

U.S. Customs and Border Protection

CBP Decisions

19 CFR Part 115

CBP Dec. 09-27

RIN 1651-AA78

CARGO CONTAINER AND ROAD VEHICLE CERTIFICATION PURSUANT TO INTERNATIONAL CONVENTIONS: DESIGNATED CERTIFYING AUTHORITIES

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

ACTION: Final rule; technical amendment.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations in title 19 of the Code of Federal Regulations (CFR) concerning the certification of cargo containers for international transport pursuant to international customs conventions. These amendments reflect that the Commissioner of CBP has designated Lloyd's Register North America, Inc., as an authority in certifying containers for international transport under customs seal. This document further updates the addresses of three designated Certifying Authorities that are already listed in the CBP regulations.

DATE: This final rule is effective July 27, 2009.

FOR FURTHER INFORMATION CONTACT: Gary Rosenthal, Program Manager, Cargo Control Branch, Cargo and Conveyance Security, Office of Field Operations, (202) 344-2673.

SUPPLEMENTARY INFORMATION:

Background

The provisions of part 115 of the Customs and Border Protection (CBP) regulations (19 CFR part 115) establish procedures for certify-

ing containers and road vehicles for international transport under customs seal in conformance with the Customs Convention on Containers (1956) (TIAS 6634), the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (1959) (TIAS 6633), the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets, November 14, 1975 (TIAS), and the Customs Convention on Containers, 1972 (TIAS). The responsibility for the approval and certification of containers and road vehicles was transferred from the U. S. Coast Guard to the U.S. Customs Service (now CBP) by Executive Order 12445, dated October 17, 1983. Part 115 of the CBP regulations was promulgated by T.D. 86-92 which was published in the **Federal Register** (51 FR 16161) on May 1, 1986.

Under the certification program, containers and road vehicles, or proposed designs for such conveyances, may be submitted to various Certifying Authorities worldwide for approval. With respect to the designation of Certifying Authorities in the United States, § 115.3(a) of the CBP regulations (19 CFR 115.3(a)) defines a “Certifying Authority” as a non-profit firm or association, incorporated or established in the United States, which the Commissioner of CBP finds competent to carry out the functions set forth in §§ 115.8 through 115.14 of the CBP regulations (19 CFR 115.8-115.14), and which the Commissioner designates to certify containers and road vehicles for international transport under customs seal. The certification of containers and road vehicles for international transport under customs seal is voluntary, and non-certification does not preclude the use of containers and road vehicles in international commerce.

Section 115.6 of the CBP regulations (19 CFR 115.6) sets forth three Certifying Authorities that have been designated by the Commissioner to perform the examination and certification functions for containers and road vehicles. These are the American Bureau of Shipping, International Cargo Gear Bureau, Inc., and the National Cargo Bureau, Inc. Under § 115.7 of the CBP regulations (19 CFR 115.7), the Commissioner may designate additional Certifying Authorities.

On May 8, 2002, Lloyd’s Register North America, Inc. (“Lloyd’s”) filed a request with CBP for status as a Certifying Authority for containers and container-design types pursuant to 19 CFR part 115. This request was granted by the Commissioner by letter dated April 10, 2003. Lloyd’s status as a Certifying Authority does not extend to certification for individual road vehicles or road vehicle design types covered in 19 CFR part 115, subparts E and F. This document amends § 115.6 to add Lloyd’s to the list of designated Certifying Authorities only for containers and container-design types.

This document further amends § 115.6 to update the addresses of the previously-designated three Certifying Authorities, and also to

clarify that they are approved entities for certifying both containers and road vehicles. Finally, this document revises § 115.6 to distinguish between the two types of Certifying Authorities designated by the Commissioner.

Signing Authority

This document is limited to technical corrections of CBP regulations. Accordingly, it is being issued in accordance with section 0.2(a) of the CBP regulations (19 CFR 0.2(a)).

Inapplicability of Notice and Delayed Effective Date Requirements

Because this amendment merely updates the list of Certifying Authorities designated by the Commissioner and their addresses, and neither imposes any additional burdens on, nor takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Executive Order 12866 and Regulatory Flexibility Act

This final rule document does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866. In addition, because no notice of proposed rulemaking is required for the reasons stated above, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 *et seq.*), this final rule document contains no new information collection and recordkeeping requirements that require Office of Management and Budget approval.

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It will not result in costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule would not result in such an expenditure.

Executive Order 13132

In accordance with the principles and criteria contained in Executive Order 13132 (Federalism), this final rule will have no substan-

tial effect on the States, the current Federal-State relationship, or on the current distribution of power and responsibilities among local officials.

List of Subjects in 19 CFR Part 115

Containers, Customs Duties and Inspection, Freight, International Conventions.

Amendments to the CBP Regulations

For the reasons set forth above, part 115, CBP regulations (19 CFR part 115), is amended as set forth below:

PART 115 - CARGO CONTAINER AND ROAD VEHICLE CERTIFICATION PURSUANT TO INTERNATIONAL CUSTOMS CONVENTIONS

1. The authority citation for part 115, CBP regulations, continues to read as follows:

AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 66, 1624; E.O. 12445 of October 17, 1983.

2. Section 115.6 is revised to read as follows:

§ 115.6 Designated Certifying Authorities.

(a) Certifying Authorities for containers and road vehicles. The Commissioner has designated the following Certifying Authorities for containers and road vehicles as defined in this part:

(1) The American Bureau of Shipping, ABS Plaza, 16855 Northchase Drive, Houston, Texas 77060-6008;

(2) International Cargo Gear Bureau, Inc., 321 West 44th Street, New York, New York 10036;

(3) The National Cargo Bureau, Inc., 17 Battery Place, Suite 1232, New York, New York 10004-1110.

(b) Certifying Authority for containers. The Commissioner has designated Lloyd's Register North America, Inc., 1401 Enclave Parkway, Suite 200, Houston, Texas 77077, as a Certifying Authority only for containers as defined in this part.

Date: July 22, 2009

JAYSON P. AHERN
Acting Commissioner;
Customs and Border Protection.

General Notices

Notice of Cancellation of Customs Broker Licenses Due to Death of the License Holder

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

ACTION: General Notice

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations at section 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
James B. Gill	16335	Los Angeles
Neal G. Newns	12673	Los Angeles
Sidney Freidin	02055	Laredo
John H. Adcock	15736	Laredo

DATED: July 17, 2009

DANIEL BALDWIN,
*Assistant Commissioner,
Office of International Trade.*

[Published in the Federal Register, July 24, 2009 [(74 FR 36733)]]

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

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

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning July 1, 2009, the interest rates for overpayments will be 3 percent for corporations and 4 percent for non-corporations, and the interest rate for underpayments will be 4 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

EFFECTIVE DATE: July 1, 2009.

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

SUPPLEMENTARY INFORMATION:

Background

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

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

In Revenue Ruling 2009-17, the IRS determined the rates of interest for the calendar quarter beginning July 1, 2009, and ending on September 30, 2009. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). For corporate overpayments, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). These interest rates are subject to change for the calendar quarter beginning October 1, 2009, and ending December 31, 2009.

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

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

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under- payments (percent)</u>	<u>Over- payments (percent)</u>	<u>Corporate Overpay- ments (Eff. 1-1-99) (percent)</u>
020178	013180	6%	6%	
020180	013182	12%	12%	
020182	123182	20%	20%	
010183	063083	16%	16%	
070183	123184	11%	11%	
010185	063085	13%	13%	
070185	123185	11%	11%	
010186	063086	10%	10%	
070186	123186	9%	9%	
010187	093087	9%	8%	
100187	123187	10%	9%	
010188	033188	11%	10%	
040188	093088	10%	9%	
100188	033189	11%	10%	
040189	093089	12%	11%	
100189	033191	11%	10%	
040191	123191	10%	9%	
010192	033192	9%	8%	
040192	093092	8%	7%	
100192	063094	7%	6%	
070194	093094	8%	7%	
100194	033195	9%	8%	
040195	063095	10%	9%	
070195	033196	9%	8%	
040196	063096	8%	7%	
070196	033198	9%	8%	
040198	123198	8%	7%	
010199	033199	7%	7%	6%
040199	033100	8%	8%	7%

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under- payments (percent)</u>	<u>Over- payments (percent)</u>	<u>Corporate Overpay- ments (Eff. 1-1-99) (percent)</u>
040100	033101	9%	9%	8%
040101	063001	8%	8%	7%
070101	123101	7%	7%	6%
010102	123102	6%	6%	5%
010103	093003	5%	5%	4%
100103	033104	4%	4%	3%
040104	063004	5%	5%	4%
070104	093004	4%	4%	3%
100104	033105	5%	5%	4%
040105	093005	6%	6%	5%
100105	063006	7%	7%	6%
070106	123107	8%	8%	7%
010108	033108	7%	7%	6%
040108	063008	6%	6%	5%
070108	093008	5%	5%	4%
100108	123108	6%	6%	5%
010109	033109	5%	5%	4%
040109	093009	4%	4%	3%

Dated: July 27, 2009

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

[Published in the Federal Register, July 31, 2009 (74 FR 38213)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:
Foreign Assembler's Declaration (with Endorsement by
Importer)**

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: 1651-0031

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: Foreign Assembler's Declaration (with Endorsement by Importer). 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 28712) on June 17, 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 August 31, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

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 techniques or other forms of information.

Title: Foreign Assembler's Declaration (with Endorsement by Importer)

OMB Number: 1651-0031

Form Number: None

Abstract: The Foreign Assembler's Declaration with Importer's Endorsement is used by CBP to substantiate a claim for duty free treatment of U.S. fabricated components sent abroad for assembly and subsequently returned to the United States

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

Estimated Number of Respondents: 2,730

Estimated Annual Burden per Respondent: 110.77 hours

Estimated Total Annual Burden Hours: 302,402

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: July 27, 2009

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

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

Washington, DC, July 24, 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.

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF AN MP-3 PLAYER CASE
WITH A SPEAKER**

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

ACTION: Notice of proposed revocation of two ruling letters and revocation of treatment relating to the tariff classification of an MP-3 player case with a speaker.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CBP”) is proposing to revoke two ruling letters pertaining to the tariff classification of an MP-3 player case with a speaker under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP is also proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

DATE: Comments must be received on or before September 14, 2009.

ADDRESS: Written comments are to be addressed to 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. 20229–1179. Comments submitted 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 Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Jean R. Brousard, Tariff Classification and Marking Branch, (202) 325-0284.

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, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP is proposing to revoke two ruling letters pertaining to the classification of an MP-3 player case with a speaker. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letters (NY) N005234, dated February 2, 2007 (Attachment A) and NY N019513, dated December 5, 2007 (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 one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a spe-

cific 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 both NY N005234 and NY N019513, CBP classified an MP-3 player case with a speaker in heading 8518, HTSUS, specifically subheading 8518.21.0000, HTSUSA, as: “[m]icrophones and stands therefore; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof: Loudspeakers, whether or not mounted in their enclosures: Single loudspeakers, mounted in their enclosures . . .” It is now CBP’s position that the MP-3 player case with a speaker is classified in heading 4202, HTSUS, as “[t]runks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:”.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY N019513 and NY N005234, and revoke or modify any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letters (HQ) H068738 (Attachment C) and H026521 (Attachment D). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, we will give consideration to any written comments timely received.

DATED: July 22, 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,
N005234
February 2, 2007
CLA-2-85:RR:NC:MM:109
CATEGORY: Classification
TARIFF NO.: 8518.21.0000

MS. JOANNE MEINTZER
WESTERN OVERSEAS CORP.
406 Elmwood Court
Sharon Hill, PA 19079

RE: The tariff classification of an Aquapod Splash Proof MP3 Speaker from China

DEAR MS. MEINTZER:

In your letter dated January 5, 2007, you requested a tariff classification ruling on behalf of Computer Expressions, Inc.

The merchandise subject to this ruling is described in your letter as an Aquapod Splash Proof MP3 Speaker (Style #54123). This item is a hard plastic case, which houses a speaker, and contains an on/off volume control. The lid on the top of the case opens so that an MP3 player can be attached to the wire plug that connects to the speaker. Once connected, the MP3 player can be placed in the case for carrying purposes. The case also contains a fabric strap so that the item can be carried around a person's neck or over their shoulder. A sample of the merchandise was submitted to this office for classification purposes and is being returned to you as per your request.

The applicable subheading for the Aquapod Splash Proof MP3 Speaker will be 8518.21.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Loudspeakers, whether or not mounted in their enclosures: Single loudspeakers, mounted in their enclosures." The rate of duty will be 4.9 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Linda M. Hackett at 646-733-3015.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.

U.S. CUSTOMS AND BORDER PROTECTION,

N019513

December 5, 2007

CLA-2-85:OT:RR:NC:N1:109

CATEGORY: Classification

TARIFF NO.: 8518.21.0000

MS. CECILIA CASTELLANOS
VICE PRESEIDENT IMPORT ADMINISTRATION
WESTERN OVERSEAS CORPORATION
10731-B Walker Street
Cypress, CA 90630

RE: The tariff classification of a Melody MP-3 Case with Portable Speaker, Cable (input jack) and Battery compartment from China

DEAR MS. CASTELLANOS:

In your letter dated November 6, 2007 on behalf of Picnic Time, you requested a tariff classification ruling. The sample which you submitted is being returned as requested.

The merchandise subject to this ruling is a Melody MP-3 Case with portable speaker, cable (input jack) and battery compartment. It is a media carrying case with a built-in amplified speaker and an input jack. The item measures approximately 6 inches in length by 4 inches in width. The item is comprised of plastic and contains a plastic zipper around the case. On the front of the carrying case, is a built-in speaker. A plastic belt clip is attached to the top of the case. On the back of the case, is a Velcro plastic flap, which opens to enable the MP-3 player to be inserted into and removed from. Inside the case is a compartment for batteries, the input jack, and an on/off switch. The item operates on 2 "AAA" batteries, which are not included.

The applicable subheading for the Melody MP-3 Case with Portable Speaker, Cable (input jack) and Battery compartment will be 8518.21.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Microphones and stands therefore; . . . Loudspeakers, whether or not mounted in their enclosures: . . . Single loudspeakers, mounted in their enclosures". The rate of duty will be 4.9%.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Linda M. Hackett at 646-733-3015.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H068738
CLA-2 OT:RR:CTF:TCM H068738 JRB
CATEGORY: Classification
TARIFF NO.: 4202

MS. JOANNE MEINTZER
WESTERN OVERSEAS CORPORATION
406 Elmwood Court
Sharon Hill, Pennsylvania 19079

RE: Revocation of NY N005234; Classification of an Aquapod Splash Proof MP3 Speaker

DEAR MS. MEINTZER:

This letter is in reference to New York Ruling Letter ("NY") N005234, issued to Western Overseas Corporation on behalf of Computer Expressions, Inc. on February 2, 2007, concerning the tariff classification of a waterproof MP-3 case with a portable speaker. In that ruling, U.S. Customs and Border Protection ("CBP") classified the merchandise under subheading 8518.21.0000, Harmonized Tariff Schedule of the United States ("HTSUS"), as a single loudspeaker mounted in its enclosure. We have reviewed NY N005234 and found it to be in error. For the reasons set forth below, we hereby revoke NY N005234.

FACTS:

In NY N005234 we described the merchandise as follows:

The merchandise subject to this ruling is described in your letter as an Aquapod Splash Proof MP3 Speaker (Style #54123). This item is a hard plastic case, which houses a speaker, and contains an on/off volume control. The lid on the top of the case opens so that an MP3 player can be attached to the wire plug that connects to the speaker. Once connected, the MP3 player can be placed in the case for carrying purposes. The case also contains a fabric strap so that the item can be carried around a person's neck or over their shoulder. A sample of the merchandise was submitted to this office for classification purposes and is being returned to you as per your request.

ISSUE:

Whether the Aquapod Splash Proof MP3 Speaker is classified in heading 8518, HTSUS, as a speaker or in heading 4202, HTSUS, as a case for an MP-3 player?

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 HTSUS provisions under consideration are as follows:

- 4202 Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:
- 8518 Microphones and stands therefore; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof:

The Aquapod Splash Proof MP3 Speaker is described by both headings 4202 and 8518, HTSUS, as it is a case, as well as, as a loudspeaker. Because it is prima facie classifiable under two or more headings, it cannot be classified according to GRI 1. In pertinent part, GRI 2(b) provides that any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. However, GRI 2(b) adds that the classification of goods consisting of more than one material or substance shall be according to the principles of rule 3. Accordingly, GRI 3 is utilized when, by application of GRI 2(b), a good consists of materials or components which are prima facie classifiable under two or more headings.

GRI 3(a) states that when goods are prima facie classifiable under two or more headings, classification shall be effected as follows:

The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

In this case, headings 4202 and 8518, HTSUS, are equally specific in relation to one another. We cannot classify these goods by application of GRI 3(a) and therefore turn to GRI 3(b) which states:

Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN's provide a commentary on the scope of each heading of

the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system. CBP believes the EN's should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Explanatory Note IX to GRI 3(b) states in pertinent part:

For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, provided these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

We find that the portable speaker/plastic travel case is a composite good because no heading in the HTSUS completely describes the product; it is prima facie classifiable in two or more headings, heading 8518, HTSUS, which provides for speakers and heading 4202, HTSUS, which provides for various types of cases and similar containers; and the speaker and the case are attached together to form a practically inseparable whole. Thus, we are required to undergo an essential character analysis. EN VIII to GRI 3(b) provides guidance on determining the essential character of an item. It provides:

[t]he 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 a constituent material in relation to the use of the goods.

There have been several court decisions on "essential character" for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *See, Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1337-1338 (CIT 2005); and *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278, 1295-1356 (CIT 2006), *aff'd* 491 F.3d 1334 (Fed. Cir. 2007).

In cases where containers of heading 4202, HTSUS, incorporate electrical devices in their design, CBP has consistently held that the 4202 component imparts the essential character to the article as a whole. *See* Headquarters Ruling Letters (HQ) HQ 087057, dated December 21, 1990; HQ 089901, dated April 2, 1992; and HQ 955261, dated April 14, 1994. More specifically, in both HQ 968051, dated June 9, 2006 and HQ 967704, dated August 25, 2005, CBP held that by application of GRI 3(b), the essential character of a speaker/CD case was imparted by the 4202 component and the composite goods was classified under subheading 4202.92.9050, HTSUS. In particular, in HQ 968051, CBP dealt with the same issue as this case. In HQ 968051, CBP determined that when a composite good consists of a speaker (heading 8518) and a container (heading 4202), the container imparts the essential character because of its role in relation to the use of the goods.

Similarly, we believe that the essential character of your product is imparted by the case of heading 4202, HTSUS, because we find that the consumer is most likely purchasing the product for use as a case. This case has the ability to store the purchaser's MP-3 player so that it can be transported from place to place. While the speaker may make the case more distinctive and more attractive to some, it is unlikely that the purchaser would buy the

case primarily for use as a speaker. Also, the case is always in use as a means to store and protect the MP-3 player while the speaker is not always being used by the consumer. In particular the case of this product has the ability to protect the MP-3 player from water intrusion. Thus, we believe the case imparts the essential character for this product.

HOLDING:

By application of GRI 3(b), the Aquapod Splash Proof MP3 Speaker is classified in heading 4202, HTSUS, which provides for “[t]runks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:”.

At this time we are unable to provide a specific subheading classification because additional information is needed concerning the material used to construct the exterior of the case. We invite you to request a new ruling with this required information on the speaker case to obtain a more precise classification of the product.

EFFECT ON OTHER RULINGS:

NY N005234, dated February 2, 2007 is hereby revoked.

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division.



[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.

U.S. CUSTOMS AND BORDER PROTECTION,

HQ H026521

CLA-2 OT:RR:CTF:TCM H026521 JRB

CATEGORY: Classification

TARIFF NO.: 4202

MS. CECILIA CASTELLANOS
VICE PRESEIDENT IMPORT ADMINISTRATION
WESTERN OVERSEAS CORPORATION
10731-B Walker Street
Cypress, California 90630

RE: Revocation of NY N019513; Classification of a Melody MP-3 Case with Portable Speaker, Cable (Input Jack) and Battery Compartment

DEAR MS. CASTELLANOS:

This letter is in reference to New York Ruling Letter (“NY”) N019513, issued to Western Overseas Corporation on behalf of Picnic Time on December 5, 2007, concerning the tariff classification of an MP-3 case with a portable speaker. In that ruling, U.S. Customs and Border Protection (“CBP”) classi-

fied the merchandise under subheading 8518.21.0000, Harmonized Tariff Schedule of the United States (“HTSUS”), as a single loudspeaker mounted in its enclosure. We have reviewed NY N019513 and found it to be in error. For the reasons set forth below, we hereby revoke NY N019513.

FACTS:

In NY N019513 we described the merchandise as follows:

The merchandise subject to this ruling is a Melody MP-3 Case with portable speaker, cable (input jack) and battery compartment. It is a media carrying case with a built-in amplified speaker and an input jack. The item measures approximately 6 inches in length by 4 inches in width. The item is comprised of plastic and contains a plastic zipper around the case. On the front of the carrying case, is a built-in speaker. A plastic belt clip is attached to the top of the case. On the back of the case, is a Velcro plastic flap, which opens to enable the MP-3 player to be inserted into and removed from. Inside the case is a compartment for batteries, the input jack, and an on/off switch. The item operates on 2 “AAA” batteries, which are not included.

ISSUE:

Whether the Melody MP-3 case with speaker is classified in heading 8518, HTSUS, as a speaker or in heading 4202, HTSUS, as a case for an MP-3 player?

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 HTSUS provisions under consideration are as follows:

- 4202 Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:
- 8518 Microphones and stands therefore; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof:

The Melody MP-3 case with a portable speaker is described by both headings 4202 and 8518, HTSUS, as it is a case, as well as, as a loudspeaker. Be-

cause it is prima facie classifiable under two or more headings, it cannot be classified according to GRI 1. In pertinent part, GRI 2(b) provides that any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. However, GRI 2(b) adds that the classification of goods consisting of more than one material or substance shall be according to the principles of rule 3. Accordingly, GRI 3 is utilized when, by application of GRI 2(b), a good consists of materials or components which are prima facie classifiable under two or more headings.

GRI 3(a) states that when goods are prima facie classifiable under two or more headings, classification shall be effected as follows:

The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

In this case, headings 4202 and 8518, HTSUS, are equally specific in relation to one another. We cannot classify these goods by application of GRI 3(a) and therefore turn to GRI 3(b) which states:

Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

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

Explanatory Note IX to GRI 3(b) states in pertinent part:

For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, provided these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

We find that the portable speaker/plastic travel case is a composite good because no heading in the HTSUS completely describes the product; it is prima facie classifiable in two or more headings, heading 8518, HTSUS, which provides for speakers and heading 4202, HTSUS, which provides for various types of cases and similar containers; and the speaker and the case are attached together to form a practically inseparable whole. Thus, we are

required to undergo an essential character analysis. EN VIII to GRI 3(b) provides guidance on determining the essential character of an item. It provides:

[t]he 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 a constituent material in relation to the use of the goods.

There have been several court decisions on “essential character” for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *See, Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1337–1338 (CIT 2005); and *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278, 1295–1356 (CIT 2006), *aff’d* 491 F.3d 1334 (Fed. Cir. 2007).

In cases where containers of heading 4202, HTSUS, incorporate electrical devices in their design, CBP has consistently held that the 4202 component imparts the essential character to the article as a whole. *See* Headquarters Ruling Letters (HQ) HQ 087057, dated December 21, 1990; HQ 089901, dated April 2, 1992; and HQ 955261, dated April 14, 1994. More specifically, in both HQ 968051, dated June 9, 2006 and HQ 967704, dated August 25, 2005, CBP held that by application of GRI 3(b), the essential character of a speaker/CD case was imparted by the 4202 component and the composite goods was classified under subheading 4202.92.9050, HTSUS. In particular, in HQ 968051, CBP dealt with the same issue as this case. In HQ 968051, CBP determined that when a composite good consists of a speaker (heading 8518) and a container (heading 4202), the container imparts the essential character because of its role in relation to the use of the goods.

Similarly, we believe that the essential character of your product is imparted by the case of heading 4202, HTSUS, because we find that the consumer is most likely purchasing the product for use as a case. This case has the ability to store the purchaser’s MP-3 player so that it can be transported from place to place. While the speaker may make the case more distinctive and more attractive to some, it is unlikely that the purchaser would buy the case primarily for use as a speaker. Also, the case is always in use as a means to store and protect the MP-3 player while the speaker is not always being used by the consumer. Thus, we believe the case imparts the essential character for this product.

HOLDING:

By application of GRI 3(b), the Melody MP-3 case with portable speaker is classified in heading 4202, HTSUS, which provides for “[t]runks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:”.

At this time we are unable to provide a specific subheading classification because additional information is needed concerning the material used to construct the exterior of the case. We invite you to request a new ruling with this required information on the speaker case to obtain a more precise classification of the product.

EFFECT ON OTHER RULINGS:

NY N019513, dated December 5, 2007 is hereby revoked.

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

***REVOCATION OF THREE RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF AUTO-SAMPLERS FOR
CHROMATOGRAPHS AND DNA SEQUENCING GENETIC
ANALYZER MACHINES***

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

ACTION: Notice of revocation of three ruling letters and revocation of treatment relating to the classification of auto-sampler machines that are used with and attached to a chromatograph or a DNA sequencing genetic analyzer machine.

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 three ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of auto-samplers that are used with and attached to a chromatograph or a DNA genetic analyzer machine. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. A notice of the proposed action was published in the Customs Bulletin, Volume 39, Number 48, on November 23, 2005. Four comments were received in response to the proposed notice.

DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 13, 2009.

FOR FURTHER INFORMATION CONTACT: Jacinto P. Juarez, Jr., Tariff Classification and Marking Branch, at (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 provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is revoking three ruling letters related to the tariff classification of auto-samplers that attached to other machines that analyze samples such as a chromatograph and a DNA sequencing analyzer. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) 899900 dated July 20, 1994, NY G86629 dated January 29, 2001, and NY G84697 dated December 12, 2000, 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 three 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 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 with substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its

agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY 899900, NY G84697, and NY G86629, CBP classified devices known as auto-samplers which were attached to other machines that perform an analysis of samples in subheading 9027.90.54, HTSUS, which provides for parts and accessories of instruments and apparatus for physical or chemical analysis in subheading 9027.20, 9027.30, 9027.40, 9027.50 or 9027.80. The auto-samplers are used to automate the process by which various samples are prepared and moved into the other machine that analyzes the samples. In NY 899900 the auto-sampler was attached to chromatographs. NY G84697 and NY G86629 dealt with auto-sampler platforms that were attached to DNA sequencing genetic analyzing machines. Based on our examination of the scope of the terms of heading 9027, HTSUS, and Legal Note 2(a) to Chapter 90, of the HTSUS, we have determined that the auto-samplers are not classified as parts or accessories of instruments and apparatus for physical or chemical analysis. Instead, we have concluded that the auto-samplers subject to this notice are classified in heading 8479, specifically in subheading 8479.89.9897, HTSUS, as: "Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other: Other: Other".

As stated in the proposed notice, pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY G84697, NY G86629, NY 899900, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) W967842 and HQ W967843 (Attachments A and B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions that is contrary to the determination set forth in this notice.

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

DATED: July 22, 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,
HQ W967842
July 22, 2009
CLA-02 OT:RR:CTF:TCM W967842 JPJ
CATEGORY: Classification
TARIFF NO: 8479.89.98

MR. BRECHBUHLER
BRECHBUHLER, INC.
3845 FM 1960 W
One Cornerstone Plaza, Suite 275
Houston, Texas 77068

RE: Revocation of NY 899900 (issued on July 20, 1994) regarding ALS 104 GC Auto-Sampler

DEAR MR. BRECHBUHLER:

The National Commodity Specialist Division of Customs and Border Protection (CBP) issued ruling NY 899900 on July 20, 1994, to Mass Evolution Inc., regarding the classification of the ALS 104 GC Auto-Sampler under the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered this ruling, and now believe that the classification of the ALS 104 GC Auto-Sampler specified in NY 899900 is incorrect. This ruling sets forth the correct classification of the ALS 104 GC Auto-Sampler. An Internet search revealed that Brechbuler, Inc. was the successor company for products sold by Mass Evolution, Inc.

Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 2186 (1993), notice of the proposed revocation of NY 899900 was published in the *Custom Bulletin*, Volume 39, Number 40, on November 23, 2005. Four comments were received in response to the notice. They are discussed in the Law and Analysis section of this ruling.

FACTS:

The subject merchandise under consideration in NY 899900 was called the ALS 104 GC Auto-Sampler (auto-sampler). It was described in the ruling as an automatic programmable sample injector that could be programmed for right or left injection in up to four vertical ports. The ruling further indicated that the auto-sampler worked in conjunction with a gas chromatograph by performing repetitious motions of drawing samples from a vial tray. It performed its function by injecting samples into a gas chromatograph and by raising the injection syringe in the vials. The auto-sampler mainly consisted of a motorized tray and a sampling tower, which contained motors and syringes that were used for drawing liquids analyzed by the gas chromatograph from the test vials. The device rotated the tray, and then raised and lowered a syringe into the test vials to draw the liquid. It also had a position for flush vials that were used to clean the syringe after an injection and a position for a waste vial where a solvent used for rinsing was disposed.

ISSUE:

Whether the auto-sampler is classified under heading 8479, HTSUS, as a machine or mechanical appliance having individual functions not specified or included elsewhere or under heading 9027, HTSUS, as a part or accessory of an instrument and apparatus for physical or chemical analysis.

LAW AND ANALYSIS:

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

The 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:
	Other:
8479.89.98	Other.
*	*
9027	Instruments and apparatus for physical or chemical analysis for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes; parts and accessories thereof:
9027.90	Microtomes; parts and accessories:
	Parts and Accessories:
	Of electrical instruments and apparatus:
	Other:
9027.90.54	Of instruments and apparatus of subheading 9027.20, 9027.30, 9027.50 or 9027.80
*	*

Note 1(m) to Section XVI, HTSUS, states that the section does not cover:

Articles of chapter 90;

Note 2(a) to Chapter 90, HTSUS, states:

2. Subject to note 1 above, parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

(a) Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings;

* * *

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

The ENs to heading 8479, HTSUS, provide in relevant part:

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.

* * *

The machinery of this heading is distinguished from the parts of machinery, etc., that fall to be classified in accordance with the general provisions concerning parts, by the fact that it has individual functions.

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

* * *

(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 ENs to heading 9027, HTSUS, provide in relevant part:

Subject to the provisions of Notes 1 and 2 to this Chapter (see the General Explanatory Note), the heading also covers parts and accessories identifiable as being solely or principally for use with the above mentioned instruments and apparatus.

EN 90.27(24) states:

Chromatographs (such as gas-, liquid-, ion- or thin-layer chromatographs) for the determination of gas or liquid components. The gas or liquid to be analysed is passed through columns or thin layers of absorbent material and then measured by means of a detector. The character-

istics of the gases or liquids under analysis are indicated by the time taken for them to pass through the columns or thin layers of absorbent material, while the quantity of the different components to be analysed is indicated by the strength of the output signal from the detector.

* * *

Two commenters contend that the auto-sampler is precluded from classification in heading 8479, HTSUS, by operation of note 1(m) to Section XVI, HTSUS. Note 1(m) to Section XVI, HTSUS, excludes goods of the section, including heading 8479, HTSUS, provided that the good is determined to be classifiable in Chapter 90, HTSUS.

Of particular importance is the Court of Appeals for the Federal Circuit's decision in Sharp Microelectronics Technology, Inc. v. United States, 122 F. 3d 1446 (CAFC 1997), wherein the Court stated "[i]f one determines that a [good] belongs in [chapter 90] because it is not more specifically captured elsewhere in the schedule, then Note 1(m) complements the rule of relative specificity by excluding the device from classification in Chapter 84." Id. at 1450.

Accordingly, in classifying the instant auto-sampler, we must examine whether the auto-sampler could be classified in heading 9027, HTSUS, as a part or an accessory to a gas chromatograph, the apparatus attached to the auto-sampler.

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.

In performing its function, the auto-sampler is attached to the gas chromatograph. It is intended for use solely with a chromatograph. It also contributes to the effectiveness of a gas chromatograph by mechanizing the processes of injecting samples into the gas chromatograph and by raising the injection syringe in the vials. Without the auto-sampler, the samples would have to be fed to the gas chromatograph by hand. Based on the above definition of the term accessory, the auto-sampler is an accessory of the gas chromatograph.

However, Note 2(a) to Chapter 90, HTSUS, excludes goods of Chapter 84, HTSUS, from classification in Chapter 90, HTSUS. Moreover, Additional U.S. Rules of Interpretation (AUSRI) 1(c) provides that "a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for 'parts' or 'parts and accessories' shall not prevail

over a specific provision for such part or accessory". Accordingly, if the auto-sampler is classified in heading 8479, HTSUS, it cannot be classified in heading 9027, HTSUS.

Three commenters note that the terms of heading 8479, HTSUS, require that the machines of the heading not be elsewhere specified or included. These commenters characterize heading 8479, HTSUS, as a residual provision which cannot be considered since the auto-sampler is included in heading 9027, HTSUS. As such, two commenters contend that Note 2(a) is, therefore, inapplicable.

The term "not elsewhere specified or included" does not render this residual provision for machines with individual functions a "basket" or non-specific provision. In *Sharp Microelectronics, supra*, the court found that heading 9013, HTSUS, the provision for "liquid crystal devices not constituting articles provided for more specifically in other headings; . . . other optical appliances and instruments, not specified or included elsewhere in this chapter; . . .," was not a "basket" provision. The court explained that the provision "is simply another specific provision acknowledging that it may be more or less difficult to satisfy than some other provision, or a more or less accurate or certain provision than some other to describe a particular article." *Id.* at 1450. So too, heading 8479, HTSUS, specifically describes machines having individual functions, but acknowledges that other headings for machines with individual functions may provide a more specifically described home for the merchandise at issue. As such, a determination whether the auto-sampler is classifiable in heading 8479, HTSUS, is necessary.

The express terms of heading 8479, HTSUS, provide, in relevant part, for machines having individual functions. As set forth *supra*, a machine has an individual function if it performs a function which is distinct from the appliance to which it is incorporated, does not play an integral or inseparable part in the operation of the appliance, and cannot perform its function unless it is incorporated in a more complex entity.

The auto-sampler at issue is clearly a machine whose function of drawing samples from the vials and injecting the samples into a gas chromatograph is distinct from the gas chromatograph's function of analyzing the samples. The auto-sampler is not an integral and inseparable part of the gas chromatograph because the gas chromatograph can function without the auto-sampler being attached to it. As such, we conclude that the auto-sampler is a machine having an individual function which is excluded from heading 9027, HTSUS, by operation of Note 2(a) to Chapter 90, HTSUS. Note 1(m) to Section XVI, HTSUS, is not applicable insofar as under a relative specificity analysis, heading 8479, HTSUS, is more difficult to meet than classification as an accessory in heading 9027, HTSUS. See *Sharp, supra* at 1449. This conclusion is consistent with NY 883067, dated March 10, 1993; NY 893932, dated February 15, 1994; NY G82571, dated October 20, 2000 and; HQ 965754, dated October 4, 2002, which determined that similar machinery was classified in heading 8479, HTSUS.

Two commenters argue that classifying the auto-samplers in heading 8479, HTSUS, is inconsistent with the trade policy of the United States as articulated in the Information Technology Agreement (ITA) (Ministerial Declaration on Trade in Information Technology Products, Attachment A, WTO, 13, December 1996). The commenters claim that classifying the auto-

samplers as parts and accessories of products of heading 9027, HTSUS, is consistent with the language and the intent of the ITA.

Our decision herein is not inconsistent with obligations of the United States as articulated in the ITA. Pursuant to Presidential Proclamation No. 7011, the U.S. implemented the agreement by creating various new provisions to cover the commodities listed in the Ministerial Declaration on Trade in Information Technology Products and its Annex (together referred to as ITA).

This office acknowledges the commenters' statement that "high-tech" products were enumerated in the ITA. However, the list of products is finite. ITA does not cover all "high-tech" products. Neither the ITA nor Presidential Proclamation 7011 provided duty-free treatment for articles such as the auto-sampler. Moreover, the ITA does not govern tariff classification. A classification determination of a product is based upon many factors, e.g., condition as imported, material or composition, function, etc. Unless specified by name, the ITA covers only parts and accessories classified in accordance with Note 2(b) to Chapter 90. We cannot make assumptions as to how broadly the drafters of the ITA intended the language of the Ministerial Declaration to be interpreted nor can we classify articles based upon hypothetical "intent". Accordingly, we do not agree with the commenters' contention that classifying the auto-sampler in heading 8479, HTSUS, would violate the terms or the intent of the ITA.

Application of GRI 3(a) to classify the auto-samplers is not necessary as suggested by one commenter, insofar as the auto-sampler is classifiable in accordance with GRI 1. Moreover, assuming, *arguendo*, that a GRI 3(a) analysis were warranted, as noted *supra*, heading 8479, HTSUS, more specifically provides for the merchandise at issue than does heading 9027, HTSUS, as an accessory.

HOLDING:

In accordance with GRI 1, and Note 2(a) to Chapter 90, HTSUS, the auto-sampler platform is classified in heading 8479, HTSUS. It is specifically provided for in subheading 8479.89.98.97, HTSUS, which provides for: "Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other: Other: Other." The general, column one rate of duty is 2.5 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY G86629 dated January 29, 2001 and NY G84697 dated December 12, 2000, are revoked with respect to the classification of the auto-sampler platform.

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

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ W967843
July 22, 2009
CLA-02 OT:RR:CTF:TCM W967843 JPJ
CATEGORY: Classification
TARIFF NO: 8479.89.98

MR. MATTHEW K. NAKACHI
GEORGE R. TUTTLE, LAW OFFICES
Three Embarcadero Center, Suite 1160
San Francisco, California 94111

RE: The tariff classification of the Auto-Sampler platform used with the ABI Prism 3100 Genetic Analyzer

DEAR MR. NAKACHI:

The National Commodity Specialist Division of Customs and Border Protection (CBP) issued ruling NY G86629 on January 29, 2001, to you on behalf of Applied Biosystems, regarding the classification of the Auto-Sampler platform for the ABI Prism 3100 Analyzer under the Harmonized Tariff Schedule of the United States (HTSUS). NY G86629 was issued as a correction to NY G84697, dated December 12, 2000, regarding a change in the statistical suffix applied to the classification of the Auto-Sampler platform. We have reconsidered these rulings, and now believe that the classification of the Auto-Sampler platforms specified in NY G86629 and NY G84697 were incorrect. This ruling sets forth the correct classification of the GC Auto-Sampler platform for the ABI Prism 3100 Genetic Analyzer.

Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 2186 (1993), notice of the proposed revocation of NY G86629 and NY G84697 was published in the *Customs Bulletin*, Volume 39, Number 40, on November 23, 2005. Four comments were received in response to the notice. They are discussed in the Law and Analysis section of this ruling.

FACTS:

The subject merchandise under consideration in NY G86629 and NY G84697 was the Auto-Sampler platform (auto-sampler) that was used with the ABI Prism 3100 Genetic Analyzer (ABI). According to NY G84697, the ABI is a fluorescence-based DNA analysis system using the technologies of capillary electrophoresis and laser fluorescence with CCD recording technology to analyze genetic material. After importation, the ABI DNA sequencer is combined with a computer workstation running proprietary analysis software that performs sequencing analysis.

The auto-sampler platform, designated as part no. 628-0310, was a motorized platform and tray with x-y-z movement functionality. Three stepper motors accomplish the x-y-z movement. The auto-sampler platform moves the DNA samples to the pins of the capillary array and moves a buffer reservoir and an electrode to the pin of the capillary array. The auto-sampler platform causes the DNA sample to be moved so as to insert the capillary array pins into these samples. Once in position, the DNA is automatically

drawn up into the capillary array pins. Secondly, the buffer solution is moved so that the pins of the capillary array are submerged in the solution.

In NY G84697, CBP determined that the applicable subheading for the auto-sampler platform was subheading 9027.90.5430, HTSUS, which provides for parts and accessories of instruments and apparatus of subheading 9027.20, 9027.30, 9027.40, 9027.50 or 9027.80; of articles of subheading 9027.30.40. In NY G86629, the classification for the auto-sampler was changed for a correction in the statistical suffix to subheading 9027.90.5450, HTSUS.

ISSUE:

Whether the auto-sampler is classified under heading 8479, HTSUS, as a machine or mechanical appliance having individual functions not specified or included elsewhere or under heading 9027, HTSUS, as a part or accessory of an instrument and apparatus for physical or chemical analysis.

LAW AND ANALYSIS:

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

The 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:
	Other:
8479.89.98	Other.
*	*
9027	Instruments and apparatus for physical or chemical analysis for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes; parts and accessories thereof:
9027.91	Microtomes; parts and accessories:
	Parts and Accessories:
	Of electrical instruments and apparatus:
	Other:
9027.90.54	Of instruments and apparatus of subheading 9027.20, 9027.30, 9027.50 or 9027.80

* * *

Note 1(m) to Section XVI, HTSUS, states that the section does not cover:

Articles of chapter 90;

Note 2(a) to Chapter 90, HTSUS, states:

2. Subject to note 1 above, parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

(a) Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings;

* * *

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

The ENs to heading 8479, HTSUS, provide in relevant part:

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.

* * *

The machinery of this heading is distinguished from the parts of machinery, etc., that fall to be classified in accordance with the general provisions concerning parts, by the fact that it has individual functions.

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

* * *

(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 ENs to heading 9027, HTSUS, provide in relevant part:

Subject to the provisions of Notes 1 and 2 to this Chapter (see the General Explanatory Note), the heading also covers parts and accessories identifiable as being solely or principally for use with the above mentioned instruments and apparatus.

* * *

Two commenters contend that the auto-sampler is precluded from classification in heading 8479, HTSUS, by operation of note 1(m) to Section XVI, HTSUS. Note 1(m) to Section XVI, HTSUS, excludes goods of the section, including heading 8479, HTSUS, provided that the good is determined to be classifiable in Chapter 90, HTSUS.

Of particular importance is the Court of Appeals for the Federal Circuit's decision in *Sharp Microelectronics Technology, Inc. v. United States*, 122 F. 3d 1446 (CAFC 1997), wherein the Court stated "[i]f one determines that a [good] belongs in [chapter 90] because it is not more specifically captured elsewhere in the schedule, then Note 1(m) complements the rule of relative specificity by excluding the device from classification in Chapter 84." *Id.* at 1450.

Accordingly, in classifying the instant auto-sampler, we must examine whether the auto-sampler could be classified in heading 9027, HTSUS, as a part or an accessory to a DNA sequencing machine, the apparatus attached to the auto-sampler.

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.

In performing its function, the auto-sampler is attached to the DNA sequencing machine. It is intended for use solely with a genetic analyzer. It also contributes to the effectiveness of a DNA sequencing machine by mechanizing the processes of preparing and injecting samples into the genetic analyzer. Without the auto-sampler, the genetic material would have to be fed to the analyzer by hand. Based on the above definition of the term accessory, the auto-sampler is described as an accessory of the DNA sequencing machine.

However, Note 2(a) to Chapter 90, HTSUS, excludes goods of Chapter 84, HTSUS, from classification in Chapter 90, HTSUS. Moreover, Additional U.S. Rules of Interpretation (AUSRI) 1(c) provides that "a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for 'parts' or 'parts and accessories' shall not prevail

over a specific provision for such part or accessory". Accordingly, if the auto-sampler is classified in heading 8479, HTSUS, it cannot be classified in heading 9027, HTSUS.

Three commenters note that the terms of heading 8479, HTSUS, require that the machines of the heading not be elsewhere specified or included. These commenters characterize heading 8479, HTSUS, as a residual provision which cannot be considered since the auto-sampler is included in heading 9027, HTSUS. As such, two commenters contend that Note 2(a) is, therefore, inapplicable.

The term "not elsewhere specified or included" does not render this residual provision for machines with individual functions a "basket" or non-specific provision. In *Sharp Microelectronics, supra*, the court found that heading 9013, HTSUS, the provision for "liquid crystal devices not constituting articles provided for more specifically in other headings; . . . other optical appliances and instruments, not specified or included elsewhere in this chapter; . . .," was not a "basket" provision. The court explained that the provision "is simply another specific provision acknowledging that it may be more or less difficult to satisfy than some other provision, or a more or less accurate or certain provision than some other to describe a particular article." *Id.* at 1450. So too, heading 8479, HTSUS, specifically describes machines having individual functions, but acknowledges that other headings for machines with individual functions may provide a more specifically described home for the merchandise at issue. As such, a determination whether the auto-sampler is classifiable in heading 8479, HTSUS, is necessary.

The express terms of heading 8479, HTSUS, provide, in relevant part, for machines having individual functions. As set forth *supra*, a machine has an individual function if it performs a function which is distinct from the appliance to which it is incorporated, does not play an integral or inseparable part in the operation of the appliance and cannot perform its function unless it is incorporated in a more complex entity.

The auto-sampler platform at issue is clearly a machine whose function of moving samples to the capillary array and injecting them into the DNA sequencing machine is distinct from the genetic analyzer's function of analyzing DNA samples. The auto-sampler is not an integral and inseparable part of the DNA analysis system because the genetic analyzer can function without the auto-sampler being attached to it. As such, we conclude that the auto-sampler is a machine having an individual function which is excluded from heading 9027, HTSUS, by operation of Note 2(a) to Chapter 90, HTSUS. Note 1(m) to Section XVI, HTSUS, is not applicable insofar as under a relative specificity analysis, heading 8479, HTSUS, is more difficult to meet than classification as an accessory in heading 9027, HTSUS. See *Sharp, supra* at 1449. This conclusion is consistent with NY 883067, dated March 10, 1993; NY 893932, dated February 15, 1994; NY G82571, dated October 20, 2000 and; HQ 965754, dated October 4, 2002, which determined that similar machinery was classified in heading 8479, HTSUS.

Two commenters argue that classifying the auto-samplers in heading 8479, HTSUS, is inconsistent with the trade policy of the United States as articulated in the Information Technology Agreement (ITA) (Ministerial Declaration on Trade in Information Technology Products, Attachment A, WTO, 13, December 1996). The commenters claim that classifying the auto-

samplers as parts and accessories of products of heading 9027, HTSUS, is consistent with the language and the intent of the ITA.

Our decision herein is not inconsistent with obligations of the United States as articulated in the ITA. Pursuant to Presidential Proclamation No. 7011, the U.S. implemented the agreement by creating various new provisions to cover the commodities listed in the Ministerial Declaration on Trade in Information Technology Products and its Annex (together referred to as ITA).

This office acknowledges the commenters' statement that "high-tech" products were enumerated in the ITA. However, the list of products is finite. ITA does not cover all "high-tech" products. Neither the ITA nor Presidential Proclamation 7011 provided duty-free treatment for articles such as the auto-sampler. Moreover, the ITA does not govern tariff classification. A classification determination of a product is based upon many factors, e.g., condition as imported, material or composition, function, etc. Unless specified by name, the ITA covers only parts and accessories classified in accordance with Note 2(b) to Chapter 90. We cannot make assumptions as to how broadly the drafters of the ITA intended the language of the Ministerial Declaration to be interpreted nor can we classify articles based upon hypothetical "intent". Accordingly, we do not agree with the commenters' contention that classifying the auto-sampler in heading 8479, HTSUS, would violate the terms or the intent of the ITA.

Application of GRI 3(a) to classify the auto-samplers is not necessary as suggested by one commenter, insofar as the auto-sampler is classifiable in accordance with GRI 1. Moreover, assuming, *arguendo*, that a GRI 3(a) analysis were warranted, as noted *supra*, heading 8479, HTSUS, more specifically provides for the merchandise at issue than does heading 9027, HTSUS, as an accessory.

HOLDING:

In accordance with GRI 1, and Note 2(a) to Chapter 90, HTSUS, the auto-sampler platform is classified in heading 8479, HTSUS. It is specifically provided for in subheading 8479.89.98.97, HTSUS, which provides for: "Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other: Other: Other." The general, column one rate of duty is 2.5 percent ad valorem.

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

EFFECT ON OTHER RULINGS:

NY G86629 dated January 29, 2001 and NY G84697 dated December 12, 2000, are revoked with respect to the classification of the auto-sampler platform.

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

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

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

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

ACTION: Notice of modification of two ruling letters relating to the classification of certain satellite radio receivers/tuners and 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) is modifying 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 revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed modification was published on May 29, 2009, in the Customs Bulletin, Vol. 43, No. 22. 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 October 13, 2009.

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 im-

porter of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is modifying 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, and NY J89049, dated November 4, 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 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 have advised CBP during the 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 modifying NY K87747 and any other ruling not specifically identified to reflect the proper procedural basis on which to modify an interpretive ruling or deci-

sion, pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) H042575 (Attachment A). In addition, CBP is modifying 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 Headquarters Ruling Letter (HQ) H043540 (Attachment B). CBP is also revoking any treatment previously accorded by it to substantially identical transactions.

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

DATED: July 22, 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,
HQ H042575
July 22, 2009
CLA-2 OT:RR:CTF:TCM H042575 HkP
CATEGORY: Classification
TARIFF NO.: n/a

JOHN A. BESSICH, ESQ.
FOLLIK & 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 sub-heading 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.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification was published on May 29, 2009, in the Customs Bulletin, Vol. 43, No. 22. One comment was received in support of the proposed 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 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.

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 HQ H043540, which is attached to the notice of Modification of Two Ruling Letters Concerning the Classification of Certain Satellite Radio Receivers/Tuners and Revocation of Treat-

ment, to which the instant ruling (HQ H042575) is also attached. 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.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H043540
July 22, 2009
CLA-2 OT:RR:CTF:TCM H043540 HkP
CATEGORY: Classification
TARIFF NO.: 8527.91.60

JOHN A. BESSICH, ESQ.
FOLLIK & BESSICH, ATTORNEYS AT LAW
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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.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification was published on May 29, 2009, in the Customs Bulletin, Vol. 43, No. 22. One comment was received from Audiovox in response to this notice in support of the proposed 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 voiding the portion of NY K87747 that addresses the classification of SIR-PNP1 receivers/tuners. See Modification of Two Ruling Letters Concerning the Classification of Certain Satellite Radio Receivers/Tuners and Revocation of Treatment, Attachment A (HQ H042575). HQ H043540, the instant ruling, which reclassifies the SIR-PNP1 receiver/tuner as other reception apparatus "combined with sound recording or reproducing apparatus", is Attachment B 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.

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