 5 n.2. Instead of referring to the subject merchandise as "relays," however, the Government uses the description "solid state timers." Def.'s Mem. 7 n.3.

cal components. Their function is to direct electricity to specific apparatus at a specified time after power has been applied to the entire electrical system. The most widely used application of these devices is in a control panel on an assembly operation or conveyor line.

Each timing device consists of a number of electrical parts contained in a small six-sided, plastic box with a front dial and a rear connection port. Its interior parts are: a set of moveable contact blocks; a set of stationary contact blocks; a wound magnetic coil mounted on a stack of steel laminations; and a circuit board containing various components, including resistors that regulate the period of time between cycles. *See* Pl.'s Revised Mem. Supp. Mot. Summ. J. ("Pl.'s Mem.") 1, 3, 4; Def.'s Mem. Supp. Mot. Summ. J. & Opp'n Pl.'s Mot. Summ. J. ("Def.'s Mem.") 5 n.2.

Customs has consistently classified plaintiff's merchandise as "[t]ime switches with clock or watch movement or with synchronous motor: . . . Valued over \$5 each," under HTSUS subheading 9107.00.80. Beginning in 1999, Rockwell regularly disputed Customs's classification, arguing that they were properly classifiable as relays under Heading 8536. In July, 1999, Customs affirmed its classification of Rockwell's merchandise, describing the devices in the ruling as solid state timing relays, under Heading 9107. *See* HQ 962138 (July 28, 1999), *reprinted in* 36 Cust. Bull. & Decs. 24 (June 12, 2002), Attach. A ("1999 Ruling") 27, 30-31 ("[W]e find that the Bulletin 700 solid state timing relays are classifiable under subheading 9107.00.80."). Thereafter, between December 9, 1999, and February 22, 2000, Rockwell entered the subject merchandise under HTSUS subheading 9107.00.80. *See* Summons (Jan. 9, 2003). Between November 13, 2000, and January 5, 2001, Customs liquidated Rockwell's entries under HTSUS subheading 9107.00.80, as entered. *See* Summons (Jan. 9, 2003).

In January 2002, Rockwell timely filed Protest Number 3901-01-100230, contesting Customs's classification of the subject merchandise. *See* Protest Number 3901-01-100230. In its supporting papers, Rockwell reasserted its argument that the subject merchandise was properly classifiable under HTSUS Heading 8536. *See* Rockwell's Mem. P. & A. Supp. Protest 1.

On June 12, 2002, Customs published notice of its intention to modify the 1999 Ruling. *See* Proposed Modification of Ruling Letter and Revocation of Treatment Relating to Tariff Classification of Relays, 36 Cust. Bull. & Decs. 24 (June 12, 2002). Nonetheless, on July 23, 2002, it issued HQ 964656 reaffirming those portions of the 1999 Ruling and again classified Rockwell's merchandise under Heading 9107. *See* HQ 964656 (July 23, 2002), attached as Ex. 3 to Def.'s Mem. ("2002 Ruling"). On August 8, 2002, Customs denied Protest Number 3901-01-100230 with respect to the subject merchandise, stating that its decision was based on the 1999 Ruling. *See* Protest Number 3901-01-100230.

On January 9, 2003, plaintiff filed a summons with the Court, commencing this action to challenge Customs's denial. By its motion for summary judgment, Rockwell claims that the subject merchandise is properly classifiable under HTSUS Heading 8536. By its cross-motion for summary judgment, the Government urges the court to sustain Customs's classification of the subject merchandise.

#### STANDARD OF REVIEW

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." USCIT R. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). In the context of a classification action, "summary judgment is appropriate when there is no genuine dispute as to the underlying factual issue of exactly what the merchandise is." *Bausch & Lomb, Inc. v. United States*, 148 F.3d 1363, 1365 (Fed. Cir. 1998) (citations omitted). Under such circumstances, all that remains is the interpretation of the relevant tariff provisions, which is a question of law. *See Boen Hardwood Flooring, Inc. v. United States*, 357 F.3d 1262, 1264 (Fed. Cir. 2004).

#### DISCUSSION

##### I. Identification of the Subject Merchandise

With its motion for summary judgment, plaintiff has provided what it claims are samples of the subject merchandise to the court.<sup>3</sup> The Government, however, contends that Rockwell has failed to satisfy its burden of identifying these samples as representative of the subject merchandise. *See Group Italglass U.S.A., Inc. v. United States*, 16 CIT 766, 767, 798 F. Supp. 729, 730 (1992) ("*Italglass*"). It argues:

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<sup>3</sup>Plaintiff provided eight samples in individual boxes that have been numbered sequentially from one to eight. Each sample is stamped with a variation of the phrase "timing relay." The samples have the following model numbers: (1) 700-HRM12TU24 Series C (bearing the description "single function timing relay"); (2) 700-HRM12TA17 Series C (bearing the description "on-delay timing relay"); (3) 700-HRC12TA17 Series C (bearing the description "single function timing relay"); (4) 700-HRC12TU24 Series B (bearing the description "on delay timing relay"); (5) 700-HR52TA17 Series B (bearing the description "multi function timing relay"); (6) 700-HR52TU24 Series B (bearing the description "multi function timing relay"); (7) 700-HR52TA17 Series C (bearing the description "multi function timing relay"); and (8) 700-HR52TU24 Series C (bearing the description "multi function timing relay").

Although plaintiff did not import any Series C timing relays, plaintiff insists that the "Series C models are substantially similar to the Series B models," and thus that "the samples before the Court, whether Series B or Series C, correctly reflect those short body timing relays that are contained in the subject entries." Letter from Curtis W. Knauss to Hon. Richard K. Eaton of 04/05/07 at 4; *see* Third Pohl Aff. ¶¶ 2-3.

Rockwell has never identified the particular models of timers covered by the entries in issue. Although Rockwell submitted technical documentation from Omron and samples manufactured by Omron to the Court and to the Government, none of this has been shown to relate to the specific merchandise covered by the specific entries at issue. That is, while the imported merchandise and the samples have Rockwell's model numbers on them, and their functions may be similar, there is absolutely no evidence that the electronics inside are the same or that their functions are the same.

Def.'s Mem. 10. The crux of the Government's claim is that plaintiff has not offered evidence that the internal electronics and functioning of the supplied samples, which were manufactured by Omron Corporation, are the same as the electronics and functioning of the entered merchandise, which was manufactured by Fuji Electric Co. Ltd. See Def.'s Resp. Pl.'s Statement of Material Facts Not in Dispute ¶¶ 6, 7 & 8; Def.'s Reply Br. Supp. Mot. Summ. J. & Opp'n Pl.'s Resp. 3-4.

The Government correctly points out that plaintiff "has the burden of demonstrating exactly what merchandise the Court is being called upon to classify." Def.'s Mem. 9; *Italglass*, 16 CIT at 767, 798 F. Supp. at 730. An examination of the case law reveals how this burden is to be met.

In *Italglass*, a case challenging the denial of a protest, the plaintiff moved for summary judgment but supplied "no affidavit or other evidence to identify the disputed items actually imported under the entries" in the case. *Italglass*, 16 CIT at 767, 798 F. Supp. at 730. The court stated that "[u]nless stipulated between the parties, plaintiff has the burden of submitting evidence on its motion identifying the specific items of merchandise in the particular entries in the case that are claimed to have been incorrectly classified by Customs." *Id.*, 798 F. Supp. at 730. The plaintiff having failed to do so, the court denied its motion for summary judgment.<sup>4</sup>

When an employee affidavit has been presented, however, this Court has upheld its use to identify imported merchandise. In *E.T.I.C., Inc. v. United States*, 26 CIT 1293 (2002) (not reported in the Federal Supplement), the plaintiff challenged the classification of a tomato product that had previously been the subject of a differ-

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<sup>4</sup>The *Italglass* Court permitted the parties to engage in further discovery and to submit supplemental briefing and evidence with respect to plaintiff's motion for summary judgment. In a later stage of the case, the Court noted that the identification issue had been obviated by the plaintiff's supplemental filings and observed that "identification of the subject merchandise under the entries and commercial invoices can be determined with reference to the verbal descriptions, style numbers, and photographs in plaintiff's catalog." Group *Italglass U.S.A., Inc. v. United States*, 17 CIT 226, 227 (1993) (not reported in the Federal Supplement).

ent action. The plaintiff supported its motion for summary judgment with the affidavit of one of its employees, who testified that the tomato product at issue was “identical in all respects to that at issue in” the previous case. *Id.* at 1293. The defendant submitted an opposing affidavit by a Customs import specialist, who had not examined the product, but relied solely on the invoice descriptions. *Id.* at 1293–94. Finding the E.T.I.C. employee’s affidavit persuasive, the Court granted summary judgment for plaintiff. *Id.* at 1294 (“The court concludes that the ‘heavy juice’ referred to in the Malpica entries is equivalent to the ‘puree’ mentioned in [*Orlando Food Corp. v. United States*, 140 F.3d 1437, 1439 (Fed. Cir. 1998)], because an E.T.I.C. employee with knowledge has sworn that the products are the same.”).

Here, unlike the plaintiff in *Italglass*, Rockwell has submitted the Pohl affidavits<sup>5</sup> “to identify the disputed items actually imported under the entries in this case. . . .” *Italglass*, 16 CIT at 767, 798 F. Supp. at 730. Mr. Pohl is a Senior Project Engineer at Rockwell, whose experience includes “providing technical support and guidance to customers, suppliers, professional organizations, and other technical personnel” with respect to “relays and timing relays produced and sold for [Rockwell].” First Pohl Aff. ¶ 1. Thus, like the employee of the plaintiff in *E.T.I.C.*, Mr. Pohl is familiar with the product at issue and his sworn affidavit, which states that the Fuji-produced short body timing relays “are identical in all material respects to the Omron short body timing relays that have been submitted to the Court as samples,” supports Rockwell’s motion. Second Pohl Aff. ¶ 16.

The Government insists, however, that plaintiff has failed to sufficiently identify the product contained in the entries. *See* Def.’s Mem. 10–11 (citing *Saab v. United States*, 434 F.3d 1359, 1369 (Fed. Cir. 2006), for the proposition that “a non-movant is required to provide opposing evidence under Rule 56(e) only if the moving party has provided evidence sufficient, if unopposed, to prevail as a matter of law”).

It is, of course, true that on a motion for summary judgment, the movant has the burden of coming forth with evidence to support the factual allegations in its claims. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (“[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings,

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<sup>5</sup> Plaintiff has submitted the “Affirmation of Randy Pohl” as Exhibit C to its revised motion for summary judgment; the “Second Affirmation of Randy Pohl” as an attachment to Plaintiff’s Response to Defendant’s Motion for Summary Judgment and Reply in Support of Plaintiff’s Motion for Summary Judgment; and the “Third Affirmation of Randy Pohl” as an attachment to its letter to the court of April 5, 2007. Mr. Pohl’s sworn statements shall be referred to as “First Pohl Affidavit,” “Second Pohl Affidavit” and “Third Pohl Affidavit,” respectively.

depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.”) (internal quotation marks omitted). The court finds that plaintiff has done so with respect to the issue of identification of some, but not all of the subject entries.

A review of the First Pohl Affidavit reveals that Mr. Pohl identified some of Rockwell's merchandise by model number: “The short body timing relays imported in the subject entries are listed by Rockwell under the following model numbers: 700–HR52TA17 Series C; 700–HR52TU24 Series C; 700HRM12TU24 Series C; 700–HR52TA17 Series B; 700–HR52TU24 Series B; 700–HRC12TA17 Series C; 700–HRC12TU24 Series B; and 700–HRM12TA17 Series [C].” First Pohl Aff. ¶ 3; *see also* Third Pohl Aff. ¶ 4 (correcting a typographical error). These model numbers match the model numbers of the samples provided to the court; the samples' model numbers, in turn, correspond to certain of the model numbers that appear in the entry documentation.<sup>6</sup> *Compare* Invoice No. L68842 (Jan. 13, 2000), attached to Entry No. 110–0417823–1 *and* Invoice No. F78713 (Feb. 17, 2000), attached to Entry No. 110–0418751–3 with First Pohl Aff. ¶ 3.

Based on the forgoing, the court finds that Rockwell has sufficiently identified the merchandise covered by the entries with respect to which it has provided samples and model numbers corresponding to the entered merchandise. It has thus satisfied its burden of coming forth with evidence to support its factual allegations with respect to identification of that merchandise.

Since plaintiff, as the movant, has met its burden with respect to the merchandise for which it produced samples, Rule 56(e) of the rules of this Court provides that the Government, as the adverse party, “may not rest upon the mere allegations or denials of the adverse party's pleading,” but rather

the adverse party's pleading, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

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<sup>6</sup>A comparison of the sample model numbers and the model numbers of the merchandise listed in the entry documents indicates that plaintiff did not provide samples of all models covered by the entries. For example, plaintiff did not provide a sample of 700–HX86SA17 or 700–HX86SU24, which were imported under entry numbers 110 0417823–1 and 110 0418751–3. Moreover, Mr. Pohl's affidavit identifies the eight samples provided to the court as identical in all material respects to the imported merchandise, but makes no such statement with respect to imported merchandise for which no sample was provided. As such, the court's decision applies only to the merchandise for which a sample was provided to the court.

USCIT R. 56(e); *see also United States v. Rockwell Automation, Inc.*, 30 CIT \_\_\_, \_\_\_, 462 F. Supp. 2d 1243, 1252 (2006) (where movant has supported its motion as Rule 56 requires, Rule 56(e) requires non-movant to come forward with opposing evidence). The Government having failed to submit any opposing evidence demonstrating a genuine issue for trial with respect to identification of that portion of the subject merchandise for which the model numbers of the provided samples match the model numbers of the entered merchandise, the court grants partial summary judgment for plaintiff on this issue.

## II. Classification of the Subject Merchandise

The court now turns to the classification of the subject merchandise itself. Here, the primary question is whether the subject merchandise has a “display or a system to which a mechanical display can be incorporated.” As previously noted, Customs denied plaintiff’s protest and classified the subject merchandise under Heading 9107 of the HTSUS. This heading reads:

Time switches with clock or watch movement or with synchronous motor. . . .

HTSUS 9107. The terms “clock movements” and “watch movements” are defined in the Additional U.S. Notes and the Notes to Chapter 91, respectively. “Clock movements” and “watch movements” are defined as

devices [with a] system capable of determining intervals of time, with a display *or a system to which a mechanical display can be incorporated.*

HTSUS, Ch. 91, Additional U.S. Note 1(d); HTSUS, Ch. 91, Note 3 (emphasis added). It is undisputed that the merchandise has a system capable of determining intervals of time.<sup>7</sup> It is also undisputed that the merchandise does not have a mechanical display. *See* Second Pohl Aff. ¶ 9; First Costello Decl. ¶ 27. Thus, in order for Customs’s classification to be sustained the subject merchandise must have “a system to which a mechanical display can be incorporated.”

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<sup>7</sup>As described by Mr. Pohl, “the short body timing relays measure a certain time interval and then activate or de-activate a subcircuit.” First Pohl Aff. ¶ 5. The user sets the length of the delay period, which is

accomplished by the resistor, capacitor, and oscillation timing circuitry. The oscillation circuit produces calibrated pulses which are counted by the resistor and capacitor circuit. After the short body time delay relay receives a trigger signal the timing circuitry begins counting pulses until the total count value from external settings is achieved.

First Pohl Aff. ¶ 10. *See also* First Costello Decl. ¶ 23 (“A Rockwell Timer electronically measures [an] interval of time by using an oscillator to generate specific very small intervals of time. . . .”).

The Government insists that Customs's classification under Heading 9107 is correct, and that Customs's 1999 and 2002 rulings are entitled to deference in accordance with the principles set forth in *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (setting forth factors which give a Customs ruling "power to persuade"). See Def.'s Mem. 12 ("HQ 962138 and HQ 964656 are entitled to deference.") (citing *United States v. Mead Corp.*, 533 U.S. 218 (2001)). It argues that it is entitled to prevail in this action as a matter of law because, among other things, the subject merchandise has a clock or watch movement, which although having no mechanical display, has a system capable of incorporating a display.

For its part, Rockwell argues that Customs's classification under Heading 9107 is incorrect and that the subject merchandise is correctly classified under Heading 8536. Rockwell contends that it is entitled to summary judgment because the subject merchandise does not have a system to which a mechanical display can be incorporated. See Pl.'s Mem. 15. In addition, plaintiff argues that the 2002 Ruling is not entitled to *Skidmore* deference. Pl.'s Mem. 19 ("[T]he [2002 Ruling] summarily concluded that the short body [timing relays] at issue 'ha[d] a system to which a mechanical display can be incorporated,' which is an essential element in classification under Heading 9107, HTSUS.").

#### A. *Skidmore Deference*

The court first addresses whether Customs's 1999 and 2002 rulings are entitled to *Skidmore* deference. When determining the degree of deference to be accorded to a Customs ruling, the factors to be considered are "the thoroughness evident in the classification ruling; the validity of the reasoning that led to the classification; consistency of the classification with earlier and later pronouncements; the formality with which the particular ruling was established; and other factors that supply a 'power to persuade.'" *Warner-Lambert Co. v. United States*, 407 F.3d 1207, 1209 (Fed. Cir. 2005) (quoting *Skidmore*, 323 U.S. at 140).

The court concludes that those portions of Customs's 1999 and 2002 rulings finding that plaintiff's merchandise has clock or watch movements are not entitled to *Skidmore* deference because they are unpersuasive on the question of whether the merchandise has "a system to which a mechanical display can be incorporated." HTSUS, Ch. 91, Additional U.S. Note 1(d); HTSUS, Ch. 91, Note 3.

The 1999 Ruling, on which Customs based its denial of plaintiff's protest, is not persuasive on this issue. The ruling sets forth the pertinent provisions of the HTSUS and the explanatory notes, but it does not contain any discussion or finding with respect to whether the merchandise has a "display or a system to which a mechanical display can be incorporated."

Customs's 2002 Ruling is no more persuasive. It quotes a report prepared by the Customs laboratory that analyzed plaintiff's merchandise. The report stated that each of the relays

has electronic circuitry that performs the timing functions. Each of these circuits contains a component that is ". . . capable of determining intervals of time . . ." The time delay for [one of the relays under consideration] is factory set, while it can be user-changed in [other relays under consideration]. In our opinion, [all of the above-mentioned relays] contain a watch or clock movement as described in Note 3 or Additional U.S. Note 1(d) to HTSUS Chapter 91. We believe that they are "time switches" of HTSUS Heading 9107.

HQ 964656 at 4. Thus, the report addressed only one of the requirements of a clock or watch movement, i.e., whether the subject merchandise has a system capable of determining intervals of time. It did not address the requirement that the merchandise must have a display or a system to which a mechanical display can be incorporated.

In the 2002 Ruling itself, Customs devotes a single sentence to the latter requirement: "Our discussions with the Customs Laboratory indicated that [certain of the components under consideration] have a system to which a mechanical display can be incorporated." HQ 965646 at 4 (citing definitions of clock movements and watch movements). This conclusion is not convincing since Customs does not provide any reasoning to support it. Rather, Customs's conclusion is based on "discussions" with the laboratory, which were not reduced to writing.

Even though Customs has consistently classified plaintiff's merchandise under Heading 9107, it has failed to address the requirement of a "display or system to which a mechanical display can be incorporated" in its rulings. Thus, the court concludes that Customs's 1999 and 2002 rulings do not contain valid reasoning with respect to, or a thorough consideration of, that issue. They are therefore not entitled to *Skidmore* deference.

#### B. Classification Under HTSUS Heading 9107

The court next turns to the issue of whether the subject merchandise has a system to which a mechanical display can be incorporated, such that it can be said to have a "clock or watch movement," under Heading 9107.

Review of Customs classification decisions involves a dual inquiry. The first question is the meaning of the HTSUS tariff terms at issue, which is a question of law. The second question is of a factual nature and requires the court to determine under which HTSUS provision the subject merchandise falls. *See Bausch & Lomb, Inc.*, 148 F.3d at 1365 (citation omitted). A statutory presumption of correctness ap-

plies to the factual component of Customs's classification decisions, not the legal issue of the meaning of tariff terms. See 28 U.S.C. § 2639(a)(1);<sup>8</sup> *Universal Elecs., Inc. v. United States*, 112 F.3d 488, 492 (Fed. Cir. 1997). The burden lies with plaintiff to demonstrate that Customs's classification is incorrect. *Universal Elecs.*, 112 F.3d at 492 ("Specifically, the importer must produce evidence (the burden of production portion of the burden of proof) that demonstrates by a preponderance (the burden of persuasion portion of the burden of proof) that Customs' classification decision is incorrect.").

In determining the proper classification of merchandise, the General Rules of Interpretation ("GRI") govern. See *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999) (citation omitted) ("The HTSUS General Rules of Interpretation . . . and the Additional U.S. Rules of Interpretation . . . govern the proper classification of all merchandise and are applied in numerical order."). The court begins with the language of the HTSUS headings, section and chapter notes, as the GRI require. See GRI 1. If a tariff term is not defined by the statute or the legislative history, its correct meaning is its common, or commercial, meaning. See *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). "To ascertain the common meaning of a term, a court may consult 'dictionaries, scientific authorities, and other reliable information sources' and 'lexicographic and other materials.'" *Id.* (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271 (C.C.P.A. 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). Finally, the explanatory notes, while not binding law, offer guidance as to how tariff terms are to be interpreted. See *Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003) (noting explanatory notes are "intended to clarify the scope of HTSUS subheadings and to offer guidance in their interpretation").

As noted, in order for Customs's classification to be sustained, the subject merchandise must have a system to which a mechanical display can be incorporated. The Government contends that it has such a system and cites Dr. Richard Costello's declaration in support of its position. In his declaration, Dr. Costello refers to a diagram of the subject merchandise submitted as an exhibit to plaintiff's memorandum in support of its motion. Dr. Costello asserts that "the essential blocks or components of a digital clock movement or a digital timer

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<sup>8</sup>Subsection 2639(a)(1) provides:

Except as provided in paragraph (2) of this subsection [providing for civil actions commenced under 28 U.S.C. § 1582], in any civil action commenced in the Court of International Trade under section 515, 516, or 516A of the Tariff Act of 1930, the decision of the Secretary of the Treasury, the administering authority, or the International Trade Commission is presumed to be correct. The burden of proving otherwise shall rest upon the party challenging such decision.

28 U.S.C. § 2639(a)(1).

are: (1) an oscillator, and (2) a counter.” First Costello Decl. ¶ 25. He then states that the oscillator and counter blocks shown in the diagram

can be interfaced by a suitable driver circuitry to an electrically operated mechanical display, such as a watch or clock hand. . . . Such a display would be interfaced to the counter contained within the Rockwell timer under discussion, to provide a mechanical display, if desired. . . . *In a practical sense, constructing such a mechanical time display would be rather involved and somewhat complicated, but conceptually, or theoretically, it is possible. It could be built.*

First Costello Decl. ¶¶ 26–27 (emphasis added). The Government maintains that the statute requires that the incorporation of a mechanical display be possible, i.e., that it *can* be done – not that it is commercially practical to do so. Def.’s Supplemental Br. 1–2 (“Note 3 [defining “watch movements”] does not state that incorporating a display has to be practical or commercially feasible; it has to be able to be done.”).

Plaintiff, on the other hand, argues that the subject merchandise does not have a system to which a mechanical display can be incorporated and that the HTSUS contemplates that the ability to incorporate a mechanical display must be more than a mere theoretical possibility. Plaintiff argues that Congress’s use of the word “incorporated”

implies that an article has been designed and manufactured to accept . . . a display system with a specific connection interface, not some Rube Goldberg, ad hoc contraption developed after production. . . . Clearly, the theoretical possibility posited by the government does not relate to the condition of the [short body timing relay] as imported, but merely constitutes speculation as to some post-importation, post-production reconfiguration of the product.

Pl.’s Supplemental Br. 2.

The court concludes that the subject merchandise does not have “a system to which a mechanical display can be incorporated.” In reaching this conclusion, the court agrees with plaintiff that the word “incorporated” when combined with the word “system” compels the rejection of Customs’s classification. The word “system” means “a complex unity formed of many often diverse parts . . . serving a common purpose.” Webster’s Third New International Dictionary 2322 (2002). Applied to the words of the HTSUS, the purpose of the “system” at issue here is to facilitate the incorporation of a display into the subject merchandise. That is, to be classified under Heading 9107 plaintiff’s merchandise must have a system whose purpose is

to allow the incorporation of a display.<sup>9</sup>

Moreover, the merchandise must have such a system at the time of importation. See *United States v. Citroen*, 223 U.S. 407, 414–15 (1911) (“The rule is well established that in order to produce uniformity in the imposition of duties, the dutiable classification of articles imported must be ascertained by an examination of the imported article itself, in the condition in which it is imported.”) (internal quotation marks omitted); *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). As each expert makes clear, the subject merchandise does not satisfy this requirement. See First Costello Decl. ¶ 27 (“In a practical sense, constructing such a mechanical time display would be rather involved and somewhat complicated, but conceptually, or theoretically, it is possible.”); Second Pohl Aff. ¶¶ 9 (likening the “scenario of incorporating a display into the subject timing relays [described by Dr. Costello in his declaration] to taking a radio, [and] modifying the circuitry by adding a display to make a television”); 10 (“[T]here is no system to which a mechanical display can be incorporated. . . .”). It is therefore apparent that, at the time of importation, the subject merchandise had no system whose purpose was to facilitate the addition of a display. Therefore, the subject merchandise does not have a “clock or watch movement” and is not properly classifiable under Heading 9107.

#### C. Classification Under HTSUS Heading 8536

Plaintiff has overcome its burden of demonstrating that Customs’s classification is incorrect. Thus, in accordance with the holding in *Jarvis Clark Co. v. United States*, 733 F.2d 873, 878 (Fed. Cir. 1984), the court now turns to the question of whether Heading 8536, or another provision of the HTSUS, provides the correct classification of the subject merchandise. The court concludes that the merchandise is properly classifiable under HTSUS Heading 8536.

Applying GRI 1, the court must determine the correct classification “according to the terms of the headings and any relative section or chapter notes. . . .” GRI 1. Heading 8536 covers

[e]lectrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs,

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<sup>9</sup>Reference to other language in the notes defining “clock movements” (Additional U.S. Note 1(d)) and “watch movements” (Note 3) supports this conclusion. For example, Additional U.S. Note 1(d) states that clock movements are “devices regulated by . . . any other system capable of determining intervals of time.” HTSUS, Ch. 91, Additional U.S. Note 1(d) (emphasis added). In other words, this system must have as its purpose the capacity to measure time.

sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V. . . .<sup>10</sup>

Although the terms of Heading 8536 are not defined in the section or chapter notes, the explanatory notes, a recognized, albeit non-binding, guide to interpreting tariff terms, provide:

Relays are electrical devices by means of which the circuit is automatically controlled by a change in the same or another circuit. They are used, for example, in telecommunication apparatus, road or rail [signaling] apparatus, for the control or protection of machine-tools, etc. The various types can be distinguished by, for example:

(1) The electrical means of control used: electromagnetic relays, permanent magnet relays, thermo-electric relays, induction relays, electro-static relays, photoelectric relays, electronic relays, etc.

(2) The predetermined conditions on which they operate: maximum current relays, maximum or minimum voltage relays, differential relays, fast acting cut out relays, time delay relays, etc.

4 World Customs Org., Harmonized Commodity Description and Coding System Explanatory Notes (“Explanatory Notes”) § 85.36(I)(C), at 1504 (1998); *see also* Webster’s Third New International Dictionary 1917 (2002) (defining relay as “an electromagnetic device for remote or automatic control that is actuated by a variation in conditions of an electric circuit and that operates in turn other devices (as switches, circuit breakers) in the same or a different circuit”).

The undisputed facts together with the court’s observations lead to the conclusion that the subject merchandise meets the definition of a relay. *See Dolly, Inc. v. United States*, 27 CIT 1597, 1609, 293 F. Supp. 2d 1340, 1350 (2003). That is to say, the subject merchandise is an “electrical device [ ] by means of which [a] circuit is automatically controlled by a change in the same or another circuit.” Explanatory Notes § 85.36(I)(C), at 1504. As described by the parties and noted in the background section, *supra*, the subject merchandise is used in a control panel on an assembly operation or conveyor line. When electrical power has been applied to the electrical system of which the subject merchandise is a component, the subject merchandise directs electrical power to specific apparatus at the rate specified by the user. The internal components of the subject merchandise include stationary and moveable parts to which electric power is applied in order to complete a circuit. Heading 8536 thus accurately

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<sup>10</sup>Because there is no dispute that the merchandise does not exceed 1,000 volts, this aspect of Heading 8536 is satisfied.

describes the use and function of the merchandise at issue. Furthermore, it specifically contemplates, *eo nomine*,<sup>11</sup> the classification of relays thereunder, i.e., relays that are used to make connections to electrical circuits. The subject merchandise is thus properly classifiable as a relay under HTSUS Heading 8536.

#### CONCLUSION

The court finds that the subject merchandise, with respect to which plaintiff supplied samples to the court, i.e., those whose model numbers match the model numbers of the imported merchandise, is properly classifiable under HTSUS Heading 8536. Summary judgment is granted in favor of Rockwell as to that merchandise. The Government's cross-motion is denied. The parties are directed to confer and jointly submit, no later than May 17, 2007:

- (1) a proposed Judgment, specifically identifying the merchandise covered by this opinion; and
- (2) a proposed Scheduling Order for trial with respect to the remaining merchandise.

Slip Op 07-68

FORMER EMPLOYEES OF CABOT SUPERMETALS Plaintiffs, v. UNITED STATES DEPARTMENT OF LABOR Defendant.

Before: MUSGRAVE, JUDGE  
Court No. 05-00674

#### JUDGMENT

This court, having issued an Order on March 27, 2007, requiring the plaintiffs to show cause why this action should not be dismissed for lack of prosecution; and with no response from the plaintiffs having been received by the Court, it is hereby

**ORDERED** pursuant to Rule 41(b)(3) of the Rules of this Court that this action be, and it hereby is, dismissed for lack of prosecution.

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<sup>11</sup> *Eo nomine* means "[b]y or in that name." Black's Law Dictionary 575 (8th ed. 2004). "[A]n *eo nomine* provision . . . describes a commodity by a specific name, usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article." *Nidec Corp. v. United States*, 68 F.3d 1333, 1336 (Fed. Cir. 1995).

Slip-Op. 07-69

SALMON SPAWNING & RECOVERY ALLIANCE, *et al.*, Plaintiffs, v.  
W. RALPH BASHAM, *et al.*, Defendants.

Before: Judith M. Barzilay, Judge  
Court No. 06-00191

[Plaintiffs' motion for reconsideration is denied.]

*Heller Ehrmann LLP, Eric Redman and (Svend Arnold Brandt-Erichsen)* for Plaintiffs Salmon Spawning & Recovery Alliance, Native Fish Society, and Clark-Skamania Flyfishers.

*Peter D. Keisler*, Assistant Attorney General; (*Jeanne E. Davidson*), Director; (*Stephen C. Tosini*), Commercial Litigation Branch, Civil Division, United States Department of Justice for Defendants United States Customs & Border Protection, Dirk Kempthorne, United States Department of Interior, United States Fish & Wildlife Service, Carlos M. Gutierrez, United States Department of Commerce, D. Robert Lohn, National Oceanic & Atmospheric Administration National Marine Fisheries Service, Deborah J. Spero, and H. Dale Hall.

Dated: May 9, 2007

MEMORANDUM ORDER

**BARZILAY, JUDGE:** Plaintiffs in the above captioned matter move pursuant to USCIT Rule 59(a)(2) to have this court reconsider its judgment in *Salmon Spawning & Recovery Alliance v. Basham*, No. 06-00191, 2007 WL 666464 (CIT Mar. 6, 2007), granting Defendants' motion to dismiss.<sup>1</sup> For the reasons discussed below, Plaintiffs' motion for reconsideration is denied.

I. Standard of Review

The disposition of a motion for reconsideration lies within "the sound discretion of the court." *United States v. Gold Mountain Coffee, Ltd.*, 8 CIT 336, 336, 601 F. Supp. 212, 214 (1984). A court generally will grant such a motion only to "rectify[ ] a significant flaw in the conduct of the original proceeding." *Id.* (quotations & citation omitted). Specifically,

[a] rehearing may be proper when there was: (1) an error or irregularity in the trial; (2) a serious evidentiary flaw; (3) a discovery of important new evidence which was not available even to the diligent party at the time of trial; or (4) an occurrence at trial in the nature of an accident or unpredictable surprise or

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<sup>1</sup>Familiarity with *Salmon Spawning & Recovery Alliance*, 2007 WL 666464, is presumed.

unavoidable mistake which impaired a party's ability to adequately present its case.

*Id.* at 336–37, 601 F. Supp. at 214. A motion for reconsideration will not be granted merely to give a losing party another chance to relitigate the case or present arguments it previously raised. *See id.* at 337, 601 F. Supp. at 214.

## II. Plaintiffs' Contentions

Plaintiffs set forth various arguments in support of their motion. First, they claim that the court misconstrued the first claim in their complaint as an assertion that Customs is violating 16 U.S.C. § 1538, Section 9 (“§ 9”) of the Endangered Species Act (“ESA”), 16 U.S.C. § 1531, *et seq.* Pls.' Mot. Reh'g & Recons. J. 2 (“Pls. Mot.”). Rather, they aver that their claim was that Customs is violating its duties under Section 7 (“§ 7”), *id.* § 1536, by allowing others to import threatened salmon. Pls. Mot. 2. Plaintiffs also contend that the applicability of § 7(a)(2)'s consultation requirement does not turn upon “whether an agency's conduct is characterized as an affirmative action or a failure to act.” Pls. Mot. 5. In the alternative, Plaintiffs construe Customs' failure to enforce § 9 as “actions' within the meaning of the ESA” sufficient to trigger § 7(a)(2). Pls. Mot. 7.

## III. Discussion

Though Plaintiffs maintain that their first claim dealt with Customs' violation of § 7(a)(2), after several careful reviews of the complaint, the court has determined that a reasonable person would conclude that Plaintiffs sought to bring a § 9 claim against Customs. *See* Compl. ¶¶ 41–46. Any confusion over the nature of the claim stemmed from the complaint's inartful drafting rather than the court's misreading of the text. Tellingly, the District Court for the Western District of Washington, which transferred this case to the Court of International Trade, and Defendants also interpreted this claim to “allege that Defendants have violated Section 9 of the Endangered Species Act . . . by allowing the import of threatened and endangered salmon.” *Salmon Spawning & Recovery Alliance v. Spero*, No. C05–1878Z, 2006 WL 1207909, at \*1 (W.D. Wash. May 3, 2006); *accord* Mot. Dismiss & Resp. Pls.' Mot. J. A.R. 6. Nevertheless, assuming *arguendo* that both Courts and Defendants misconstrued Plaintiffs' first claim, the claim would be subsumed by Plaintiffs' second claim, which asserts that Defendants must undergo the § 7(a)(2) consultation process.<sup>2</sup> *See* Compl. ¶¶ 48–51; *see also* § 1536(a)(2).

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<sup>2</sup>The court need not address Plaintiffs' assertion that the Court has jurisdiction over Defendants' first claim pursuant to 16 U.S.C. § 1540(g)(1)(A) or, in the alternative, the Admin-

Plaintiffs' argument that the applicability of § 7(a)(2) does not depend on whether the disputed agency conduct constitutes action or inaction also does not withstand scrutiny. Ample case law reiterates that "the [§ 7(a)(2)] duty to consult is triggered by *affirmative actions*." *W. Watersheds Project v. Matejko*, 468 F.3d 1099, 1102 (9th Cir. 2006) (emphasis added); *accord* § 1536(a)(2); *W. Watersheds Project*, 468 F.3d at 1108; *Defenders of Wildlife v. EPA*, 420 F.3d 946, 962 (9th Cir. 2005) ("The two critical factors triggering this [§ 7(a)(2)] obligation are (1) that the 'action' be . . . an action 'authorized, funded or carried out' by the agency; and (2) that there is . . . a direct or indirect effect 'likely to jeopardize the continued existence of any endangered species or threatened species . . .'" (quoting § 1536(a)(2)), *reh'g denied*, 450 F.3d 394 (9th Cir. 2006), *cert. granted sub nom. Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 127 S. Ct. 852 (2007), *EPA v. Defenders of Wildlife*, 127 S. Ct. 853 (2007). Regulations governing the ESA buttresses this conclusion. *See, e.g.*, 50 C.F.R. § 402.02 (" 'Action' means all activities or programs of any kind *authorized, funded, or carried out*, in whole or in part, by Federal agencies . . .") (emphasis added); *id.* § 402.03 ("Section 7 . . . appl[ies] to all *actions* in which there is discretionary Federal involvement or control.") (emphasis added); *id.* § 402.14(a) ("Requirement for formal consultation. Each Federal agency shall review its *actions* at the earliest possible time to determine whether any *action* may affect listed species . . .") (emphasis added). Without an affirmative action by Customs, the court cannot compel it to enter consultations pursuant to § 7(a)(2).

#### IV. Conclusion

Therefore, upon reading Plaintiffs' motion for reconsideration; Defendants' opposition thereto; and upon consideration of other papers and proceedings had herein, it is hereby

ORDERED that Plaintiffs' motion for reconsideration is denied.

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istrative Procedures Act ("APA"), 5 U.S.C. §§ 551–706. *See* Pls. Mot. 4–5. As stated *supra*, if Plaintiffs' first claim indeed concerned Defendants' violation of § 7(a)(2), it would be subsumed by the second claim, rendering this issue moot.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO./DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY & MERCHANDISE
C07/4 2/27/07 Ridgway, J.	California Innovations, Inc.	05-00531	6307.90.99 Not stated	3924.10.50 3.4%	Agreed statement of facts	Chicago Coolers, etc.
C07/5 3/1/07 Ridgway, J.	Hilti, Inc.	02-00098	3214.10.00 3.7%	3506.91.00 2.1%	Agreed statement of facts	Houston Hilti anchor adhesives
07/6 3/1/07 Ridgway, J.	Hilti, Inc.	02-00206	3214.10.00 3.7%	3506.91.00 2.1%	Agreed statement of facts	Tulsa Hilti anchor adhesives
C07/7 3/1/07 Ridgway, J.	Hilti, Inc.	02-00603	3214.10.00 3.7%	3506.91.00 2.1%	Agreed statement of facts	Tulsa Hilti anchor adhesives
C07/8 3/20/07 Aquilino, S.J.	Berwick Indus., Inc.	00-00029	3926.40.00 or 3926.90.98 5.3% 6307.90.9989 7%	4601.99.90 4602.90.00 Various rates	Agreed statement of facts	Newark, NJ Various polypropylene or textile bows
C07/9 4/27/07 Wallach, J.	California Innovations, Inc.	01-00885	6307.90.99 7% 4202.92.45 20%	3924.10.50 3.4%	Agreed statement of facts	Los Angeles Coolers, etc.
C07/10 4/27/07 Wallach, J.	Grand Northern Prods., Ltd.	02-00178	2846.90.8000 3.7%	3824.90.39 00 Free of duty	Agreed statement of facts	Portland Chemical product-Yttria C
C07/11 4/27/07 Wallach, J.	Grand Northern Prods., Ltd.	02-00557	2846.90.8000 3.7%	3824.90.39 00 Free of duty	Agreed statement of facts	Portland Chemical product-Yttria C
C07/12 4/27/07 Wallach, J.	Grand Northern Prods., Ltd.	03-00666	2846.90.8000 3.7%	3824.90.39 00 Free of duty	Agreed statement of facts	Portland Chemical product-Yttria C
C07/13 4/27/07 Wallach, J.	Grand Northern Prods., Ltd.	04-00428	2846.90.8000 3.7%	3824.90.39 00 Free of duty	Agreed statement of facts	Portland Chemical product-Yttria C

DECISION NO./DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY & MERCHANDISE
C07/14 4/27/07 Wallach, J.	Grand Northern Prods., Ltd.	05-00490	2824.90.39 3.7%	3824.90.39 Free of duty	Agreed statement of facts	Portland Chemical product-Yttria C
C07/15 4/27/07 Wallach, J.	Treibacher Auermet Produktionsges, MBH	05-00642	2824.90.39 3.7%	3824.90.39 Free of duty	Agreed statement of facts	Portland Chemical product-Yttria C

