

U.S. Customs and Border Protection



NOTICE OF POSTPONEMENT OF H-2A AND H-2B TEMPORARY WORKER VISA EXIT PROGRAM PILOT CBP Dec. 09-34

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

ACTION: General notice; postponement of commencement date.

SUMMARY: U.S. Customs and Border Protection (CBP) announces the postponement of the commencement date of the H-2A and H-2B Temporary Worker Visa Exit Program Pilot, originally set for August 1, 2009. The pilot program will require temporary workers within H-2A and H-2B nonimmigrant classifications that enter the United States at either the port of San Luis, Arizona or the port of Douglas, Arizona, to depart from one of those ports and to submit certain biographical and biometric information at one of the kiosks established for this purpose. A delay of the commencement date is necessary to ensure that the kiosks are fully operational.

DATES: The pilot program will commence December 8, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Erin M. Martin via e-mail at *ERIN.Martin@dhs.gov*.

SUPPLEMENTARY INFORMATION:

On December 18, 2008, U.S. Customs and Border Protection (CBP) published a Notice in the **Federal Register** (73 FR 77049), announcing that CBP is establishing a new land-border exit system for H-2A temporary workers, starting on a pilot basis, at certain designated ports of entry.¹ This notice was published concurrently and is in accordance with a Final Rule published by the Department of Homeland Security (DHS) in the **Federal Register** (73 FR 76891). The Final Rule implements the pilot program by adding 8 CFR 215.9, which provides that an alien admitted on an H-2A visa at a port of entry participating in the Temporary Worker Visa Exit Program must

¹ The H-2A nonimmigrant classification applies to aliens seeking to perform agricultural labor or services of a temporary or seasonal nature in the United States. Immigration and Nationality Act (Act or INA) sec. 101(a)(15)(H)(ii)(a), 8 U.S.C. 1101(a)(15)(H)(ii)(a); see 8 CFR 214.1(a)(2) (designation for H-2A classification).

also depart at the end of his or her authorized period of stay through a port of entry participating in the program and present designated biographic and/or biometric information upon departure. As required by 8 CFR 215.9, CBP published a Notice in the **Federal Register** (73 FR 77049) designating H-2A workers that enter the United States at either the port of San Luis, Arizona or the port of Douglas, Arizona, as participants in the Temporary Worker Visa Exit Program, who must depart from one of those ports and submit certain biographical and biometric information at one of the kiosks established for this purpose.

On December 19, 2008, CBP published a Notice of Expansion of Temporary Worker Visa Exit Program Pilot To Include H-2B Temporary Workers in the **Federal Register** (73 FR 77817), in line with the Final Rule published concurrently by DHS in the **Federal Register** (73 FR 78104).² The Final Rule expands the pilot program by amending 8 CFR 215.9, to provide that aliens admitted on an H-2B visa at a port of entry participating in the Temporary Worker Visa Exit Program must also depart at the end of his or her authorized period of stay through a port of entry participating in the program and present designated biographic and/or biometric information upon departure. As required by 8 CFR 215.9, as amended, CBP published a Notice in the **Federal Register** (73 FR 77817) to include H-2B workers in the Temporary Worker Visa Exit Program at the ports of San Luis, Arizona and Douglas, Arizona.

Pursuant to the Notices in the **Federal Register** (73 FR 77049 and 73 FR 77817) published by CBP containing all the required elements referenced in 8 CFR 215.9, as amended, any alien that is admitted on an H-2A or H-2B visa into the United States at a designated port on or after August 1, 2009, is subject to the pilot program. However, in order to ensure that the facilities necessary to implement the pilot program are fully operational and meet the needs of the agency and the public, this notice postpones the start date of the pilot program. Accordingly, this notice postpones the start of the pilot program from August 1, 2009 to December 8, 2009.

Dated: August 20, 2009

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

[Published in the Federal Register, August 25, 2009 (74 FR 42909)]

² The H-2B nonimmigrant classification applies to foreign workers coming to the U.S. temporarily to perform temporary, non-agricultural labor or services. Immigration and Nationality Act (Act or INA) sec. 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b); see 8 CFR 214.1(a)(2) (designation for H-2B classification).

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING MULTIFUNCTIONAL MACHINES

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

ACTION: Notice of final determination.

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

DATES: The final determination was issued on August 12, 2009. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR § 177.22(d), may seek judicial review of this final determination within September 21, 2009 .

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202–325–0041).

SUPPLEMENTARY INFORMATION:

Notice is hereby given that on, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain multifunctional machines which may be offered to the United States Government under a government procurement contract. This final determination, in HQ H039856, was issued at the request of Sharp Electronics Corporation under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511-18). In the final determination, CBP concluded that, based upon the facts presented, certain articles will be substantially transformed in Japan. Therefore, CBP found that Japan is the country of origin of the finished articles for purposes of U.S. Government procurement.

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

Dated: August 12, 2009

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

[Published in the Federal Register, August 20, 2009 (74 FR 42087)]

Attachment

HQ H039856

August 12, 2009

OT:RR:CTF:VS H039856 KSG

MR. EDMUND BAUMGARTNER, ESQ.
PILLSBURY WINTHROP SHAW PITTMAN LLP
1540 BROADWAY
NEW YORK, NY 10036

Re: U.S. Government Procurement; country of origin of multifunctional printer machines; substantial transformation

DEAR MR. BAUMGARTNER:

This is in response to your letters, dated November 26, 2007, July 2, 2008, and November 10, 2008, requesting a final determination on behalf of Sharp Electronics Corporation (“Sharp”) pursuant to subpart B of 19 CFR Part 177.

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

This final determination concerns the country of origin of certain multifunctional machines that Sharp may sell to the U.S. Government. We note that Sharp is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination. A conference was held on this matter at Headquarters on August 25, 2008.

FACTS:

This case involves the Sharp Jupiter II J-models that are sent to the U.S. for final assembly (Sharp model # MX-M350NJ, MX-M350UJ, MX-M450NJ, and MX-450UJ) (“J-models”). These models have digital multifunctional systems (monochrome copying, printing, faxing and duplex scanning functions). The Jupiter II J-models designated with an “N” feature a hard disc drive and network interface card which allows them to function as networked printers and send scanned documents in the form of e-mail attachments in various formats. The Jupiter II J-models designated with a “U” are not equipped with a hard disk or network interface card and function with stand-alone capacity.

Sharp Corporation, Sharp’s parent company (“Sharp Japan”) developed the Jupiter II J-models in Japan; all the engineering, development, design and artwork processes were developed in Japan. Each J-model is produced from a scanner unit and printer engine unit, which are assembled in Japan.

The scanner units and printer engine units are imported into the U.S. where each is combined with a scanner rack and stand which can contain optional paper feed drawers.

There are 16 main subassemblies that compose the Jupiter II J-models.

Assembly in China

Assembly in China includes assembly of the duplex single pass feeder (“DSPF”) subassembly; the laser scanning unit (“LSU”) subassembly; the transfer unit subassembly; the developer (“DV”) unit subassembly; the

printer control unit (“PCU”); the fusing unit subassembly; the multifunctional printer (“MFP”) control unit and various other subassemblies.

- (1) The DSPF subassembly transports original documents to the scanning bed.
- (2) The LSU subassembly takes the image data of the documents or graphics and converts the data into laser beams which are exposed to the drum surface and create the electrostatic images necessary for printing.
- (3) The transfer belt unit transfers the image created on the drum onto the surface of the paper for printing. This unit is assembled in China.
- (4) The developer unit (“DV”) is used to transfer toner evenly over the latent image created on the drum unit.
- (5) The PCU controls the printing function of the J-models. It is comprised of a control printed wire board (“PWB”) and mother PWB that are stuffed in China.
- (6) The fusing unit is used to fix the transferred image onto paper.

Processing and Assembly in Japan of the scanner unit and the printer engine unit

The following parts which are stated to be critical components are produced in Japan: the charge-coupled device (“CCD”), the contact image sensor (“CIS”), the laser scanning unit (“LSU”) housing, the LSU fixing base, the LSU synchronous lens, the LSU two cylinder lenses, the transfer roller, the drum, the DSD flange, the DSD flange spacer, the rollers, the lamps, the thermistors, the thermostat, the cleaning roller, two sets of pawls, and the flash memory chips.

Eight of the 16 subassemblies involve processing in Japan; the upper cabinet rear unit; scanner base plate unit; the scanner control mounting unit; the process unit subassembly; the drum unit subassembly; the two rear frame units; the control box; and the high voltage holder unit.

- (1) The upper cabinet rear unit contains the detector luminescence arm and ORS emission printer wire board, which detect the size and placement of original documents on the scanning bed.
- (2) The scanner base plate unit contains a charge-coupled device (“CCD”) made in Japan, which is stated to be a critical component for scanning and copying documents. The scanning base plate unit contains lamps and mirror motors which illuminate and reflect the image for scanning by the CCD.

- (3) The scanner control mounting unit contains PWBs for operating the original document detector and guides and harnesses to hold the scanner's optical components in place.
- (4) The process unit subassembly stores the drum used for creating images.
- (5) The drum unit contains the drum. The drum unit is assembled in Japan with parts made in China and Japan.
- (6) Rear frame 2 unit is assembled from the rear fixing plate unit, solenoid fixing plate unit, dust support plate unit and other frames, mounts, holder and plates. Rear frame 1 unit is assembled from the main duct, fusing drawer, fixing plate, paper powder remover case unit, box cooling duct unit and other parts.
- (7) The control box unit is assembled with the control box upper unit and other parts.
- (8) The high voltage holder unit is assembled from a Chinese holder and other parts.

Additional units are installed in the printer engine in Japan including the developer guide unit, left door unit, cassette unit, PS roller(resist roller) unit, main drive unit, paper feed unit, lift-up unit, paper exit reverse unit, power supply unit, PCU PWB fixing sub unit and inlet fixing unit.

Final assembly of the scanner unit and printer engine unit are then performed in Japan. All functions of the printer engine and scanner unit undergo adjustment and testing prior to being exported to the U.S. You state that the testing and adjustment process takes as much or more time than the physical assembly of the product and require skilled personnel.

Final Assembly in the U.S.

The scanner unit and the printer engine unit are imported into the U.S. where they are assembled onto a scanner rack and a scanner stand to create the finished multi-functional machine. Final testing of the machine is then performed.

The basic scanner stand is made in the U.S.

The scanner rack and stand with paper feed drawers (either 1,500 sheet or 2,500 sheet) are made in China.

ISSUE:

What is the country of origin of the subject multifunctional printer machines for the purpose of U.S. Government procurement?

LAW AND ANALYSIS:

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

certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

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

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR § 177.22(a).

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

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

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

In a number of cases, CBP has considered similar merchandise. In Headquarters Ruling Letter (“HRL”) 563491 (February 8, 2007), CBP addressed the country of origin of certain digital color multifunctional systems manufactured by Sharp and assembled in Japan of various Japanese - and Chinese - origin parts. In that ruling, CBP determined that color multifunctional systems were a product of Japan based on the fact that “although several subassemblies are assembled in China, enough of the Japanese subassemblies and individual components serve major functions and are high in value, in particular, the transfer belt, control box unit, application-specific integrated circuits, charged couple device, and laser diodes.” Further CBP found that the testing and adjustments performed in Japan were technical and complex, and the assembly operations that occurred in Japan were sufficiently complex and meaningful. Thus, through the product assembly and testing and adjustment operations, the individual components and subassemblies of Japanese and foreign-origin were subsumed into a new and distinct article of commerce that had a new name, character, and use. *See also* HRL 562936, dated March 17, 2004.

In HRL 561734, dated March 22, 2001, CBP held that certain multifunctional machines (consisting of printer, copier, and fax machines) assembled in Japan were a product of that country for the purposes of U.S. government procurement. The multifunctional machines were assembled from 227 parts (108 parts obtained from Japan, 92 from Thailand, 3 from China, and 24 from other countries) and eight subassemblies, each of which was assembled in Japan. *See also* HRL 561568, dated March 22, 2001.

Finally, in HRL H020516, dated November 7, 2008, CBP considered Sharp Andromeda II J models composed of eight main subassemblies, two of which involved processing in Japan. Similar to this case, all the engineering, development, design, and artwork were developed in Japan. The multifunctional printer control unit was described as the brain of the model. While some of the components were installed on the control printer board in China, the flash read-only memory which included firmware developed in Japan, was manufactured in Japan. The other unit that involved production in Japan was the process unit, that housed a drum produced in Japan. The process unit was assembled in China. The other subassemblies were assembled in China but certain key components of the subassemblies originated in Japan. The final assembly was performed in Japan.

Based on the totality of the circumstances discussed in this ruling, we agree that the Jupiter II J-models described in this ruling are considered a product of Japan. As was determined in HRL 563491 and HRL H020516, substantial portions of the components that are of key importance are of Japanese origin and all the engineering, design and development of the multifunctional machines occurs in Japan. As in H020516, we find the final assembly of the subassemblies into a finished product in Japan to be sufficiently complex and meaningful to result in a new and distinct article of commerce that possesses a new name, character and use. In this case, we also note that 8 of the 16 subassemblies involve processing in Japan. In addition, the testing and adjustment of the multifunctional machines in Japan is significant.

The processing that occurs in the U.S., which involves the assembly of the finished printer engines and scanners to the stand and rack, is a simple assembly operation that is not demonstrated to be complex or meaningful

and does not involve a large number of components. Based on these factors, we find that there is no substantial transformation in the U.S.

Accordingly, the country of origin of the Jupiter II J-model multifunctional printer machines is Japan for purposes of U.S. Government procurement.

HOLDING:

Based on the facts of this case, the country of origin of the Jupiter II J-model multifunctional printer machines is Japan for purposes of U.S. Government procurement.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR § 177.31 that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR § 177.30, any party-at-interest may, within 30 days after publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

SANDRA L. BELL

Executive Director

Office of Regulations and

Rulings Office of International Trade

**AGENCY INFORMATION COLLECTION ACTIVITIES:
Crew Member's Declaration**

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

ACTION: 30-Day notice and request for comments; Revision of an existing information collection: 1651-0021

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: Crew Member's Declaration. This is a proposed extension and revision of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 30103) on June 24, 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 September 24, 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: Crew Member's Declaration

OMB Number: 1651-0021

Form Number: Form 5129

Abstract: The Form 5129 is used to accept and record importations of merchandise by crewmembers, and to enforce agricultural quarantines, currency reporting laws, and revenue collection laws. CBP is proposing to increase the burden hours for this collection of information as a result of increasing the estimated time to fill out Form 5129 from 3 minutes to 10 minutes.

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours.

Type of Review: Revision and Extension

Affected Public: Businesses

Estimated Number of Respondents: 6,000,000

Estimated Time Per Respondent: 10 minutes

Estimated Total Annual Burden Hours: 996,000

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: August 12, 2009

TRACEY DENNING
Agency Clearance Officer
Customs and Border Protection

[Published in the Federal Register, August 25, 2009 (74 FR 42907)]

**NOTICE OF CANCELLATION OF CUSTOMS BROKER
LICENSES**

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

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses and all associated permits are cancelled without prejudice.

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
Rafael I. Morales	13682	Laredo
Deborah C. Martin	11423	Los Angeles
Thomas Tello	06319	Los Angeles
Thomas Tello & Co., Inc.	09841	Los Angeles
World International Freight Forwarders, Inc.	04187	New Orleans

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
Kay Diamond, Ltd. dba Salviati & Santori	15788	New York
Pronto Cargo Brokers, Inc.	06437	Miami

Dated: August 11, 2009

DANIEL BALDWIN
Assistant Commissioner
Office of International Trade

[Published in the Federal Register, August 20, 2009 (74 FR 42087)]



**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 license 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>
Sandra P. Brown	06855	Charlotte

Dated: August 11, 2009

DANIEL BALDWIN
Assistant Commissioner
Office of International Trade

[Published in the Federal Register, August 20, 2009 (74 FR 42087)]

19 CFR PART 177

NOTICE OF CORRECTION OF NOTICE OF 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: Correction of notice of 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.

SUMMARY: This notice corrects the notice of revocation published in the *Customs Bulletin*, Vol. 43, No. 33, on August 13, 2009. CBP is correcting the notice of revocation because HQ W967842 and HQ W967843 contained errors.

DATES: Immediately.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 43, No. 33, on August 13, 2009, revoking three ruling letters relating to the tariff classification of auto-samplers for chromatographs and DNA sequencing genetic analyzer machines. However, CBP erroneously published Headquarters Ruling letters (HQ) W967842 and HQ W967843 (Attachments A and B, respectively). This document modifies the notice of revocation by providing corrected texts of HQ W967842 and HQ W967843, which are attached to this document (Attachments A and B, respectively). The information set forth in the Supplementary Information section of the notice of revocation published on August 13, 2009, is applicable to the correct versions of HQ W967842 and HQ W967843, attached to this document (Attachments A and B, respectively).

Accordingly, pursuant to 19 U.S.C. 1625(c)(1), CBP is correcting the notice of revocation by providing corrected texts of HQ W967842 and HQ W967843.

Dated: August 21, 2009

IEVA O'ROURKE
for Myles B. Harmon, Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ W967842

August 21, 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 characteristics 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 chromato-

graph 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 ITA does not cover all "high-tech" products. Also, the ITA does not determine the tariff classification of specific products. Accordingly, we do not agree with the commenters' contention that, based on the terms or intent of the ITA, this office is required to classify the auto-sampler in heading 9027, HTSUS.

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.

Sincerely,

IEVA O'ROURKE

*for Myles B. Harmon, Director
Commercial and Trade Facilitation Division*

[ATTACHMENT B]

HQ W967843

August 21, 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 ITA does not cover all "high-tech" products. Also, the ITA does not determine the tariff classification of specific products. Accordingly, we do not agree with the commenters' contention that, based on the terms or intent of the ITA, this office is required to classify the auto-sampler in heading 9027, HTSUS.

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*.

Sincerely,

IEVA K. O'ROURKE
for Myles B. Harmon, Director
Commercial and Trade Facilitation Division