

U.S. Customs and Border Protection

General Notices

ACCREDITATION AND APPROVAL OF CERTISPEC SERVICES USA, INC., AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of Certispec Services USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Certispec Services USA, Inc., 1448 Texas Avenue, Texas City, TX 77590, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Certispec Services USA, Inc., as commercial gauger and laboratory became effective on July 22, 2008. The next triennial inspection date will be scheduled for July 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Pro-

tection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: October 16, 2008

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, October 24, 2008 [(73 FR 63187)]]

**APPROVAL OF OILTEST, INC., AS A
COMMERCIAL GAUGER**

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

ACTION: Notice of approval of Oiltest, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Oiltest, Inc., 4333 50th Street South, Tampa, FL 33619, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The approval of Oiltest, Inc., as commercial gauger became effective on July 24, 2008. The next triennial inspection date will be scheduled for July 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: October 16, 2008

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, October 24, 2008 [(73 FR 63187)]]

**APPROVAL OF OMNI HYDROCARBON MEASUREMENT, AS
A COMMERCIAL GAUGER**

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

ACTION: Notice of approval of Omni Hydrocarbon Measurement, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Omni Hydrocarbon Measurement, 914 Kennings Ave., Crosby, TX 77532, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The approval of Omni Hydrocarbon Measurement, as commercial gauger became effective on February 13, 2008. The next triennial inspection date will be scheduled for February 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: October 16, 2008

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, October 24, 2008 [(73 FR 63187)]

IMPORTER SELF-ASSESSMENT PRODUCT SAFETY PILOT

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

ACTION: General notice.

SUMMARY: This document announces the expansion of the Importer Self-Assessment Program (ISA) to include the Importer Self-Assessment-Product Safety Pilot (ISA-PS). The ISA-PS is a partnership that will be created among CBP, the Consumer Product Safety Commission (CPSC), and importers which will strive to maintain a high level of product safety compliance, and to achieve the goals of the Interagency Working Group on Import Safety by working collaboratively to prevent unsafe imports. The ISA-PS is a voluntary approach to product safety compliance, which will provide recognition and support to participating companies. Application to the ISA-PS is open to all importers who are participants in the ISA. CBP and CPSC staff will designate a limited number of importers from the initial applicants and determine their eligibility for participation in the pilot program. This document contains information on the application process, the benefits, and continued participation requirements.

EFFECTIVE DATE: This pilot program will be open to applications from qualified importers on October 29, 2008.

FOR FURTHER INFORMATION CONTACT: Cathy Saucedo, Director, Import Safety and Interagency Requirements Division, Office of International Trade, Customs and Border Protection, (202) 863-6556.

SUPPLEMENTARY INFORMATION:

BACKGROUND

ISA Program

U.S. Customs and Border Protection (CBP) is committed to encouraging importers to share the responsibility for compliance with trade laws and regulations. In order to enable interested importers to participate in a program that allows them to assess their own compliance with CBP laws and regulations on a continuing basis, CBP (then known as the U.S. Customs Service, Department of the Treasury) announced the Importer Self-Assessment (ISA) program on June 17, 2002 in a notice in the **Federal Register** (67 FR 41298). The ISA program is a trade facilitation partnership program that recruits trade compliant companies in order to reduce both CBP and company resources required during entry and post entry, and to build cooperative relationships that strengthen trade compliance

with trade laws. The ISA program is based on the premise that importers with strong internal controls achieve the highest level of compliance with CBP laws and regulations, and provides a means to recognize and support importers that have implemented such systems.

Since the ISA program started in 2002, over 172 importers under 760 different Importer of Record numbers have been approved to participate in the program. The compliance measurement program has shown that ISA program participants have continued to hold the highest rate of compliance with major trade laws among major importing groups. In FY 2007, merchandise imported by ISA participants comprised 15% of the total value imported into the United States and the compliance rate for ISA importers was 99.4%.

Import Safety

On July 18, 2007, President George W. Bush issued Executive Order 13439, which established an Interagency Working Group on Import Safety (“Working Group”). The Working Group, a cabinet-level panel of designated members, includes CBP (acting as a designee of the Secretary of Homeland Security) and the Chairman of the U.S. Consumer Product Safety Commission (CPSC). The mission of the Working Group is to identify actions and appropriate steps that can be pursued, within existing resources, to promote the safety of imported products by (i) reviewing and assessing current import safety procedures and methods aimed at ensuring the safety of imported products, (ii) identifying potential means to promote all appropriate steps by U.S. importers to enhance safety of imported products, and (iii) surveying the authorities and practices of Federal, State, and local government agencies regarding the safety of imports to identify best practices and enhance coordination among agencies. Executive Order 13439 required the Working Group to provide recommendations within 60 days to the President regarding these actions and steps.

On September 10, 2007, the Working Group submitted a comprehensive strategic framework entitled *Protecting Americans Every Step of the Way: A strategic framework for continual improvement in import safety* (“Strategic Framework”), which outlined an approach that can build upon existing efforts to improve the safety of imported products, while facilitating trade. On November 6, 2007, the Working Group followed the submission of the Strategic Framework by presenting an *Action Plan for Import Safety: A roadmap for continual improvement* (“Action Plan”). The Action Plan takes the form of 14 broad recommendations and 50 specific action steps based on the Strategic Framework.

Three organizing principles form the keystones of the Strategic Framework and the Action Plan recommendations: (i) preventing harm resulting from the importation of unsafe products; (ii) inter-

vening when risks are identified; and, (iii) responding rapidly after harm has occurred. Within each of these organizing principles are cross-cutting building blocks that departments and agencies should use to guide their programs. These “building blocks” include the advancement of a common vision across the federal government, as well as fostering a culture of collaboration among federal departments and agencies.

CBP is responsible for multiple action steps in the Action Plan, including harmonizing government procedures concerning imports, creating an automated system reflecting a “single window” concept, and being an active participant in establishing good importer practices for foreign collaboration, capacity building and developing voluntary certification programs. Taking the lead for a significant amount of the action steps, CBP leads the Working Group in its mission to implement the Action Plan and Strategic Framework by working collaboratively with other government agencies and focusing on import safety issues.

The Working Group is comprised of multiple government agencies, including CPSC. CBP and CPSC have a strong history of partnership in combating unsafe imports, and the two agencies have worked diligently on several significant product recalls including those on lead in toys, cribs, and children’s sleepwear. This collaboration has strengthened as both agencies have worked together in the Working Group to implement the Action Plan and the Strategic Framework. In November of 2007, CBP officials worked closely with CPSC officials to formulate a response to the recall of the toy Aquadots after it was discovered that some of the imported toys contained a toxic chemical that resulted in the illness and hospitalization of some children who ingested the toys. The two agencies devised a plan to seize and recover shipments of Aquadots bound for the U.S. or that were already in the U.S. and still subject to redelivery, and thereby successfully prevented the unsafe toys from further distribution.

Currently, to more precisely target consumer products that present a safety risk, CPSC staff and CBP are collaborating on action steps to further improve import safety. CBP and CPSC staff are working collectively with the trade community in the development of a trilateral partnership to facilitate the trade of safe products. Since the development of the ISA program, CBP and CPSC staff have worked with the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC) to expand the ISA program to include a product safety component, and thereby extend the ISA program to include compliance with other agency requirements.

Expansion of ISA Program to Include Import Safety

In order to further the goals of the Working Group’s Strategic Framework and Action Plan, this document announces the expan-

sion of the ISA to include the Importer Self-Assessment-Product Safety Pilot (ISA-PS). The ISA-PS is envisioned to be a partnership among CBP, CPSC, and importers to maintain a high level of product safety compliance, and to thereby achieve the objective of the Strategic Framework and Action Plan, that is, working collaboratively to prevent unsafe imports. The ISA-PS is a voluntary approach to product safety compliance, which provides recognition and support to participating companies. CBP and CPSC staff have developed a list of best practices to ensure compliance with CPSC's current regulations and will be working through this program to adapt those best practices to meet CPSC's new statutory scheme. Within the realm of their respective authorities, CBP and CPSC will verify that companies have adequate controls and processes in place to ensure product safety at all points in the product life-cycle of imported products and to comply with these mandatory standards. CPSC staff and CBP have worked to develop CPSC-based benefits to encourage participation in this expanded pilot program. Acceptance into the program is by mutual agreement of CPSC and CBP.

DESCRIPTION OF THE IMPORTER SELF-ASSESSMENT PRODUCT SAFETY PILOT

OVERVIEW

The Importer Self-Assessment-Product Safety Pilot (ISA-PS) is envisioned to be a partnership among CBP, the Consumer Product Safety Commission (CPSC) and importers to maintain a high level of product safety compliance. ISA-PS is a voluntary approach to product safety compliance, which provides recognition and support to participating companies.

ISA-PS PARTICIPATION REQUIREMENTS

In order to participate in ISA-PS, an importer must:

1. Be an active member in ISA and comply with all ISA requirements and obligations.
2. Complete an ISA-PS/CPSC Questionnaire and sign an ISA-PS/CPSC Addendum.
3. Agree to comply with all laws and regulations administered by CBP, as well as the CPSC including, but not limited to: the Consumer Product Safety Improvement Act of 2008, Pub. L. 110-314, 122 Stat. 3016 (August 14, 2008), the Consumer Product Safety Act (codified at 15 U.S.C. 2051-2089), the Federal Hazardous Substances Act (codified at 15 U.S.C. 1261-1278), the Flammable Fabrics Act (codified at 15 U.S.C. 1191-1204), the Poison Prevention Packaging Act (codified at 15 U.S.C. 1471-1476), the Refrigerator Safety Act (codified at 15 U.S.C. 1211-1214), the Virginia Graeme Baker Pool and Spa Safety Act (codified at 15 U.S.C. 8001-8008),

and the Children's Gasoline Burn Prevention Act, Pub. L. 110-278, 122 Stat. 2602 (July 17, 2008).

4. Maintain an internal control system that ensures the integrity of product safety.

5. Notify CBP of any major organizational changes that may impact the importer's product safety controls.

6. Submit an annual written notification to CBP that sets forth the importer's ISA-PS point of contact and acknowledges that the importer continues to meet the requirements of ISA-PS.

APPLICATION PROCESS

1. Required Information

Interested applicants (importers that are already active members of ISA) may send an e-mail requesting an application to isa@dhs.gov, and will receive an electronic ISA-PS/CPSC Questionnaire and an ISA-PS/CPSC Addendum. Completed ISA-PS/CPSC Questionnaires may be submitted electronically via e-mail to isa@dhs.gov.

2. CBP Review of Application

After the applicant has submitted the ISA-PS/CPSC Questionnaire and ISA-PS/CPSC Addendum, CBP and CPSC staff will review the applicant's submission. For a limited number of applicants, the review will include a CPSC risk assessment to determine the applicant's readiness to assume responsibilities for self-assessment. The risk assessment will include an examination of the applicant as identified by the Importer of Record (IOR) number(s) listed on the ISA-PS/CPSC Questionnaire and its scope will include the laws and regulations administered by CPSC requirements set forth above (in ISA-PS Participation Requirements, Item 3). CBP and CPSC will perform a formal domestic site visit with the importer. At the discretion of CBP and CPSC it may also be necessary to perform a formal visit with the applicant at a foreign facility. The purpose of these site visits is to determine if the applicant is ready to assume the responsibilities of self-assessment and to equip CBP and CPSC with the knowledge of the importers internal control procedures as appropriate. If CBP and CPSC determine that the applicant is not ready to assume the responsibilities of self-assessment, CBP and CPSC staff will continue to work with the applicant to strengthen their product safety program. If CBP and CPSC staff determine that the applicant is ready to assume all the responsibilities of self-assessment, they will sign the ISA-PS/CPSC Addendum and return a copy to the importer. CBP and CPSC staff reserve the right, in their discretion, to approve or disapprove an application. Further, in selecting applicants for participation in ISA-PS, CBP and CPSC staff reserve the right to establish priorities for the processing and approval of applications.

ISA-PS POTENTIAL BENEFITS

In addition to the benefits received as a participant in ISA, once accepted into the ISA-PS, the participant also becomes eligible for the following benefits:

1. CPSC will provide the participant with a product-specific CPSC point of contact who can assist in providing National Electronic Injury Surveillance System (NEISS) Product Codes for entry lines.
2. CPSC will provide access to the participant with special training concerning product safety compliance, internal controls, and CPSC audit trails.
3. CPSC will allow the participant the opportunity to apply for external participation coverage of multiple business units (multiple IOR numbers) identified in the ISA-PS/CPSC Addendum.
4. CPSC will consider expansion of benefits to all products of approved participants if the entry line(s) contains all the applicable NEISS product code(s).
5. CPSC will reduce product safety tests on goods imported by ISA-PS participants.
6. CPSC laboratories will grant priority “front of the line testing” to ISA-PS participants when product safety testing is conducted.
7. CPSC may allow products to be destroyed by the ISA-PS participant in lieu of requesting redelivery to CBP of the product.
8. CPSC will acknowledge the participation of ISA-PS in CPSC’s “Fast-Track Product Recall Program.”
9. Additional benefits tailored to specific industry needs may later become available.

Additionally, the ISA-PS participant will enjoy greater business certainty because a reliable system of internal controls ensures compliant product safety transactions.

ISA-PS CONTINUING PARTICIPATION REQUIREMENTS

Each ISA-PS participant must remain an active member in ISA and comply with all ISA requirements and obligations, available at http://www.cbp.gov/linkhandler/cgov/trade/trade_programs/trade_compliance/importer_self_assessment/isahb.ctt/isahb.doc. Additionally, each ISA-PS participant must remain in compliance with the requirements of the ISA-PS/CPSC Addendum and provide annual written notification to CBP that it continues to meet the requirements of ISA-PS. In connection with this notification, CBP and CPSC staff will determine if additional discussions or reviews of company controls or documentation are necessary. In addition, ISA-PS participants are responsible for making appropriate ongoing changes to internal controls as needed.

If a participant fails to remain an active member in ISA or fails to meet the requirements of the ISA-PS/CPSC Addendum, or is determined to have violated a law or regulation administered by CBP or the CPSC, the participant may be subject to penalties, liquidated

damages, and/or removal from the ISA removal from the ISA-PS. If CBP and CPSC staff believe that there is a basis for removal of an ISA-PS participant, a written notice proposing removal with a description of the facts or conduct warranting removal, will be provided to such participant. The participant will be offered the opportunity to respond to the proposed removal notice within 30 days of the date of the notice. CBP and CPSC will issue a final written decision on the proposed removal within 30 days of the receipt of the response to the proposed removal notice, if one was timely received. In the case of a public health interest and/or safety concern, a participant may be removed immediately from the ISA-PS. The participant will be given an opportunity to respond within 30 days to the notice providing for immediate removal.

EVALUATION OF PILOT

CBP and CPSC staff intend to review the ISA-PS pilot two years after its effective date to measure its effects and achievements, and recommend to CBP and the Commission whether ISA-PS shall become a permanent program.

Dated: October 21, 2008

JAYSON P. AHERN.
*Acting Commissioner,
Customs and Border Protection.*



QUARTERLY IRS INTEREST RATES USED IN CALCULATING INTEREST ON OVERDUE ACCOUNTS AND REFUNDS ON CUSTOMS DUTIES

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

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning October 1, 2008, the interest rates for overpayments will be 5 percent for corporations and 6 percent for non-corporations, and the interest rate for underpayments will be 6 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

EFFECTIVE DATE: October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614-4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2008-47, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2008, and ending on December 31, 2008. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). For corporate overpayments, the rate is the Federal short-term rate (3%) plus two percentage points (2%) for a total of five percent (5%). For overpayments made by non-corporations, the rate is the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). These interest rates are subject to change for the calendar quarter beginning January 1, 2009, and ending March 31, 2009.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under-payments (percent)</u>	<u>Over-payments (percent)</u>	<u>Corporate Overpayments (Eff. 1-1-99) (percent)</u>
070174	063075	6%	6%	
070175	013176	9 %	9 %	
020176	013178	7 %	7 %	
020178	013180	6 %	6 %	

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under- payments (percent)</u>	<u>Over- payments (percent)</u>	<u>Corporate Overpay- ments (Eff. 1-1-99) (percent)</u>
020180	013182	12 %	12 %	
020182	123182	20 %	20 %	
010183	063083	16 %	16 %	
070183	123184	11 %	11 %	
010185	063085	13 %	13 %	
070185	123185	11 %	11 %	
010186	063086	10 %	10 %	
070186	123186	9 %	9 %	
010187	093087	9 %	8 %	
100187	123187	10 %	9 %	
010188	033188	11 %	10 %	
040188	093088	10 %	9 %	
100188	033189	11 %	10 %	
040189	093089	12 %	11 %	
100189	033191	11 %	10 %	
040191	123191	10 %	9 %	
010192	033192	9 %	8 %	
040192	093092	8 %	7 %	
100192	063094	7 %	6 %	
070194	093094	8 %	7 %	
100194	033195	9 %	8 %	
040195	063095	10 %	9 %	
070195	033196	9 %	8 %	
040196	063096	8 %	7 %	
070196	033198	9 %	8 %	
040198	123198	8%	7%	
010199	033199	7%	7%	6%
040199	033100	8%	8%	7%
040100	033101	9%	9%	8%
040101	063001	8%	8%	7%
070101	123101	7%	7%	6%
010102	123102	6%	6%	5%
010103	093003	5%	5%	4%
100103	033104	4%	4%	3%
040104	063004	5%	5%	4%
070104	093004	4%	4%	3%
100104	033105	5%	5%	4%
040105	093005	6%	6%	5%
100105	063006	7%	7%	6%
070106	123107	8%	8%	7%
010108	033108	7%	7%	6%
040108	063008	6%	6%	5%

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under- payments (percent)</u>	<u>Over- payments (percent)</u>	<u>Corporate Overpay- ments (Eff. 1-1-99) (percent)</u>
070108	093008	5%	5%	4%
100108	123108	6%	6%	5%

Dated: October 24, 2008

JAYSON P. AHERN,
Acting Commissioner,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 29, 2008 {(73 FR 64358)}]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, October 29, 2008

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

SANDRA L. BELL,
Executive Director,
Regulations and Rulings Office of International Trade.

**PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE CLASSIFICATION OF A TRIGGER SPRAYER**

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

ACTION: Proposed modification of a classification ruling letter and proposed revocation of treatment relating to the classification of a trigger sprayer.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. §1625(c)), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is proposing to modify one ruling letter relating to the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a trig-

ger sprayer. CBP is also proposing to revoke any treatment previously accorded by it to substantially identical transactions.

DATE: Comments must be received on or before December 13, 2008.

ADDRESS: Written comments are to be addressed to the Bureau of Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street N.W., Washington, D.C. 20001. Submitted comments may be inspected at the offices of Customs and Border Protection, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the classification of a trigger sprayer. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N006423, dated March 6, 2007 (Attachment A), this notice covers any rulings on this merchandise which may exist

but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY N006423, a trigger sprayer designed to spray fluids such as herbicides and pesticides was classified in subheading 8481.80.50, HTSUS, which provides for: "Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof: Other appliances: Hand operated: Of other materials." Since the issuance of that ruling, CBP has reviewed the classification of the Goliath trigger sprayer and has determined that the cited ruling is in error as it pertains to the eligibility of the trigger sprayer for duty free treatment in accordance with heading 9817.00.50, HTSUS, which provides for "Machinery, equipment and implements to be used for agricultural or horticultural purposes."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N006423 and any other ruling not specifically identified, to reflect the proper classification of the Goliath trigger sprayer according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H009832, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: October 24, 2008

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

Attachments



[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
NY N006423
March 6, 2007
CLA-2-84:RR:NC:N:102
CATEGORY: Classification
TARIFF NO.: 8481.80.5040

MS. MARIAN E. LADNER
EPSTEIN BECKER GREEN WICKLIFF & HALL, P.C
Wells Fargo Plaza 1000 Louisiana (Suite 5400)
Houston, Texas 77002-5013

RE: The tariff classification of a plastic trigger sprayer of unspecified origin

DEAR MS. LADNER:

In your letter dated February 1, 2007 you requested a tariff classification ruling on behalf of your client MeadWestvaco Calmar.

The article in question is described as the "Goliath trigger sprayer". The trigger sprayer essentially consists of a grip body housing, a trigger actuator, an orifice cup, a manifold short and a cap cover. You indicate that the planned use for the Goliath trigger sprayer is for agricultural and/or horticultural applications. A technical drawing and a sample were submitted.

In your request you suggest that the trigger sprayer is provided for in subheading 8424.20.1000, Harmonized Tariff Schedule of the United States (HTSUS), as an appliance for spraying liquids or powders. You also suggest that the trigger sprayer is eligible for duty-free treatment under HTSUS subheading 9817.00.5000 because the principal use of the sprayer is agricultural or horticultural.

An examination of the technical drawing and sample of the trigger sprayer submitted with your request does not support your conclusion that the Goliath is a mechanical appliance for spraying liquids or powders. The trigger sprayer appears to simply function as a hand-operated valve, controlling the flow of fluid from a pressurized container, thus creating a spray of fluids, such as pesticides and herbicides. Accordingly, the trigger sprayer is an article of HTSUS heading 8481, which provides for taps, cocks, valves, and similar appliances, not an article of HTSUS heading 8424.

You also suggest that the Goliath is alternatively classified as machinery, equipment or implements to be used for agricultural or horticultural purposes in subheading 9817.00.50, HTSUS. However, because the trigger sprayer is merely a part of agricultural or horticultural machinery, equipment or implements, the sprayer does not meet the terms of the heading and cannot be classified in HTSUS subheading 9817.00.5000.

The applicable subheading for the trigger sprayer will be 8481.80.5040, HTSUS, which provides for pressure spray can valves as other taps, cocks, valves and similar appliances, hand operated, of other materials. The rate of duty will be 3 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth T. Brock at 646-733-3009.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H009832
CLA-2: RR:CTF:TCM H009832 KSH
CATEGORY: Classification
TARIFF NO.: 8481.80.5040; 9817.00.50

MARIAN LADNER, ESQ.
EPSTEIN BECKER GREEN WICKLIFF & HALL, P.C
Wells Fargo Plaza
1000 Louisiana
Suite 5400
Houston, Texas 77002-5013

RE: Modification of NY N006423, dated March 6, 2007; Classification of a plastic trigger sprayer

DEAR MR. LADNER:

This letter is in reply to your letter of April 10, 2007, on behalf of your client, MeadWestvaco Calmar, Inc., in which you request reconsideration of our determination in New York Ruling Letter (NY) N006423, dated March 6, 2007, regarding the classification of the Goliath trigger sprayer under the Harmonized Tariff Schedule of the United States ("HTSUS"). We have reviewed that ruling and found it to be in error as it pertains to the classification of the Goliath trigger sprayer as an agricultural or horticultural implement under heading 9817.00.50, HTSUS. Therefore, this ruling modifies NY N006423.

FACTS:

The merchandise at issue is identified as the "Goliath trigger sprayer." It consists of a grip body housing, a trigger actuator, an orifice cup, a manifold short and cap cover. It is affixed to an aerosol can. The Goliath trigger sprayer is designed to spray fluids contained with the aerosol can such as herbicides or pesticides. You state its actual planned use is for agricultural and/or horticultural applications.

In NY N006423, US Customs and Border Protection (CBP) classified the Goliath trigger sprayer in subheading 8481.80.50, HTSUS, which provides for: "Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof: Other appliances: Hand operated: Of other materials." CBP determined that heading 9817.00.50, HTSUS was not applicable because the trigger sprayer is merely a part of agricultural or horticultural machinery, equipment or implements and did not meet the

terms of the heading. You submit that the Goliath trigger sprayer should be classified under heading 9817.00.50, HTSUS, as "Machinery, equipment and implements to be used for agricultural or horticultural purposes."

ISSUE:

Whether the Goliath trigger sprayer is classified in heading 9817.00.50, HTSUS, as an implement to be used for agricultural or horticultural purposes?

LAW AND ANALYSIS:

Merchandise imported into the U.S. is classified under the HTSUS. Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs 1 through 5.

The HTSUS headings under consideration are as follows:

8481 Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof:

9817.00.50 Machinery, equipment and implements to be used for agricultural or horticultural purposes . . .

Heading 9817.00.50, HTSUS, provides for the duty-free entry of machinery, equipment and implements to be used for agricultural or horticultural purposes. This is a provision based on actual use. See Headquarters Ruling Letter (HQ) 953152, dated March 15, 1993. A tariff classification controlled by the actual use to which the imported goods are put in the United States is satisfied only if such use is intended at the time of importation, the goods are so used and proof thereof is furnished within three years after the goods are entered. See Additional U.S. Rule of Interpretation 1(b), HTSUS.

We have consistently held that before an article can be classified in heading 9817.00.50, HTSUS, and qualify for the agricultural use duty exemption it must first satisfy each part of the following three-part test, taken in order.

- (1) the articles must not be among the long list of exclusions to heading 9817.00.50 or 9817.00.60 under Section XXII, Chapter 98, Subchapter XVII, U.S. Note 2;
- (2) the terms of heading 9817.00.50 or 9817.00.60 must be met in accordance with GRI 1; and
- (3) the merchandise must meet the actual use conditions required in accordance with sections 10.131 – 10.139 of the CBP Regulations (19 CFR 10.131 – 10.139).

If a good fails any part of the test, then recourse would have to be made to its primary classification. See HQ 086211, dated March 24, 1990.

At the outset, we note that the Goliath trigger sprayer is not precluded from classification in heading 9817.00.50, by any of the exclusions in Chapter 98, Subchapter XVII, U.S. Note 2, HTSUS, and, therefore, meets the first part of the test.

Next we need to determine if the Goliath trigger sprayer is machinery, equipment or an implement used for agricultural or horticultural purposes. In defining the terms of subheading 9817.00.50, HTSUS, we refer to the definitions found in *Webster's II New Riverside University Dictionary* (1988).

- Machinery: 1. Machines or machine parts in general. 2. The working parts of a machine. 3. A system of related elements that operates in a definable way.
- Equipment: 1. The act of equipping or state of being equipped. 2. Something with which one is equipped.
- Implement: 1. A tool, utensil, or instrument for doing a task. 2. An article used to outfit or equip.
- Agriculture: The science, art, and business of cultivating the soil, producing crops, and raising livestock.
- Horticulture: The science, art, and business of cultivating fruits, vegetables, flowers, and plants.

It is undisputed that the Goliath trigger sprayer conforms to the definition of an implement or equipment. Not all implements, apparatus or equipment used on a farm are necessarily related to an agricultural or horticultural pursuit within the meaning of these terms. *See* HQ 953152, *supra*. However, some implements have design features that dedicate them specifically to agricultural or horticultural applications. Devices specifically designed and used for spraying insecticides, pesticides or disinfectants in agricultural or horticultural environments have a rational and obvious relationship to the production of food or clothing. We have routinely held these to be agricultural or horticultural implements. *See* HQ 952868, dated November 26, 1993, and NY 869883, dated December 24, 1991. Accordingly, the Goliath trigger sprayer is machinery, equipment or an implement used for agricultural or horticultural purposes.

Provided the Goliath trigger sprayer meets the actual use conditions required in accordance with sections 10.131 – 10.139 of the CBP Regulations (19 C.F.R. §§10.131 – 10.139), it is classifiable in heading 9817.00.50, HTSUS.

HOLDING:

The Goliath trigger sprayer is eligible for the duty free treatment of heading 9817.00.50, HTSUS, provided the actual use requirements of 19 C.F.R. Sections 10.131 through 10.139 are satisfied.

EFFECT ON OTHER RULINGS:

NY N006423, dated March 6, 2007, is modified with respect to classification of the trigger sprayer in heading 9817.00.50, HTSUS. The primary classification of the trigger sprayer in heading 8481, HTSUS, is unchanged.

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

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A CERTAIN VACUUM
FOR USE IN HOME POOLS AND SPAS**

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and proposed revocation of treatment relating to the classification of a certain vacuum for use in home pools and spas.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a certain vacuum for use in home pools and spas. CBP proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before December 13, 2008.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Greg Connor, Tariff Classification and Marking Branch: (202) 572-8749.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of a certain vacuum for use in spas and pools. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) L82232, dated February 7, 2005 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY L82232, CBP classified a certain vacuum for use in home pools and spas under subheading 9506.99.5500, HTSUSA, as: "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: Other: Swimming pools and wading pools and parts and accessories thereof." Upon review of NY L82232, we have determined that the vacuum for use in home pools and spas described in that ruling is classified under subheading 8421.21.0000, HTSUSA, which provides for: "Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: Filtering or purify-

ing machinery and apparatus for liquids: For filtering or purifying water.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to revoke NY L82232, and to revoke or modify any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H008519, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: October 17, 2008

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

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
NY L82232
February 7, 2005
CLA-2-95:RR:NC:2:224 L82232
CATEGORY: Classification
TARIFF NO.: 9506.99.5500

MS. LILLIE BARBOSA
FPA CUSTOMS BROKERS, INC.
152-31- 134th Avenue
Jamaica, NY 11434

RE: The tariff classification of a pool vacuum cleaner from Taiwan

DEAR MS. BARBOSA:

In your letter dated January 18, 2005, you requested a tariff classification ruling, on behalf of Water Tech, the importer.

You are requesting the tariff classification on a product that is identified as a Pool Buster® Max. The article is a portable, hand-held wet/dry vacuum cleaner for all types of pools. The portable pool vacuum cleaner is designed to attach to any telescopic pole. The sample will be returned, as requested by your office.

The applicable subheading for the Pool Buster® Max will be 9506.99.5500, Harmonized Tariff Schedule of the United States (HTS), which provides for articles and equipment for general physical exercise, gymnastics, athletics, other sports . . . swimming pools and wading pools; parts and accessories thereof: swimming pools and wading pools and parts and accessories thereof. The rate of duty will be 5.3% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Tom McKenna at 646-733-3025.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H008519
CLA-2 OT:RR:CTF:TCM H008519 GC
CATEGORY: Classification
TARIFF NO.: 8421.21.0000

RICHARD K. CACIOPPO, ESQ.
WATER TECH, L.L.C.
44 West Ferris Street
East Brunswick, New Jersey 08816

RE: Request for reconsideration of NY L82232 dated February 7, 2005;
Tariff classification of a pool vacuum imported from Taiwan

DEAR MR. CACIOPPO:

This letter is in reference to your request, dated November 29, 2006, on behalf of Water Tech Corp., for reconsideration of NY L82232, dated February 7, 2005, concerning the classification of a pool vacuum under the Harmonized Tariff Schedule of the United States (HTSUS). In NY L82232, the National Commodity Specialist Division of U.S. Customs and Border Protection (CBP) classified the pool vacuum, style WV-001, as an accessory for swimming pools in subheading 9506.99.5500, HTSUS. In light of the additional factual evidence provided to our office, including a supplemental submission dated May 7, 2008, we have determined that the classification in NY L82232 is in error.

In your correspondence, you also requested that CBP classify two similar models of pool vacuums marketed by Water Tech, styles WV-002 and WV-003. CBP declines to issue a prospective ruling pursuant to 19 C.F.R. § 177.7(a) on these two devices because it would be in conflict with our position in NY L82232. It is contrary to CBP policy to issue rulings in conflict with each other. You may resubmit your request, if necessary, after the publication of the Final Notice of the revocation of our decision in NY L82232 in the Customs Bulletin.

FACTS:

The imported pool vacuum, style WV-001, is marketed by Water Tech as the "Pool Blaster Max" (formerly as the "Pool Buster Max"). In NY L82232, CBP described it as "a portable, hand-held wet/dry vacuum cleaner for all types of pools . . . [that] is designed to attach to any telescopic pole." This battery-charged device contains its own internal vacuum motor that creates a suction to collect debris such as hair, sand pebbles, and leaves from the

water in a pool or spa. This waste is captured with and stored in a reusable fine filter bag. The device may be operated with or without the accompanying vacuum head attachment.

The device is advertised, marketed, and sold principally for use in home pools and spas. The marketing brochure published by Water Tech states that the device: "contains everything you need in order to clean all gunite, vinyl, and fiberglass pools and spas. [It] is designed for both in-ground and above-ground pools. Both wheel and brush attachments are provided." The instruction manual published by Water Tech also states that the device is "not intended for use as an all-purpose vacuum cleaner." While it may be operated for a short period of time above water, its vacuuming function is intended for operation only when it is submerged in water. The cleaning capacity is rated as 40–50 gallons per minute. According to Water Tech, the device is "designed, manufactured, imported and marketed worldwide as [a] water or *wet* vacuum cleaner[]."

Water Tech claims that the device "not only vacuum[s], but filter[s] and purify[ies] all pools of water, including both indoor and outdoor domestic spas, hot tubs, swimming pools, fountains, as we[ll] as ponds, fish tanks and aquariums, rain water collection tanks, cisterns, shrimp tanks and various backyard water gardens, waterfalls, etc." It is the position of Water Tech that its device is effective in any pool of water. Water Tech explains that while its device is marketed for universal usage in water, its device is primarily intended for usage by the owners of spas, followed by above-ground pools, and then below-ground pools. According to Water Tech, the owners of spas often clean the water on their own, given that spas hold a substantially smaller volume of water than do swimming pools.

Data provided by the Association of Pool and Spa Professionals (formerly the National Pool and Spa Institute) shows that there are three general categories in the pool and spa industry: in-ground pools, above-ground pools, and spas/hot tubs. Water Tech explains that, unlike the two types of pools, spas lack extensive main pumps and filter systems for use with automatic vacuuming machinery that is often employed when cleaning swimming pools. Water Tech has also explained that the device is inefficient when vacuuming in-ground and above-ground pools, as opposed to when it is used in spas, which are smaller and shallower than those pools.

ISSUE:

What is the correct classification of the pool vacuum under the HTSUS?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

8421	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof:
	Filtering or purifying machinery and apparatus for liquids:
8421.21.0000	For filtering or purifying water . . .
	* * *

8508	Vacuum cleaners; parts thereof:
	With self-contained electric motor:
8508.11.000	Of a power not exceeding 1,500 W and having a dust bag or other receptacle capacity not exceeding 20 l . . .
	* * *
9506	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:
	Other:
9506.99	Other:
9506.99.5500	Swimming pools and wading pools and parts and accessories thereof . . .

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

Note 3 to Chapter 95, HTSUS, states: “[s]ubject to note 1 above, parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles”. It appears that in NY L82232, note 3 was the basis for classification of the subject merchandise in heading 9506, HTSUS, as an accessory of a swimming and wading pool. However, this overlooks the fact that Note 3 is subject to Note 1 to Chapter 95, HTSUS. Note 1(m) to Chapter 95 excludes “filtering or purifying machinery and apparatus for liquids or gases (heading 84.21)” from classification in Chapter 95. Accordingly, before determining if the subject merchandise is classifiable as an accessory of a swimming pool by operation of Note 3 to Chapter 95, we must first determine if it fits the terms of heading 8421, HTSUS.

Heading 8421 is a use provision that provides for, in relevant part, “filtering or purifying machinery and apparatus for liquids.” EN 84.21 describes the function of liquid filters within this heading as the “separat[ion] of solid, fatty, colloidal, etc., particles from a liquid, for example, by passing it through a sheet, membrane or mass porous material[.]” The Court of Appeals for the Federal Circuit (CAFC) has defined the term “filter” per the 1986 edition of *Webster’s Third New International Dictionary*:

The dictionary defines the verb “filter” in relevant part as “to subject to the action of a filter: pass (a *liquid or gas*) through a filter for the purpose of purifying or separating or both.” *Id.* at 850 (emphasis added). The noun filter is defined as “a porous article or mass (as of cloth, paper, or sand) that serves as a medium for separating from a *liquid or gas* passed through it matter held in suspension or dissolved impurities or coloring matter.” *Id.* (emphasis added).

Airflow Technology, Inc. v. United States, 2008 U.S. App. LEXIS 9165 at 11–12 (Fed. Cir. Apr. 28, 2008). The definition of “purify,” is not set forth in the HTSUS or the ENs, but it is defined by the same dictionary as meaning, in relevant part, “to make pure: as **a**: to clear from material defilement or

imperfection: free from impurities or noxious matter <~ ing air by filtration> <purified the house with soap, and water, and sweat> . . .” *Id.* at 1846.

The principal function of the device is to filter and purify the water contained in a swimming pool or spa. It removes solid debris by suctioning it through a filter bag. The water is filtered through the porous filter bag, leaving only the debris inside for later removal from the device. This suction-based process of filtration is within the scope of heading 8421. *See, e.g.*, HQ 958821, dated June 28, 1996 (classifying tanks designed to contain filtration devices for swimming pools in heading 8421); HQ 961455 (classifying a potable water system that fills a tank with filtered water in heading 8421). The ENs to heading 8421 specify that it covers “liquid filters whether of gravity, suction (or vacuum) or pressure types.” *Cf.* NY K87340 dated July 21, 2004 (wherein CBP classified chlorine generator and filter pump units in heading 8421). We also note that Water Tech’s own request for reconsideration concedes that the device is described by heading 8421, although it makes no arguments for or against classification in that provision. To this end, Water Tech stated that the device “not only vacuums water, but also filters and purifies it.” Thus, the subject merchandise is classifiable under heading 8421, HTSUS, as a filtering or purifying apparatus.

Accordingly, we find that the subject merchandise is excluded from classification in Chapter 95, HTSUS, by virtue of Note 1(m) to Chapter 95, as it is a filtering apparatus for liquids under heading 8421, HTSUS.

It is the position of Water Tech that the device is excluded from classification in Chapter 95, HTSUS, because it is not an accessory of swimming pools, and is thus classifiable as a “vacuum cleaner” of heading 8508.* We will omit discussion on the first prong of counsel’s argument, as we have already found that the subject merchandise is excluded from Chapter 95, HTSUS, by application of Note 1(m). However, regarding heading 8508, HTSUS, we note that CBP has previously defined “vacuum cleaner” on the basis of its common meaning: “In *The Random House College Dictionary*, Random House, 1973, “vacuum cleaner” is defined as “an electrical apparatus for cleaning carpets, floors, furniture, etc., by suction.” HQ W967698, dated March 10, 2006. (The 1986 edition of *Webster’s Third New International Dictionary* contains a substantially similar definition.) CBP has found that the definitions in the dictionaries and the ENs stress that a vacuum cleaner’s method of cleaning is by “suction.” *See* HQ W967698, dated March 10, 2006. However, “suction” is not the only essential characteristic of a vacuum cleaner of heading 8508. Vacuum cleaners of this heading must also filter the air stream as part of the suction process. The characteristics of suction and filtration of the air stream are emphasized in the description of vacuum cleaners in the ENs to Heading 8508:

Vacuum cleaners perform two functions: the suction of material, includ-

* Water Tech’s submission, dated November 29, 2006, actually identified heading 8509 as the *eo nomine* provision for vacuum cleaners. Effective February 2, 2007, a new heading in the HTSUS was established for vacuum cleaners. Vacuum cleaners formerly classified in heading 8509, HTSUS, migrated to the new heading, 8508, HTSUS. Rulings cited in this letter which control the classification of vacuum cleaners in the HTSUS prior to February 2, 2007 are relevant in CBP’s analysis, despite the migration of vacuum cleaners from heading 8509 to 8508.

ing dust, and the filtering of the air stream. Suction is effected by means of a turbine fixed directly onto the shaft of the motor, turning at high velocity. The dust and other material are collected in an internal or external dust bag or other receptacle, whereas the air sucked in and filtered is also used to cool the motor.

CBP has consistently applied these two criteria, which are also set forth in the ENs to heading 8508, to classify an article as a vacuum cleaner of this heading. *See* HQ 967698, HQ 967904, dated December 21, 2005; NY K85051, dated May 17, 2004; HQ 962622, dated August 11, 1999.

The device at issue does not fit the terms of heading 8508, HTSUS, because it only filters water, and *not* the air stream. As opposed to the wet/dry vacuums, which are classifiable in heading 8508, this device operates only when it is submerged in water. And, to this end, the characterization of the device as a “wet/dry vacuum” in NY L82232 was in error. CBP notes that the device is distinguishable from articles like the Vaqua wet/dry vacuum described in NY L85706, dated July 8, 2005, as “a water filtration, canister-style vacuum cleaner used in the home.” The Vaqua uses water to pick up dust and debris and filters the air stream, but it is not operational when submersed completely in water. It is noteworthy that wet and wet/dry vacuums suction and store water in a receptacle. When the device at issue suctions water, it retains only the debris filtered from the water. We conclude that the device does not meet the terms of a “vacuum cleaner” and is therefore not classifiable in heading 8508, HTSUS. The device does fit the terms of heading 8421, HTSUS, which provides for, in pertinent part, “filtering or purifying machinery or apparatus, for liquids or gases”.

HOLDING:

By application of GRI 1, the pool vacuum, WV-001, is classified in heading 8421, HTSUS, as “[c]entrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof[.]” and is specifically provided for in subheading 8421.21.0000, which provides for “[f]iltering or purifying machinery and apparatus for liquids: For filtering or purifying water.” The 2008 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY L82232, dated February 7, 2005, is hereby REVOKED.

MYLES B. HARMON,
Director,

Commercial and Trade Facilitation Division.

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A SURGICAL CLIP**

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and proposed revocation of treatment relating to the classification of a surgical clip.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is proposing to revoke a ruling letter relating to the tariff classification of a surgical clip under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before December 13, 2008.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Commercial Trade and Regulations Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Richard Mojica, Tariff Classification and Marking Branch, at (202) 572-8789.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. § 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of a surgical clip. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) G83236, issued on October 17, 2000 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY G83236, CBP classified the surgical clip under heading 7508, specifically in subheading 7508.90.50, HTSUS, which provides for: "Other articles of nickel: Other: Other." Based on our recent review of NY G83236, we have determined that the classification set forth in that ruling is incorrect. It is now CBP's position that the surgical clip is properly classified under heading 9018, specifically in subheading 9018.90.80, HTSUS, which provides for: "Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Other instruments and appliances and parts and accessories thereof: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY G83236, dated October 17, 2000, and any other ruling not specifi-

cally identified, to reflect the proper classification of the surgical clip according to the analysis contained in proposed Headquarters Ruling Letter H035567, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: October 15, 2008

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
NY G83236
October 17, 2000
CLA-2-75:RR:NC:N1:113 G83236
CATEGORY: Classification
TARIFF NO.: 7508.90.5000

MR. WILLIAM F. JOFFROY
WILLIAM F. JOFFROY CUSTOMS BROKERS, INC.
P.O. Box 698
Nogales, AZ 85628

RE: The tariff classification of a surgical clip from Mexico

DEAR MR. JOFFROY:

In your letter dated September 29, 2000, on behalf of Coalescent Surgical, Inc., you requested a tariff classification ruling.

The sample you provided is a non-sterile surgical clamp made of Nitinol wire. Nitinol is nickel titanium, an alloy of nickel (Section XV, Chapter 75, Subheading Notes, 1(b)(iii)). The applicable subheading for the surgical clamp will be 7508.90.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of nickel, other. The general rate of duty will be 3 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist James Smyth at 212-637-7008.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H035567
CLA-2 OT: RR: CTF: TCM H035567 RM
CATEGORY: Classification
TARIFF NO.: 9018.90.80

MR. WILLIAM F. JOFFROY
WILLIAM F. JOFFROY CUSTOMS BROKERS, INC.
P.O. Box 698
Nogales, AZ 85628

RE: Reconsideration of New York Ruling Letter NY G83236, dated October 17, 2000; Classification of a Surgical Clip

DEAR MR. JOFFROY:

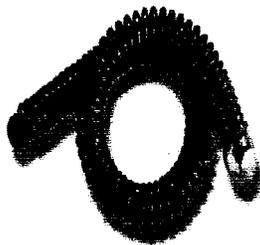
This is in reference to New York Ruling Letter ("NY") G83236, dated October 17, 2000, issued to you on behalf of Coalescent Surgical, Inc., concerning the tariff classification of a surgical clip. In that ruling, U.S. Customs and Border Protection ("CBP") classified the merchandise under heading 7508, specifically in subheading 7508.90.50, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for "Other articles of nickel: Other: Other." We have reviewed NY G83236 and found it to be incorrect.

FACTS:

In NY G83236, we described the merchandise as: "a non-sterile surgical clamp made of Nitinol wire. Nitinol is a nickel titanium, an alloy of nickel (Section XV, Chapter 75, Subheading Notes, 1(b)(iii))." We have since received additional information to indicate that the clamp, which is marketed as the "U-Clip," is a device used during vascular and cardiac surgery, in lieu of sutures, to join severed vessels and organs. The device consists of a self-closing clip attached to a conventional surgical needle by a flexible member (pictured below).



According to our research gathered from the importer's website, after joining the vessels and/or organs, the clip automatically retracts when severed from the needle and flexible member, thereby forming a ring (magnified picture below).¹ The self-closing clip eliminates the need for knot-tying and suture management during surgery.



ISSUE:

What is the correct tariff classification of the U-Clip under the HTSUS?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

- 7508 Other articles of nickel:
- 7508.90 Other:
- 7508.90.50 Other . . .
- 9018 Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof:
- 9018.90 Other instruments and appliances and parts and accessories thereof:
- Other:
- 9018.90.80 Other . . .

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

¹ See http://www.medtronic.com/cardsurgery/products/uclip_spyder.html#

The ENs to heading 7508, HTSUS, state, in part:

(B) OTHER

This group covers all articles of nickel **other than** those covered by the preceding group or by the preceding headings of this Chapter or by Note 1 to Section XV, or articles specified or included in Chapter 82 or 83, or more specifically covered elsewhere in the Nomenclature.

The ENs to heading 9018, HTSUS, state, in part:

This heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a diagnosis, to prevent or treat an illness or to operate, etc. Instruments and appliances for anatomical or autoptic work, dissection, etc., are also included, as are, under certain conditions, instruments and appliances for dental laboratories (see Part (II) below). The instruments of the heading may be made of any material (including precious metals).

This heading **does not cover**:

- (a) Sterile catgut and other sterile material for surgical sutures, sterile laminaria and sterile laminaria tents (heading 30.06).

* * *

**(I) INSTRUMENTS AND APPLIANCES
FOR HUMAN MEDICINE OR SURGERY**

This group includes:

- (A) **Instruments which may be used under the same names for several purposes, for example:**

- (1) **Needles** (for sutures, ligatures, vaccination, blood tests, hypodermic needles, etc.).

* * * (15) **Clips** (suture, etc.).

* * * (17) **Surgical staplers** for inserting staples to close a wound.

Heading 9018, HTSUS, provides for, among other things, “[i]nstruments and appliances used in . . . surgical sciences.” The U-Clip is not a general-purpose clip. It is a clip used solely during vascular and cardiac surgery to join vessels and organs. As such, it is analogous to a surgical needle with a suture attached, which we have consistently classified under heading 9018, HTSUS. See Headquarters Ruling Letter (“HQ”) 965845, 965846, and 965847, dated November 7, 2002.

Based on the foregoing, we conclude that the U-Clip is provided for under heading 9018, HTSUS. Our determination is in keeping with the ENs to heading 9018, HTSUS, which describe “clips (suture, etc.)” as “[i]nstruments used . . . only in professional practice (e.g., by surgeons) . . . to operate[.]” Classification under heading 7508, HTSUS, is thereby precluded, as it is limited to articles not more specifically covered elsewhere in the Nomenclature. See EN 75.08(b).

HOLDING:

By application of GRI 1, the U-Clip is classified under heading 9018, specifically in subheading 9018.90.80, HTSUS, which provides for: “Instru-

ments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Other instruments and appliances and parts and accessories thereof: Other. The column one, general rate of duty is: "Free."

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

EFFECT ON OTHER RULINGS:

NY G83236, dated October 17, 2000, is hereby revoked.

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