

U.S. Customs and Border Protection

General Notices

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING USB FLASH DEVICES

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of certain USB flash devices (“UFDs”) which may be offered to the United States Government under an undesignated government procurement contract. Based upon the facts presented, in the final determination CBP concluded that either Israel or the United States is the country of origin of the UFDs for purposes of U.S. Government procurement.

DATE: The final determination was issued on May 5, 2009. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR § 177.22(d), may seek judicial review of this final determination within June 8, 2009.

FOR FURTHER INFORMATION CONTACT: Gerry O’Brien, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202–325–0044).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 5, 2009, pursuant to Subpart B of Part 177, Customs Regulations (19 CFR Part 177, Subpart B), CBP issued a final determination concerning the country of origin of certain UFDs which may be offered to the United States Government under an undesignated government procurement contract. This final determination, in HQ H034843, was issued at the request of SanDisk Corporation under procedures set forth at 19 CFR Part 177, Subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511–18). In the final determination, CBP concluded that, based upon the facts presented, certain goods are substantially transformed in either Israel or the United States, such that either Is-

rael or the United States is the country of origin of the finished article for purposes of U.S. Government procurement.

Section 177.29, Customs Regulations (19 CFR § 177.29), provides that notice of final determinations shall be published in the *Federal Register* within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR § 177.30), provides that any party-at-interest, as defined in 19 CFR § 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the *Federal Register*.

Dated: May 5, 2009

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

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H034843
May 5, 2009
MAR-2-05 OT:RR:CTF:VS H034843 GOB
CATEGORY: Marking

KEVIN P. CONNELLY, ESQ.
SEYFARTH SHAW LLP
975 F Street, N.W.
Washington, D.C. 20004

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, CBP Regulations; Country of Origin of USB Flash Drive

DEAR MR. CONNELLY:

This is in response to your letter of July 17, 2008 requesting a final determination on behalf of the SanDisk Corporation (“SanDisk”), pursuant to subpart B of Part 177, Customs and Border Protection (“CBP”) Regulations (19 CFR 177.21 *et seq.*). Pursuant to our request, you provided additional information on March 10, 2009.

Under the pertinent regulations, which implement Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government. You state that SanDisk “either manufactures or imports the merchandise which is the subject of this request.”

This final determination concerns the country of origin of certain encrypted USB flash devices. We note that SanDisk is a party-at-interest within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination.

You also request a determination concerning the country-of-origin marking of the subject goods.

FACTS:

You describe the pertinent facts as follows. A USB flash device (“UFD”) is a portable device that stores data in a non-volatile memory. The data is accessed from a host PC when the UFD is connected to its USB port. Flash memory is a form of block-oriented computer memory that can be electronically erased and reprogrammed. Flash memory is based on one of two current principles of operation: NOR flash and NAND flash. NAND-based flash, which is more suitable for mass-data storage devices, has faster erase and write times, but its interface allows only sequential access to data.

Four different items are involved here: Cruzer Professional (Stock Keeping Unit (“SKU”) SDCZ21); Cruzer Enterprise (SKU SDCZ22 and SDCZ35); Cruzer Enterprise FIPS Edition (SKU SDCZ32); and Cruzer Identity (SKU SDCZ31). The subject SanDisk UFDs are intended for organizations which require protection of their data when a UFD is lost or stolen. Cruzer Identity can also be used for managing a user digital identity to authenticate the user to different software systems.

You state that the key hardware component of the UFD is the flash memory chip, which stores the data. A flash chip is created in a generic manufacturing process for semiconductor device fabrication used to create chips and integrated circuits present in electronic devices. The process is a sequence of photographic and chemical processing steps during which electronic circuits are stacked on a wafer made of semiconducting material. Silicon is the most commonly used semiconductor material. The entire manufacturing process, which is performed in highly specialized facilities, takes six to eight weeks. The flash memory chips are manufactured in Japan and are the most expensive hardware component of the UFD.

You state that the UFDs consist of the following components: (1) NAND-based flash memory chips for mass data storage; (2) an application specific integrated circuit (“ASIC”), which acts as the mass storage controller and provides a linear interface to the block-oriented flash memory; (3) a USB connector, which provides the interface with the host computer; (4) a crystal oscillator, which produces the device’s clock signal and controls the data output; (5) LEDs, which indicate data transfer in progress; (6) capacitors and resistors; (7) electrically erasable programmable read-only memory (“EEPROM”) to store secret encryption keys in some of the UFD models; (8) a printed circuit board, which provides the mounting frame and circuitry for the electronic components listed above; and (9) a robust plastic or metal case. Cruzer Identity also contains a USB hub and smartcard.

You further state that the subject UFDs consist of firmware and application software. The firmware is a piece of binary machine code embedded or downloaded to the device using SanDisk’s proprietary mass production machines (“MPUs”) after the hardware is manufactured. The firmware is essential to the use of the UFD. The firmware is responsible for the following: transferring data into and out of the flash memory chips; determining the storage algorithm; transferring data to and from the host PC through the USB port by implementing the USB different protocols; controlling the hardware encryption core in decisions such as determining which encryption key to use; and establishing secure encrypted communication sessions with a related software agent running on the host PC. During the manufacturing step of embedding the firmware, the production system

is responsible for provisioning randomly generated encryption keys that are stored in the controller internal memory cache. The encryption keys are also crucial for the operation of the UFD.

The application software is responsible for functions such as login and user interface. Without it, the UFD does not exhibit its security features and behaves like any standard off the shelf USB flash drive for storing files in a non-protected manner. Without the application software, one cannot access information already stored in the protected encrypted form. The application software code is stored in the UFD during the manufacturing process in a read only storage area.

The current versions of the firmware and the application software were developed at SanDisk's site in Israel. SanDisk estimates that at least 70 man year hours were invested in the development of the firmware and the application software and that at least 20 more man years are invested each year in its continuing development. The process of software development (firmware and application software) is composed of requirements analysis, design, code writing, quality assurance testing, bug fixing and maintenance and support. The entire development process of the firmware and application software is performed in Israel.

The UFDs are intended for organizations that require protection of their data when a UFD is lost or stolen. They add security by encrypting the data secured on them via a cryptographic hardware core. The UFD user must provide a login password to access the data. Cruiser Identity may be used for managing a user digital identity to authenticate the user to different software systems.

The UFDs are manufactured in a manufacturing process, which requires approximately five minutes for each device. You state that SanDisk will perform the first three manufacturing operations in China and that it will perform the final three manufacturing operations in either Israel or the United States:

1. Initial Quality Control. SanDisk personnel assemble and visually inspect the components.
2. Component Mounting. SanDisk prints a bare circuit board with circuits and populates it with various electronic components through a solder paste surface mounting and reflow process (Surface Mounted Technology or "SMT") to form a printed circuit board assembly ("PCBA"). Assembly of the PCBA is performed in a standard SMT process. The PCBA is visually inspected and tested to verify that all components have been properly mounted and the connections and power circuitry are functioning.
3. Device Housing. The PCBA is joined with a metal USB connector and sealed in a plastic case to form the device through an ultrasonic housing process. The device then undergoes quality control to verify that it has not been harmed in the ultrasonic housing process.
4. Software Installation and Customization. The proprietary software (firmware and application software) is downloaded and the device is tested for functionality. Additional software, such as security software, can be added at this time or later. During this operation, device enumeration and identification to the operating system, device configuration, and content loading occur. Depending on the customer's unique requirements, some or all of the following configurable parameters are

accomplished during this step: device enumeration and identification to the operating system; device configuration; and content. The process is slightly different for Cruzer Identity, as it contains the controllers, one for storage and one for the smartcode reader. Cruzer Identity provides capability (two-factor authentication (password and certificate)) which the Cruzer Professional, Cruzer Enterprise, and Cruzer Enterprise FIPS Edition do not have.

5. System Diagnostics and Test. The device undergoes a systems test consisting of many tests that are performed with “Read Only” diagnostics software and test vectors to verify product definition and functionality.

6. Packaging. After the firmware and application software are downloaded and the system is tested, the completed products are packaged and prepared for shipment.

The components used by SanDisk to manufacture Cruzer Professional and Cruzer Enterprise are a printed circuit board, USB connector, LED, crystal oscillator, flash memory chip, ASIC controller chip, capacitors and resistors, and plastic parts for the case. Cruzer Enterprise FIPS Edition consists of the same components with the addition of an EEPROM and epoxy glue, coating part of the PCBA. The components used to manufacture Cruzer Identity consist of a printed circuit board, USB connector, two LEDs, crystal oscillator, flash memory chips, two ASIC controller chips, USB hub, EEPROM, smartcard, capacitors and resistors, and plastic parts used to make the case.

As stated above, the flash memory chip is manufactured in Japan. The other hardware components are manufactured in Korea, Taiwan, or China.

You state that the addition of the security capabilities of the UFDs, through the firmware and application software installation and customization process, add significant capability and value to the UFDs. The software installation and customization currently drive the price of the UFDs, as the price of a UFD with security is currently somewhere between seven to nine times the price of a UFD without security.

ISSUES:

What is the country of origin of the UFDs for the purpose of U.S. Government procurement?

What is the country of origin of the UFDs for the purpose of marking?

LAW AND ANALYSIS:

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

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

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumental-

ity, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 CFR § 177.22(a).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See*, C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. In C.S.D. 85–25, 19 Cust. Bull. 844 (1985), CBP held that for purposes of the Generalized System of Preferences (“GSP”), the assembly of a large number of fabricated components onto a printed circuit board in a process involving a considerable amount of time and skill resulted in a substantial transformation. In that case, in excess of 50 discrete fabricated components (such as resistors, capacitors, diodes, integrated circuits, sockets, and connectors) were assembled. Whether an operation is complex and meaningful depends on the nature of the operation, including the number of components assembled, number of different operations, time, skill level required, attention to detail, quality control, the value added to the article, and the overall employment generated by the manufacturing process.

The courts and CBP have also considered the essential character of the imported article in making these determinations. *See*, for example, *Uniroyal, Inc. v. United States*, 542 F. Supp. 1026, 3 CIT 220, 224–225 (1982) (where it was determined that imported uppers were the essence of a completed shoe) and *National Juice Products Association, et al v. United States*, 628 F. Supp. 978, 10 CIT 48, 61 (1986) (where the court addressed each of the factors (name, character, and use) in finding that no substantial transformation occurred in the production of retail juice products from manufacturing concentrate).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item’s components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process may be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

In *Data General v. United States*, 4 CIT 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States, the programming of a foreign PROM (Programmable Read-Only Memory chip) substantially transformed the PROM into a U.S. article. The court noted that it is undisputed that programming alters the character of a PROM. Programming changes the pattern of interconnections within the PROM. A distinct physical change is effected in the PROM by the opening or closing of the fuses, depending on the method of program-

ming. This physical alteration, not visible to the naked eye, may be discerned by electronic testing of the PROM. The essence of the article, its interconnections or stored memory, is established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device possessing a desired distinctive circuit pattern is no less a “substantial transformation” than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

In C.S.D. 84–86, CBP stated:

We are of the opinion that the rationale of the court in the *Data General* case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming. . . . [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

In HQ 563012, dated May 4, 2004, CBP considered whether components of various origins were substantially transformed when assembled to form a fabric switch which involved a combination of computer hardware and software. Most of the assembly of computer hardware was performed in China. Then, in either Hong Kong or the U.S., the hardware was completed and the U.S.-origin software was downloaded onto the hardware. CBP noted that the U.S.-developed software provided the finished product with its “distinctive functional characteristics.” In making the determination that the product was substantially transformed in the U.S., where the fabric switch was assembled to completion, CBP considered both the assembly process that occurred in the U.S. and the configuration operations that required U.S.-origin software. In the scenario where the fabric switch was assembled to completion in Hong Kong, CBP determined the origin for marking purposes was Hong Kong.

In HQ 559255, dated August 21, 1995, a device referred to as a “CardDock” was under consideration for country of origin marking purposes. The CardDock was a device which was installed in IBM PC compatible computers. After installation, the units were able to accept PCMCIA cards for the purpose of interfacing such PCMCIA cards with the computer in which the CardDock unit was installed. The CardDock units were partially assembled abroad but completed in the United States. The overseas processing included manufacturing the product’s injection molded plastic frame and installing integrated circuits onto a circuit board along with various diodes, resistors and capacitors. After such operations, these items were shipped to the United States for further processing that included mating a U.S.-origin circuit board to the foreign-origin frame and board. The assembled units were thereafter subjected to various testing procedures. In consideration of the foregoing, CBP held that the foreign-origin components, *i.e.*, the ISA boards, frame assemblies and connector cables, were substantially transformed when assembled to completion in the United States. In finding that the name, character, and use of the foreign-origin components had changed during processing in the United States, CBP noted that the components had

lost their separate identity during assembly and had become an integral part of a new and distinct item which was visibly different from any of the individual foreign-origin components.

In HQ 735027, dated September 7, 1993, a device that software companies used to protect their software from piracy was under consideration for country of origin marking purposes. The device, referred to as the "MemoPlug," was assembled in Israel from parts that were obtained from Taiwan (such as various connectors and an Electronically Erasable Programmable Read Only Memory, or "EEPROM") and Israel (such as an internal circuit board). After assembly, these components were shipped to a processing facility in the United States where the EEPROM was programmed with special software. Such processing in the United States accounted for approximately 50 percent of the final selling price of the MemoPlugs. In finding that the foreign-origin components were substantially transformed in the United States, CBP noted that the U.S. processing transformed a blank media, the EEPROM, into a device that performed functions necessary to the prevention of software piracy.

We make our determination herein based on the totality of the circumstances. In doing so, we take particular note of the fact that the installation of the firmware and the application software makes the UFDs functional and executes the security features. In addition, the installation and customization of the firmware and application software greatly increase the value of a UFD without security.

Based upon the above precedents and the totality of the circumstances, we determine that there is a substantial transformation of the component parts in either Israel or the United States, the location where the final three manufacturing operations, including installation and customization of the firmware and application software, occur, *i.e.*, if the final three manufacturing operations occur in Israel, there is a substantial transformation in Israel and if the final three manufacturing operations occur in the United States, there is a substantial transformation in the United States. Therefore, the country of origin for government procurement purposes is such location, either Israel or the United States.

Country of Origin Marking

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Part 134, CBP Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. § 1304. Section 134.1(b), CBP Regulations (19 CFR § 134.1(b)), defines the country of origin of an article as the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the country of origin for country of origin marking purposes.

Based upon our determination, above, with respect to substantial transformation of the UFDs, the country of origin for marking of these goods is Israel or the United States if the final three manufacturing steps, described

above, are performed in either of these countries. If the final three manufacturing steps are performed in Israel, the UFDs should be marked "Made in Israel." For a determination as to whether SanDisk may mark the UFDs "Made in the United States" when the final three manufacturing operations are performed in the U.S., please contact the Federal Trade Commission, Division of Enforcement, 6th Street and Pennsylvania Ave., N.W., Washington, DC 20580.

HOLDINGS:

There is a substantial transformation of the component parts in either Israel or the United States, the location where the final three operations, including the installation and customization of the firmware and application software, occur. Therefore, the country of origin for government procurement purposes is such location, either Israel or the United States.

The country of origin of the UFDs is Israel or the United States if the final three manufacturing steps, described above, are performed in these countries. If the final three manufacturing steps are performed in Israel, the UFDs should be marked "Made in Israel." For a determination as to whether SanDisk may mark the UFDs "Made in the United States" when the final three manufacturing operations are performed in the United States, please contact the Federal Trade Commission.

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

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

[Published in the Federal Register, May 8, 2009 (74 FR 21702)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

**Application for Extension of Bond for Temporary
Importation**

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

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0015.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Extension of Bond for Temporary Im-

portation (Form 3173). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 5668) on January 30, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 8, 2009.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Application for Extension of Bond for Temporary Importation

OMB Number: 1651-0015

Form Number: CBP Form-3173

Abstract: Imported merchandise that is to remain in the Customs territory for 1-year or less without duty payment is entered as a temporary importation. The importer may apply for an extension of this period on CBP Form-3173.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date with a change to the burden hours resulting from a more accurate estimate of time per response.

Type of Review: Extension (with change)

Estimated Number of Respondents: 1,200

Estimated Number of Annual Respondents per Respondent: 14

Estimated Number of Total Annual Responses: 16,800

Estimated Time Per Response: 13 minutes

Estimated Total Annual Burden Hours: 3,646

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

Dated: May 4, 2009

TRACEY DENNING,
Agency Clearance Officer,
Customs and Border Protection.

[Published in the Federal Register, May 8, 2009 (74 FR 21700)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Declaration of Persons who Performed Repairs or Alterations

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

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0048.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following infor-

mation collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Declaration of Persons Who Performed Repairs or Alterations. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 5669) on January 30, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 8, 2009.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Declaration of Person Who Performed Repairs

OMB Number: 1651-0048

Form Number: None

Abstract: The Declaration of Person Who Performed Repairs is used by CBP to ensure duty-free status for entries covering articles repaired aboard. It must be filed by importers claiming duty-free status.

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

Type of Review: Extension (without change)

Affected Public: Businesses or other for-profit institutions

Estimated Number of Respondents: 10,236

Estimated Number of Total Annual Responses: 20,472

Estimated Number of Annual Responses per Respondent: 2

Estimated Time Per Response: 30 minutes

Estimated Total Annual Burden Hours: 10,236

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

Dated: May 4, 2009

TRACEY DENNING,
Agency Clearance Officer,
Customs and Border Protection.

[Published in the Federal Register, May 8, 2009 (74 FR 21700)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Guam-CNMI Visa Waiver Information

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

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0109

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget

(OMB) for review and approval in accordance with the Paperwork Reduction Act: Guam-CNMI Visa Waiver Information (Form I-736). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 7911) on February 20, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 8, 2009.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Guam-CNMI Visa Waiver Agreement

OMB Number: 1651-0109

Form Number: I-736

Abstract: Public Law 110-229, enacted on May 8th, 2008, provides for certain aliens to be exempt from the nonimmigrant visa requirement if seeking entry into Guam or the Commonwealth of the Northern Mariana Islands (CNMI) as a visitor. Applicants must present a completed Form I-736 to CBP in order to enter these territories under these provisions.

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

Estimated Number of Respondents: 1,560,000

Estimated Time Per Respondent: 5 minutes

Estimated Total Annual Burden Hours: 129,480

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

Dated: May 4, 2009

TRACEY DENNING,
Agency Clearance Officer,
Customs and Border Protection.

[Published in the Federal Register, May 8, 2009 (74 FR 21699)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Bonded Warehouse Proprietor's Submission

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

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0033

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Bonded Warehouse Proprietor's Submission. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be

extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 5669) on January 30, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 12, 2009.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity
- (3) of the methodology and assumptions used;
- (4) Enhance the quality, utility, and clarity of the information to be collected; and
- (5) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Bonded Warehouse Proprietor's Submission

OMB Number: 1651-0033

Form Number: CBP Form 300

Abstract: CBP Form 300 is prepared by Bonded Warehouse Proprietor and submitted to CBP annually. The document reflects all bonded merchandise entered, released, and manipulated, and includes beginning and ending inventories.

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

Type of Review: Extension (without change)

Affected Public: Businesses or other for-profit institutions

Estimated Number of Respondents: 1,800

Estimated Time Per Respondent: 24.3 hours

Estimated Total Annual Burden Hours: 43,740

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

Dated: May 6, 2009

TRACEY DENNING,
*Agency Clearance Officer,
Customs and Border Protection.*

[Published in the Federal Register, May 13, 2009 (74 FR 22565)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Country of Origin Marking Requirements for Containers or Holders

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

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0057

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Country of Origin Marking Requirement for Containers or Holders. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was

previously published in the **Federal Register** (74 FR 5847–5848) on February 2, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 12, 2009.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION:

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Country of Origin Marking Requirements for Containers or Holders

OMB Number: 1651–0057

Form Number: None

Abstract: Containers or holders imported into the United States destined for an ultimate purchaser must be marked with the English

name of the country of origin at the time of importation into Customs territory.

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

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 250

Estimated Number of Annual Responses per Respondent: 40

Estimated Number of Total Annual Responses: 10,000

Estimated Time Per Respondent: 15 seconds

Estimated Total Annual Burden Hours: 41

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

Dated: May 6, 2009

TRACEY DENNING,
*Agency Clearance Officer,
Customs and Border Protection.*

[Published in the Federal Register, May 13, 2009 (74 FR 22564)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Customs Modernization Act Recordkeeping Requirements

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

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0076

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Customs Modernization Act Recordkeeping Requirements. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected

agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 5670) on January 30, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 15, 2009.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Customs Modernization Act Recordkeeping Requirements

OMB Number: 1651-0076

Form Number: None

Abstract: This recordkeeping requirement is to allow CBP to verify the accuracy of the claims made on the entry documents re-

garding the tariff status of imported merchandise, admissibility, classification/nomenclature, value and rate of duty applicable to the entered goods.

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

Type of Review: Extension (without change)

Affected Public: Businesses or other for-profit institutions

Estimated Number of Respondents: 4,695

Estimated Average Annual Time Per Respondent: 1,037 hours

Estimated Total Annual Burden Hours: 4,870,610

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

Dated: May 6, 2009

TRACEY DENNING,
Agency Clearance Officer,
Customs and Border Protection.

[Published in the Federal Register, May 14, 2009 (74 FR 22760)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, May 13, 2009

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.*

**REVOCATION AND MODIFICATION OF TWO RULING
LETTERS AND REVOCATION OF TREATMENT RELATING
TO THE TARIFF CLASSIFICATION OF CERTAIN LIGHT
SCULPTURES**

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

ACTION: Notice of revocation of one ruling letter, and modification of one ruling letter and revocation of treatment relating to the tariff classification of certain light sculptures.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking New York Ruling Letter (NY) N011802 and modifying NY N012101, both dated June 7, 2007, which pertain to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain light sculptures. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 43, No. 11, on March 12, 2009. Three comments were received in support of the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 28, 2009.

FOR FURTHER INFORMATION CONTACT: Greg Connor, Tariff Classification and Marking Branch: (202) 325–0025.

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, a notice was published in the Customs Bulletin, Vol. 43, No. 11, on March 12, 2009, proposing to revoke or modify NY N011802 and NY N012101, both dated June 7, 2007, in which CBP classified certain decorative light sculptures in the shapes of snowmen, reindeer, and angels under subheading 9405.40.60, HTSUS, which provides for, in pertinent part: “[l]amps . . . not elsewhere specified or included . . . : Other electric lamps and lighting fittings: Of base metal: Other”. Three comments were received in support of the notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised CBP during the comment 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 this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N011802 and modifying NY N012101 to reflect the proper tariff classification of this merchandise under subheading 9505.10.25, HTSUS, which provides for: “[f]estive, carnival or other entertainment articles . . . : Articles of Christmas festivities . . . : Christmas ornaments: Other: Other”, pursuant to the analysis set forth in the attached Headquarters Ruling Letter H020852. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions.

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

DATED: May 8, 2009

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H020852
May 8, 2009
CLA-2 OT:RR:CTF:TCM H020852 GC
CATEGORY: Classification
TARIFF NO.: 9505.10.2500

TERRIE A. GLEASON, ESQ.
BAKER & MCKENZIE LLP
815 Connecticut Avenue, NW
Washington, DC 20006-4078

RE: Revocation of NY N011802 and modification of NY N012101; Tariff classification of light sculptures of snowman, reindeer and angel

DEAR MR. GLEASON:

This is in response to your letter, dated December 5, 2007, on behalf of your client, Costco Wholesale Corporation (Costco), requesting that we reconsider New York Ruling Letters (NY) N011802 and N012101, both dated June 7, 2007.¹

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North

¹ You also requested a prospective ruling in your December 5, 2007 correspondence concerning similar merchandise. This letter will only address the request for reconsideration.

American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed action was published on March 12, 2009, in the Customs Bulletin, Volume 43, No. 11. Three comments were received in support of the notice.

FACTS:

The subject light sculptures, identified as the “Glistening Snowman” (item 663613), “Grapevine Angel” (item 663620), “Standing Reindeer Light Sculpture” (item 663609) (Standing Reindeer), “Feeding Reindeer Light Sculpture” (item 663610) (Feeding Reindeer) and “Snowman Family Light Sculpture Set” (item 663619) (Snowman Family Set), are three-dimensional representations of deer, snowmen or angels composed of a pre-assembled metal frame covered with a string of lights and may include metal stakes. Each item contains an Underwriters Laboratory (UL) tag warning the ultimate purchaser that the items are “[f]or temporary (90 days max) installation and use only.”

The Glistening Snowman is approximately 60 inches tall and is composed of a pre-assembled metal frame covered with PVC tinsel and a string of 450 lights to outline the shape of the frame. The snowman has a green and red striped scarf and a sprig of holly in its blue hat.

The Grapevine Angel also measures approximately 60 inches high, and is composed of a pre-assembled metal and grapevine frame covered with a string of 300 lights that outline the shape of the angel. The angel has a halo and wings and is holding a 5-pointed star.

The Standing Reindeer measures 40 inches tall by 60 inches wide, and resembles a standing buck with its head held aloft.

The Feeding Reindeer is of similar proportions, but the buck’s head is lowered as though it were eating grass.

The Snowman Family Set consists of three different sized of snowman, measuring 60 inches, 48 inches, and 36 inches high respectively. Each snowman is wearing a red and white striped scarf and a hat that contains a sprig of holly.

You indicate in your letters and photograph attachments that Costco sells the light sculptures in the holiday/seasonal aisle of its stores as well as in the “holiday & seasonal – outdoor décor” section of its website. The light sculptures are sold for a limited time, usually taking place over a fourteen week period starting in late August and continuing until December 24th. The light sculptures are not sold after Christmas, as Costco instructs its stores to remove all Christmas related items, including the subject light sculptures, from display no later than December 26th.

In NY N011802, CBP classified the Glistening Snowman and Grapevine Angel under heading 9405, of the Harmonized Tariff Schedule of the United States (HTSUS), as lamps. In NY N012101, CBP classified, in relevant part, the Standing Reindeer, Feeding, and Snowman Family Set under heading 9405, HTSUS, which provides for lamps.

ISSUE:

Whether the subject light sculptures are classified under heading 9405, HTSUS, as lamps, or heading 9505, HTSUS, as festive articles?

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 in this case are as follows:

- 9405 Lamps and lighting fittings including searchlights and spotlights and part thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
- 9405.40 Other electric lamps and lighting fittings:
Of base metal:
- 9405.40.6000 Other
* * *
- 9505 Festive, carnival or other entertainment articles, including magic tricks and other practical joke articles; parts and accessories thereof:
- 9505.10 Articles for Christmas festivities and parts and accessories thereof:
Christmas Ornaments:
Other:
- 9505.10.2500 Other

Note 1(l) to chapter 94, HTSUS, states that chapter 94 does not cover:

Toy furniture or toy lamps or lighting fittings (heading 9503), billiard tables or other furniture specially constructed for games (heading 9504), furniture for magic tricks or decorations (other than electric garlands) such as Chinese lanterns (heading 9505).

Note 1(t) to chapter 95, HTSUS, states that chapter 95 does not cover, “[e]lectric garlands of all kinds (heading 9405).”

The Harmonized Commodity Description and Coding System Explanatory Note (EN) to heading 8543, HTSUS, supports this conclusion. In understanding the language of the HTSUS, the ENs may be utilized. The ENs, though not dispositive or legally binding, may provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. CBP believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The ENs to heading 9505, HTSUS, provide, in pertinent part:

This heading covers:

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

* * *

(2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees, nativity scenes, nativity figures and animals, angels, Christmas crackers, Christmas stockings, imitation yule logs, Father Christmases.

Although all the subject light sculptures incorporate a string of electric lights around a frame, the light sculptures are not electric garlands. *See Primal Lite, Inc. v. United States*, 15 F.Supp. 2d 915 (1998), aff'd, 182 F.3d 1362 (1999). The articles at issue here form three-dimensional shapes. Such light sculptures are not similar to electric garlands. Accordingly, the above mentioned exclusion note to Chapter 95, HTSUS, does not apply.

In accordance with Note 1(l) to Chapter 94, HTSUS, we must determine if the subject merchandise constitutes “festive articles” within the scope of heading 9505, HTSUS. In *Midwest of Cannon Falls v. United States*, 122 F.3d 1423 (Fed. Cir. 1997) (*Midwest*), the court discussed the scope of heading 9505, HTSUS, specifically the class or kind of merchandise termed “festive articles”. In general, merchandise is classified as a festive article in heading 9505, HTSUS, when the article, as a whole:

1. Is not predominantly of precious or semiprecious stones, precious metal or metal clad with precious metal;
2. Functions primarily as a decoration or functional item used in the celebration of, and entertainment on, a holiday; and
3. Is associated with or used on a particular holiday.

See also Park B. Smith, Ltd. v. United States, 347 F.3d 922 (Fed. Cir. 2003) (*Park B. Smith*).

In addition to the criteria listed above, the *Midwest* Court considered the general criteria for classification set forth in *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), cert. denied, 429 U.S. 979 (*Carborundum*) to determine the principal use of the articles at issue therein. Therefore, with respect to decorative articles related to holidays and symbols not specifically recognized in *Midwest* or *Park B. Smith*, CBP will also consider the general criteria set forth in *Carborundum* to determine whether a particular good belongs to the class or kind “festive articles”. Those criteria include the general physical characteristics of the article, the expectation of the ultimate purchaser, the channels of trade, the environment of sale (accompanying accessories, manner of advertisement and display), the use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use.

The ultimate purchaser of the instant light sculptures in the shapes of reindeer, angels, and snowmen would have the expectation of using the articles to decorate the outside of their home during the holiday season. As you have stated, the environment of sale will be a portion of the store, existing only from late August through Christmas, devoted to displaying Christmas or holiday items. The subject merchandise is available on the Costco website in the same manner. The recognition in the trade would be as Christmas articles. Accordingly, we find the instant reindeer, snowman, and angel light sculptures to be of a class or kind of merchandise which is bought to decorate the home during the Christmas season.

We note that not all reindeer, snowman and angel ornaments are automatically festive, nor will the presence of other Christmas-related images

automatically qualify the articles for classification as a festive article. This is the case because the images may appear with articles that are inconsistent with festive use. Likewise, the mere appearance of articles in a Christmas catalogue is not sufficient to bring the article into the class of festive articles; however, such an appearance is useful evidence toward that end. See Headquarters Ruling Letter (HQ) 963198, dated September 26, 2000 (citing HQ 961839, dated March 9, 1999). The subject light sculptures satisfy the above-referenced standard in the sense that the *Carborundum* factors, taken together, lead to the conclusion that the subject reindeer, snowman and angel light sculptures are within the same class of merchandise principally used during Christmas.²

Indeed, CBP has considered certain light sculptures utilized during Christmas as recognized symbols of the Christmas holiday to be classifiable in heading 9505. See HQ 963198; HQ 962965, dated November 9, 1999; NY R02191, dated February 16, 2005; NY R01191, dated January 12, 2005; NY K86401, dated June 14, 2004; and NY H87842. The instant light sculptures are classifiable as festive articles of heading 9505, HTSUS. They are excluded from Chapter 94, HTSUS, by Note 1(l) to Chapter 94, HTSUS.

HOLDING:

By application of GRI 1, the subject light sculptures are classified in heading 9505, HTSUS, as festive articles, and they are specifically provided for in subheading 9505.10.25, HTSUS, which provides for: “[f]estive, carnival or other entertainment articles, including magic tricks and other practical joke articles . . . : Christmas ornaments: [o]ther: [o]ther.” The 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/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N011802, dated June 7, 2007 is hereby REVOKED. NY N012101, dated June 7, 2007, is hereby MODIFIED.

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

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

² For instance, one commenter suggested that NY N005878, dated February 1, 2007, should also be modified according to the proposed action. In NY N005878, CBP classified a “Lighted Standing Deer” and a “Lighted Jumping Deer” as lamps of heading 9405, HTSUS, on the basis that the two products did not have decorations traditionally used during Christmas festivities. However, there is no evidence in the text of NY N005878, nor from the comment, that the ultimate purchaser of the “Lighted Standing Deer” and the “Lighted Jumping Deer” from NY N005878 would have the expectation of using the articles to decorate their home during the holiday season. Without such information, we elected not to include NY N005878 among those rulings subject to the instant action.

GENERAL NOTICE**19 CFR PART 177****PROPOSED MODIFICATION OF RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO
CLASSIFICATION OF EVEREST® T AND G BLANKS**

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

ACTION: Notice of proposed revocation of ruling letters and treatment relating to the classification of Everest® T and G blanks.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CBP”) intends to modify two rulings concerning the classification of Everest® T and G blanks, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before June 29, 2009.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade—Regulation and Rulings, Attn: Mr. Joseph Clark, 799 9th Street N.W. -5th Floor, Washington D.C. 20229–1179. Comments submitted may be inspected at 799 9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, Tariff Classification and Marking Branch (202) 325–0029.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (CBP 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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP intends to modify two rulings pertaining to the classification of Everest® T and G blanks. Although in this notice CBP is specifically referring to New York Ruling Letters (NY) J89431, dated October 7, 2003, and NY K81158, dated November 20, 2003, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., 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 his agents for importations of merchandise subsequent to this notice.

In NY J89431 and K81158 (Attachments "A" and "B", respectively), CBP ruled that Everest® T and G blanks are classified in subheading 9021.21.8080, HTSUS, which provides for "other" artificial teeth and parts and accessories thereof. The referenced rulings are incorrect because the titanium and glass ceramic cylinders do not have the essential character of a finished dental artifice.

CBP, pursuant to 19 U.S.C. 1625(c)(1), intends to modify NY J89431 and K81158, and any other ruling not specifically identified,

to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H021885. (see Attachment "C" 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: May 5, 2009

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 J89431
October 7, 2003
CLA-2-90:RR:NC:N1:105 J89431
CATEGORY: Classification
TARIFF NO.: 9018.49.8080, 9021.21.8080

MS. JENNIFER HENGELS
KAVO AMERICA CORPORATION
340 East Main Street
Lake Zurich, ILL 60047

RE: The tariff classification of dental laboratory appliances and materials from Germany

DEAR MS. HENGELS:

In your letter dated September 26, 2003, you requested a tariff classification ruling. No samples were provided.

Your letter requested the classification of the "Everest" system imported as a complete unit and ten different materials/elements you sell related to it, including gypsum, resin, and diamond grinding pins. We understand that you are asking for the classification of the latter when imported separately. You have provided detailed information, including pictorial representations, only regarding the complete system and the T and G blanks. We will provide the classification of those 3 items within this ruling. You may wish to resubmit your request for the other 8 items. In the future, please limit your ruling request to a maximum of 5 items of the same class or kind and provide sufficient information for their classification. The complete Everest system consists of a measuring unit, a cutting and grinding unit, and a sintering unit. They are specialized to produce dental underpieces and crowns to replace a patient's missing teeth. Harmonized System Explanatory Note II to 90.18 indicates that it includes the tools and machinery used by dental mechanics in prosthetic dentistry if those devices are not articles of general use.

We agree that that the applicable subheading for the complete Everest system will be 9018.49.8080, Harmonized Tariff Schedule of the United

States (HTS), which provides for “other” instruments and appliances used in dental sciences, and parts and accessories thereof. The rate of duty will be free.

Per the Everest Elements brochure, the blanks are: “The Everest T-Blanks provide the laboratory with industrially produced titanium blanks in various sizes for the KaVo Everest system. Medical pure titanium (grade 2) is a tried-and-tested biocompatible material suitable for the production of crown and bridge frameworks. In addition to the biocompatibility of titanium, the following properties are noteworthy:

Low thermal conductivity Comfortable prosthesis due to low weight Neutral taste X-ray translucency.

To meet aesthetic demands, articles produced from Everest T-Blanks can be easily faced with titanium ceramic (titanium ceramic from VITA) or composite.

This leucite-reinforced glass ceramic together with the Everest system enables the laboratory very easily to produce inlays, onlays, veneers and anterior and posterior crowns from ceramic.

The Everest G-Blanks are clinically proven and in particular have the following properties:

Natural translucency Biocompatibility High breaking strength Good polishability” From the illustrations both are cylinders in various sizes to approximate the size of the finished piece. The ceramic blanks also come in various colors to better match the patient’s other teeth. We consider them to be unfinished parts of artificial teeth, noting Harmonized System General Rule of Interpretation 2, Explanatory Note II concerning “blanks.”

Note 2-g to HTS Chapter 69, Ceramic Products, excludes Artificial Teeth (90.21.)

You propose classification in 9018.49 as parts of the Everest system. However, they are not used as part of that appliance. Rather, when finished, they are the product that the appliance makes for insertion by a dentist into the patient’s mouth.

The applicable subheading for the T and G Blanks will be 9021.21.8080, Harmonized Tariff Schedule of the United States (HTS), which provides for “other” artificial teeth and parts and accessories thereof. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist J. Sheridan at 646-733-3012.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
NY K81158
November 20, 2003
CLA-2-90:RR:NC:N1:105 K81158
CATEGORY: Classification
TARIFF NO.: 9018.49.8080, 9021.21.8000

MS. JENNIFER HENGELS
KAVO AMERICA CORPORATION
340 East Main Street
Lake Zurich, IL 60047

RE: The tariff classification of dental appliances and materials from Germany

DEAR MS. HENGELS:

This ruling letter corrects a clerical error in the HTSUS Statistical Suffix noted in ruling J89431.

Your letter requested the classification of the "Everest" system imported as a complete unit and ten different materials/elements you sell related to it, including gypsum, resin, and diamond grinding pins. We understand that you are asking for the classification of the latter when imported separately. You have provided detailed information, including pictorial representations, only regarding the complete system and the T and G blanks. We will provide the classification of those 3 items within this ruling. You may wish to resubmit your request for the other 8 items. In the future, please limit your ruling request to a maximum of 5 items of the same class or kind and provide sufficient information for their classification. The complete Everest system consists of a measuring unit, a cutting and grinding unit, and a sintering unit. They are specialized to produce dental underpieces and crowns to replace a patient's missing teeth. Harmonized System Explanatory Note II to 90.18 indicates that it includes the tools and machinery used by dental mechanics in prosthetic dentistry if those devices are not articles of general use.

We agree that that the applicable subheading for the complete Everest system will be 9018.49.8080, Harmonized Tariff Schedule of the United States (HTS), which provides for "other" instruments and appliances used in dental sciences, and parts and accessories thereof. The rate of duty will be free.

Per the Everest Elements brochure, the blanks are: "The Everest T-Blanks provide the laboratory with industrially produced titanium blanks in various sizes for the KaVo Everest system. Medical pure titanium (grade 2) is a tried-and-tested biocompatible material suitable for the production of crown and bridge frameworks. In addition to the biocompatibility of titanium, the following properties are noteworthy:

Low thermal conductivity Comfortable prosthesis due to low weight Neutral taste X-ray translucency To meet aesthetic demands, articles produced from Everest T-Blanks can be easily faced with titanium ceramic (titanium ceramic from VITA) or composite.

This leucite-reinforced glass ceramic together with the Everest system enables the laboratory very easily to produce inlays, onlays, veneers and anterior and posterior crowns from ceramic.

The Everest G-Blanks are clinically proven and in particular have the following properties:

Natural translucency Biocompatibility High breaking strength Good polishability” From the illustrations both are cylinders in various sizes to approximate the size of the finished piece. The ceramic blanks also come in various colors to better match the patient’s other teeth. We consider them to be unfinished parts of artificial teeth, noting Harmonized System General Rule of Interpretation 2, Explanatory Note II concerning “blanks.”

Note 2–g to HTS Chapter 69, Ceramic Products, excludes Artificial Teeth (90.21.)

You propose classification in 9018.49 as parts of the Everest system. However, they are not used as part of that appliance. Rather, when finished, they are the products that the appliance makes for insertion by a dentist into the patient’s mouth.

The applicable subheading for the T and G Blanks will be 9021.21.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for “other” artificial teeth and parts and accessories thereof. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist J. Sheridan at 646–733–3012.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.

U.S. CUSTOMS AND BORDER PROTECTION,

HQ H021885

CLA–2 OT:RR:CTF:TCM H021885ARM

CATEGORY: Classification

TARIFF NO.: 7020.60.00, 8108.90.30

MS. JENNIFER HENGELS
KAVO AMERICA CORPORATION
340 East Main Street
Lake Zurich, IL 60047

RE: Modification of NY J89431 and NY K81158; T and G Blanks

DEAR MS. HENGELS

In New York (NY) Ruling Letters J89431, dated October 7, 2003, and NY K81158, dated November 20, 2003, Customs and Border Protection (“CBP”) classified, under the Harmonized Tariff Schedule of the United States (HTSUS), T and G blanks for the “Everest” system imported separately, as “artificial teeth” under heading 9021, HTSUS. For the reasons set forth below, CBP intends to modify these rulings.

FACTS:

The merchandise consists of titanium cylinders and glass ceramic cylinders of varying sizes. Pictures on the internet reveal that titanium cylinders are marked and/or engraved with the letter "T" and numbers relating to the size. The box containing the cylinders is labeled Everest® T-Blank. Boxes of larger titanium blocks and flat round material are also labeled "blanks." The cylinders at issue here are created in the following sizes of diameter in millimeters: 10 x 12, 12 x 16, 16 x 13, and 16 x 16. The glass ceramic cylinders appear similar in size and shape and are marked with a "G". Leucite glass ceramic is made through a process of devitrification of leucite into glass.

In NY J89431 and K81158, CBP describes the merchandise thus:

Per the Everest Elements brochure, the blanks are: "The Everest T-Blanks provide the laboratory with industrially produced titanium blanks in various sizes for the KaVo Everest system. Medical pure titanium (grade 2) is a tried-and-tested biocompatible material suitable for the production of crown and bridge frameworks. In addition to the biocompatibility of titanium, the following properties are noteworthy:

Low thermal conductivity Comfortable prosthesis due to low weight
Neutral taste X-ray translucency

To meet aesthetic demands, articles produced from Everest T-Blanks can be easily faced with titanium ceramic (titanium ceramic from VITA) or composite.

This leucite-reinforced glass ceramic together with the Everest system enables the laboratory very easily to produce inlays, onlays, veneers and anterior and posterior crowns from ceramic.

The Everest G-Blanks are clinically proven and in particular have the following properties:

Natural translucency Biocompatibility High breaking strength Good polishability" From the illustrations both are cylinders in various sizes to approximate the size of the finished piece. The ceramic blanks also come in various colors to better match the patient's other teeth.

The T and G blanks are part of the Everest system for creating crowns, bridges and artificial teeth. The system utilizes CAD/CAM technology to create the finished product. First a model is made of the patient's tooth. Then the blank is embedded into a positioning appliance. The model is scanned and the computer technology allows the titanium or glass ceramic cylinder to be milled to shape. In some cases, the milled piece is then sintered, a process of applying heat to create the final shape and hardness of the artifice. Lastly, coatings or stains may be added to mimic the appearance of an actual tooth.

ISSUE:

Are Everest T and G "blanks" classified as "artificial teeth" in heading 9021, under GRI 2(a), or according to their material composition in Chapters 70 and 81?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Sec-

tion or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6 may be applied. GRI 2(a) states “Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.”

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitutes the official interpretation of the HTSUS at the international level. The ENs, although not dispositive, are used to determine the proper interpretation of the HTSUS by providing a commentary on the scope of each heading of the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to GRI 2(a) states, in pertinent part, the following:

RULE 2 (a)

(Incomplete or unfinished articles)

- (I) The first part of Rule 2 (a) extends the scope of any heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, provided that, as presented, it has the essential character of the complete or finished article.
- (II) The provisions of this Rule also apply to blanks unless these are specified in a particular heading. The term “blank” means an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part (e.g., bottle preforms of plastics being intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape).

Semi-manufactures not yet having the essential shape of the finished articles (such as is generally the case with bars, discs, tubes, etc.) are not regarded as “blanks”.

The HTSUS provisions under consideration are as follows:

7020 Other articles of glass:

7020.00.60 Other

* * * * *

8108 Titanium and articles thereof, including waste and scrap:

8108.90 Other:

8108.90.30 Articles of titanium

* * * * *

9021 Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof:

Artificial teeth and dental fittings, and parts and accessories thereof:

9021.21 Artificial teeth and parts and accessories thereof:

9021.21.40 Of plastics

9021.21.80 Other

The general ENs to Chapter 70 state, in pertinent part, the following:

This Chapter also covers :

* * * * *

(2) Special materials known as glass-ceramics, in which the glass is converted into an almost wholly crystalline material by a process of controlled crystallisation. They are made by adding to the glass batch nucleating agents which are often metal oxides (such as titanium dioxide and zirconium oxide) or metals (such as copper powder). After the article has been shaped by ordinary glass-making techniques, it is maintained at a temperature such as to ensure crystallisation of the glassy body around the nucleating crystals (devitrification). Glass-ceramics may be opaque or sometimes transparent. They have much better mechanical, electrical and heat-resistant properties than ordinary glass.

EN 70.20 states, in pertinent part, the following:

This heading covers glass articles (including glass parts of articles) not covered by other headings of this Chapter or of other Chapters of the Nomenclature.

These articles remain here even if combined with materials other than glass, provided they retain the essential character of glass articles. The heading includes :

(1) Industrial articles such as pots, bowls, cylinders or discs for glazing hides or skins; protectors for safety or other apparatus; greasing cups; thread guides; sight-holes and gauge-glasses; S-shaped tubes; coils; gut-tering and drains for corrosive products (often of fused quartz or other fused silica); absorption drums for hydrochloric acid and trickling columns.

* * * * *

EN 81.08 states, in pertinent part, the following: "This heading covers titanium in all forms: in particular, sponge, ingots, powder, anodes, bars and rods, sheets and plates, waste and scrap, and products other than those articles covered by other Chapters of the Nomenclature (generally Section XVI or XVII), such as helicopter rotors, propeller blades, pumps or valves."

EN 90.21(III) states, in pertinent part, the following:

(III) ARTIFICIAL LIMBS, EYES, TEETH
AND OTHER ARTIFICIAL PARTS OF THE BODY

These wholly or partially replace defective parts of the body and usually resemble them in appearance. They include:

* * * * *

- (B) Artificial teeth and dental fittings, for example :
- (1) Solid artificial teeth, usually made of porcelain or plastics (acrylic polymers in particular). These may be “diatoric” teeth having a small number of holes into which the fixing material penetrates (generally molars), or may be fitted with two metallic pins for fixing (generally incisors and canines) or with a groove for sliding on to a metal ridge fixed to the dental plate (also usually incisors and canines).
 - (2) Hollow artificial teeth, also made of porcelain or plastics and with the external shape of teeth (incisors, canines or molars).
According to the method of fixing, they are called “pivot teeth” (placed on a small metallic pin or pivot fitted into the prepared root), or “crowns” (fitted by means of artificial resin on to a previously shaped stump).
 - (3) Dentures, whole or part, comprising a plate of vulcanised rubber, plastics or metal to which the false teeth are fitted.
 - (4) Other articles such as, prefabricated metal crowns (gold, stainless steel, etc.) used for the protection of real teeth; cast tin bars (“heavy bars”) for weighting and increasing the stability of dentures; stainless steel bars for reinforcing vulcanised rubber dental plates; various other dentists’ accessories, clearly identifiable as such, for making metal crowns or dentures (sockets, rings, pivots, hooks, eyelets, etc.).

It should be noted that dental cements and other dental fillings fall in heading 30.06; the preparations known as “dental wax” or as “dental impression compounds”, put up in sets, in packings for retail sale or in plates, horseshoe shapes, sticks or similar forms, and other preparations for use in dentistry, with a basis of plaster (of calcined gypsum or calcium sulphate), fall in heading 34.07.

At GRI 1, the titanium cylinders are described by heading 8108, as “articles of titanium.” The cylinders are made of titanium and are fashioned into a discrete article. The glass-ceramic cylinders are formed by the divitrification of leucite into glass, but retain their character as articles of glass of heading 7020 explicitly included in the Chapter in the General ENs to Chapter 70 (*see also*, Headquarters Rulings (HQs) 086734, dated May 2, 1990, 960274, dated October 9, 1997, 085563, dated January 18, 1990, and NY F82435, dated February 23, 2000.)

The question is whether these articles of their respective material can be described as unfinished artificial teeth of heading 9021, using GRI 2(a). If so, the T and G blanks cannot be classified in headings 8108 and 7020 respectively.

Under GRI 2(a), an unfinished article is classified in the heading for the finished article if it has the essential character of the complete or finished article. The EN to GRI 2(a) explains that a covered unfinished article may

be a “blank”, which it defines as “an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part . . .” As commentary on the scope of the heading, the EN can neither expand nor decrease that scope of the heading. Therefore, the description of a “blank” in the EN cannot be taken to mean that an article named a blank in the trade, but which does not contain the essential character of the finished article, can be classified in the provision for the finished article. Hence, the immediate question is whether the T and G blanks contain the essential character of the dental artifice which they become.

The applicable text of heading 9021 is “artificial parts of the body.” The cylindrical articles do not resemble any part of the body, nor do they appear to contain the essential character of any part of the body. Even when revealed that the cylinders become artificial teeth or other dental artifice, they are not immediately recognizable as such. They are not the approximate shape or outline of an artificial tooth, crown or bridge. Although small, they are considerably larger than teeth. Unlike teeth, they are perfectly cylindrical in shape with a flat bottom and top. They are not ready for direct use as an artificial tooth, crown, bridge or other dental artifice.

In addition, the EN to GRI 2(a) lists “bottle preforms of plastics” as an example of blanks describing them thus: “intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape.” The bottle preforms of the EN have the tubular shape of a bottle, with one closed and one open end. The threads are already formed. Once expanded, the bottle is formed. Unlike the process in creating artificial teeth from the instant blanks, there is no addition or deletion of material. There is no sintering or other process to harden or otherwise change the tensile strength or other physical properties of the plastic other than the fact of the plastic becoming slightly thinner by means of the expansion. This physical change is part and parcel of creating the shape of the bottle from the blank, whereas the processes employed with the subject blanks are in addition to those milling procedures that create the shape of the dental artifice. Lastly, the EN excludes profile shapes such as bars and rods from classification as unfinished articles under GRI 2(a). The cylindrical blanks here are similar to the bars and rods of the example.

Other examples of “blanks” are found in numerous CBP rulings. For instance, in HQ H003713, dated February 22, 2007, screw blanks, which had the approximate shape or outline of a finished screw, albeit without threads or finished heads, were classified as unfinished screws in heading 7318, HTSUS. Likewise, in H006327, dated August 28, 2007, stainless steel forgings already sized and shaped for use as elbow, cross or tee pipe fittings, were classified as unfinished tube or pipe fittings of heading 7307, HTSUS. In HQ 953079, dated July 8, 1993, panel blanks for automobiles, said to have the “approximate shape or outline of the finished article; motor vehicle side panels,” were classified as a part of bodies of motor vehicles. The side panels were used directly on the motor vehicle. Their shape or size was not further altered.

In HQ 951620, dated August 4, 1992, circular steel blanks were classified according to their material component rather than as unfinished automotive wheels. They consisted of non alloy SAE 1015 steel cut by an automated process, die sunk with an identifying part number designating a specific wheel

for a particular automobile. After importation, the wheel blanks are drawn, strengthened, formed with pockets, bolt hole mounting pads and other specific features, trimmed and turned under to create a rim, and the center hole is punched. In that ruling we state the following:

The precise external specifications of the wheel blanks is an indication that they will be used principally, if not solely, for completion into automotive wheel discs. . . . It is only after each wheel blank is drawn and reversed, and the pockets, bolt hole mounting pads, vents or window imparted by one or more forming processes, and the center hole punched, that the shape or outline of the finished wheel disc can be seen (pp.3–4).

In that case, CBP found that the wheel blanks were essentially semi-manufactures which are not “blanks” for tariff purposes under GRI 2(a).

In HQ 956210, dated August 11, 1994, steel circle blanks for the front cover of an automobile torque converter or transmission were similarly found to “have neither the form nor shape nor visually apparent characteristic of the specific part or component they will be when finished.”

These examples of previous rulings show that we have been consistent in requiring that a blank, for tariff purposes, has the approximate shape or outline of the finished article. The cylinders at issue are more akin to the semi-manufactures of HQ 951620 and HQ 956210. Like in those cases, the material of the instant cylindrical articles is particularly suited to use in artificial teeth, crown and dental artifices, and the size is convenient for that use. However, the instant cylindrical articles do not have the approximate shape, outline, hardness or tensile strength of a finished tooth and cannot therefore be considered blanks for tariff purposes under heading 9021, by application of GRI 2(a).

The Everest T and G blanks are classified in headings 8108 and 7020, HTSUS, respectively. Specifically, the Everest T-blanks are classified in subheading 8108.90.30, the provision for “Titanium and articles thereof, including waste and scrap: Other: Articles of titanium” and the Everest G blanks are classified in subheading 7020.60.00, HTSUS, the provision for “Other articles of glass: Other.”

HOLDING:

By application of GRI 1, The Everest T blanks are classified in heading 8108 HTSUS, specifically in subheading 8108.90.30, the provision for “Titanium and articles thereof, including waste and scrap: Other: Articles of titanium”. The 2009 column one general rate of duty is 5.5% *ad valorem*. The Everest G blanks are classified in heading 7020, specifically subheading 7020.60.00, HTSUS, the provision for “Other articles of glass: Other.” The 2009 column one general rate of duty is 5% *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 the internet at www.usitc.gov.

EFFECT ON OTHER RULINGS:

New York (NY) Ruling Letters J89431, dated October 7, 2003, and NY K81158, dated November 20, 2003, are modified in accordance with the above holding.

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 CARRIER OF SKIS
AND SKI POLES**

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 carrier of skis and ski poles.

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 a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a carrier of skis and ski poles. 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 June 29, 2009.

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, 799 9th Street N.W., Washington, D.C., 20229, and may be inspected during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Isaac D. Levy, Tariff Classification and Marking Branch: (202) 325-0028.

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 ski and ski pole carrier. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N006891, dated February 15, 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 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 N006891, CBP classified a ski and ski pole carrier under heading 9506, HTSUS, which provides for: “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.” Upon our review of NY N006891, we have determined that the merchandise described in that ruling is properly classified under heading 8479, HTSUS, which provides for: “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N006891, 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) H007654, 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: May 6, 2009

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 N006891
February 15, 2007
CLA-2-95:RR:NC:2:224
CATEGORY: CLASSIFICATION
TARIFF NO.: 9506.19.8080

ANGELO SPADACCINI
VELOCITER AXA L.L.C
13308 Bondy Way
Darnestown MD 20878

RE: The tariff classification of ski and ski pole carrier from Taiwan.

DEAR MR. SPADACCINI:

In your letter dated February 7, 2007, you requested a tariff classification ruling.

The merchandise is identified as the "Sling-Ski® Universal Ski & Ski-Pole Carrying System." The product is a ski and ski pole carrier that allows the user to carry their ski equipment hands-free. The sample will be returned at your request.

The subject ski and ski pole carrier is considered ski equipment for tariff purposes. The applicable subheading for the "Sling-Ski® will be 9506.19.8080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports or outdoor games Snow-skis and other snow-ski equipment; parts and accessories thereof: Other: Other, Other." The rate of duty will be 2.8 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/>.

In your letter, you state you received a non-binding classification from a U.S. Customs and Border Protection office for this product in subheading 9506.11.6000, HTSUS, presumably because it was believed the ski carrier to be an accessory component to snow skis. The U.S. Customs Service interprets the term "accessory" according to its common meaning and has stated consistently, for example, in ruling HQ 958924 dated June 20, 1996, that ac-

cessories: are of secondary importance, not essential of themselves. They, however, must contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the principal article, widen the range of its uses, improve its operation.). We have also noted that Webster's Dictionary defines an accessory as an object or device that is not essential in itself but adds to the beauty, convenience, or effectiveness of something else.

The Ski & Ski-Pole Carrying System is not an accessory to a snow ski. The carrier is not designed in its operation to contribute to the operational effectiveness of snow skis. It does not relate directly to ski performance because the carrier has no effect on how well the skis will operate.

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 H007654
CLA-2 OT:RR:CTF:TCM H007654 IDL
CATEGORY: Classification
TARIFF NO.: 8479.89.98

MR. ANGELO SPADACCINI
VELOCITER AXA, LLC
13308 Bondy Way
Damestown, Maryland 20878

Re: Ski and Ski Pole Carrier; Revocation of NY N006891

DEAR MR. SPADACCINI:

This letter is in response to your request, dated February 22, 2007, for reconsideration of New York Ruling Letter (NY) N006891, dated February 15, 2007, issued to your company, Velociter AXA, LLC, by the National Commodity Specialist Division, U.S. Customs and Border Protection (CBP). The issue in NY N006891 was the correct classification of a "Sling-Ski® Universal Ski & Ski-Pole Carrying System" ("Sling-Ski®") under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N006891 and have found that it is incorrect.

FACTS:

In NY N006891, the "Sling-Ski®" was described as follows:

The product is a ski and ski pole carrier that allows . . . user[s] to carry their ski equipment hands-free.

We have obtained a sample from you, and additional information on the “Sling-Ski®” through your company’s Web site. The Web site provides the following:

One Sling-Ski® set consists of two tough and flexible Hytrel holding members . . . that contain a soft inner lining to protect skis from abrasion, a proprietary alloy ring for attachment of the clasps of shoulder strap . . . and a micro-adjustable ratcheting closure system that allows [for] maximum tightening with minimal effort. The length of the shoulder strap . . . is adjustable to suit large adults to small children equally and has a weight-distributing flexible pad and 2-light-weight D-rings to facilitate clipping of accessories (e.g., gloves, helmet, sunglasses, goggles, key chain, etc.).

CBP classified the subject merchandise under heading 9506, HTSUS, which provides for: “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.”

ISSUE:

Whether the “Sling-Ski®”, as described above, is properly classified in heading 8479, HTSUS, as machines and mechanical appliances not specified or included elsewhere or under heading 9506, HTSUS, as parts and accessories of sports equipment?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, 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 2009 HTSUS provisions under consideration are as follows:

8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	* * *
	Other machines and mechanical appliances:
8479.89	Other:
	* * *
8479.89.98	Other
	* * *
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:

Snow-skis and other snow-ski equipment; parts and accessories thereof:

9506.11	Skis and parts and accessories thereof, except ski poles:
	* * *
9506.11.60	Parts and accessories
	* * *
9506.19	Other:
	* * *
9506.19.80	Other
	* * *
9506.19.8080	Other

Note 3 to chapter 95, states, in pertinent part, that “. . . parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles.”

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 84.79 provides, in pertinent part, as follows:

This heading is **restricted to** machinery having individual functions, which:

- (a) Is not excluded from this Chapter by the operation of any Section or Chapter Note[;] and
- (b) Is not covered more specifically by a heading in any other Chapter of the Nomenclature[;] and
- (c) Cannot be classified in any other particular heading of this Chapter since:
 - (i) No other heading covers it by reference to its method of functioning, description or type[;] and
 - (ii) No other heading covers it by reference to its use or to the industry in which it is employed[;] or
 - (iii) It could fall equally well into two (or more) other such headings (general purpose machines).

* * *

For this purpose the following are to be regarded as having “individual functions”:

- (A) Mechanical devices, with or without motors or other driving force, whose function can be performed distinctly from and independently of any other machine or appliance.

* * *

- (B) Mechanical devices which cannot perform their function unless they are mounted on another machine or appliance, or are incorporated in a more complex entity, **provided** that this function:
- (i) is distinct from that which is performed by the machine or appliance whereon they are to be mounted, or by the entity wherein they are to be incorporated, and
 - (ii) does not play an integral and inseparable part in the operation of such machine, appliance or entity.

* * *

The many and varied machines covered by this heading include *inter alia*: . . . [emphasis added].

EN 95.06 provides, in pertinent part, as follows:

This heading covers:

* * *

(B) **Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03)**, e.g. :

- (1) Snow-skis and other snow-ski equipment, (e.g., ski-fastenings (ski-bindings), ski brakes, ski poles).

* * *

In NY N006891, CBP held that the “Sling-Ski®” is not an accessory to a snow ski, because the “carrier is not designed in its operation to contribute to the operational effectiveness of snow skis[, and] . . . does not relate directly to ski performance because the carrier has no effect on how well the skis will operate.” Consequently, CBP classified the subject merchandise under subheading 9506.19.80, HTSUS, 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: Snow-skis and other snow-ski equipment; parts and accessories thereof: Other: Other.”

In your request for reconsideration, you challenge CBP’s interpretation of “accessory” in that decision, contending that the “Sling-Ski®” meets the criteria set forth in HQ 958924, because “use of the ‘Sling-Ski®’ can allow elderly people with arthritis/joint problems in their wrists and hands to carry skis and ski poles hands-free and allows small children to carry their own equipment when skiing-thereby facilitating the use or handling of the principal article [skis and poles] By allowing access to the elderly and the young . . . the ‘Sling-Ski®’ also ‘widens the range of the uses of the principal article . . .’ [emphasis added]. Therefore, you contend that the subject merchandise should have been classified under subheading 9506.11.60, HTSUS, 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: Snow-skis and other snow-ski equipment; parts and accessories thereof: Skis and parts and accessories thereof, except ski poles: Parts and accessories.”

In accordance with Note 3 to Chapter 95, HTSUS, we must first determine whether classification in heading 9506, HTSUS, as an accessory, is appropriate before consideration is given to classification in heading 8479, HTSUS.

The term "accessory" is not defined in the HTSUS or in the ENs. However, this office has stated that the term "accessory" is generally understood to mean an article which is not necessary to enable the goods with which they are intended to function. They are of secondary importance, but must, however, contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the particular article, widen the range of its uses, or improve its operation). See Headquarters Ruling Letter (HQ) 958710, dated April 8, 1996; HQ 950166, dated November 8, 1991. We also employ the common and commercial meanings of the term "accessory", as the courts did in Rollerblade v. United States, wherein the Court of International Trade derived from various dictionaries that an accessory must relate directly to the thing accessorized. See Rollerblade, Inc. v. United States, 116 F.Supp. 2d 1247 (CIT 2000), aff'd, 282 F.3d 1349 (Fed. Cir. 2002) (holding that inline roller skating protective gear is not an accessory because the protective gear does not directly act on or contact the roller skates in any way); see, also, HQ 966216, dated May 27, 2003.

Thus, for the merchandise to be considered an "accessory" of heading 9506, HTSUS, it must contribute directly to the effectiveness of the primary article (a snow-ski or other snow-ski equipment), and be suitable for use solely or principally with the primary article.

The "Sling-Ski[®]" does not directly act on or contact the snow-skis or other snow-ski equipment in any way or contribute to the effectiveness of the principal article. It is used to allow users to carry their ski equipment hands-free. As such, it is excluded from heading 9506, HTSUS.

Rather, our examination of the sample reveals that the "Sling-Ski[®]" is a type of machine that meets the provisions of heading 8479, HTSUS. See, HQ 089411, dated June 20, 1991, wherein we classified in heading 8479, HTSUS, a "Combo Tie Down Pack," described as follows:

The Combo Tie Down Pack consists of four tie downs used to secure various articles. Two tie down employ nylon straps with metal locking buckles for fastening the strap and locking in into place. The buckles are spring operated. At either end of the strap is a vinyl covered "S" hook used for attaching the strap.

The pack also contains two ratcheting nylon straps that also have "S" hooks on either end of the strap. Each of the ratcheting straps are themselves two piece units consisting of a shorter strap with an "S" hook and a ratcheting action lock mechanism for locking the strap in place. The second and longer piece consists of a nylon strap and an "S" hook on one end. In use, the longer strap is inserted through the ratchet action mechanism and pulled through to the desired position. The ratchet mechanism is then used to securely tighten the strap at its optimum, non-slipping position.

See, also, HQ 950334, dated January 24, 1992, wherein we classified in heading 8479, HTSUS, "trailer winches," described as follows:

Heading 8479 encompasses machinery having individual functions which is not more specifically provided for elsewhere in the HTSUS. The devices here have sufficient mechanical capability to qualify as machinery. Moreover, although they must be mounted on a flatbed trailer, their function is separate and distinct from that of the trailer. They therefore have an individual function as required of classification in heading 8479[, HTSUS]. In a ruling dated June 10, 1991 ([HQ] 089411),

ratchet tie down instruments consisting of nylon straps and gear and pawl mechanisms, and used to secure various articles, were held to be classifiable in heading 8479[, HTSUS].

Like the merchandise at issue in the rulings cited above, the instant “Sling-Ski®” contains an alloy ring for attachment, textile straps and a gear and pawl mechanism that function together to securely tighten the ski-equipment to facilitate transport by the user.

Accordingly, the “Sling-Ski®” is classified under heading 8479, HTSUS.

HOLDING:

By application of GRI 1, the “Sling-Ski® Universal Ski & Ski-Pole Carrying System” is classified in heading 8479, HTSUS, and specifically provided for under subheading 8479.89.98, HTSUS, as: “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter . . . : Other machines and mechanical appliances: Other: Other.” The 2009 general, column one rate of duty is 2.5% ad valorem, and may be subject to quota under subheadings 9817.84.01 and 9902.11.17, HTSUS.

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 the World Wide Web at <http://www.usitc.gov/tata/hts/>.

EFFECT ON OTHER RULINGS:

NY N006891, dated February 15, 2007, is revoked.

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division.

**PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE NAFTA ELIGIBILITY OF CERTAIN AUTOMATIC DATA
PROCESSING SYSTEMS**

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

ACTION: Notice of proposed modification of tariff classification ruling letter and proposed revocation of treatment relating to the North American Free Trade Agreement (NAFTA) eligibility of certain automatic data processing systems.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) intends to modify one ruling letter relating to the NAFTA eligibility of certain automatic data processing systems. CBP also proposes to revoke any treatment previously accorded by it to substantially identi-

cal transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before June 29, 2009.

ADDRESS: Written comments are to be addressed to Customs and Border Protection, Office of Regulations and Rulings, Office of International Trade, Attention: Commercial Trade and Regulations Branch, 799 9th Street, N.W., Washington, D.C. 20229. Submitted comments may be inspected at 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) 325-0118.

FOR FURTHER INFORMATION CONTACT: Robert F. Altneu, Tariff Classification and Marking Branch: (202) 325-0023.

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 modify one ruling letter pertaining to the NAFTA eligibility of certain automatic data processing systems. Although in this notice, CBP is specifically referring to the modification of HQ H027696, dated July 2, 2008 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken rea-

sonable 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 notice of this proposed action.

In HQ H027696, set forth as Attachment A this document, CBP determined the NAFTA eligibility of certain automatic data processing systems under General Note 12(t), Harmonized Tariff Schedule of the United States (HTSUS). Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify HQ H027696 and any other ruling not specifically identified, in order to reflect the proper analysis contained in proposed HQ H037540 set forth in 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: May 11, 2009

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

Attachments

[ATTACHMENT A]

HQ H027696

July 2, 2008

CLA-2 OT:RR:CTF:TCM H027696 HkP

CATEGORY: Classification Origin Marking

TARIFF NO.: 8471.49

Ms. JOYCE WINEMAN
ACCOUNT MANAGER/LCB UPS SUPPLY CHAIN SOLUTIONS
4950 Gateway
East El Paso, TX 79905

RE: ADP systems: classification; NAFTA eligibility

DEAR Ms. WINEMAN:

This is in response to your letter, dated March 19, 2008, to the National Commodity Specialist Division, U.S. Customs and Border Protection ("CBP"), on behalf of your client, Hon Hai Precision Industry Co. ("Hon Hai"), requesting a binding ruling on the tariff classification of certain merchandise under the Harmonized Tariff Schedule of the United States (HTSUS). At issue is the classification of an automatic data processing ("ADP") machine, keyboard, mouse, and monitor imported from Mexico packaged together for retail sale. You have also asked CBP to address whether this merchandise would be eligible for treatment as a good of a NAFTA (the North American Free Trade Agreement) country. Your letter was forwarded to this office on May 7, 2008, for a response.

The issues addressed by this ruling originated in a request for a ruling made by you on June 19, 2007, with respect to the tariff classification and NAFTA eligibility of certain merchandise in two scenarios, the second of which is the subject of this decision. The first concerned whether an ADP machine, keyboard and mouse packaged together for retail sale in a box would be classified as a set pursuant to GRI 3(b). CBP issued New York Ruling Letter ("NY") N025291, dated April 25, 2008, in response to the first scenario.

FACTS:

Hon Hai imports from their subsidiary in Mexico an ADP machine, a keyboard, a mouse, and a monitor packaged together for retail sale. When so packaged, the merchandise is identified by model numbers M9177c and M8307c.

According to the submitted information, the keyboard and mouse are imported into Mexico from various vendors in China, Taiwan, and Malaysia, and the monitor is imported into Mexico from Taiwan. The monitors measure either 19 or 22 inches and have integrated speakers but cannot accept video signals other than VGA and DVI. Some monitors may contain TV tuner cards which are also manufactured outside of NAFTA countries. Those monitors can only receive analog signals. Their TV functions can be controlled through the computer once certain software is installed.

The ADP machine is assembled in Mexico from components originating in China, Taiwan, and Malaysia. The ADP[™]'s motherboard is shipped to Mexico in a box with all its components except for the memory (a BIOS ROM chip) and the central processing unit. The following assembly operations occur in Mexico:

1. Chassis installations: rear I/O shield; system fan; power supply; PCA (printed circuit assembly) components such as the processor cooler back

plate, retention module, memory module, Intel processor, heatsink, Bluetooth, front I/O shield, and PCA cabling; Expansion cards, such as a video card, modem card, TV tuner card, wire/wireless card and LED, or an audio card, as requested; optical drive; hard drive; Bluejay module (video and imaging card); bezel subassembly.

2. Final assembly: front bezel installation, connector cover installation, cable routing and side access panel installation.

3. Equipment testing.

4. Software installation.

All of the above stated operations are performed by skilled and trained workers.

All of the ADP machines use Windows Vista as their operating system and all the models perform data processing functions. Additional hardware or software can also be installed by a customer on a machine. The keyboard and mouse connect to the CPU through connectors or USB ports.

ISSUES:

Are an ADP machine, keyboard, mouse, and monitor imported together an ADP system of subheading 8471.49, HTSUS?

If so, what is the country of origin of an ADP system comprised of an ADP machine assembled in Mexico, a monitor made in Taiwan, and a keyboard and a mouse made in China?

If so, how should an ADP system that has components originating in different countries be marked for country of origin marking purposes?

LAW AND ANALYSIS:

Classification

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:

8471 Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included:

* * * Other automatic data processing machines:

* * * 8471.49.0000 Other, entered in the form of systems

“|. .

8471.50.01 Processing units other than those of subheading 8471.41 or 8471.49, whether or not containing in the same housing one or two of the following types of unit: storage units, input units, output units “|. .

* * *

8471.60 Input or output units, whether or not containing storage units in the same housing:

* * * Other:

8471.60.2000 Keyboards “|. .

8471.60.7000 Units suitable for physical incorporation into automatic data processing machines or units thereof “|. .

* * * 8471.60.90 Other “| . .
 * * * 8471.60.9050 Other “| . .

Note 5 to Chapter 84, HTSUS, provides in relevant part:

(A) For the purposes of heading 8471, HTSUS, the expression “automatic data processing machines” means machines capable of:

- (i) Storing the processing program or programs and at least the data immediately necessary for the execution of the program;
- (ii) Being freely programmed in accordance with the requirements of the user;
- (iii) Performing arithmetical computations specified by the user; and
- (iv) Executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run.

(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units.

(C) Subject to paragraphs (D) and (E) below, a unit is to be regarded as being part of an automatic data processing system if it meets all of the following conditions:

- (i) It is of a kind solely or principally used in an automatic data processing system;
- (ii) It is connectable to the central processing unit either directly or through one or more other units; and
- (iii) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

Separately presented units of an automatic data processing machine are to be classified in heading 8471.

However, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of paragraphs (C) (ii) and (C) (iii) above, are in all cases to be classified as units of heading 8471.

Subheading Note 1 to Chapter 84 provides:

For the purposes of subheading 8471.49, the term “systems” means automatic data processing machines whose units satisfy the conditions laid down in note 5(C) to chapter 84 and which comprise at least a central processing unit, one input unit (for example, a keyboard or a scanner), and one output unit (for example, a visual display unit or a printer).

Under the provisions of Note 5(B), ADP machines may be in the form of systems consisting of a variable number of separate units. Note 5(C) instructs that keyboards and X-Y coordinate input devices [for example, a mouse] that meet the conditions of paragraphs C (ii) and (iii) of the Note are in all cases to be classified as units of heading 8471. Since that is the case here, we find that the keyboard and the mouse must be classified as units of an ADP machine under heading 8471. Likewise, in this instance, we find that the monitor meets the requirements of Note 5(C) and is to be regarded as part of an ADP system because it is not presented separately. Furthermore, based on the information you have provided to CBP, we find that the ADP machine you have described conforms to the definition provided in Note 5(A) and is classified under heading 8471, HTSUS.

Based on the relevant provisions of Note 5 and Subheading Note 1 to Chapter 84, we find that the ADP machine, keyboard, mouse, and monitor when entered packaged together, comprise an ADP system, which is classified in subheading 8471.49.0000, HTSUS.

NAFTA Origin

You ask whether an ADP machine assembled in Mexico, a monitor made in Taiwan, and a keyboard and a mouse made in China (or in other non-NAFTA countries), and imported into the U.S. as an "ADP system", are eligible for preferential duty rates under NAFTA as goods of a NAFTA country.

As an initial matter, the following is noted on GN p. 2 of the HTSUS (2008) (Rev. 1):

COMPILER™S NOTE: The rules of origin provisions for United States free trade agreements, other than those for the United States-Australia Free Trade Agreement, the United States-Singapore Free Trade Agreement and the United States-Chile Free Trade Agreement, have NOT been updated to reflect changes to the tariff schedule resulting from Presidential Proclamation 8097, which modified the HTS to reflect World Customs Organization changes to the Harmonized Commodity Description and Coding System. You will therefore see tariff heading/subheading numbers in the pertinent general notes which do not correspond to numbers in chapters 1 through 97 or to other portions of the same general notes.

Accordingly, because the NAFTA rules of origin have not been updated to reflect the 2007 changes to the Harmonized System, the pre-2007 classifications for the goods at issue must be used in order to ascertain their correct rule of origin under NAFTA.

General Note 12 of the HTSUS incorporates Article 401, North American Free Trade Agreement, as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (December 8, 1993), into the HTSUS. Note 12(b) provides, in relevant part:

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as "goods originating in the territory of a NAFTA party" only if "they are goods wholly obtained or produced entirely in the territory of Canada, Mexico, and/or the United States; or they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivision (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivision (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note[.] Originating good status is conferred on ADP systems classified under 8471.49 in accordance with GN 12(t) 85/191, Subheading 8471.49 rule, which provides:

The origin of each unit presented within a system shall be determined as though each unit were presented separately and were classified under the appropriate tariff provision for that unit.

The foregoing rule is subject to Chapter Rule 2, Chapter 84, GN 12, which provides:

For purposes of subheading 8471.49, the origin of each unit presented within a system shall be determined in accordance with the rule that would be applicable to such unit if it were presented separately; and the special rate of duty applicable to each unit presented within a system shall be the

rate that is applicable to such unit under the appropriate tariff item within subheading 8471.49.

For purposes of this rule, the term “unit presented within a system” shall mean:

(a) a separate unit as described in note 5(B) to chapter 84 of the tariff schedule; or (b) any other separate machine that is presented and classified with a system under subheading 8471.49.

As only the ADP machine underwent processing in Mexico, it is the only unit that is eligible to acquire originating status as a good of Mexico under rule of origin GN12(b). The monitor, keyboard and mouse do not fulfill any of the requirements of GN 12(b) and, therefore, cannot be treated as goods originating in the territory of a NAFTA party. We have not been provided with any manufacturing information on the monitor, keyboard or mouse and, thus, will not comment on their countries of origin.

Based on the Compiler’s Note above, the pre-2007 classification for the ADP machine must be used in order to ascertain its correct rule of origin. Under the provisions of HTSUS (2006), when presented separately, an ADP machine was classified in subheading 8471.50, HTSUS. (This remains the case under HTSUS (2008).) Originating status is thereby conferred on an ADP machine by the following rule:

192. A change to subheading 8471.50 from any other subheading, except from subheading 8471.30 through 8471.49.

As earlier stated, the ADP’s motherboard is imported into Mexico in a box with all of its components except for the BIOS ROM chip and the CPU. Without these components an ADP machine cannot perform the functions described in Note 5(A) to Chapter 84 (discussed in the “Classification” section above). None of the components assembled together to form the ADP machine were classified in subheadings 8471.30 through 8471.49, HTSUS. The ADP machine is, therefore, a good of Mexico for duty purposes.

Finally, you have asked, what country of origin should be indicated on the CBP Form 7501 (“Entry Summary”) when only one classification (8471.49, HTSUS) is used for the ADP system?

For purposes of the Entry Summary, pursuant to Chapter Rule 2 to Chapter 84, General Note 12, HTSUS, the country of origin of each unit of the ADP system must be listed in the box specified on the form (currently, box 10). Further, each unit of the system must be separately described as required on the form (currently, in boxes 27 through 33). The duty rate for each unit must be reflected in specified box (currently, box 34).

Marking

The issue of country of origin marking was indirectly raised in some of the correspondence between you and CBP. Although not specifically asked to do so, we will also address this issue because we believe that it is an important corollary to the issues discussed in this ruling.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. Â§1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. Â§1304 was “that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evi-

dent purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will.” United States v. Friedlaender & Co., 27 CCPA 297, 302, C.A.D. 104 (1940). Part 134, U.S. Customs and Border Protection Regulations (19 C.F.R. Â§134) implements the country of origin marking requirements and exceptions of 19 U.S.C. Â§1304. Section 134.1(b), CBP Regulations (19 C.F.R. Â§134.1(b)), defines “country of origin” as:

[T]he country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of [the marking laws and regulations]; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. Part 102 of the CBP Regulations sets forth the NAFTA Rules of Origin for country of origin marking purposes. 19 C.F.R. Â§102.0. 19 C.F.R. Â§102.11 provides, in pertinent part:

The following rules shall apply for the purposes of determining the country of origin of imported goods other than textile and apparel products covered by Â§102.21.

The country of origin of a good is the country in which:

The good is wholly obtained or produced; The good is produced exclusively from domestic materials; or Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in Â§102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

* * *

(d) Where the country of origin of a good cannot be determined under paragraph (a), (b) or (c) of this section, the country of origin of the good shall be determined as follows:

* * *

(3) If the country of origin of the good cannot be determined under paragraph (d)(1) or (d)(2) of this section, the country of origin of the good is the last country in which the good underwent production.

In previous correspondence between CBP and yourself, there was discussion of the tariff shift requirements of section 102.11(a). However, we now find that section 102.11(a) is not applicable in this situation. Paragraphs (a)(1) and (a)(2) are not applicable because the ADP system is not wholly obtained or produced in any one country and is not produced exclusively from the domestic materials of any one country. Paragraph (a)(3) (the section 102.20 “tariff shift” rules) is not applicable because the ADP system (the good at issue for marking purposes) does not incorporate foreign materials, that is, the units of the system are not subassemblies or components incorporated into each other by any production process in order to produce the system; it is only the ADP machine, a unit (which is not at issue for marking purposes) of the system, that is wholly assembled from foreign materials. See 102.1(l) “Material”. Paragraph (b) of section 102.11 concerns the country of origin for marking purposes based on the “essential character” of materials of a good that is not a set and is not covered by paragraph (a) of the section. This is inapplicable because, as stated above in relation to section 102.11(a)(3), the ADP system itself does not incorporate foreign materials. Paragraph (c) covers “goods specifically described in the Harmonized System

as a set or a mixture, or classified as a set, mixture or composite good pursuant to General Rule of Interpretation 3". This is not the situation here. Paragraphs (d)(1) and (d)(2) concern goods produced as a result of minor processing or by simple assembly; neither is the case here.

Under the provisions of section 102.11(d)(3), we find that the country of origin with which the ADP system should be marked is Mexico because it is the last country in which it underwent production. See 102.1(n) "Production". Specifically, the ADP machine was assembled in Mexico by skilled and trained workers in an operation that constituted more than simple assembly. See 102.1 (o) "Simple Assembly".

Finally, for your information, 19 C.F.R. Â§134.22 provides that when an article is excepted from the marking requirements, the outermost container or holder in which the article ordinarily reaches the ultimate purchaser shall be marked to indicate the country of origin of the article whether or not the article is marked to indicate its country of origin. Section 134.32 provides that articles for which the marking of the containers will reasonably indicate the origin of the articles are an exception to the marking regulations. In this case, we believe that only the outermost package in which the ADP system reaches the ultimate purchaser need be marked.

In addition, 19 C.F.R. Â§134.41(b) requires that the degree of permanence and visibility of marking should at least be sufficient to insure that in any reasonably foreseeable circumstance, the marking shall remain on the article (or its container) until it reaches the ultimate purchaser unless it is deliberately removed. The marking must survive the normal distribution and store handling. The ultimate purchaser in the United States must be able to find the marking easily and read it without strain. CBP has found certain factors to be indicative but not conclusive of compliance with the requirements of 19 C.F.R. Â§134.41 and 19 U.S.C. Â§1304. Among the factors that we consider are the size, location, and legibility of the marking, and whether or not the marking stands out. CBP has generally found that the size of the marking should be large enough so that the ultimate purchaser can easily see the marking without strain. The location of the marking should be in a place where the ultimate purchaser could expect to find the marking or where he/she could easily notice it from a casual inspection. Whether the marking stands out is generally dependent on where it appears in relationship to other print on the article and whether it is in contrasting letters to the background. Overall, CBP has found that the totality of the circumstances determines whether or not the marking conforms to the marking rules. See, for e.g., HQ 733940, October 24, 1991.

HOLDING:

By application of GRI 1, the ADP system is classified in heading 8471, HTSUS. It is specifically provided for in subheading 8471.49, HTSUS, which provides for: "Automatic data processing machines and units thereof": Other automatic data processing machines: Other, entered in the form of systems."

The country of origin of the system is determined according to the origin of each unit of the system. The country of origin of the ADP machine is Mexico. The country of origin of the other components of the system will depend on where they were manufactured or substantially transformed.

The country of origin for marking purposes of the ADP system is Mexico.

A copy of this ruling letter should be attached to entry documents filed at the time the goods are entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

GAIL A. HAMILL,
Chief,
Tariff Classification and Marking Branch.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H037540
CLA-2 OT:RR:CTF:TCM H037540 RFA
CATEGORY: Origin/Marking
TARIFF NO.: 8471.49

MS. JOYCE WINEMAN
ACCOUNT MANAGER/LCB
UPS SUPPLY CHAIN SOLUTIONS
4950 Gateway East
El Paso, TX 79905

RE: ADP systems; classification; NAFTA eligibility; Modification of HQ H027696

DEAR MS. WINEMAN:

This is in reference to HQ H027696, issued to you on July 2, 2008, on behalf of your client, Hon Hai Precision Industry Co. ("Hon Hai"), concerning the tariff classification of certain merchandise under the Harmonized Tariff Schedule of the United States (HTSUS). In addition to classifying the merchandise as an automatic data processing ("ADP") system, CBP also addressed whether the merchandise was eligible for preferential tariff treatment under the NAFTA (the North American Free Trade Agreement). For the reasons set forth below, we are modifying only that portion of the ruling relating to NAFTA eligibility and country of origin marking. We will also be addressing whether the subject merchandise is subject to the merchandise processing fee under 19 U.S.C. §58c(a).

FACTS:

Hon Hai imports from their subsidiary in Mexico an ADP machine, a keyboard, a mouse, and a monitor packaged together for retail sale. When so packaged, the merchandise is identified by model numbers M9177c and M8307c.

According to the submitted information, the keyboard and mouse are imported into Mexico from various vendors in China, Taiwan, and Malaysia, and the monitor is imported into Mexico from Taiwan. The monitors measure either 19 or 22 inches and have integrated speakers but cannot accept video signals other than VGA and DVI. Some ADP machines may contain TV tuner cards which are also manufactured outside of NAFTA countries.

The monitors can only receive analog TV signals through the ADP machine. The TV functions can be controlled through the computer once certain software is installed.

The ADP machine is assembled in Mexico from components originating in China, Taiwan, and Malaysia. The ADP's motherboard is shipped to Mexico in a box with all its components except for the memory (a BIOS ROM chip) and the central processing unit. The following assembly operations occur in Mexico:

1. Chassis installations: rear I/O shield; system fan; power supply; PCA (printed circuit assembly) components such as the processor cooler back plate, retention module, memory module, Intel processor, heatsink, Bluetooth, front I/O shield, and PCA cabling; Expansion cards, such as a video card, modem card, TV tuner card, wire/wireless card and LED, or an audio card, as requested; optical drive; hard drive; Bluejay module (video and imaging card); bezel subassembly.
2. Final assembly: front bezel installation, connector cover installation, cable routing and side access panel installation.
3. Equipment testing.
4. Software installation.

All of the above stated operations are performed by skilled and trained workers.

All of the ADP machines use Windows Vista as their operating system and all the models perform data processing functions. Additional hardware or software can also be installed by a customer on a machine. The keyboard and mouse connect to the CPU through connectors or USB ports.

ISSUES:

- I. Whether an ADP system comprised of an ADP machine assembled in Mexico, a monitor made in Taiwan, and a keyboard and a mouse made in China, Taiwan or Malaysia, is eligible for preferential tariff treatment under the NAFTA?
- II. How should an ADP system that has components originating in different countries be marked for country of origin marking purposes?
- III. Is the ADP system exempt from the merchandise processing fee?

LAW AND ANALYSIS:

I. Eligibility for Preferential Treatment Under NAFTA

You ask whether an ADP machine assembled in Mexico, a monitor made in Taiwan, and a keyboard and a mouse made in China (or in other non-NAFTA countries), and imported into the U.S. as an "ADP system", are eligible for preferential duty rates under NAFTA as goods of a NAFTA country.

As an initial matter, the following is noted on page 2 of the General Notes (GN) of the HTSUS (2009) (Rev. 1):

COMPILER'S NOTE: The rules of origin provisions for United States free trade agreements, other than those for the United States-Australia Free Trade Agreement, the United States-Singapore Free Trade Agreement and the United States-Chile Free Trade Agreement, have NOT been updated to reflect changes to the tariff schedule resulting from Presidential Proclamation 8097, which modified the HTS to reflect World Customs Organization changes to the Harmonized Commodity Descrip-

tion and Coding System. You will therefore see tariff heading/subheading numbers in the pertinent general notes which do not correspond to numbers in chapters 1 through 97 or to other portions of the same general notes.

Accordingly, because the NAFTA rules of origin have not been updated to reflect the 2007 changes to the Harmonized System, the pre-2007 classifications for the goods at issue must be used in order to ascertain their correct rule of origin under NAFTA.

General Note 12 of the HTSUS incorporates Article 401, North American Free Trade Agreement, as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (December 8, 1993), into the HTSUS. General Note 12(a)(ii) provides that:

(a) Goods originating in the territory of a party to the North American Free Trade Agreement (NAFTA) are subject to duty as provided herein. For the purposes of this note—

* * * * *

(ii) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Mexico under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), **and goods enumerated in subdivision (u) of this note**, when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “MX” in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act. (emphasis added)

General Note 12(b) provides in relevant part that:

(b) For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if—

* * * * *

(v) they are goods enumerated in subdivision (u) of this note and meet all other requirements of this note.

General Note 12(u) incorporates Table 308.1.1 of Annex 308.1 of the NAFTA and provides that:

Goods that shall be considered originating goods. For the purposes of subdivision (b)(v) of this note, notwithstanding the provisions of subdivision (t) above, the automatic data processing machines, automatic data processing units and parts of the foregoing that are classifiable in the tariff provisions enumerated in the first column and are described opposite such provisions, when the foregoing are imported into the customs territory of the United States from the territory of Canada or of Mexico, shall be considered originating goods for the purposes of this note:

<u>Provisions</u>	<u>Description</u>
(1) 8471.30.01, 8471.41.01, 8471.49.00, 8471.50.01	Automatic data processing machines
(2) 8471.49.00, 8471.50.01	Digital processing units
(3) 8471.49.00, 8471.60.10	Combined input/output units
(4) 8471.49.00, 8528.41.00, 8528.51.00, 8528.61.00	Display units
(5) 8471.49.00, 8471.60.20, 8471.60.70, 8471.60.80, 8471.60.90	Other input or output units
(6) 8471.49.50, 8471.70	Storage units
(7) 8471.49.00, 8471.80.10, 8471.80.40, 8471.80.90, 8517.62.00, 8517.69.00	Other units of automatic data processing machines
(8) 8443.99, 8473.30, 8517.70, 8529.90	Parts of automatic data processing machines and units thereof
(9) 8471.49.00, 8504.40.60, 8504.40.70	Power supplies for automatic data processing machines
(10) 8504.90.20, 8504.90.40	Parts of power supplies for automatic data processing machines

In HQ 027696, dated July 2, 2008, we properly determined that the merchandise met the terms of an ADP system as defined by Subheading Note 1 to Chapter 84³ and was correctly classified in subheading 8471.49.00, HTSUS, when imported from the territory of Mexico into the United States. This classification remains the same under the 2006 through 2009 versions of the HTSUS. As this tariff provision is listed in General Note 12(u), the merchandise qualifies as an originating good under NAFTA for duty purposes.

II. Marking for Country of Origin Purposes

The issue of country of origin marking was indirectly raised in some of the correspondence between you and CBP. Although not specifically asked to do so, we will also address this issue because we believe that it is an important corollary to the issues discussed in this ruling.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. §1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. §1304 was “that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to

³Subheading Note 1 to Chapter 84 provides that: “For the purposes of subheading 8471.49, the term ‘systems’ means automatic data processing machines whose units satisfy the conditions laid down in note 5(C) to chapter 84 and which comprise at least a central processing unit, one input unit (for example, a keyboard or a scanner), and one output unit (for example, a visual display unit or a printer).”

buy or refuse to buy them, if such marking should influence his will.” United States v. Friedlaender & Co., 27 CCPA 297, 302, C.A.D. 104 (1940). Part 134, U.S. Customs and Border Protection Regulations (19 C.F.R. §134) implements the country of origin marking requirements and exceptions of 19 U.S.C. §1304.

Section 134.1(b), CBP Regulations (19 C.F.R. § 134.1(b)), defines “country of origin” as:

[T]he country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of [the marking laws and regulations]; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Part 102 of the CBP Regulations sets forth the NAFTA Rules of Origin for country of origin marking purposes. 19 C.F.R. §102.0. 19 C.F.R. §102.11 provides, in pertinent part:

The following rules shall apply for the purposes of determining the country of origin of imported goods other than textile and apparel products covered by § 102.21.

- (a) The country of origin of a good is the country in which:
 - (1) The good is wholly obtained or produced;
 - (2) The good is produced exclusively from domestic materials; or
 - (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in §102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.
- (b) Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:
 - (1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good, or
 - (2) If the material that imparts the essential character to the good is fungible, has been commingled, and direct physical identification of the origin of the commingled material is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the appendix to part 181 of this chapter.
- (c) Where the country of origin cannot be determined under paragraph (a) or (b) of this section and the good is specifically described in the Harmonized System as a set or mixture, or classified as a set, mixture or composite good pursuant to General Rule of Interpretation 3, the country of origin of the good is the country or countries of origin of all materials that merit equal consideration for determining the essential character of the good.

- (d) Where the country of origin of a good cannot be determined under paragraph (a), (b) or (c) of this section, the country of origin of the good shall be determined as follows:

* * *

- (3) If the country of origin of the good cannot be determined under paragraph (d)(1) or (d)(2) of this section, the country of origin of the good is the last country in which the good underwent production.

CBP finds that §102.11(a) is not applicable in this situation. Paragraphs (a)(1) and (a)(2) are not applicable because the ADP system is not wholly obtained or produced in any one country and is not produced exclusively from the domestic materials of any one country. Paragraph (a)(3) (the §102.20 “tariff shift” rules) is not applicable because the foreign-sourced goods (e.g., the monitor, keyboard and mouse) which are simply re-packed with the ADP machine is a non-qualifying operation under 19 C.F.R. §102.17.⁴

As the goods entered into the United States meet the terms of “ADP systems” as defined in Subheading Note 1 to Chapter 84, CBP finds that they constitute a GRI 1 set under the Harmonized System for the purposes of §102.11. Therefore, we find that §102.11(b) is also inapplicable. According to §102.11(c), the “country of origin of the good is the country or countries of origin of all materials that merit equal consideration for determining the essential character of the good”. For marking purposes, all of the components which make-up the ADP system are essential as they work together to perform the ADP system’s function. As such, each of the components must be individually marked with their own country of origin. This decision is consistent with a previous CBP ruling in which we held that a set consisting of a computer, keyboard, mouse, speakers and microphone merit equal consideration for marking purposes and must be individually marked. See HQ 561409, dated May 30, 2000.

Merchandise Processing Fee

19 U.S.C. §58c(a) provides the statutory authority for certain customs services which states in relevant part that:

- (a) Schedule of fees

In addition to any other fee authorized by law, the Secretary of the Treasury shall charge and collect the following fees for the provision of customs services in connection with the following:

* * * * *

- (9)(A) For the processing of merchandise that is formally entered or released during any fiscal year, a fee in an amount equal to 0.21 percent ad valorem, unless adjusted under subparagraph (B).

⁴ 19 C.F.R. §102.17 sets out the rules as to non-qualifying operations under §102.20, in relevant part:

[a] foreign material shall not be considered to have undergone an applicable change in tariff classification specified in § 102.20 or § 102.21 or to have met any other applicable requirements of those sections merely by reason of one or more of the following:

* * * * *

- (c) Simple packing, repacking or retail packaging without more than minor processing;

However, 19 U.S.C. §58c(b)(10)(B) provides that:

For goods qualifying under the rules of origin set out in section 3332 of this title, the fee under subsection (a)(9) or (10)—

* * * *

(ii) may not be increased after December 31, 1993, and may not be charged after June 29, 1999, with respect to goods that qualify to be marked as goods of Mexico pursuant to such Annex 311, for such time as Mexico is a NAFTA country.

Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

19 U.S.C. §3332(n) provides for the rules of origin of automatic data processing goods under NAFTA:

Notwithstanding any other provision of this section, when the NAFTA countries apply the rate of duty described in paragraph 1 of section A of Annex 308.1 of the Agreement to a good provided for under the tariff provisions set out in Table 308.1.1 of such Annex, the good shall, upon importation from a NAFTA country, be deemed to originate in the territory of a NAFTA country for purposes of this section.

As stated above, Table 308.1.1 is codified in General Note 12(u) which lists ADP systems of subheading 8471.49.00 as being deemed to originate in the territory of a NAFTA country for purposes of origin. As such, the subject merchandise qualifies under 19 U.S.C. §58c(b)(10)(B)(ii) as being exempt from the merchandise processing fees.

HOLDING:

By application of GRI 1, the ADP system is classified in heading 8471, HTSUS. It is specifically provided for in subheading 8471.49.00, HTSUS, which provides for: “Automatic data processing machines and units thereof . . . : Other automatic data processing machines: Other, entered in the form of systems.” In accordance with General Note 12(b)(v), the ADP system originates from Mexico under NAFTA.

The country of origin of the system is determined according to the origin of each unit of the system. The country of origin of the ADP machine is Mexico. The country of origin of the other components of the ADP system should be marked to reflect their country of origin.

Under 19 U.S.C. §58c(b)(10)(B)(ii), the ADP system imported from Mexico qualifies for exemption from the merchandise processing fee.

EFFECT ON OTHER RULINGS:

HQ H027696, dated July 2, 2008, is hereby modified.

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

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE CLASSIFICATION OF
AN RF POWER AMPLIFIER**

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

ACTION: Revocation of a classification ruling letter and revocation of treatment relating to the classification of an RF power amplifier.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking one ruling letter relating to the classification of an RF power amplifier. CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on January 15, 2009, in Volume 43, Number 4, of the Customs Bulletin. CBP received one comment in support of the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 28, 2009.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking Branch: (202) 325-0026.

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, notice proposing to revoke one ruling letter pertaining to the tariff classification of an RF power amplifier was published in the January 15, 2009, Customs Bulletin, Volume 43, Number 4. One comment was received in support of the notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the 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 R04974, an RF power amplifier was classified in heading 8543, of the Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for: "Electric machines or apparatus, having individual functions, not specified or included elsewhere [in Chapter 85]." Since the issuance of that ruling, CBP has reviewed the classification of the RF power amplifier and has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY R04974 and revoking or modifying any other ruling not specifically identified, to reflect the classification of the RF power amplifier according to the analysis contained in Headquarters Ruling Letter (HQ) H004105, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: May 8, 2009

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H004105
May 8, 2009
CLA-2 OT:RR:CTF:TCM H004105 KSH
CATEGORY: Classification
TARIFF NO.: 8517.62.0050

MYRON P. BARLOW, ESQ.
BARLOW & ASSOCIATES
312 Third Street
Annapolis, MD 21403

RE: Revocation of NY R04974, dated October 23, 2006; Classification of an
Mobile RF Amplifier Module

DEAR MR. BARLOW:

This is in response to your letter, dated November 17, 2006, on behalf of your client, RF Micro Devices, Inc., concerning the classification of an RF (radio frequency) power amplifier module under the Harmonized Tariff Schedule of the United States ("HTSUS"). You have requested reconsideration of New York Ruling Letter ("NY") R04974, dated October 23, 2006, in which the National Commodity Specialist Division of U.S. Customs and Border Protection (CBP) classified the RF power amplifier module in subheading 8543.89.92, HTSUS, as an electric machine or apparatus, having individual functions, not specified or included elsewhere in Chapter 85. The applicable text to subheading 8543.89.92, HTSUS, has been moved to subheading 8543.70, HTSUS, effective February 3, 2007.

You contend that the RF power amplifier module is provided for in heading 8529.90.99, HTSUS, as other apparatus for the transmission or reception of voice, images or other data. Prior to 2007, cellular phone amplifiers were classified in heading 8525, HTSUS or heading 8529, HTSUS. See HQ 962909, dated May 20, 2000. Pursuant to title 19 United States Code, Section 3005, the HTSUS was amended to reflect changes recommended by the World Customs Organization. The proclaimed changes are effective for goods entered or withdrawn from warehouse for consumption on or after February 3, 2007. See Presidential Proclamation 8097, 72 FR 453, Volume 72, No. 2 (January 4, 2007). Cellular phones and parts thereof of headings 8525, HTSUS, and 8529, HTSUS, were transferred to heading 8517, HTSUS (2007).

We have reviewed NY R04974 and participated in a telephone conference with you and a member of my staff. We have determined that NY R04974 is in error.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on January 15, 2009, in Volume 43, Number 4, of the Customs Bulletin. CBP received one comment in support of the notice.

FACTS:

The merchandise at issue is a mobile handset RF power amplifier module, identified as part number RF3146 (RF3146). It is designed to be installed into Global System for Mobile Communications (GSM) cellular phones. You state the RF3146 is sold to GSM cellular phone manufacturers and is incorporated into the cellular phone during the manufacturing process. You also explain that the RF3146 is necessary for the functioning of the cellular

phones as the phones cannot operate without it. See www.rfmd.com. The RF3146 amplifies four radio frequency bands, provides integrated power control circuitry, selects the proper band to transmit the signal and filters the amplified signal to remove unwanted energy.

The RF3146 contains a silicon CMOS and two Gallium Arsenide chips and is comprised of a printed circuit board, two resistors and three connectors. It is packaged in a 7x7mm Lead Frame Module™ packaging technology. You state that the packaging technology allows RF Micro Devices, Inc., to manufacture extremely small units to better fit a cellular phone.

ISSUE:

Whether the RF3146 is classified in heading 8517, HTSUS, as an other apparatus for the transmission or reception of voice, images or other data, or in heading 8543, HTSUS, as an electric machine or apparatus, having individual functions, not specified or included elsewhere in Chapter 85.

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 2008 HTSUS provisions under consideration are as follows:

8517	Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof: * * * Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): * * *
8517.62.00	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: * * *
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter, parts thereof: * * *
8543.70	Other machines and apparatus:

* * *

Other:

* * *

Other:

* * *

8543.70.96 Other

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the HTSUS 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).

Heading 8517 covers electrical apparatus for the transmission or reception of data between two points, regardless of the type of signal (i.e., analog or digital) or distance transmitted. EN 85.17 states, in pertinent part, the following:

This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric current or optical wave flowing in a wired network or by electromagnetic waves in a wireless network. The signal may be analogue or digital. The networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radio-telegraphy, local and wide area networks.

* * *

(D) Apparatus for telegraphic communication other than facsimile machines of heading 84.43.

These apparatus are essentially designed for converting characters, graphics, images or other data into appropriate electrical impulses, for transmitting those impulses, and at the receiving end, receiving these impulses and converting them either into conventional symbols or indications representing the characters, graphics, images or other data or into the characters, graphics, images or other data themselves.

* * *

The EN to heading 8543, HTSUS, provides in relevant part, the following:

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

We note that by the terms of the headings, if the instant merchandise is described by the terms of heading 8517, HTSUS, it cannot be classified in heading 8543, HTSUS, as it is specified elsewhere in the Chapter. The EN to heading 8543, HTSUS, supports this view. The RF power amplifiers are used in cellular phones to amplify and transmit radio frequency signals. Ra-

dio frequency transmission of an electrical signal requires corresponding power amplification for the intended transmission range. See www.electronics-manufacturers.com. The RF power amplifier achieves the power amplification by producing, from the input signal, an output signal having an increased magnitude. Id. The transistors and integrated circuitry filter the signal or provide impedance matching at a particular operating frequency. Id. As the RF power amplifier is an electrical apparatus for the transmission or reception of data between two points, it is expressly provided for in heading 8517, HTSUS. It is used to convert data into electrical impulses and transmit that impulse. It is used to amplify and transmit RF signals to a cellular tower in order to enable the user to successfully complete calls. Insofar as the RF power amplifier has an individual function which is otherwise provided for in Chapter 85, it cannot be classified in heading 8543, HTSUS.

HOLDING:

By application of GRI 1, the RF power amplifier module is classified in heading 8517, HTSUS. It is specifically provided for in subheading 8517.62.0050, HTSUSA (annotated), which provides for: “Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof: Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other” 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 internet at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY R04974, dated October 23, 2006, is revoked.

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

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

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE COUNTRY OF
ORIGIN MARKING OF BURIAL CASKETS**

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

ACTION: Notice of revocation of a ruling letter and treatment relating to the country of origin marking of burial caskets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB is revoking a ruling letter concerning the country of origin marking of burial caskets. Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed action was published on March 26, 2009, Vol. 43, No. 13, of the Customs Bulletin. One comment was received in support of the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 28, 2009.

FOR FURTHER INFORMATION CONTACT: Jacinto P. Juarez, Jr., Tariff Classification and Marking Branch: (202) 325–0027.

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, notice proposing to revoke one ruling letter pertaining to the country of origin marking of burial caskets was published in the March 26, 2009, Customs Bulletin, Vol. 43, No. 13. One comment was received in response to the notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the 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 New York Ruling Letter (NY) N013043, CBP determined that marking an imported casket with country of origin "Made in China" near the center of the bottom panel using permanent ink was conspicuous in satisfaction of the marking requirements of 19 U.S.C. 1304 and 19 C.F.R. Part 134. It is now CBP's position that the country of origin marking "Made in China" near the center of the unfinished bottom panel of a casket does not meet the conspicuousness requirements of 19 U.S.C. 1304 and 19 CFR 134.41.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N013043, and is revoking or modifying any other ruling not specifically identified, to reflect the country of origin marking of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (HQ) H033598, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: May 11, 2009

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

Attachment

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H033598
May 11, 2009
MAR-2-05 OT:RR:CTF:TCM H033598 JPJ
CATEGORY: Marking

MR. PRESLEY MELTON
MELTON COMPANY INC.
5900 Patterson Road
Little Rock, AR 72209

RE: Country of origin marking of caskets; Bottom of Casket; Conspicuous;
19 CFR 134.41; NY N013043 Revoked.

DEAR MR. MELTON:

This letter is to inform you that Customs and Border Protection (CBP) has reconsidered New York Ruling letter (NY) N013043, issued to you on July 12, 2007. CBP has determined that NY N013043 is incorrect.

NY N013043 determined, in relevant part, that marking an imported casket with country of origin "Made in China" near the center of the bottom panel using permanent ink was conspicuously, legibly and permanently marked in satisfaction of the marking requirements of 19 U.S.C. 1304 and 19 C.F.R. Part 134.

On March 26, 2009, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the Customs Bulletin, Vol. 43, No. 13. One comment was received in support of the notice.⁵

FACTS:

You import burial caskets from China and sell them to funeral homes. In turn, funeral service providers sell the imported caskets to the final consumers.⁶

You currently mark the bottom of each casket using permanent ink with "Made in China" in letters clearly readable from a distance. You provided an electronic photograph of the bottom of a casket displaying the "Made in China" country of origin marking.

You argued that because a casket is finished on all sides and on the top (photograph provided), these finished surfaces do not lend themselves to country of origin marking. Therefore, country of origin marking is affixed on the unfinished bottom, along with other inventory control and model number labeling.

You also argued that country of origin marking on the bottom of the casket was consistent with country of origin marking used in the furniture industry. You stated that you had observed that on virtually all furniture that is finished on all sides (tables, chests, bed frames, wooden chairs, etc.) the

⁵ The commenter also requests that we require country of origin marking on any exterior surface with the exception of the rear panel; that funeral homes and retailers of caskets be required to display caskets in a certain way; and that Internet casket sales outlets be required to include country of origin information in their online product descriptions and advertising. However, each of these requests is beyond the scope of this action.

⁶ We note that consumers may also purchase burial caskets directly from retailers and wholesalers and off of their internet websites.

country of origin is marked on the bottom. You alleged that marking on the bottom of a casket was clearly available to the purchaser who examined the product, but did not detract from the overall appearance of a casket as it was being used at a funeral.

ISSUE:

Whether country of origin marking near the center of the unfinished bottom panel of a casket is conspicuous pursuant to the requirements of 19 U.S.C. 1304 and section 134.41, CBP Regulations (19 C.F.R. 134.41).

LAW AND ANALYSIS:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304) provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. 1304 was “that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will.” *United States v. Friedlaender & Co. Inc.*, 27 CCPA 297, 302, C.A.D. 104 (1940).

Part 134, CBP Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. As provided in section 134.41, CBP Regulations (19 CFR 134.41), the country of origin marking is considered to be conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain. The ultimate purchaser in the U.S. is not the funeral home, but the individual. Section 134.1(k), CBP Regulations (19 CFR 134.1(k)), defines “conspicuous” as “capable of being easily seen with normal handling of the article or container.”

Section 134.41(a), CBP Regulations (19 CFR 134.41(a)), provides that as a general rule, marking requirements are best met by marking worked into the article at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in, or etched. Paper stickers or pressure sensitive labels may be used, but these must be affixed in a conspicuous place and so securely that unless deliberately removed they will remain on the article while it is in storage or on display and until it is delivered to the ultimate purchaser. (19 CFR 134.44(b)). See also 19 CFR 134.41(b).

Section 134.44, CBP Regulations (19 CFR 134.44), generally provides that any marking that is sufficiently permanent so that it will remain on the article until it reaches the ultimate purchaser unless deliberately removed is acceptable.

Under the holding of *Charles A. Redden v. United States*, T.D. 44964 (Cust. Ct. June 11, 1931), the country of origin of an article need not be marked in the most conspicuous place, “but merely in any conspicuous place which shall not be covered or obscured by subsequent attachments or arrangements.”

In determining whether the country of origin marking “Made in China” near the center of the unfinished bottom panel of a casket is conspicuous, we

are guided by the principles discussed above. We do not require country of origin marking which would detract from the appearance of the article. We require only that the location of country of origin marking be conspicuous, and not that it be in the most conspicuous location. We take into account where the ultimate purchaser expects to find country of origin marking. We are also guided by the requirement that the marking be easily found and read without strain; that the method of marking is appropriate to the nature of the article; and that the marking will be sufficiently permanent to insure that the marking will remain on the article until it reaches the ultimate purchaser unless deliberately removed. No single factor is considered conclusive in determining whether a marking meets the conspicuousness requirement of 19 CFR §134.41 and 19 U.S.C. 1304. Instead, it is the combination of factors which will determine whether the marking is acceptable.

In CBP ruling HQ 707766 (July 29, 1977), we permitted upholstered furniture to be marked with a fabric label affixed on the underside and followed our prior rulings that large pieces of furniture usually had been required to be marked in large letters on the rear, or on the underside in the case of chairs or tables. See, also, T.D. 45121 (1931)(large pieces of furniture should be marked on the back or underside).

However, in HQ 735336, dated April 27, 1994, CBP stated:

Although Customs has permitted upholstered furniture to be marked with a fabric label affixed on the underside (See HQ 707766 July 29, 1977), we do not believe that such a marking can be considered in a conspicuous location, if the tag is obscured and the marking cannot be observed without lifting up or tilting a heavy piece of furniture. Here, a purchaser could not observe the marking without lifting a heavy piece of furniture, some of which may weigh 110 pounds. An ultimate purchaser should not have to greatly manipulate an article or conduct a difficult search to observe the country of origin marking.

Caskets offered for sale from a showroom may be displayed horizontally on display racks with casket lids open to reveal their interiors. You argued that marking on the bottom of the casket was clearly available to the purchaser who examined the product. However, in NY 013043, the photograph of the unfinished bottom panel of the casket demonstrates that the country of origin marking "Made in China" near the center of the bottom panel can only be seen when the casket is lifted and stood up vertically on one end.

In NY N013043, you argued that the outside finished surfaces of the casket did not lend themselves to marking with the country of origin, and implied that the marking would detract from the overall appearance of the casket as it is being used at a funeral. Again, in HQ 735336, discussed above, CBP recognized that while the furniture was constructed of leather upholstery and that permanent stamping could mar the furniture's appearance, we nevertheless required that the country of origin be in a location other than the bottom where it would be noticeable and legible upon casual inspection by a consumer. In that ruling, we determined that the country of origin marking could not be observed without lifting a heavy piece of furniture, some of which may weigh 110 pounds. We also determined that an ultimate purchaser should not have to greatly manipulate an article or conduct a difficult search to observe the country of origin marking. Likewise, a purchaser of a casket should not have to greatly manipulate the casket or lift it or stand it up at one end in order to find the country of origin marking.

Therefore, while we believe that a purchaser may not expect to find a country of origin marking on the finished surface of a casket, we find that the bottom of a casket is not conspicuous for purposes of country of origin marking because marking a casket with country of origin near the center of the bottom panel renders the marking difficult to locate and read without strain.

Regarding the methods and the permanency of marking, section 134.41(a), CBP Regulations (19 CFR 134.41(a)), provides that as a general rule, marking requirements are best met by marking worked into the article at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in, or etched. However, it may be inappropriate to mark the finished surface of a casket with permanent ink, etching, or dye stamping, because each of these methods could damage the special finish, and ruin the aesthetic appeal of a casket.

Section 134.44, CBP Regulations (19 CFR 134.44), generally provides that any marking that is sufficiently permanent so that it will remain on the article until it reaches the ultimate purchaser unless deliberately removed is acceptable. Paper stickers or pressure sensitive labels may be used, but these must be affixed in a conspicuous place and so securely that unless deliberately removed they will remain on the article while it is in storage or on display and until it is delivered to the ultimate purchaser. (19 CFR 134.44(b)). See also 19 CFR 134.41(b). Likewise, hangtags may also be used, but these must be attached in a conspicuous place and in a manner which assures that unless deliberately removed they will remain on the article until it reaches the ultimate purchaser. See 19 CFR 134.44(c).

In this case, use of a pressure sensitive label or a hangtag affixed in a conspicuous place on a casket would be sufficiently permanent to meet the requirements of 19 CFR 134.44. The marking "Made in China" on a label or hangtag affixed in a conspicuous place on a casket would be easy to find, securely affixed, and would, in our opinion, come off only if it were deliberately removed. Accordingly, the requirements of 19 U.S.C. 1304 and 19 CFR 134.44 would be satisfied and this method of marking country of origin on a casket would be acceptable.

HOLDING:

The country of origin marking "Made in China" near the center of the unfinished bottom panel of a casket does not meet the conspicuousness requirements of 19 U.S.C. 1304 and 19 CFR 134.41, in that the country of origin marking is not capable of being easily seen with normal handling of the article or container.

EFFECT ON OTHER RULINGS:

NY N013043, dated July 12, 2007, is revoked.

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

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

**UNITED STATES CUSTOMS AND BORDER PROTECTION
PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF
DIETHYL-4-TOLUENESULFONYLOXMETHYL PHOSPHATE**

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

ACTION: Notice of proposed modification of a tariff classification ruling letter and proposed revocation of treatment relating to the classification of Diethyl-4-Toluenesulfonyloxmethyl Phosphate.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625 (c)), as amended by Section 623 of Title IV (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) intends to modify a ruling letter relating to the tariff classification of Diethyl-4-Toluenesulfonyloxmethyl Phosphate (C.A.S. 31618-90-3) also referred to as Diethyl (Tosyloxy) Methylphosphonate, under the Harmonized Tariff Schedule of the United States (HTSUS). The Diethyl-4-Toluenesulfonyloxmethyl Phosphate is an aromatic chemical compound which is used as a pharmaceutical intermediate. 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 June 29, 2009.

ADDRESS: Written comments are to be addressed to Customs and Border Protection, Regulations and Rulings of the Office of International Trade, Attention: Commercial Trade and Regulations Branch, 799 9th Street, N.W., Washington, D.C. 20001. Submitted comments may be inspected at 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, Trade and Commercial Regulations Branch, at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: John Rhea, Tariff Classification and Marking Branch: (202) 325-0035

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective.

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify a ruling letter pertaining to the tariff classification Diethyl-4-Toluenesulfonyloxmethyl Phosphate. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (“NY”) J83633, dated June 12, 2003, (Attachment “A”), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 the above mentioned ruling, CBP determined that the subject Diethyl-4-Toluenesulfonyloxmethyl Phosphate was classifiable under subheading 2930.90.29, HTSUS, which provides for, “Organosulfur compounds: Other: Aromatic: Other: Other.” Based upon the chemical composition of this product, we have determined that the Diethyl-4-Toluenesulfonyloxmethyl Phosphate is properly classified

in heading 2931, HTSUS. Specifically, this chemical product is classified under subheading 2931.00.30, HTSUS, which provides for: "Other organo-inorganic compounds: Aromatic: Other: Other: Other: Products described in additional U.S. note 3 to section VI."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY J83633 and revoke or modify any other ruling not specifically identified, to reflect the proper classification of the Diethyl-4-Toluenesulfonyloxymethyl Phosphate according to the analysis contained in proposed Headquarters Ruling Letter ("HQ") H034672, 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: May 11, 2009

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 J83633
June 12, 2003
CLA-2-29:RR:NC:2:239 J83633
CATEGORY: Classification
TARIFF NO.: 2930.90.2900;
2916.39.2000; 2932.99.6100

MS. LAURA MANNISTO
INTERCHEM CORPORATION
120 Route 17 North
P.O. Box 07653-1579
Paramus, NJ 07653-1579

RE: The tariff classification of Diethyl-4-Toluenesulfonyloxymethyl Phosphonate (CAS 31618-90-3) from France; 3-Phenylpropionic Acid (CAS 501-52-0) from France; and Citalopram Hydrobromide (CAS 59729-32-7) from Finland.

DEAR MS. MANNISTO:

In your letter dated April 4, 2003, you requested a tariff classification ruling for the above products.

The applicable subheading for Diethyl-4-Toluenesulfonyloxymethyl Phosphonate, which you have stated will be used as a pharmaceutical intermediate, will be 2930.90.2900, Harmonized Tariff Schedule of the United

States (HTS), which provides for other organo-sulfur compounds. Pursuant to General Note 13 to the Harmonized Tariff Schedule this product is free of duty.

The applicable subheading for 3-Phenylpropionic Acid, which you have stated will be used as a pharmaceutical intermediate, will be 2916.39.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for aromatic monocarboxylic acid, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Odoriferous or flavoring compounds. The rate of duty will be 7 percent ad valorem.

The applicable subheading for Citalopram Hydrobromide, which you have stated is used for the treatment of depression, will be 2932.99.6100, Harmonized Tariff Schedule of the United States (HTS), which provides for heterocyclic compounds with oxygen hetero-atom(s) only: aromatic: other. Pursuant to General Note 13 of the Harmonized Tariff Schedule this product is free of duty.

Ciprofloxacin may be subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number 301-443-1544.

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 Andrew Stone at 646-733-3032.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.

U.S. CUSTOMS AND BORDER PROTECTION,

HQ H034672

CLA-2 OT:RR:CTF:TCM H034672 JER

CATEGORY: Classification

TARIFF NO.: 2931.00.30

LAURA MANNISTO
INTERCHEM CORPORATION
120 Route 17 North, Suite 115
P.O. Box 1579
Paramus, NJ 07653-1579

RE: Proposed Modification of NY J83633; Diethyl-4-Toluenesulfonyloxmethyl Phosphate

DEAR MS. MANNISTO:

On June 12, 2003, U.S. Customs and Border Protection ("CBP") issued New York Ruling Letter ("NY") J83633 to you classifying, in relevant part, Diethyl-4-Toluenesulfonyloxmethyl Phosphate in heading 2930 of the Harmonized Tariff Schedule of the United States ("HTSUS"). After reviewing

NY J83633, we have found that ruling to be incorrect. For the reasons set forth in this ruling, we are modifying NY J83633.

FACTS:

Diethyl-4-Toluenesulfonyloxmethyl Phosphate (C.A.S. 31618-90-3)⁷ also referred to as Diethyl (Tosyloxy) Methylphosphonate is an aromatic chemical compound which is used as a pharmaceutical intermediate, i.e. adjuvants, diluent or carriers. According to the CBP Laboratory, the chemical structure of Diethyl-4-TP contains three functional groups which include an organo-phosphorus group, an organo-sulfur group and an ester of inorganic acid.

ISSUE:

Whether the subject Diethyl-4-Toluenesulfonyloxmethyl Phosphate is classified in heading 2930, HTSUS, as an organo-sulfur compound or under heading 2931, HTSUS, as an other organo-inorganic compound.

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:

2920	Esters of other inorganic acids of nonmetals (excluding esters of hydrogen halides) and their salts; their halogenated, sulfonated, nitrated or nitrosated derivatives:
2920.90	Other:
	Aromatic:
2920.90.2000	Other
2930	Organo-sulfur compounds:
	* * *
2930.90	Other
	Aromatic:
	Other:
2930.90.2900	Other
2931	Other organo-ingoranic compounds:
	Aromatic:
	* * *

⁷ C.A.S. is an acronym for the Chemical Abstract Service and is typically followed by a registry number (e.g., C.A.S. 637-59-2).

Other:

Other:

Other:

2931.00.3000 Products described in additional U.S. note 3 to section VI

Note 3 to Chapter 29, HTSUS, provides that:

Goods which could be included in two or more of the headings of this chapter are to be classified in that one of those headings which occurs last in numerical order.

Furthermore, Additional U.S. Note 3 to Section VI, HTSUS, provides that:

The term “products described in additional U.S. note 3 to section VI” refers to any product not listed in the Chemical Appendix to the Tariff Schedule and—

(a) For which the importer furnishes the Chemical Abstracts Service (C.A.S.) registry number and certifies that such registry number is not listed in the Chemical Appendix to the Tariff Schedule; or

(b) Which the importer certifies not to have a C.A.S. registry number and not to be listed in the Chemical Appendix to the Tariff Schedule, either under the name used to make Customs entry or under any other name by which it may be known.

In NY J83633, CBP classified three chemical compounds referred to respectively as 3-Phenylpropionic Acid, Citalopram Hydrobromide and Diethyl-4-Toluenesulfonyloxmethyl Phosphate. This decision is limited to the classification of the Diethyl-4-Toluenesulfonyloxmethyl Phosphate (hereinafter Diethyl-4-TP).

The subject aromatic chemical compound contains esters of inorganic acids, classified in heading 2920, HTSUS. In addition, the subject compound also contains organo-sulfur, classified in heading 2930, HTSUS, and organo-phosphorus, classified in heading 2931, HTSUS. Based on the chemical structure of the subject compound, we find that the Diethyl-4-Toluenesulfonyloxmethyl Phosphate is *prima facie* included in more than one heading of Chapter 29, namely, heading 2920, HTSUS; heading 2930, HTSUS and heading 2931, HTSUS.

As such, the subject Diethyl-4-TP is within the purview of Note 3 to Chapter 29. Accordingly, the Diethyl-4-TP is classified in heading 2931, HTSUS, which occurs last in numerical order.

The subject Diethyl-4-TP (C.A.S. 31618-90-3) is not listed in the Chemical Appendix to the Harmonized Tariff Schedule and the C.A.S. registry number is also not listed on the Chemical Appendix to the Harmonized Tariff Schedule. Therefore, the subject Diethyl-4-TP is deemed a product described in Additional U.S. Note 3 to Section VI and is thus classified in sub-heading 2931.00.30, HTSUS.

HOLDING:

By application of GRI 1 and pursuant to Note 3 to Chapter 29, HTSUS, the subject Diethyl-4-Toluenesulfonyloxmethyl Phosphate is classifiable under heading 2931, HTSUS. Specifically, the product is classified under sub-

heading 2931.00.30, HTSUS, which provides for: “Other organo-inorganic compounds: Aromatic: Other: Other: Other: Products described in additional U.S. note 3 to section VI.” Pursuant to GN 13, the column one, special rate of duty is Free.⁸

EFFECT ON OTHER RULINGS:

NY J83633, dated June 12, 2003, is hereby modified.

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division.

GENERAL NOTICE

19 CFR PART 177

**PROPOSED MODIFICATION OF TWO RULING LETTERS
CONCERNING THE CLASSIFICATION OF CERTAIN
SATELLITE RADIO RECEIVERS/TUNERS AND PROPOSED
REVOCATION OF TREATMENT**

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

ACTION: Notice of proposed modification of two ruling letters relating to the classification of certain satellite radio receivers/tuners and proposed revocation of treatment.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify two ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain satellite radio receivers/tuners. CBP is also proposing to revoke any treatment previously accorded by it to substan-

⁸ General Note (GN) 13 to the HTSUS provides that:

Pharmaceutical products. Whenever a rate of duty of “Free” followed by the symbol “K” in parentheses appears in the “Special” subcolumn for a heading or subheading, any product (by whatever name known) classifiable in such provision which is the product of a country eligible for tariff treatment under column 1 shall be entered free of duty, provided that such product is included in the pharmaceutical appendix to the tariff schedule. Products in the pharmaceutical appendix include the salts, esters and hydrates of the International Non-proprietary Name (INN) products enumerated in table 1 of the appendix that contain in their names any of the prefixes or suffixes listed in table 2 of the appendix, provided that any such salt, ester or hydrate is classifiable in the same 6-digit tariff provision as the relevant product enumerated in table 1.

tially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before June 29, 2009.

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, 799 9th Street, N.W. – 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Tariff Classification and Marking Branch, at (202) 325–0034.

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 modify two ruling letters relating to the tariff classification of certain satellite radio receivers/tuners. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) K87747, dated July 20, 2004 (Attachment A) and NY J89049, dated November 4, 2003 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP

has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

In NY K87747, CBP classified certain satellite radio receivers/tuners, model PNP1, in subheading 8527.31.60, HTSUS. This model of satellite radio receiver/tuner had previously been classified in subheading 8527.90.95, HTSUS, by CBP in NY J89049. However, rulings which have been in effect for at least 60 days may only be modified in accordance with the provisions of 19 U.S.C. § 1625(c), which requires that notice of the proposed action be published in the Customs Bulletin and that the public be allowed to comment on the proposed action for a period of at least 30 days. This procedure was not followed with respect to the purported reclassification of the PNP1 receiver/tuner. The original classification decision (NY J89049) was effective on November 4, 2003, and the purported reclassification was attempted on June 20, 2004 (NY K87747), more than 60 days later but notice of the modification of NY J89049 was not published in the Customs Bulletin. In addition, CBP now finds that NY J89049 is incorrect as it concerns the classification of the PNP1 model of satellite radio receivers/ tuners. NY J89049 has previously been modified as it relates to the classification of the SIR-CK2 and SIR-HK1 docking stations. See Headquarters Ruling Letter HQ H008626, Nov. 28, 2008, and Notice of Revocation of one Ruling Letter, Modification of one Ruling Letter and Revocation of Treatment Relating to the Classification of a certain Satellite Radio Boombox and certain other Satellite Radio Receiver Docking Stations, Customs Bulletin, Vol. 42, No. 52, Nov. 28, 2008.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY K87747 and any other ruling not specifically identified to reflect the proper procedural basis on which to modify an interpretive ruling or decision, pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) H042575 (Attachment C). In addition, CBP is proposing to modify NY J89049 and any other ruling not specifically identified to reflect the proper classification of the PNP1 model of receivers/tuners pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) H043540 (Attachment D). CBP is also proposing to revoke any treatment previously accorded by it to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: May 12, 2009

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 K87747
July 20, 2004
CLA-2-85: RR: NC: 1:108 K87747
CATEGORY: Classification
TARIFF NO.: 8527.31.6080

MR. JOHN A. BESSICH
FOLLIK & BESSICH ATTORNEYS AT LAW
33 Walt Whitman Road, Suite 204
Huntington Station, NY 11746

RE: The tariff classification of satellite radios from Korea

DEAR MR. BESSICH:

In your letter dated July 6, 2004, on behalf of your client Audiovox Corporation, you requested a tariff classification ruling.

The items in question are satellite radios. They are denoted as the Sirius Satellite Radio Receiver/Tuners, models PNP1 and PNP2. Each satellite radio is designed to receive satellite radio broadcasts on the S-band that encompasses 2320.0 through 2332.5 MHz. Each model satellite radio has internal digital recording capability. They can be used in various settings such as the home or an automobile. In their imported condition each model is packaged for retail sale with a battery operated remote control, batteries and a user's manual.

Explanatory Note X to GRI 3b provides for the purpose of this rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:

A. Consist of at least two articles which are, prima facie, classifiable in different headings.

B. Consist of products put up together to meet a particular need or carry out a specific activity; and

C. Are put up in a manner suitable for sale to users without repackaging (e.g. in boxes or cases or on boards).

All the aforementioned articles are prima facie classifiable in different headings. Together each enables the user to receive and listen to satellite radio broadcasts. Based upon the supplied information the imported packaging represents the retail packaging. The satellite radio kits will not be repackaged prior to retail sale. Therefore it is the opinion of this office that the satellite radio kits are sets in accordance with Explanatory Note X.

In accordance, in part, with GRI 3b . . . goods put up in sets for retail sale, which cannot be classified by reference to GRI 3a, shall be classified as if they consisted of the material or component which gives them their essential character.

EN VIII to GRI 3b states that the factor, which determines essential character, will vary as between different kinds of goods. It may for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the goods.

It is the opinion of this office that for each kit the essential character is imparted by the satellite radios models PNP1 and PNP2. These radios are

the reason one would purchase the kit. The radios clearly provide the dominant feature for each kit. It should be noted that each satellite radio model, based upon detailed information provided with this ruling request, meets the requirements of a radio broadcast receiver as defined by *Channel Master v. United States*. Each model performs the function of selectivity, amplification and detection.

It should be noted that model PNP1 was the subject of NY Ruling J89049. It should be noted that this ruling was based upon, as now stated by the requestor, on information that was both incomplete and erroneous. Therefore this ruling will address the classification of model PNP1 based upon the now correct and complete information as well as the classification for model PNP2. It should be noted that model PNP2 varies from model PNP1 not in function but rather in some external features such as the backlighting of the LCD screen and on the control buttons and some user time based features.

The applicable subheading for the satellite radio kits, models PNP1 and PNP2 will be 8527.31.6080, Harmonized Tariff Schedule of the United States (HTS), which provides for Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy: Combined with sound recording or reproducing apparatus: Other: Other . . . Other. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Michael Contino at 646-733-3014.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
NY J89049
November 4, 2003
CLA-2-85: RR: NC: 1:108 J89049
CATEGORY: Classification
TARIFF NO.: 8527.90.9590,
8525.10.7045, 8543.89.9695

MR. PATRICK E. MOFFETT
AUDIOVOX CORPORATION
150 Marcus Blvd.
Hauppauge, NY 11788

RE: The tariff classification of XM satellite radio devices from Korea.

DEAR MR. MOFFETT:

In your letter dated October 16, 2003 you requested a tariff classification ruling.

Your request denotes four electronic devices used in conjunction with XM satellite radio broadcasts. You have requested a ruling covering each individual device. They are denoted as follows:

- SIR-PNP1 is a receiver/tuner that receives a transmitted satellite radiobroadcast signal and converts it to an analog signal. It does not have any amplification capability. It is designed to primarily receive the broadcast signal through the ether without any line connection. It further transmits that signal to the radio broadcast receiver within the automobile.

- SIR-CK1 is a FM transmitter that transmits the analog radiobroadcast signal through 4 FM frequencies (88.1, 88.3, 88.5 and 88.7) directly to the radiobroadcast receiver in the automobile.

- SIR-CK2 is a docking station designed for use with the SIR-PNP1. It employs a power adapter; a roof mounted antenna, mounting bracket and an RCA cable. The device provides power for the SIR-PNP1 as well as receiving the analog signal from it through interconnecting pins. It further transmits that signal through the RCA cable directly to the radiobroadcast receiver. It can only transmit via the cable.

- SIR-HK1 is a docking station for the SIR-PNP1. It employs an AC power adapter, antenna and RCA cable. This device provides power for the SIR-PNP1, receives the signal from through interconnecting pins and transmits that signal via the RCA cable to the radiobroadcast receiver within the automobile.

The applicable subheading for the SIR-PNP1 will be 8527.90.9590, Harmonized Tariff Schedule of the United States (HTS), which provides for Other reception apparatus: Other: Other: Other. The rate of duty will be 6 percent ad valorem.

The applicable subheading for the SIR-CK1 will be 8525.10.7045, HTS, which provides for Transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound or recording or reproducing apparatus; television cameras; still image video cameras or other camera recorders; digital cameras: Transmission apparatus: Other: For radiobroadcasting . . .

Transmitters capable of transmitting on frequencies: Exceeding 30MHz but not exceeding 400MHz. The rate of duty will be 3 percent ad valorem.

The applicable subheading for the SIR-CK2 and the SIR-HK1 will be 8543.89.9695, HTS, which provides for Electrical machines and apparatus, . . . not specified or included elsewhere in chapter 85, HTS. The rate of duty will be 2.6 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 Michael Contino at 646-733-3014.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H042575
CLA-2 OT:RR:CTF:TCM H042575 HkP
CATEGORY: Classification
TARIFF NO.: n/a

JOHN A. BESSICH, ESQ.
FOLLIICK & BESSICH, ATTORNEYS AT LAW
33 Walt Whitman Road, Suite 204
Huntington Station, NY 11746

RE: Modification of NY K87747; Classification of satellite radio receivers/tuners from Korea; 19 U.S.C. § 1625(c)

DEAR MR. BESSICH:

This letter concerns New York Ruling Letter (“NY”) K87747, issued to you on July 20, 2004, on behalf of your client Audiovox Corporation. At issue in that ruling was the classification of two models of satellite radio receivers/tuners (“PNP1” and “PNP2”) under the Harmonized Tariff Schedule of the United States. Through the classification decision reached in NY K87747, the National Commodity Specialist Division, U.S. Customs and Border Protection (CBP) purported to modify NY J89049, dated November 4, 2003, in which CBP classified satellite radio receiver/tuner model SIR-PNP1 in subheading 8527.90, (HTSUS), as “other reception apparatus”. The classification of the PNP2 model of satellite radio receiver/tuner described in NY K87747 is not affected by this action.

FACTS:

Rulings which have been in effect for at least 60 days may only be modified in accordance with the provisions of 19 U.S.C. §1625(c), which requires that notice of the proposed action be published in the Customs Bulletin and that the public be allowed to comment on the proposed action for a period of at least 30 days. This procedure was not followed with respect to the purported reclassification of the SIR-PNP1 receiver/tuner. The original classifi-

cation decision (NY J89049) was effective on November 4, 2003, and the purported reclassification was attempted on June 20, 2004 (NY K87747), more than 60 days later and was not published in the Customs Bulletin.

ISSUE:

What is the procedure to be followed by CBP when modifying an interpretive ruling or decision?

LAW AND ANALYSIS:

Section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), provides:

A proposed interpretive ruling or decision which would –

(1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or

(2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions;

shall be published in the Customs Bulletin. The Secretary shall give interested parties an opportunity to submit, during not less than the 30-day period after the date of such publication, comments on the correctness of the proposed ruling or decision. After consideration of any comments received, the Secretary shall publish a final ruling or decision in the Customs Bulletin within 30 days after the closing of the comment period. The final ruling or decision shall become effective 60 days after the date of its publication.

NY J89049 was effective on November 4, 2003, and the purported reclassification of the SIR-PNP1 model satellite radio receiver/tuner was attempted on June 20, 2004 (NY K87747), more than 60 days later. As this action was not published in the Customs Bulletin and was not subject to comments by the public, we find that the classification decision reached in NY K87747 with regard to the SIR-PNP1 receiver/tuner is without effect.

HOLDING:

Under the provisions of 19 U.S.C. § 1625(c), CBP's classification decision in NY K87747 concerning the SIR-PNP1 model of receiver/tuner is without effect.

EFFECT ON OTHER RULINGS:

NY K87747, dated July 20, 2004, is void with respect to the classification of the SIR-PNP1 model of satellite radio receiver/tuner. The classification of the PNP2 model described therein is unchanged. The classification of SIR-PNP1 receivers/tuners is addressed in proposed ruling HQ H043540, which is attached to the notice of Proposed Modification of Two Ruling Letters Concerning the Classification of Certain Satellite Radio Receivers/Tuners and Proposed Revocation of Treatment, to which the instant ruling (HQ H042575) is also attached.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H043540
CLA-2 OT:RR:CTF:TCM H043540 HkP
CATEGORY: Classification
TARIFF NO.: 8527.91.60

JOHN A. BESSICH, ESQ.
FOLLIICK & BESSICH, ATTORNEYS AT LAW
33 Walt Whitman Road, Suite 204
Huntington Station, NY 11746

RE: Modification of NY J89049; Classification of satellite radio receivers/tuners (model SIR-PNP1) from Korea

DEAR MR. BESSICH:

This letter concerns New York Ruling Letter (NY) J89049, issued to you on November 4, 2003, on behalf of your client Audiovox Corporation. At issue in that ruling was the classification of certain satellite radio devices, including satellite radio receivers/tuners, model SIR-PNP1, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP classified the receivers/tuners in subheading 8527.90, HTSUS (2003), as “other reception apparatus”. It is now our position that this classification is incorrect and that the correct classification is under subheading 8527.91, HTSUS (2009) as other reception apparatus “combined with sound recording or reproducing apparatus.”

NY J89049 has previously been modified as it relates to the classification of the SIR-CK2 and SIR-HK1 docking stations. See Headquarters Ruling Letter HQ H008626, Nov. 28, 2008, and Notice of Revocation of one Ruling Letter, Modification of one Ruling Letter and Revocation of Treatment Relating to the Classification of a certain Satellite Radio Boombox and certain other Satellite Radio Receiver Docking Stations (“Notice of Revocation”), Customs Bulletin, Vol. 42, No. 52, Nov. 28, 2008. The classification of the SIR-CK1 FM transmitters described in NY J89049 is not affected by this action.

FACTS:

In NY J89049 the merchandise at issue was described as follows:

SIR-PNP1 is a receiver/tuner that receives a transmitted satellite radiobroadcast signal and converts it to an analog signal. It does not have any amplification capability. It is designed to primarily receive the broadcast signal through the ether without any line connection. It further transmits that signal to the radio broadcast receiver within the automobile.

Subsequent to the issuance of NY J89049, CBP was informed by the importer that the description of the merchandise was incomplete because SIR-PNP1 receivers/tuners also had internal digital recording capability.

As a result of this information, CBP attempted to reclassify the merchandise in subheading 8527.31, HTSUS (2003) as “other radiobroadcast receivers . . . combined with sound recording or reproducing apparatus” by issuing NY K87747 (July 20, 2004). However, rulings which have been in effect for at least 60 days may only be modified in accordance with the provisions of

19 U.S.C. §1625(c), which requires that notice of the proposed action be published in the Customs Bulletin and that the public be allowed to comment on the proposed action for a period of at least 30 days. This procedure was not followed with respect to the purported reclassification of SIR-PNP1 receivers/tuners.

The original classification decision (NY J89049) was effective on November 4, 2003, and the purported reclassification was attempted on June 20, 2004 (NY K87747), more than 60 days later and was not published in the Customs Bulletin. Accordingly, CBP is proposing to void the portion of NY K87747 that addresses the classification of SIR-PNP1 receivers/tuners. See Proposed Modification of Two Ruling Letters Concerning the Classification of Certain Satellite Radio Receivers/Tuners and Proposed Revocation of Treatment, Attachment C (HQ H042575). HQ H043540, the instant ruling proposing to reclassify the SIR-PNP1 receiver/tuner as other reception apparatus “combined with sound recording or reproducing apparatus”, is Attachment D to that Notice.

Pursuant to the 2007 updates to the HTSUS, goods classified under subheading 8527.31, HTSUS (pre-2007) are now classified, in relevant part, under subheading 8527.91, HTSUS.

ISSUE:

What is the correct classification of the satellite radio receivers/tuners with internal digital recording capability under the HTSUS?

LAW AND ANALYSIS:

Classification of merchandise under the HTSUS is 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 2009 HTSUS provisions under consideration are as follows:

8527 Reception apparatus for radiobroadcasting, whether or not combined in the same housing, with sound recording or reproducing apparatus or a clock:

Other:

Combined with sound recording or reproducing apparatus:

Other:

8527.91.60 Other

8527.99 Other:

8527.99.15 Other radio receivers

8527.99.40 Other

Based on the description in the FACTS section above of the way in which the receivers/tuners work, we find that they are provided for in heading 8527, HTSUS. Furthermore, because the receivers/tuners are combined with

sound recording apparatus, they are provided for under subheading 8527.91, HTSUS.

HOLDING:

By application of GRI 1, the SIR-PNP1 satellite radio receivers/tuners are classified in heading 8527, HTSUS. They are specifically provided for in subheading 8527.91.60, HTSUS, which provides for: "Reception apparatus for radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Other: Combined with sound recording or reproducing apparatus: Other: Other."

EFFECT ON OTHER RULINGS:

NY J89049, dated November 4, 2003, is modified with respect to the classification of SIR-PNP1 satellite radio receivers/tuners. The classification of the SIR-CK1 FM transmitters described therein is not affected. The classification of the SIR-CK2 and SIR-HK1 docking stations described in NY J89049 has been modified by HQ H008626, Nov. 28, 2008. See Notice of Revocation, Customs Bulletin, Vol. 42, No. 52, Nov. 28, 2008.

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