

U.S. Customs and Border Protection



19 CFR CHAPTERS I AND IV

CBP DEC. 10-03

Name Change of Two DHS Components

AGENCY: U.S. Customs and Border Protection, DHS; U.S. Immigration and Customs Enforcement, DHS; Department of the Treasury.

ACTION: Final rule.

SUMMARY: On March 31, 2007, the name of the Bureau of Customs and Border Protection changed to U.S. Customs and Border Protection (CBP) and the name of the Bureau of Immigration and Customs Enforcement changed to U.S. Immigration and Customs Enforcement (ICE). This final rule revises two chapter headings in title 19 of the Code of Federal Regulations to reflect the name changes for those two Department of Homeland Security (DHS) components.

EFFECTIVE DATE: March 16, 2010

FOR FURTHER INFORMATION CONTACT: For CBP: Harold Singer, Director, Regulations and Disclosure Law Division, Office of International Trade, U.S. Customs and Border Protection, (202) 325-0101. For ICE: Jason J. Johnsen, Writer/Editor, Office of Policy, U.S. Immigration and Customs Enforcement, (202) 732-4245.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 2002, the President signed the Homeland Security Act of 2002, 6 U.S.C. 101 et seq., Pub. L. 107-296, (the “HSA”), establishing the Department of Homeland Security (DHS). Pursuant to section 403(1) of the HSA (6 U.S.C. 203(1)), the U.S. Customs Service was transferred from the Department of the Treasury to DHS effective March 1, 2003. In addition, the Customs Service was renamed as the “Bureau of Customs and Border Protection” pursuant to

section 1502 of the HSA. Section 442 of the HSA (6 U.S.C. 252) established the “Bureau of Border Security.” Under section 1502 of the HSA, the Bureau of Border Security was renamed as the “Bureau of Immigration and Customs Enforcement,” effective March 1, 2003. The President’s “Reorganization Plan Modification for the Department of Homeland Security,” dated January 30, 2003, memorializes these name changes.

On January 18, 2007, DHS notified Congress that it was changing the name of the Bureau of Customs and Border Protection to “U.S. Customs and Border Protection (CBP)” and the name of the Bureau of Immigration and Customs Enforcement to “U.S. Immigration and Customs Enforcement (ICE).” Pursuant to section 872(a)(2) of the HSA (6 U.S.C. 452(a)(2), notice of the name change was provided to Congress no later than 60 days before the change could become effective. On April 23, 2007, a notice was published in the **Federal Register** to inform the public that DHS had changed the names of the two components effective March 31, 2007. 72 FR 20131.

This document revises the headings of chapters I and IV of title 19 of the Code of Federal Regulations (19 CFR) to reflect the agency name changes as set forth in the **Federal Register** notice of April 23, 2007.

Inapplicability of Prior Public Notice and Delayed Effective Date Requirements

This regulation involves matters relating to agency management and involves a technical change regarding the name of the two DHS components. For this reason, pursuant to 5 U.S.C. 553(a)(2), prior notice and comment is not required. Because this is not a substantive rule, publication and service of the rule thirty days before its effective date, pursuant to 5 U.S.C. 553(d), is likewise not required.

The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. Further, this amendment does not meet the criteria for a “significant regulatory action” for purposes of Executive Order 12866.

AMENDMENTS TO THE REGULATIONS

For the reasons set forth above in the preamble and the April 23, 2007, DHS Federal Register notice announcing the name change for CBP and ICE, the headings of chapters I and IV of title 19 of the Code of Federal Regulations are amended as set forth below:

1. Revise the chapter I heading to title 19 to read as follows.

**CHAPTER I – U.S. CUSTOMS AND BORDER PROTECTION,
DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT
OF THE TREASURY**

2. Revise the chapter IV heading to title 19 to read as follows.

**CHAPTER IV – U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT;
DEPARTMENT OF HOMELAND SECURITY**

JANET NAPOLITANO,
Secretary,
Department of Homeland Security.

TIMOTHY SKUD,
Deputy Assistant Secretary
(Tax, Tariff, and Trade Policy),
Department of the Treasury.

Dated: March 10, 2010

[Published in the Federal Register, March 16, 2010 (75 FR 12445)]

**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:

<i>Name</i>	<i>License #</i>	<i>Port Name</i>
Milton F. Whelan	09882	Tampa
Lucy M. Manning	17140	Philadelphia
Byron Leslie	04158	New York
Theodore L. Estrup, III	04165	Chicago

Dated: February 26, 2010

DANIEL BALDWIN
Assistant Commissioner
Office of International Trade

NOTICE OF CANCELLATION OF CUSTOMS BROKER LICENSE

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 U.S. Customs and Border Protection regulations (19 CFR 111.51(b)), the following Customs broker license and all associated permits are cancelled with prejudice.

<i>Name</i>	<i>License #</i>	<i>Issuing Port</i>
HPH International, Inc.	09358	Los Angeles

Dated: February 26, 2010

DANIEL BALDWIN
Assistant Commissioner
Office of International Trade

[Published in the Federal Register, March 12, 2010 (75 FR 11898)]

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 U.S. Customs and Border Protection regulations (19 CFR 111.51), the following Customs broker licenses and all associated permits are cancelled without prejudice.

<i>Name</i>	<i>License #</i>	<i>Issuing Port</i>
David J. Lee	05541	Los Angeles
American Customs Brokers Co., Inc.	04578	Los Angeles
Import Brokers, Inc.	06291	Miami
Bridgeport Customs Brokers, Inc.	14368	Laredo
Central Carolina Shipping, Inc.	09162	Charlotte

Dated: February 26, 2010

DANIEL BALDWIN
Assistant Commissioner
Office of International Trade

[Published in the Federal Register, March 12, 2010 (75 FR 11899)]

**REQUEST FOR APPLICANTS FOR APPOINTMENT TO THE
ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS
OF CUSTOMS AND BORDER PROTECTION (COAC)**

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

ACTION: Committee Management; request for applicants for appointment to the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC).

SUMMARY: U.S. Customs and Border Protection (CBP) is requesting individuals who are interested in serving on the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) to apply for appointment. COAC provides advice and makes recommendations to the Commissioner of CBP, Secretary of Homeland Security, and Secretary of the Treasury on all matters involving the commercial operations of CBP and related DHS functions.

DATE: Applications for membership should reach CBP on or before May 15, 2010.

ADDRESS: If you wish to apply for membership, your application should be sent to CBP by one of the following methods:

- E-mail: *Tradeevents@dhs.gov*.
- Facsimile: 202-325-4290
- Mail: Ms. Wanda J. Tate, Program Management Analyst, Office of Trade Relations, Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Room 5.2A, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda J. Tate, Program Management Analyst, Office of Trade Relations, Customs and Border Protection, (202) 344-1440, FAX (202) 325-4290.

SUPPLEMENTARY INFORMATION:

The Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) is an advisory committee established in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C., app.

Purpose and Objective : The purpose of the Committee is to provide advice to the Commissioner of Customs and Border Protection, Secretary of Homeland Security, and Secretary of the Treasury on all matters involving the commercial operations of U.S. Customs and

Border Protection (CBP) and related functions within the Department of Homeland Security (DHS) or Treasury, and to submit an annual report to Congress describing its operations and setting forth any recommendations. The Committee provides a critical and unique forum for distinguished representatives of diverse industry sectors to present their views and advice directly to senior Treasury, DHS, and CBP officials. This is done on a regular basis in an open and candid atmosphere.

Balanced Membership Plans: The members will be selected by the Commissioner of CBP, subject to approval by the Secretary of Homeland Security, jointly with the Secretary of the Treasury from representatives of the trade and transportation community that do business with CBP, or others who are directly affected by CBP commercial operations and related functions. In addition, members will represent major regions of the country, and, by statute, not more than ten of the twenty Committee members may be affiliated with the same political party.

Background

In the Omnibus Budget Reconciliation Act of 1987, (Pub. L. 100–203), Congress directed the Secretary of the Treasury to create an Advisory Committee on Commercial Operations of the Customs Service (now CBP). The Committee is to consist of twenty members drawn from industry sectors affected by CBP commercial operations with balanced political party affiliations. The Committee's first two-year charter was filed on October 17, 1988, and the Committee has been renewed for subsequent two-year terms times since then.

With the creation of DHS, the Secretary of the Treasury delegated a joint chair and Committee management role to the Secretary of Homeland Security (*see* Treasury Department Order No. 100–16, 19 CFR Part 0, Appendix.). In Delegation Number 7010.3 (May, 2006), the Secretary of Homeland Security delegated to the Commissioner of CBP the authority to preside jointly with Treasury over the meetings of the Committee, to make appointments to COAC subject to approval of the Secretary of Homeland Security jointly with Treasury, and to receive COAC advice.

It is expected that, during its twelfth two-year term, the Committee will consider issues relating to enhanced border and cargo supply chain security, CBP modernization and automation, informed compliance and compliance assessment, account-based processing, commercial enforcement and uniformity, international efforts to harmonize

customs practices and procedures, strategic planning, northern border and southern border issues, CBP agricultural inspection and import safety.

Committee Meetings

The Committee meets once each quarter, although additional meetings may be scheduled. Generally, every other meeting of the Committee may be held outside of Washington, D.C., usually at a CBP port of entry.

Committee Membership

Membership on the Committee is personal to the appointee and is concurrent with the two-year duration of the charter for the twelfth term. Under the Charter, a member may not send an alternate to represent him or her at a Committee meeting. However, since Committee meetings are generally open to the public, another person from a member's organization may attend and observe the proceedings in a nonparticipating capacity. Regular attendance is essential; the Charter provides that a member who is absent for two consecutive meetings or two meetings in a calendar year may be recommended for replacement on the Committee.

No person who is required to register under the Foreign Agents Registration Act as an agent or representative of a foreign principal may serve on this advisory committee.

Members who are currently serving on the Committee are eligible to re-apply for membership provided that they are not in their second consecutive term and that they have met attendance requirements. A new application letter (*see* ADDRESSES above) is required, but it may incorporate by reference materials previously filed (please attach courtesy copies).

Members will not be paid compensation by the Federal Government for their services with respect to the COAC.

Application for Advisory Committee Appointment

There is no prescribed format for the application. Applicants may send a letter describing their interest and qualifications and enclose a resume.

Any interested person wishing to serve on the (COAC) must provide the following:

- Statement of interest and reasons for application;
- Complete professional biography or resume;
- Home address and telephone number;

- Work address, telephone number, and email address;
- Political affiliation in order to ensure balanced representation (mandatory). If no party registration or allegiance exists, indicate “independent” or “unaffiliated”;
- Statement agreeing to submit to pre-appointment background and tax checks (mandatory). A national security clearance is not required for the position.

In support of the policy of DHS on gender and ethnic diversity, qualified women and members of minority groups are encouraged to apply for membership.

DAVID V. AGUILAR
Acting Deputy Commissioner
U.S. Customs and Border Protection

Dated: March 10, 2010

[Published in the Federal Register, March 16, 2010 (75 FR 12561)]



DEPARTMENT OF THE TREASURY

19 CFR PART 159

USCBP-2010-0008

RIN 1505-AC21

Courtesy Notice of Liquidation

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend title 19 of the Code of Federal Regulations (CFR) pertaining to the method by which CBP issues courtesy notices of liquidation. Courtesy notices of liquidation provide informal, advanced notice of the liquidation date and are not required by statute. Currently, CBP provides an electronic and a paper courtesy notice for importers of record whose entry summaries are electronically filed in the Automated Broker Interface (ABI). In an effort to streamline the notification process and reduce printing and mailing costs, CBP proposes to discontinue mailing paper courtesy notices of liquidation to importers of record whose entry summaries are filed in ABI.

DATE: Comments must be received on or before May 17, 2010.

ADDRESS: You may submit comments, identified by *USCBP docket number*, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments via docket number USCBP–2010–0008.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, N.W. (Mint Annex), Washington, D.C. 20229–1179.

Instructions: All submissions received must include the agency name and USCBP docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, N.W., 5th Floor, Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Laurie Dempsey, Trade Policy and Programs, Office of International Trade, Customs and Border Protection, 202–863–6509.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific por-

tion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

Section 1500(e) of title 19 of the United States Code (19 U.S.C. 1500(e)) requires CBP to provide notice of liquidation to the importer or his agent and authorizes CBP to determine the form and manner by which to issue the notice. Section 159.1 of the CBP regulations (19 CFR 159.1) defines “liquidation” as the final calculation of duties (not including vessel repair duties) or drawback accruing on an entry. “Duties” is defined in 19 CFR 101.1 as “[c]ustoms duties and any internal revenue taxes which attach upon importation.” Accordingly, in the customhouse at each port of entry, CBP posts the official bulletin notice of liquidation indicating the date of liquidation for the entries listed therein. 19 CFR 159.9(c). The posting of the bulletin notice of liquidation is “legal evidence of liquidation.” 19 CFR 159.9(c).

CBP also has the discretion to provide advance notice of the liquidation date to the importer or his agent by issuing informal, courtesy notices of liquidation (hereinafter “courtesy notice” or “courtesy notices”). 19 CFR 159.9(d). The courtesy notice is not required by 19 U.S.C. 1500(e) and does not trigger the date upon which an importer may file a protest under 19 U.S.C. 1514 challenging certain aspects of the liquidation.

CBP intends to make certain changes to the distribution of courtesy notices of liquidation. Courtesy notices are mailed and/or issued electronically to two parties who use the Automated Broker Interface (ABI) to file their entry summaries: importers of record and customs brokers who are duly authorized agents of the importers.

Currently, CBP’s Technology Center transmits, on a weekly basis, electronic courtesy notices to all ABI filers and mails paper courtesy notices, on CBP Form 4333–A, to all importers of record whose entry summaries are set to liquidate by each port of entry. As a result, two courtesy notices are issued for importers of record whose electronic entry summaries are filed in ABI: the ABI filer receives an electronic courtesy notice on behalf of the importer of record; and, the importer of record receives a paper courtesy notice. If the importer of record is the ABI filer, then the importer of record receives both an electronic and a paper courtesy notice. *See* 19 CFR part 143. If an importer files a paper formal entry with CBP, that importer receives a mailed courtesy notice. *See* 19 CFR parts 141 and 142.

In an effort to streamline the notification process and reduce printing and mailing costs, CBP is proposing to discontinue mailing the paper courtesy notice to importers of record whose entry summaries are filed in ABI. The ABI filer, who is either the importer of record or a customs broker, already receives an electronic courtesy notice thereby rendering the paper courtesy notice duplicative. If the proposal is adopted, ABI filers would only receive electronic courtesy notices. Below is an analysis of the cost savings that will result if CBP discontinues paper courtesy notices to these recipients.

Cost Savings

The following analysis details the cost savings that would be realized by the agency as a result of eliminating paper courtesy notices to importers of record who personally receive an electronic courtesy notice or whose broker receives an electronic courtesy notice on their behalf. In FY 2009, CBP sent approximately 7.2 million paper courtesy notices. CBP estimates that 99.6 percent of all summaries are currently filed electronically using ABI. Under the proposed rule, CBP estimates that over 90 percent of paper courtesy notices will be eliminated. For the purpose of this analysis, we assume 6.5 million paper notices (90 percent) will be eliminated. Additionally, we assume that the number of notices does not change from year to year.

Quantified Savings

1. Postage

By decreasing the number of paper courtesy notices distributed, CBP will significantly reduce postage costs required to mail the notices. Current U.S. Postal Service first-class letter rates are 44 cents within the United States, 75 cents to Canada, 79 cents to Mexico, and 98 cents to the rest of the world. Exhibit 1 shows the total estimated savings on postage in 2010, an estimated \$3 million.

Exhibit 1. Total Savings on Postage in 2010 (undiscounted)

Notice Destination	Number of Notices	Total Cost
Domestic	5,899,816	\$2,595,919
Canada	379,301	284,475
Mexico	57,371	45,323
Other Foreign	167,193	163,849
Total	6,503,681	\$3,089,566

2. Forms

CBP estimates that each courtesy notice form costs \$0.027. Decreasing the number of paper forms by 6.5 million will save the agency approximately \$175,599 per year.

3. Labor

CBP employs contractors to print the paper courtesy notices and estimates the cost of labor is \$0.08 per copy. Based on this estimate, the cost savings of labor for printing is approximately \$520,294 per year.

Total Quantified Savings

Exhibit 2 displays all of the cost savings that have been quantified for this analysis.

Exhibit 2. Total Savings from Reducint Paper Courtesy Notices in 2010 (undiscounted)

Cost	Annual Savings
Postage	\$3,089,566
Forms	175,599
Labor	520,294
Total	\$3,785,460

We total these savings over the next 10 years at a 3 and 7 percent discount rate, per guidance provided in the OMB's Circular A-4. Total estimated savings range from \$28.4 million to \$33.3 million over the period of analysis. Annualized savings are \$3.8 million. Total present value and annualized savings are presented in Exhibit 3.

Exhibit 3. Total present value and annualized costs of additional data elements, 2010–2019, \$2010

Total Present Value Costs (\$millions)		Annualized Costs (\$millions)	
3%	7%	3%	7%
\$33.3	\$28.4	\$3.8	\$3.8

Additional Savings Not Quantified

CBP has service contracts with fixed monthly costs for the equipment used to print and mail the paper courtesy notices. Current maintenance costs are approximately \$45,048 per year for two printers and approximately \$3,478 per year for a finishing machine. CBP is exploring lower cost options to replace these machines, but we are unable to quantify these savings or predict when they might occur.

Additional costs associated with the printing and distribution of paper courtesy notices include labor by government employees on the CBP Mail Management Team and mainframe processing time. Reducing the number of paper notices will allow both Mail Management Team and mainframe resources to be used for other purposes. While we do not have enough data to quantify these savings at this time,

they are important to consider in the analysis of the total impact of the reduction of paper courtesy notices.

Summary of Cost Savings

CBP estimates that this proposed rule will save the agency \$3.8 million annually by eliminating 90%, or approximately 6.5 million, of the paper courtesy notices currently sent to importers. Quantified savings include reduced postage, forms, and contract labor costs. Additional savings may be realized by reducing maintenance costs on equipment used to produce the paper notices and allowing more efficient use of other government resources, but we do not have enough data to quantify these at this time.

Explanation of Proposed Amendments

This document proposes to amend section 159 of the CBP regulations (19 CFR 159) by removing any reference to Customs Form 4333–A, when used in connection with courtesy notices. This change is necessary to reflect that electronic courtesy notices in ABI are not set forth on CBP Form 4333–A; however, the form will continue to be used when paper courtesy notices are distributed. Moreover, this document proposes to amend 19 CFR 159.9(c)(1) by removing the last sentence, which refers to electronic courtesy notices, because section 159.9(d) discusses courtesy notices generally.

The proposed changes will not affect CBP's continuing legal obligation to post the official bulletin notice of liquidation in the customhouse at all ports of entry pursuant to 19 CFR 159.9(b). Moreover, the proposed amendment will not affect the use of CBP Form 4333–A as a notice of extension and suspension. 19 CFR 159.12(b)–(c).

In addition, this document proposes non-substantive amendments to §§ 159.9, 159.10, 159.11, and 159.12 of the CFR to reflect the nomenclature changes effected by the transfer of CBP to the Department of Homeland Security and other minor editorial edits.

EXECUTIVE ORDER 12866

This proposed rule is not a “significant regulatory action” per Executive Order 12866 because it will not result in expenditures totaling \$100 million or more in any one year. The Office of Management and Budget (OMB) has not reviewed this regulation under that order. The proposed rule would result in cost savings as discussed earlier in the preamble.

REGULATORY FLEXIBILITY ACT

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires federal agencies to examine the impact a rule would have on small entities.

A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

It is noted that this proposal does not directly affect small entities because these proposed amendments place no new regulatory requirements on small entities to change their business practices. This proposed rule will eliminate paper courtesy notices that are sent to importers who file entry summaries via ABI or who hire a third party to file via ABI on their behalf. Those importers who do not file using ABI are likely to be small businesses or individuals making entry on personal goods, all of whom will continue to receive paper courtesy notices. As such, this rule should not adversely impact those importers. The primary impact of this proposed rule will be the savings realized by CBP as a result of eliminating a large portion of its annual printing and mailing costs associated with paper courtesy notices. For these reasons, we believe the effects of this proposed rule will not have an impact on a substantial number of small entities and that any effect would not rise to the level of a “significant” economic impact.

We welcome comments on this conclusion.

PAPERWORK REDUCTION ACT

As there is no collection of information proposed in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

SIGNING AUTHORITY

This proposed regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury’s authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

List of Subjects in 19 CFR Part 159

Antidumping, Countervailing duties, Customs duties and inspection, Foreign currencies.

PROPOSED AMENDMENTS TO THE CBP REGULATIONS

For the reasons set forth in the preamble, part 159 of title 19 of the CFR (19 CFR Part 159) is proposed to be amended as set forth below.

PART 159 – LIQUIDATION OF DUTIES

1. The general authority citation for part 159 continues to read as follows:

Authority: 19 U.S.C. 66, 1500, 1504, 1624.

* * * * *

2. In § 159.9:

a. Paragraph (a) is amended by removing the word “Customs” and adding in its place the term “CBP”.

b. Paragraph (c)(1) is amended by removing the word “shall” from the first and second sentence and adding in its place the word “will”; and, by removing the last sentence.

c. Paragraph (d) is revised.

The revision reads as follows:

§ 159.9 Notice of liquidation and date of liquidation for formal entries.

* * * * *

(d) *Courtesy notice of liquidation.* CBP will endeavor to provide importers or their agents with a courtesy notice of liquidation for all entries scheduled to be liquidated or deemed liquidated by operation of law. The courtesy notice of liquidation that CBP will endeavor to provide will be electronically transmitted pursuant to an authorized electronic data interchange system if the entry summary was filed electronically in accordance with part 143 of this chapter or on CBP Form 4333–A if the entry was filed on paper pursuant to parts 141 and 142 of this chapter. This notice will serve as an informal, courtesy notice and not as a direct, formal, and decisive notice of liquidation.

§ 159.10 [Amended]

3. In § 159.10:

a. Paragraph (a)(2) is amended by removing the word “Customs” and adding in its place the term “CBP”.

b. Paragraphs (c)(1) and (3) are amended by removing the word “Customs” where it appears and adding in each place the term “CBP”; and in paragraphs (c)(1) through (3) by removing the word “shall” each place that it appears and adding in its place the word “will”.

§ 159.11 [Amended]

4. In § 159.11:

a. Paragraph (a) is amended by removing the word “shall” each place that it appears and adding in its place the word “will”, by removing the word “Customs” the first two places it appears and adding in its place the term “CBP”, and, in the last sentence, by removing the words “on Customs Form 4333–A”.

b. Paragraph (b) is amended by removing the word “shall” each place that it appears and adding in its place the word “will”.

§ 159.12 [Amended]

5. In § 159.12:

a. Paragraphs (a)(1)(i) and (ii), (b), (c), and (d)(1) are amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP”.

b. Paragraph (f)(1) is amended, in the first sentence, by removing the word “shall” and adding in its place the word “will” and, in the last sentence, by removing the word “Customs” at its first occurrence and adding in its place the term “CBP” and removing the words “on Customs Form 4333–A”.

c. Paragraph (f)(2) is amended by removing the word “shall” and adding in its place the word “will”.

d. Paragraph (g) is amended, in the first sentence, by removing the word “shall” and adding in its place the word “will”, and by removing the word “Customs” and adding in its place the term “CBP”; and, in the last sentence, by removing the word “Customs” at its first occurrence and adding in its place the term “CBP”, and by removing the words “on Customs Form 4333–A”.

DAVID V. AGUILAR

*Acting Deputy Commissioner
U.S. Customs and Border Protection*

Dated: March 10, 2010

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

[Published in the Federal Register, March 16, 2010 (75 FR 12483)]

**PROPOSED REVOCATION OF A RULING LETTERS AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A CERTAIN SOLAR
MODULE**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the classification of a certain solar module.

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

DATE: Comments must be received on or before April 30, 2010.

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

FOR FURTHER INFORMATION CONTACT: Richard Mojica, Tariff Classification and Marking Branch, at (202) 325–0032.

SUPPLEMENTARY INFORMATION:

Background

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

imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of a certain solar module. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (“NY”) N047472, dated January 9, 2009 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N047472, CBP classified the solar module under heading 8501, HTSUS, which provides for: “Electric motors and generators.” We have reviewed that ruling and determined that the classification set forth therein is incorrect. It is now our position that the module is properly classified under heading 8541, HTSUS, which provides in relevant part for: “Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled into modules or made up into panels.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N047472 and any other ruling not specifically identified, to reflect the proper classification of this merchandise according to the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H084604 (Attachment B). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded

by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: March 26, 2010

GAIL A. HAMILL

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N047472

January 9, 2009

CLA-2-85:OT:RR:E:NC:N1:112

CATEGORY: Classification

TARIFF NO.: 8501.31.8000

MR. JEFFREY M. YOUNG

MOORE & VAN ALLEN, PLLC

P.O. BOX 13706

RESEARCH TRIANGLE PARK, NC 27709

RE: The tariff classification of a Trinasolar TSM-175D solar module from China

DEAR MR. YOUNG:

In your letter dated December 19, 2008, on behalf of GES USA Inc., you requested a tariff classification ruling.

The merchandise concerned is referred to as a Trinasolar TSM-175D solar module. This device consists of 72 interconnected monocrystalline silicon cells. These types of cells are known as photovoltaic cells. The 72 photovoltaic cells will be connected electrically and mounted in a photovoltaic module. In addition to the photovoltaic cells, these modules will incorporate by-pass diodes. The by-pass diodes allow current to pass around "shaded cells" and thereby reduce voltage loss. When a module becomes shaded, its by-pass diode becomes forward biased and begins to conduct current through itself. The diode also holds the entire shaded module or group of cells to a small negative voltage of approximately -0.7 volts, thus limiting the reduction in array output.

These modules will not be connected to any other device when imported from China. Once imported, this module will be connected to several other modules to create a solar panel which will produce direct current electricity from the sun. The maximum output of these modules will be 175 watts.

You suggested that the Trinasolar TSM-175D solar module is classifiable under subheading 8541.40.6020 of the Harmonized Tariff Schedule of the United States (HTSUS). Subheading 8541.40.6020 provides for "Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules...: Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels...: Other diodes: Other: Solar cells: Assembled into modules or made up into panels." However, Explanatory Note (EN) 85.41 (B) (i) states that heading 8541 does not cover panels or modules equipped with elements, however simple, i.e. diodes to control the direction of the current. As such, since the Trinasolar TSM-175D solar module does contain diodes, classification under subheading HTSUS 8541.40.6020 is inapplicable.

The applicable subheading for the Trinasolar TSM-175D solar module will be 8501.31.8000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Electric motors and generators: Other DC motors; DC generators: Of an output not exceeding 750 W: Generators." The rate of duty will be 2.5%.

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 heading 8541, please contact National Import Specialist Linda Hackett at (646) 733-3015. If you have any other questions regarding this ruling, please contact National Import Specialist Steve Pollichino at (646) 733-3008.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H084604
 CLA-2 OT:RR:CTF:TCM H084604 RM
 CATEGORY: Classification
 TARIFF NO.: 8541.40.60

JEFFEREY M. YOUNG, ESQ.
 MOORE & VAN ALLEN, PLLC
 P.O. BOX 13706
 RESEARCH TRIANGLE PARK, NC 27709

RE: Proposed Revocation of New York Ruling Letter N047472; Tariff Classification of the Trinasolar TSM-175D Solar Module

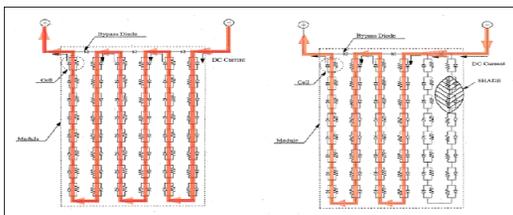
DEAR MR. YOUNG:

This is in reference to New York Ruling Letter (“NY”) N047472, dated January 9, 2009, issued to you on behalf of GES USA, Inc., concerning the tariff classification of the Trinasolar TSM-175D solar module. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under heading 8501 of the Harmonized Tariff Schedule of the United States (“HTSUS”), as an electric generator. We have reviewed that ruling and found it to be incorrect. For the reasons set forth below, we intend to revoke NY N047472.

FACTS:

Trinasolar’s TSM-175D solar module is comprised of 72 monocrystalline silicon photovoltaic (“PV”) cells and a junction box.¹ The cells are arranged in three, 24-cell strings, and are encapsulated between a sheet of tempered glass and a polymer backing. The junction box is attached to the rear of the module. It houses terminals to connect the strings of cells together, cables and connectors for external wiring, and 3 bypass diodes (one for each string) to protect the cells from overheating when shaded.² The module can generate a maximum of 175 watts.

Under normal conditions with no shading, every cell on the module will generate power and the bypass diodes will be inactive. However, if part of the module becomes shaded (*e.g.*, by a leaf or an antenna), the shaded cells will cease to generate power and will instead consume the energy produced by the active cells. Left unattended, the shaded cells would eventually overheat and deteriorate.



¹ PV cells are semiconductor devices which convert sunlight directly into direct current (“DC”) electricity.

² See Stuart R. Wendham, Martin A. Green, Muriel E. Watt & Richard Corkish, *Applied Photovoltaics*, pp. 75–77 (2nd ed. 2007).

Bypass diodes protect the shaded cells from overheating by diverting the electrical current around strings with shaded cells and through an external circuit. As illustrated above, when part of the module becomes shaded, the bypass diode wired in parallel to the string with shaded cells will conduct current.³ As a result, the current will flow through the diode and around the shaded string. In turn, the module will continue to produce electricity, albeit at a reduced rate.

ISSUE:

Is the Trinasolar TSM-175D solar module classified under heading 8541, HTSUS, as a photosensitive semiconductor device, or under heading 8501, as an electric generator?

LAW AND ANALYSIS:

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

The 2010 HTSUS provisions under consideration are the following:

8501	Electric motors and generators (excluding generating sets):
	Other DC motors; DC generators:
8501.31	Of an output not exceeding 750 W:
8501.31.80	Generators ...
8541	Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof:
8541.40	Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up in panels; light-emitting diodes:
8541.40.60	Other diodes ...
	* * *

Note 2 to Chapter 85, HTSUS, provides, in part:

Headings 8501 and 8504 do not apply to goods described in heading ...8541.

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

EN 85.01 provides, in pertinent part:

³*See* Photovoltaic CDROM, p. 145, published by Prof. Christiana Honsenber and Stuart Bowden of the Arizona State University Solar Power Lab (<http://pvcdrrom.pveducation.org/>).

(II) ELECTRICAL GENERATORS

Machines that produce electrical power from various energy sources (mechanical, solar, etc.) are classified here, provided they are not more specifically covered by any other heading of the Nomenclature.

... The heading also covers photovoltaic generators consisting of panels of photocells combined with other apparatus, e.g., storage batteries and electronic controls (voltage regulator, inverter, etc.) and panels or modules equipped with elements, however simple (for example, diodes to control the direction of the current), which supply the power directly to, for example, a motor, an electrolyser.

EN 85.41 provides, in pertinent part:

(B) PHOTOSENSITIVE SEMICONDUCTOR DEVICES

This group comprises photosensitive semiconductor devices in which the action of visible rays, infra-red rays or ultra-violet rays causes variations in resistivity or generates and electromotive force, by the internal photoelectric effect.

* * *

The main types of photosensitive semiconductor devices are:

(2) **Photovoltaic cells**, which convert light directly into electrical energy without the need for an external source of current. [...]

Special categories of photovoltaic cells are:

(i) **Solar cells**, silicon photovoltaic cells which convert sunlight directly into electric energy. They are usually used in groups such as source of electric power, e.g., in rockets or satellites employed in space research, for mountain rescue transmitters.

The heading also covers solar cells, whether or not assembled in modules or made into panels. However the heading **does not cover** panels or modules equipped with elements, however simple, (for example, diodes to control the direction of current), which supply the power directly to, for example, a motor, an electrolyser (**heading 85.01**).

* * *

Photosensitive semiconductor devices fall in this heading whether presented mounted (*i.e.*, with their terminals or leads), packaged or unmounted.

* * *

In NY N047472, CBP classified the subject module under heading 8501, HTSUS, as an electric generator. Paraphrasing EN 85.41(B)(2)(i), as follows “... heading 8541 does not cover panels or modules equipped with elements, however simple, *i.e.*, diodes to control the direction of the current”, we reasoned that the module was beyond the scope of heading 8541, HTSUS, because it contains bypass diodes.

Heading 8541, HTSUS, provides for “Photosensitive semiconductor devices, including photovoltaic cells ... assembled in modules.” EN 85.41(B) explains that photosensitive semiconductor devices are those “in which the

action of visible rays, infra-red rays or ultra-violet rays causes variations in resistivity ... by the internal photoelectric effect.” The EN adds that the heading includes PV cells assembled into modules, even if “presented mounted (i.e. with their terminals or leads),” provided they are not “*equipped with elements, however simple* (for example, diodes to control the direction of the current), *which supply the power directly to, for example, a motor, an electrolyser.*” (Emphasis added).

At the outset, we note that a solar module is not precluded from classification under heading 8541, HTSUS, simply because it contains “elements” (e.g., diodes which control the direction of the current). Those elements must also “supply power directly” to an external load, such as a motor or an electrolyser. See EN 85.41(B)(2)(i).

The Trinasolar TSM-175D solar module is “presented mounted” (i.e., with its terminals and external cables and connectors), and includes three bypass diodes to protect it from overheating. See EN 85.41(B)(2)(i). The diodes achieve this function by controlling the direction of the current that flows through the module. They do not “supply power directly” to an external load. In fact, our research indicates that solar modules are very rarely used to supply power directly to a device.⁴ The vast majority of applications require that the DC produced by the module be converted into alternating current (“AC”) by an inverter.⁵ Therefore, as the subject module is not equipped with elements which supply power to an external load, we find that it is classified under heading 8541, HTSUS, as a photosensitive semiconductor device.

Pursuant to Note 2 to Chapter 85, HTSUS, as the module is described by heading 8541, HTSUS, it is precluded from classification under heading 8501, HTSUS. Our conclusion is in accord with NY 866046, dated May 21, 1993, wherein CBP classified a solar module equipped with wired-in bypass diodes under heading 8541, HTSUS.⁶

HOLDING:

By application of GRI 1, the Trinasolar TSM-175D solar module is classified under heading 8541, HTSUS, specifically in subheading 8541.40.60, which provides for: “Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels ...: Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up in panels ...: Other diodes.” The 2010, column one, general rate of duty is: Free.

⁴See Volker Quaschnig, *Understanding Renewable Energy Systems*, pg. 172 (1st ed., 2005).

⁵*Id.*

⁶Although the ruling does not reference the bypass diodes, the data sheet provided by the manufacturer, which is included in the case file, makes clear that the module included “built-in bypass diodes (12V configuration) which “help system performance during partial shading.”

EFFECT ON OTHER RULINGS:

NY N047472, dated January 9, 2009, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division


GENERAL NOTICE**19 CFR PART 177****Proposed Revocation and Modification of Ruling Letters and Proposed Revocation of Treatment Relating to the Tariff Classification of Solar Powered Decorative Lanterns**

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

ACTION: Notice of proposed revocation and modification of ruling letters and treatment concerning the tariff classification of solar powered lanterns.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter and modify one ruling letter, both relating to the tariff classification of solar powered lanterns under the Harmonized Tariff Schedule of the United States. CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before April 30, 2010.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Office of International Trade, Attention: Trade and Commercial Regulations Branch, 799 9th Street, 5th Floor, N.W., Washington, D.C. 20229–1179. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington,

D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Dwayne S. Rawlings, Tariff Classification and Marking Branch, (202) 325-0092.

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter and modify one ruling letter, both pertaining to the tariff classification of solar powered lanterns. Although in this notice, CBP is specifically referring to the modification of NY N022872, dated February 21, 2008 (Attachment A), and revocation of NY N024029, dated March 6, 2008 (Attachment B), this notice covers any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N022872 and NY N024029, CBP classified solar powered decorative lanterns in heading 9405, HTSUS, specifically subheading 9405.40.60, HTSUS, which provides for other electric lamps and lighting fittings of base metal. It is now CBP's position that the lanterns are properly classified in heading 8306, HTSUS, specifically under subheading 8306.29.00, HTSUS, which provides for statuettes and other ornaments of base metal.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify ruling NY N022872 and revoke ruling NY N024029, and modify or revoke any other ruling not specifically identified, in order to reflect the proper analysis contained in proposed rulings HQ H024761 (Attachment C) and HQ H084499 (Attachment D). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: March 26, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

N024029

March 6, 2008

CLA-2-94:OT:RR:NC:1:110

CATEGORY: Classification

TARIFF NO.: 9405.40.6000

MS. SANDY COOPER
GARDEN MEADOW INC.
BLDG. G & H
124 RESEARCH DRIVE
MILFORD, CT 06460

RE: The tariff classification of lanterns from China.

DEAR MS. COOPER:

In your letter dated February 26, 2008, you requested a tariff classification ruling

The merchandise under consideration are two styles of Solar Scroll Lanterns. Samples of the two lanterns were submitted with your ruling request and will be returned to you. They are identified as the "Solar Etched Flower Lantern" and the "Solar Etched Column Patio Light."

The submitted samples are constructed of base metal with a rustic finish and feature frosted translucent plastic lenses on all four sides. Each lantern measures approximately 4½ inches square by 12 inches tall and feature four metal balls as legs. The Solar Etched Flower Lantern features a metal tulip on a stem with two leaves on all four sides. The Solar Etched Column Patio Light features metal screens with a scroll-like design on all four sides. In the base of each lantern is a removable disk measuring approximately 3 inches in diameter by 1 inch tall with a light emitting diode (LED) lamp, two solar panels, printed circuit board, rechargeable battery, ON/OFF switch and photocell. These lanterns are not designed to be carried in the hand or on the person. The Solar Scroll Lantern's batteries are charged by the solar panels during the day and automatically light up at night for up to 8 hours.

The applicable subheading for the Solar Etched Flower Lantern and the Solar Etched Column Patio Light will be 9405.40.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Lamps and lighting fittings...: Other electric lamps and lighting fittings: Of base metal: Other." The general rate of duty will be 6 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 Thomas Campanelli at 646-733-3016.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

N022872

February 21, 2008

CLA-2-94:OT:RR:NC:1:110

CATEGORY: Classification

TARIFF NO.: 8306.29.0000; 9405.40.6000

Ms. SANDY COOPER
GARDEN MEADOW INC.
124 RESEARCH DRIVE
MILFORD, CT 06460

RE: The tariff classification of a metal sculpture and lantern from China.

DEAR Ms. COOPER:

In your letter dated January 31, 2008, you requested a tariff classification ruling.

The merchandise under consideration is the "Solar Garden Vine Light" and the "Solar Musical Belly Frog." Samples of both items were submitted with your ruling request and will be returned to you.

The Solar Garden Vine Light is a lantern in the shape of a cylinder measuring approximately 11 inches tall overall with an outside diameter of approximately 6 inches. It is constructed of base metal with a rustic finish. The top of the lantern features a cone-shaped cap with hanging ring and is supported to the base by three metal rods. The midsection of the lantern features a frosted translucent plastic lens making up 8 inches of the lantern with a diameter of 4 inches. Metal bands with leaves form a vine-like pattern around the top and bottom of the lens. In the base of the lantern is a removable hockey puck size disk with a light emitting diode (LED) lamp, two solar panels, printed circuit board, rechargeable battery, photocell and ON/OFF switch. The solar panels recharge the battery by day and automatically light up at night. This lantern is not designed to be carried in the hand or on the person.

The Solar Musical Belly Frog is a base metal decorative garden ornament with a plastic solar ball. This ornament measures approximately 15 inches tall by 8 inches wide and consists of a main body supported by two legs with web feet, a frog head mounted by a spring neck and two spring like arms holding a flute. In the belly of the body is a green plastic ball with a diameter of approximately 5 inches. The ball features a solar powered LED. This product will recharge automatically and light up nightly. The function of the solar ball light is to enhance the decorative effect of the article; any lighting of the surrounding space is only incidental to the use of the importation as decorative article, not a lamp or lighting fitting.

The applicable subheading for the Solar Musical Belly Frog will be 8306.29.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "...statuettes and other ornaments, of base metal...and base metal parts thereof: Statuettes and other ornaments, and parts thereof: Other." The general rate of duty will be Free.

The applicable subheading for the Solar Garden Vine Light will be 9405.40.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Lamps and lighting fittings...: Other electric lamps and lighting fittings: Of base metal: Other." The general rate of duty will be 6 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 Thomas Campanelli at 646-733-3016.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

HQ H024761

CLA-2 OT:RR:CTF:TCM H024761DSR

CATEGORY: Classification

TARIFF NO.: 8306.29.00

MRS. SANDY COOPER, PRESIDENT
GARDEN MEADOW INC.
124 RESEARCH DRIVE
BLDG. G & H
MILFORD, CT 06460

RE: Revocation of NY N024029, dated March 6, 2008; classification of solar powered lanterns from China

DEAR MRS. COOPER:

This is in response to your letter, dated March 11, 2008, requesting reconsideration of New York Ruling Letter (NY) N024029, dated March 6, 2008, which pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of solar powered lanterns from China. The ruling classified the articles in heading 9405, HTSUS, which provides for “Lamps and lighting fittings ... not elsewhere specified or included; ...” U.S. Customs and Border Protection (CBP) has reviewed the tariff classification of the articles and has determined that the cited ruling is in error. Therefore, NY N024029 is revoked for the reasons set forth in this ruling.

FACTS:

The subject articles are described as follows in NY N024029:

The submitted samples are constructed of base metal with a rustic finish and feature frosted translucent plastic [panels] on all four sides. Each lantern measures approximately 4½ inches square by 12 inches tall and feature four metal balls as legs. The Solar Etched Flower Lantern features a metal tulip on a stem with two leaves on all four sides. The Solar Etched Column Patio Light features metal screens with a scroll-like design on all four sides. In the base of each lantern is a removable disk measuring approximately 3 inches in diameter by 1 inch tall with a light emitting diode (LED) lamp, two solar panels, printed circuit board, rechargeable battery, ON/OFF switch and photocell. These lanterns are not designed to be carried in the hand or on the person. The lanterns’ batteries are charged by the solar panels during the day and [the LED’s] automatically light up at night for up to 8 hours.

ISSUE:

Whether the Solar Etched Flower Lantern and the Solar Etched Column Patio Light are classified as “statuettes and other ornaments, of base metal” of heading 8306, HTSUS, “portable electric lamps” of heading 8513, HTSUS, or “lamps or lighting fittings ... not elsewhere specified of included” of heading 9405, HTSUS.

LAW AND ANALYSIS:

Proper analysis of classification of the subject lanterns encompasses discussion of the following provisions:

8306	Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; ...
	* * *
	Statuettes and other ornaments, and parts thereof:
8306.29.00	Other.
	* * * *
8513	Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof:
	* * *
8513.10	Lamps:
	* * *
8513.10.40	Other.
	* * * *
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; ...
	* * *
9405.40	Other electric lamps and lighting fittings:
	* * *
	Of base metal:
9405.40.60	Other.
	* * * *

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). 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 GRI's 2 through 6 may then be applied in order. In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89 80, 54 Fed. Reg. 35127 (August 23, 1989).

Commencing with classification of the articles, Notes 1(f) and 1(k) to Section XV, HTSUS (which governs chapter 83, HTSUS), exclude articles of section XVI, HTSUS (and thus heading 8513, HTSUS) and articles of chapter 94 (and thus heading 9405, HTSUS), respectively. Therefore, we must first determine whether the subject articles are portable electric lamps of heading 8513, HTSUS, or lamps and lighting fittings, not elsewhere specified or included, of heading 9405, HTSUS.

Both headings 8513, HTSUS, and 9405, HTSUS, refer to "lamps." However, the term is not defined in the HTSUS or in the Explanatory Notes. A tariff term that is not defined in the HTSUS or in the ENs is construed in accor-

dance with its common and commercial meaning. *Nippon Kogaku (USA) Inc. v. United States*, 69 CCPA 89, 92, 673 F.2d 380, 382 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 134, 673 F.2d 1268, 1271 (1982). The Oxford English Dictionary defines “lamp” as a “vessel containing oil, which is burnt at a wick, for the purpose of illumination. Now also a vessel of glass or some similar material, enclosing the source of illumination, whether a candle, oil, gas-jet, or incandescent wire.” Moreover, CBP has consistently determined that classification of articles under headings 8513, HTSUS, and 9405, HTSUS, requires that the articles provide practical or usable light to the surrounding area, and not merely highlight the articles themselves. See HQ H011693 (December 18, 2007); HQ H017657 (December 12, 2007); HQ W968029 (April 12, 2007); NY N059592 (May 20, 2009); NY N053561 (March 24, 2009); NY N024027 (March 7, 2008); NY R01525 (February 28, 2005); NY 807513 (March 31, 1995). Note that there have been instances where CBP has determined that classification under heading 9405, HTSUS, was appropriate even where the emitted light was considered merely to be decorative. However, the articles in those cases were also not elsewhere specified or included, and thus aptly fell into the residual subheading for “other electric lamps and lighting fittings” of heading 9405, HTSUS. See HQ 966327 (May 28, 2003) (various decorative lighting accessories used in automobiles); HQ 962901 (September 28, 1999) (plastic Hanukkah-themed light set); NY F83270 (March 6, 2000) (plastic illuminated scarecrow); NY G81588 (September 18, 2000) (plastic illuminated ice cube).

Here, the articles were charged for forty-eight hours and then viewed in complete darkness. The articles’ LED’s did not provide enough illumination to view the surrounding area but instead merely provided soft glows that were visible through the articles’ translucent panels, and which served only to highlight the patterns on their sides, thus enhancing their decorative appeal. It was very difficult to discern objects that were even less than one foot away from the articles. Thus, we find that the articles do not provide practical or usable light and are not “lamps” as contemplated by headings 8513, HTSUS, and 9405, HTSUS.

With regard to the applicability of heading 8306, HTSUS, EN 83.06 states that the group “statuettes and other ornaments” comprises a wide range of “ornaments of base metal of a kind designed essentially for decoration, e.g., in homes, offices, assembly rooms, places of religious worship, and gardens,” and which have no utility value but are wholly ornamental. Here, as discussed, the articles do not serve as sources of practical or usable light, and are merely meant to provide decorative mood lighting in gardens. Thus, it is now the position of CBP that the articles in NY 024029 are classified as “statuettes and other ornaments, of base metal” in heading 8306, HTSUS.

HOLDING:

By application of GRI 1, the articles identified as the “Solar Etched Flower Lantern” and the “Solar Etched Column Patio Light” are classifiable under heading 8306, HTSUS. Specifically, they are classifiable under subheading 8306.29.00, HTSUS, which provides for “... statuettes and other ornaments,

of base metal ...: Statuettes and other ornaments, and parts thereof: Other.” The column one, general rate of duty is “free.” Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N024029, dated March 6, 2008, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT D]

HQ H084499
CLA-2 OT:RR:CTF:TCM H084499 DSR
CATEGORY: Classification
TARIFF NO.: 8306.29.00

MRS. SANDY COOPER, PRESIDENT
GARDEN MEADOW INC.
124 RESEARCH DRIVE
BLDG. G & H
MILFORD, CT 06460

RE: Modification of NY N022872, dated February 21, 2008; classification of solar powered lanterns from China

DEAR MRS. COOPER:

This is in reference to New York Ruling Letter (NY) N022872, issued to you on February 21, 2008, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of solar powered lanterns from China. The ruling classified two solar powered lanterns — the “Solar Musical Belly Frog” and the “Solar Garden Vine Light.” The Solar Musical Belly Frog was classified in heading 8306, HTSUS, which provides for “...statuettes and other ornaments, of base metal; ...” The Solar Garden Vine Light was classified in heading 9405, HTSUS, which provides for “Lamps and lighting fittings ... not elsewhere specified or included; ...” U.S. Customs and Border Protection (CBP) has reviewed the tariff classification of the Solar Garden Vine Light and has determined that the cited ruling is in error. Therefore, NY N022872 is modified for the reasons set forth in this ruling

FACTS:

The subject article is described as follows in NY N022872:

The Solar Garden Vine Light is a lantern in the shape of a cylinder measuring approximately 11 inches tall overall with an outside diameter of approximately 6 inches. It is constructed of base metal with a rustic finish. The top of the lantern features a cone-shaped cap with hanging ring and is supported to the base by three metal rods. The midsection of the lantern features a frosted translucent plastic [panel] making up 8 inches of the lantern with a diameter of 4 inches. Metal bands with leaves form a vine-like pattern around the top and bottom of the lens. In the base of the lantern is a removable hockey puck size disk with a light emitting diode (LED) lamp, two solar panels, printed circuit board, rechargeable battery, photocell and ON/OFF switch. The solar panels recharge the battery by day and [the LED] automatically light[s] up at night.

Due to the small size of the hanging ring, the Solar Garden Vine Light is not designed to be carried in the hand or on the person.

ISSUE:

Whether the Solar Garden Vine Light is classified under heading 8306, HTSUS, as “statuettes and other ornaments, of base metal,” or under heading 9405, HTSUS, as “lamps or lighting fittings ... not elsewhere specified or included.”

LAW AND ANALYSIS:

Proper analysis of classification of the subject lantern encompasses discussion of the following provisions:

8306	Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; ... * * *
	Statuettes and other ornaments, and parts thereof:
8306.29.00	Other. * * * *
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; ... * * *
9405.40	Other electric lamps and lighting fittings: * * *
	Of base metal:
9405.40.60	Other. * * * *

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). 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 GRI's 2 through 6 may then be applied in order. In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89 80, 54 Fed. Reg. 35127 (August 23, 1989).

Commencing with classification of the article, Note 1(k) to Section XV, HTSUS (which governs chapter 83, HTSUS), excludes articles of chapter 94 (and thus heading 9405, HTSUS). Therefore, we must first determine whether the subject article is a lamp, not elsewhere specified or included, of heading 9405, HTSUS.

Heading 9405, HTSUS, refers to "lamps." However, the term is not defined in the HTSUS or in the Explanatory Notes. A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meaning. *Nippon Kogaku (USA) Inc. v. United States*, 69 CCPA 89, 92, 673 F.2d 380, 382 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 134, 673 F.2d 1268, 1271 (1982). The Oxford English Dictionary defines "lamp" as a "vessel containing oil, which is burnt at a wick, for the purpose of illumination. Now also a vessel of glass or some similar material, enclosing the source of illumination, whether a candle, oil, gas-jet, or incandescent wire."

Moreover, CBP has consistently determined that classification of articles under headings 8513, HTSUS, and 9405, HTSUS, requires that the articles provide practical or usable light to the surrounding area, and not merely highlight the articles themselves. *See* HQ H011693 (December 18, 2007); HQ H017657 (December 12, 2007); HQ W968029 (April 12, 2007); NY N059592 (May 20, 2009); NY N053561 (March 24, 2009); NY N024027 (March 7, 2008); NY R01525 (February 28, 2005); NY 807513 (March 31, 1995). Note that there have been instances where CBP has determined that classification under heading 9405, HTSUS, was appropriate even where the emitted light was considered merely to be decorative. However, the articles in those cases were also not elsewhere specified or included, and thus aptly fell into the residual subheading for “other electric lamps and lighting fittings” of heading 9405, HTSUS. *See* HQ 966327 (May 28, 2003) (various decorative lighting accessories used in automobiles); HQ 962901 (September 28, 1999) (plastic Hanukkah-themed light set); NY F83270 (March 6, 2000) (plastic illuminated scarecrow); NY G81588 (September 18, 2000) (plastic illuminated ice cube).

Here, the article was charged for forty-eight hours and then viewed in complete darkness. The article’s LED did not provide enough illumination to view the surrounding area but instead merely provided a soft glow that was visible through the article’s translucent panel and which served only to highlight the patterns on its surface, thus enhancing its decorative appeal. It was very difficult to discern objects that were even less than one foot away from the article. Thus, we find that the article does not provide a practical or usable light and is not a “lamp” as contemplated by heading 9405, HTSUS.

With regard to the applicability of heading 8306, HTSUS, EN 83.06 states that the group “statuettes and other ornaments” comprises a wide range of “ornaments of base metal of a kind designed essentially for decoration, *e.g.*, in homes, offices, assembly rooms, places of religious worship, and gardens,” and which have no utility value but are wholly ornamental. Here, as discussed, the article does not serve as a source of practical or usable light, and is merely meant to provide decorative mood lighting in gardens. Thus, it is now the position of CBP that the Solar Garden Vine Light in NY N022872 is classified in heading 8306, HTSUS, as “statuettes and other ornaments, of base metal.”

HOLDING:

By application of GRI 1, the subject article identified as the Solar Garden Vine Light is classifiable under heading 8306, HTSUS. Specifically, it is classifiable under subheading 8306.29.00, HTSUS, which provides for “... statuettes and other ornaments, of base metal ...: Statuettes and other ornaments, and parts thereof: Other.” The column one, general rate of duty is “free.” Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N022872, dated February 21, 2008, is hereby modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
APPLICABILITY OF SUBHEADING 9817.00.96, HTSUS, TO
CERTAIN IMPORTED VITREOUS CHINA TOILET
BOWLS/TOILETS**

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

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the applicability of subheading 9817.00.96, Harmonized Tariff Schedule of the United States (“HTSUS”), to certain vitreous china toilet bowls/toilets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) intends to modify a ruling letter related to the applicability of subheading 9817.00.96, HTSUS, to certain imported vitreous china toilet bowls/toilets. CBP also intends to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before April 30, 2010.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Elif Eroglu, Valuation and Special Programs Branch: (202) 325-0277.

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, as amended (19 U.S.C. § 1625(c)(1)), this notice advises interested parties that CBP intends to modify a ruling letter related to the applicability of sub-heading 9817.00.96, HTSUS, to certain imported vitreous china toilet bowls/toilets. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (“NY”) N033006, dated July 24, 2008 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No additional 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 (19 U.S.C. § 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may

raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N033006, dated July 24, 2008, CBP held that the toilet bowls/toilets, models PFCT103WH, PF1303WH, PF9300WH and PF9403WH do not qualify for duty-free treatment under subheading 9817.00.96, HTSUS. Upon further review of the matter, CBP determined that although the conclusion that model PF1303WH toilet bowl does not qualify for preferential treatment under subheading 9817.00.96, HTSUS, is correct, the conclusion that models PFCT103WH, PF9303WH, and PF9403WH toilet bowls/toilets do not qualify for preferential treatment under subheading 9817.00.96, HTSUS, is incorrect.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to modify NY N033006 and any other ruling not specifically identified, to reflect the applicability of subheading 9817.00.96, HTSUS, to imported vitreous china toilet bowls/toilets with a toilet bowl rim height of 17 inches or more pursuant to the analysis set forth in proposed Headquarters Ruling Letter (“HQ”) H055815 (Attachment B). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: March 26, 2010

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N033006
July 24, 2008
CLA-2-90:OT:RR:E:NC:N1:105
CATEGORY: Classification
TARIFF NO.: 9817.00.96

MR. CRAIG MCINTOSH
WOLSELEY INC.
1300 SOUTH SERVICE ROAD
OAKVILLE, ONTARIO
CANADA L6L 5T7

RE: The tariff classification of vitreous china toilet bowls from China

DEAR MR. MCINTOSH:

In your letters dated May 26 and July 10, 2008, you requested a tariff classification ruling. No sample was provided.

The items are toilet bowls/toilets, models PFCT103WH, PF1303WH, PF9300WH and PF9403WH.

We ruled upon their classification in HTSUS Chapters 1-97 in New York Ruling Letter N029335-128, 6-12-08.

You specifically ask about a possible secondary classification of these items in 9817.00.96 as articles for the handicapped.

In responding to our questions in that letter, you indicate that the only significant differences between your non-ADA (Americans with Disabilities Act) toilet bowls/toilets and these items, which meet the height requirement of the ADA, is that the top of the bowl is about 2 inches higher than those in the non-ADA versions of the same toilet bowl/toilet.

You state:

Ferguson's Proflo ADA compliant toilet bowls comfortable, chair height seating for people of all ages and statures, and complies with the highest requirements of the American with Disabilities Act. Comfort Height toilets are comparable to the height of an average household chair — just over 17 inches — making sitting down and standing up easier.

You also state:

These toilet bowls are used primarily in commercial applications where establishments are required to have handicap accessible lavatories by code. They are also used (but not required) in some residential applications for the reason stated above (ease of use or comfort).

It is clear that in commercial applications that the toilets will be used both by persons who suffer from a permanent or chronic physical impairment which substantially limits one or more major life activities (in the terms of U.S. Note 4-a to HTSUS Subchapter 17), and by those who do not. This is particularly clear in the case of the many commercial facilities with a single toilet or a single toilet for each sex.

You did not disagree with our citations in N029335, that, independent of the ADA, many home owners prefer and purchase the taller "comfort" height bowls, which happen to also meet the height requirement of the ADA. This is apparently particularly true of those who are less agile, although not suffering for a condition which "substantially limits" their mobility, and those who are taller than average.

Furthermore, while the additional height does meet the minimum ADA requirement for a public place, it may actually be disadvantageous for many whose mobility is substantially limited as noted in the ADA Accessibility Guidelines for Buildings and Facilities, APPENDIX:

Section A4.16.3: Height. Height preferences for toilet seats vary considerably among disabled people. Higher seat heights may be an advantage to some ambulatory disabled people, but are often a disadvantage for wheelchair users and others.

Although these toilet bowls' height make them minimally acceptable under the ADA, their use by the non-handicapped is not fugitive, similar to the "self-contained public bathrooms" ruled not covered by HTSUS 9817.00.96 in Headquarters Ruling Letter 956637, 8-29-94.

In addition, in this case, the purchase for home use by the non-handicapped of bowls which meet the height requirements of the ADA is also not fugitive, but increasingly common.

We also note that the channel of trade for these toilet bowls/toilets are as an option in a standard plumbing catalog, not that of a channel dedicated to items for the handicapped.

Therefore, a secondary classification in 9817.00.96, Harmonized Tariff Schedule of the United States (HTSUS), will not apply to these four items.

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

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

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H055815
CLA-2 OT:RR:CTF:VS H055815 EE
CATEGORY: Classification

IVAN LAVRIKOV
SCHENKER OF CANADA LIMITED
6555 NORTHWEST DRIVE
MISSISSAUGA, ON L4V 1K2
CANADA

RE: Proposed modification of NY N033006, dated July 24, 2008; subheading 9817.00.96, HTSUS; vitreous china toilet bowls/toilets

DEAR MR. LAVRIKOV:

This is in reference to New York Ruling Letter (“NY”) N033006, dated July 24, 2008, issued on behalf of your client Wolseley Inc. (“Wolseley”), concerning the applicability of 9817.00.96, Harmonized Tariff Schedule of the United States (“HTSUS”), to certain vitreous china toilet bowls/toilets. We have reviewed NY N033006 and determined that while the conclusion that model PF1303WH toilet bowl does not qualify for preferential treatment under subheading 9817.00.96, HTSUS, is correct, the conclusion that models PFCT103WH, PF9303WH, and PF9403WH toilet bowls/toilets do not qualify for preferential treatment under subheading 9817.00.96, HTSUS, is incorrect. Our reconsideration of NY N033006 follows.

FACTS:

NY N033006, dated July 24, 2008, provided, in pertinent part, the following facts:

Ferguson’s Proflo Americans with Disabilities Act (“ADA”) compliant toilet bowls provide comfortable, chair height seating for handicapped persons, and comply with the highest requirements of the ADA. Comfort height toilets are comparable to the height of an average household chair — just over 17 inches — making sitting down and standing up easier.

These toilet bowls are used primarily in commercial applications where establishments are required to have handicap accessible lavatories by code. They are also used (but not required) in some residential applications for the reason stated above (ease of use or comfort). U.S. Customs and Border Protection (“CBP”) classified the four products in NY N029335, dated June 12, 2008.

In NY N033006, CBP determined that the toilet bowls/toilets, models PFCT103WH, PF1303WH, PF9303WH and PF9403WH, are not eligible for duty-free treatment under subheading 9817.00.96, HTSUS. In support of this conclusion, CBP stated that although the toilet bowls’ height make them minimally acceptable under the ADA, their use by the non-handicapped is not fugitive. Additionally, CBP noted that the channel of trade for the bowls/toilets are as an option in a standard plumbing catalog, not that of a channel dedicated to items for the handicapped. In light of our ruling, you seek reconsideration of the application of subheading 9817.00.96, HTSUS, to the subject merchandise.

ISSUE:

Whether the vitreous china toilet bowls/toilets models PFCT103WH, PF9303WH, PF1303WH, and PF9403WH are eligible for duty-free treatment under subheading 9817.00.96, HTSUS.

LAW AND ANALYSIS:

The Agreement on the Importation of Educational, Scientific and Cultural Materials, known as the Florence Agreement, is an international agreement drafted by the United Nations Educational, Scientific, and Cultural Organization (UNESCO), adopted by it in Florence, Italy, in July 1950 (17 UST 1835; TIAS 6129). It provides for dutyfree treatment and the reduction of trade obstacles for imports of educational, scientific, and cultural materials in the interest of facilitating the international free flow of ideas and information. Materials falling within the coverage of the Florence Agreement include: books, publications and documents; works of art and collectors' pieces of an educational, scientific or cultural character; visual and auditory materials of an educational, scientific or cultural character; scientific instruments and apparatus; and articles for the blind.

The Nairobi Protocol to the Florence Agreement, adopted by UNESCO in November 1976, broadened the scope of the Florence Agreement by removing some of its restrictions on articles otherwise entitled to duty-free status, and by expanding the Agreement to embrace technologically new articles and previously uncovered works of art, films, etc. One major new category of articles is: "all materials specially designed for the education, employment and social advancement of other physically or mentally handicapped persons..." Protocol to the Agreement on the Importation of Educational, Scientific, and Cultural Materials annex E (ii), opened for signature March 1, 1977, 1976 U.S.T. LEXIS 388. Thus, the Protocol is intended to afford duty-free treatment not only for articles for the blind, but all other handicapped persons without regard to the source of their affliction. The 97th Congress passed Pub. L. 97446 to ratify the Nairobi Protocol in the United States. The Senate stated in its Report that one of the goals of this law was to benefit the handicapped and show U.S. support for the rights of the handicapped. The Senate, however, did state that it did not intend "that an insignificant adaptation would result in dutyfree treatment for an entire relatively expensive article... the modification or adaptation must be significant so as to clearly render the article for use by handicapped persons." S. Rep. No. 97564, 97th Cong. 2nd Sess. (1982). The Senate was concerned that persons would misuse this tariff provision to avoid paying duties on expensive products.

Section 1121 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. no. 100-418, 102 Stat. 1107) and Presidential Proclamation 5978 provided for the implementation of the Nairobi Protocol by inserting permanent provisions, subheadings 9817.00.92, 9817.00.94, and 9817.00.96 into the HTSUS. These tariff provisions specifically provide that "[a]rticles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons" are eligible for duty-free treatment.

U.S. Note 4(a), subchapter XVII, Chapter 98, HTSUS, states that, "the term 'blind or other physically or mentally handicapped persons' includes any person suffering from a permanent or chronic physical or mental impairment

which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.”

U.S. Note 4(b), subchapter XVII, Chapter 98, HTSUS, which establishes limits on classification of products in these subheadings, states that “Subheadings 9817.00.92, 9817.00.94 and 9817.00.96 do not cover (i) articles for acute or transient disability; (ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled; (iii) therapeutic and diagnostic articles; or (iv) medicine or drugs.”

The primary issue regarding the toilet bowls/toilets in question is whether they are “specifically designed or adapted” for the use or benefit of the handicapped within the meaning of the Nairobi Protocol. The meaning of the phrase “specially designed or adapted” has been decided on a case-by-case basis. In Headquarters Ruling Letter (“HQ”) 556449, dated May 5, 1992, CBP set forth factors it would consider in making this case-by-case determination. These factors include: 1) the physical properties of the article itself, *i.e.*, whether the article is easily distinguishable, by properties of the design and the corresponding use specific to this unique design, from articles useful to non-handicapped individuals; 2) whether any characteristics are present in an article that create a substantial probability of use by the chronically handicapped, whether the article is easily distinguishable from articles useful to the general public, and whether use of the article by the general public is so improbable that such use would be fugitive; 3) whether articles are imported by manufacturers or distributors recognized or proven to be involved in this class or kind of articles for the handicapped; 4) whether the articles are sold in specialty stores which serve handicapped individuals; and 5) whether the condition of the articles at the time of importation indicates that these articles are for the handicapped. Each of these factors is to be weighed against each other to determine whether an article is specially designed or adapted for the handicapped. *See also* T.D. 92-77 (26 Cust. Bull. 1, August 26, 1992).

The goods in question consist of four different models of vitreous toilet bowls/toilets, three of which, upon installation are designed to measure 17 inches from the floor to the top of the bowl rim. An additional model, PF1303WH, measures 16.5 inches from the floor to the top of the bowl rim. The harmonized ASME A112.19.2/CSA B45.1-2008 National Consensus Standards for Vitreous China Plumbing Fixtures provides that adult water closets must have a minimum rim height of 13.5 inches (343 mm). The height of the goods at issue clearly distinguishes them from standard toilets which measure 14 inches to 15 inches from the floor to the top of the bowl rim.

You state that the toilets at issue comply with standards issued under the ADA and are designed for use by physically handicapped persons, who suffer from arthritis, joint diseases, handicaps and other maladies which make it difficult for them to lift themselves off of low chairs or benches. The higher elevation of the toilet makes it easier for the handicapped persons to lower themselves to and from the toilet seat. You advise that if the toilet angle is raised by two inches, there is a two-thirds (67%) reduction in the negative angle of the knee joint. The degree to which the toilet user's weight is pitched rearward is also reduced by a like amount. This makes it much easier for a person to rise from the seat.

The ADA Accessibility Guidelines for Buildings and Facilities (“ADAAG”) provide that “the height of water closets shall be 17 in to 19 in (430 mm to 485 mm), measured to the top of the toilet seat.” 28 C.F.R. § 36, Appendix A, 4.16.3. The ADAAG provides that the typical seat height of a wheelchair for a large adult male is 19 inches (485 mm). 28 C.F.R. § 36, Appendix A, A4.2.4. We note that a standard toilet with a thick toilet seat as well as comfort height toilets that measure 16.5 inches from the floor to the top of the bowl rim could presumably comply with the ADAAG and be utilized by handicapped as well as non-handicapped individuals. We note that several companies market comfort height toilets for general use. See <http://www.homedepot.com>. However, we find it unlikely that toilets that measure 17 inches from the floor to the top of the bowl rim would be acquired other than for the benefit or use of a handicapped individual who is likely to benefit when transferring from the wheelchair to the toilet.

Lastly, we note that although the toilet bowls/toilets are sold by a company that markets products to the general public, the goods at issue are specifically advertised as ADA compliant.

You have provided information stating that the Canada Border Services Agency (“CBSA”) classified Wolseley’s toilets under Canada’s tariff item No. 9979.00.00 as goods specifically designed to assist persons with disabilities in alleviating the effects of those disabilities. While CBP is not bound to abide by another country’s rulings, foreign rulings may be instructive. See T.D. 89–80.

Based on the above factors, we find that the toilet bowls with a bowl rim height of 17 inches or more are “specially designed and adapted” for the use or benefit of the handicapped people and are entitled to duty-free treatment under 9817.00.96, HTSUS.

HOLDING:

Based upon the information before us, we find that the vitreous china toilet models PFCT103WH, PF9303WH and PF9403WH are eligible for duty-free treatment under subheading 9817.00.96, HTSUS. However, per NY N033006, model PF1303WH toilet bowl does not qualify for preferential treatment under subheading 9817.00.96, HTSUS,

EFFECT ON OTHER RULINGS:

NY N033006, dated July 24, 2008, is hereby modified consistent with the foregoing.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF A RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
ELIGIBILITY OF A MEN'S SHIRT AND TIE SET FOR
PREFERENTIAL TREATMENT UNDER THE CARRIBEAN
BASIN TRADE PREFERENCE ACT**

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

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the eligibility of a men's shirt and tie set for preferential treatment under the Carribean Basin Trade Preference Act (CBTPA).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is proposing to modify one ruling letter relating to the eligibility of a men's shirt and tie set for preferential treatment under the CBTPA. CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise.

DATE: Comments must be received on or before April 30, 2010.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th St. N.W., Washington, D.C. 20229-1179. Submitted comments may be inspected at the offices of Customs and Border Protection, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

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

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the eligibility of a men's shirt and tie set for preferential treatment under the CBTPA. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) L84803, dated June 2, 2005 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY L84806, a men's shirt and tie set classified in heading 6205 as a men's shirt under the CBTPA due to the presence of the tie. Since the issuance of that ruling, CBP has reviewed the determination of the eligibility of the shirt and tie set and has determined that that portion of the the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify NY L84803, dated June 2, 2005, and revoke or modify any other ruling

not specifically identified, to reflect the eligibility of the men's shirt and tie set under the CBTPA according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H058923, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: March 26, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY L84803
June 2, 2005
CLA-2-62: RR:NC:TA:N3 356 L84803
CATEGORY: Classification
TARIFF NO.: 6205.20.2025

MR. GARY EPSTEIN
BY DESIGN APPAREL, INC.
1370 BROADWAY
NEW YORK, NY 10018

RE: The tariff classification and status under the Caribbean Basin Trade Partnership Act (CBTPA) for a men's woven shirt and tie from the Dominican Republic.

DEAR MR. EPSTEIN:

In your letter, dated May 6, 2005, you requested a ruling on the tariff classification and status under the Caribbean Basin Trade Partnership Act (CBTPA) for a men's woven shirt and tie from the Dominican Republic.

The submitted sample is a men's shirt and tie set. The shirt is constructed from 55% cotton, 45% polyester, solid color, dyed, woven fabric. The shirt features a left over right full front opening with seven button closures; a point collar; long sleeves with buttoned cuffs; a pocket on the left chest; and a curved, hemmed bottom. The shirt is labeled with collar and sleeve sizes (ie., 16, 34/35) and is packaged in a retail polybag with a coordinating color, 100% polyester, woven fabric tie.

You state that the yarns used in the shirt fabric are spun in China and that the fabric will be woven and dyed in China. The shirt fabric is sent to the Dominican Republic where it is cut and sewn into finished garments. You also state that the coordinating tie is made in Korea from fabric that is woven in Korea from yarns that are spun in Korea.

The packaged shirt and tie are considered a set for tariff classification purposes. The shirt imparts the essential character to the set. Consequently, the applicable subheading for the submitted sample will be 6205.20.2025, Harmonized Tariff Schedule of the United States (HTS), which provides for men's or boys' shirts, of cotton: other: dress: other: men's. The rate of duty is 19.7 percent ad valorem.

The submitted sample falls within textile category designation 340. Based upon international textile trade agreements, products of the Dominican Republic are not presently subject to visa requirements or quota restraints. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" available at our web site at www.cpb.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov.

Based on the information you supplied, the submitted shirt and tie set is **not eligible** for duty free treatment under the Caribbean Basin Trade Partnership Act **because the foreign fabric tie, as part of the set, is an accessory which is ineligible for CBTPA preference**. Please note that

we have not commented on the eligibility of the shirt fabric under the “short supply” provisions as the presence of the foreign fabric tie precludes eligibility of the shirt and tie set.

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

A copy of this ruling letter 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 this ruling, contact National Import Specialist Mary Ryan at 646-733-3271.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H058923
CLA-2 OT:RR:CTF:TCM H058923 KSH
CATEGORY: Classification
TARIFF NO.: 6205.20.20

MR. GARY EPSTEIN
BY DESIGN APPAREL, INC.
1370 BROADWAY
NEW YORK, NY 10018

RE: Modification of NY L84803; Eligibility of shirt and tie sets under the CBTPA.

DEAR MR. EPSTEIN:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) L84803, issued to you on June 2, 2005, concerning, in relevant part, the eligibility of a men's woven shirt and tie set for preferential treatment under the Caribbean Basin Trade Partnership Act (CBTPA). The merchandise was determined to be a set ineligible for preferential treatment under the CBTPA because the foreign fabric tie, as part of the set, is an accessory ineligible for CBTPA preference. We have reviewed that ruling and found it to be in error with respect to the analysis of the eligibility of the shirt and tie set for preferential treatment. Therefore, this ruling modifies NY L84803.

FACTS:

The merchandise at issue was described as follows in NY L84803:

The submitted sample is a men's shirt and tie set. The shirt is constructed from 55% cotton, 45% polyester, solid color, dyed, woven fabric. The shirt features a left over right full front opening with seven button closures; a point collar; long sleeves with buttoned cuffs; a pocket on the left chest; and a curved, hemmed bottom. The shirt is labeled with collar and sleeve sizes (ie., 16, 34/35) and is packaged in a retail polybag with a coordinating color, 100% polyester, woven fabric tie.

You state that the yarns used in the shirt fabric are spun in China and that the fabric will be woven and dyed in China. The shirt fabric is sent to the Dominican Republic where it is cut and sewn into finished garments. You also state that the coordinating tie is made in Korea from fabric that is woven in Korea from yarns that are spun in Korea.

ISSUE:

Whether the men's shirt and tie sets qualify for duty-free treatment under the CBTPA.

LAW AND ANALYSIS:

The CBTPA provides certain specified trade benefits for countries of the Caribbean region. The Act extends North American Free Trade Agreement (NAFTA) duty treatment standards to non-textile articles that previously were ineligible for preferential treatment under the Caribbean Basin Economic Recovery Act (CBERA) and provides for duty- and quota-free treatment for certain textile and apparel articles which meet the requirements set

forth in Section 211 of the CBTPA (amended 213(b) of the CBERA, codified at 19 U.S.C. 2703(b)). Beneficiary countries are designated by the President of the United States after having met eligibility requirements set forth in the CBPTA. Eligibility for benefits under the CBTPA is contingent on designation as a beneficiary country by the President of the United States and a determination by the United States Trade Representative (USTR), published in the *Federal Register*, that a beneficiary country has taken the measures required by the Act to implement and follow, or is making substantial progress toward implementing and following, certain customs procedures, drawn from Chapter 5 of the NAFTA, that allow the United States to verify the origin of products. Once both these designations have occurred, a beneficiary country is entitled to preferential treatment provided for by the CBTPA. The Dominican Republic was designated a beneficiary country by Presidential Proclamation 7351, published in the *Federal Register* on October 4, 2000 (65 *Fed. Reg.* 59329). It was determined to have met the second criteria concerning customs procedures by the USTR and thus eligible for benefits under the CBTPA effective October 10, 2000 (*see* 65 *Fed. Reg.* 60236).

The provisions implementing the textile provisions of the CBTPA in the Harmonized Tariff Schedule of the United States (HTSUS) are contained, for the most part, in subchapter XX, Chapter 98, HTSUS (two provisions may be found in subheading 9802.00.80, HTSUS). The regulations pertinent to the textile provisions of the CBTPA may be found at §§ 10.221 through 10.228 of the CBP Regulations (19 CFR 10.221 through 10.228).

The applicable Chapter 98 provisions provide as follows:

9820: Articles imported from a designated beneficiary Caribbean Basin Trade Partnership country enumerated in general note 17(a) to the tariff schedule:

9820.11.03 Apparel articles of chapter 61 or 62 sewn or otherwise assembled in one or more such countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable in heading 5602 or 5603 and are wholly formed and cut in the United States), the foregoing which (1) are embroidered or were subjected to stone-washing, enzyme-washing, acid washing, permapressing, oven-baking, bleaching, garment-dyeing, screen printing or other similar processes, (2) but for such embroidery or processing are of a type otherwise described in heading 9802.00.80 of the tariff schedule, and (3) meet the requirements of U.S. note 2(a) to this subchapter

9820.11.24: Apparel articles both cut (or knit-to-shape) and sewn or otherwise assembled in one or more such countries from fabrics or yarn not formed in the United States or in one or more such countries, provided that such apparel articles of such fabrics or yarn would be considered an originating good under the terms of general note 12(t) to the tariff schedule without regard to the source of the fabric or yarn if such apparel article had been imported from the territory of Canada or the territory of Mexico directly into the customs territory of the United States.

The fabric is formed in China and it is assumed that the yarns are not formed in the U.S. or a CBTPA beneficiary country. Thus, in order to determine whether the apparel articles are eligible for preferential treatment under the CBPTA, we must determine whether the apparel articles would be

considered originating goods under General Note 12(t), HTSUS. *See* subheading 9820.11.24, HTSUS.

General Note 12(t), HTSUS, sets out the tariff shift rules for determining whether non-originating materials used in the production of a good have been transformed into originating goods under NAFTA.

To determine the applicable tariff shift rule, we must determine the proper classification of the shirt and tie sets. The shirts are classifiable under heading 6205, HTSUS, as “men’s or boys’ shirts” and the ties are classifiable under heading 6215, HTSUS, as “ties, bow ties and cravats.”

GRI 3 provides for goods that are, *prima facie*, classifiable in two or more headings. GRI 3(b) provides that goods put up in sets for retail sale shall be classified as if they consisted of the material or component which gives them their essential character. The shirt and tie are considered a set for purposes of classification, with the essential character being imparted by the shirt based on its greater weight, bulk and role in relation to the set. GN 12 Chapter 62, rule 3 states in part:

For purposes of determining the origin of a good of this chapter, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in the rule for that good....

As the shirt provides the essential character to the shirt and tie sets, only the shirt must undergo the tariff shift requirements.

General Note 12(t)(29) states in part:

A change to subheading 6205.20 through 6205.30 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, *provided* that the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.

Insofar as the shirts are constructed from fabric of heading 5210, HTSUS, which provides for “Woven fabrics of cotton, containing less than 85 percent by weight of cotton, mixed mainly or solely with man-made fibers, weighing not more than 200 g/m²”, the shirt does not meet the tariff shift set forth in GN 12(t)(29).

Subheading rule (c) to GN 12(t)(30) states:

Men’s or boys’ shirts of cotton (subheading 6205.20) or of man-made fibers (subheading 6205.30) shall be considered to originate if they are both cut and assembled in the territory of one or more of the parties and if the fabric of the outer shell, exclusive of collars or cuffs, is wholly of one or more of the following:

...(c) Fabrics of subheadings 5210.21 or 5210.31, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 70 metric.

No information was submitted regarding the fabric weight by which to determine the average yarn number. In the absence of such information, the men’s shirt and tie sets are not eligible for duty-free treatment under subheading 9820.11.24, HTSUS. The determination in NY L84803 that the shirt

and tie sets are classified in subheading 6205.20.2016, HTSUSA (annotated), which provides for “Men’s or boys’ shirts, of cotton: other: dress: other: men’s” remains unchanged.

HOLDING:

The men’s shirt and tie sets are not eligible for preferential treatment under the CBTPA in the absence of evidence concerning the fabric weight with which to calculate the average yarn number.

EFFECT ON OTHER RULINGS:

NY L84803, dated June 2, 2005, is modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**PROPOSED REVOCATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
VIBRATING SEX TOYS**

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

ACTION: Notice of proposed revocation of two tariff classification ruling letters and proposed revocation of treatment relating to the classification of vibrating sex toys.

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

DATE: Comments must be received on or before April 30, 2010.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Commercial Trade and Regulations Branch, 799 9th St., N.W., 5th Floor, Washington, D.C., 20229–1179. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street N.W., Washington, D.C., 20229, during regular business hours. Arrangements to

inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Richard Mojica, Tariff Classification and Marking Branch, at (202) 325-0032.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke two ruling letters pertaining to the tariff classification of vibrating sex toys. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (“NY”) N013185, dated July 12, 2007 (Attachment A), and NY K89943, dated October 27, 2004 (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.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP

intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N013185 and NY K89943, CBP classified certain vibrating sex toys under heading 8543, HTSUS, as "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85]." We have reviewed those rulings and determined that the classification set forth therein is incorrect. It is now our position that the subject goods are properly classified under heading 9019, HTSUS, as "Massage apparatus."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N013185, NY K89943, and any other ruling not specifically identified, to reflect the proper classification of vibrating sex toys according to the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H053896 (Attachment C) and HQ H053897 (Attachment D). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: March 26, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N013185

July 12, 2007

CLA-2-85:RR:NC:N1:112

CATEGORY: Classification

TARIFF NO.: 8543.70.9650

SYLVIA PERREIRA
EGL'S COMPLIANCE SOURCE
EAGLE GLOBAL LOGISTICS
8830 NE ALDERWOOD ROAD
PORTLAND, OR 97220

RE: The tariff classification of the Finger Vibrator from China.

DEAR MS. PERREIRA:

In your letter dated June 13, 2007, you requested a tariff classification ruling on behalf of Church & Dwight Co. Inc.

The article concerned is the Finger Vibrator. The product measures approximately 2 inches long x .75 inches wide. It consists of a soft, silicone plastic, finger shaped housing. The back of the device incorporates a ring shaped band which is placed over the user's finger. Within the housing is a battery operated, electric vibrator mechanism. The Finger Vibrator is activated by pressing a button located on the bottom of the device.

As described in the submission, the Finger Vibrator's function is to provide a massage for "intimate personal pleasure".

You propose classification in subheading 9019.10.2020, Harmonized Tariff Schedule of the United States (HTSUS). Per, *e.g.*, Headquarters Ruling Letter 966563, "Thus, it has been Customs position that the massage apparatus of heading 9019, HTSUS, must provide a therapeutic benefit...". As stated, the Finger Vibrator's function is "for intimate personal pleasure", that is it's only plausible function. As such, the Finger Vibrator would not be classified in Heading 9019, based on the fact that it does not provide any therapeutic benefit.

The applicable subheading for the Finger Vibrator will be 8543.70.9650, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Electrical machines and apparatus...: Other machines and apparatus: Other: Other: Other: Other." The rate of duty will be 2.6 percent.

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 Steve Pollichino at 646-733-3008.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

NY K89943
October 27, 2004
CLA-2-85:RR:NC:1:112 K89943
CATEGORY: Classification
TARIFF NO.: 8543.89.9695

MAURINE CECIL
WEST COAST REGIONAL VICE PRESIDENT, AMERICAN SHIPPING COMPANY, INC.
400 OCEANGATE
SUITE 1106
LONG BEACH, CA 90802-4389

RE: The tariff classification of a Vibrating Condom Ring from China

DEAR MS. CECIL:

In your letter dated October 1, 2004, you requested a tariff classification ruling on behalf of Pacific Entertainment Holdings, LLC of Irvine, California.

The item concerned is the Vibrating Condom Ring (see below). It is a beaded, circular piece of pink soft plastic measuring approximately 1 ½ inches wide and 1 ¾ inches in height; enclosed at the bottom of the circle is a small silicon-encased battery with an on-off twist switch on one end. Its purpose to enhance the pleasure of one or both partners when they are engaged in sexual intercourse.



The advisory HTS classification you received of 9019.10.2030 is not applicable because the item has been determined to have no therapeutic value.

The applicable subheading for the Vibrating Condom Ring will be 8543.89.9695, Harmonized Tariff Schedule of the United States (HTS), which provides for Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter: ... : Other machines and apparatus: Other: Other: Other: Other: Other. The rate of duty will be 2.6%.

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 Richard Laman at 646-733-3017.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT C]

HQ H053896
CLA-2 OT:RR:CTF:TCM H053896 RM
CATEGORY: Classification
TARIFF NO.: 9019.10.20

Ms. SYLVIA PERREIRA
EGL'S COMPLIANCE SOURCE
EAGLE GLOBAL LOGISTICS
8830 N.E. ALDERWOOD ROAD
PORTLAND, OREGON 97220

RE: Revocation of New York Ruling Letter N013185, dated July 12, 2007;
Classification of the "Finger Vibrator"

DEAR Ms. PERREIRA:

This is in reference to New York Ruling Letter ("NY") N013185, dated July 12, 2007, issued to you on behalf of Church & Dwight Co. Inc., concerning the tariff classification of a sex toy commercially known as the "Finger Vibrator." In that ruling, U.S. Customs and Border Protection ("CBP") classified the merchandise under heading 8543, Harmonized Tariff Schedule of the United States ("HTSUS"), as "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85]." We have reviewed the ruling and found this classification to be incorrect.

FACTS:

In N013185, CBP described the merchandise as follows:

The article concerned is the Finger Vibrator. The product measures approximately 2 inches long x .75 inches wide. It consists of a soft, silicone plastic, finger-shaped housing. The back of the device incorporates a ring shaped band which is placed over the user's finger. Within the housing is a battery-operated, electric vibrator mechanism. The Finger Vibrator is activated by pressing a button located on the bottom of the device [T]he Finger Vibrator's function is to provide a massage for "intimate personal pleasure."

ISSUE:

Whether the "Finger Vibrator" is classified under heading 9019, HTSUS, as a massage apparatus.

LAW AND ANALYSIS:

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

The 2009 HTSUS provisions under consideration are as follows:

8543 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:

8543.70	Other machines and apparatus:
8543.70.96	Other ...
	* * *
9019	Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus; parts and accessories thereof:
9019.10	Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; parts and accessories thereof:
9019.10.20	Mechano-therapy appliances and massage apparatus; parts and accessories thereof ...
	* * *

Heading 9019, HTSUS, provides in relevant part for “Massage apparatus.” When, as in this case, a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

The *Oxford English Dictionary* defines the term “massage” as “the rubbing, kneading, or percussion of the muscles and joints of the body with the hands, usually performed by one person on another, esp. to relieve tension or pain; an instance of this.” See www.oed.com. The term “apparatus” is defined in pertinent part as “the things collectively in which this preparation consists, and by which its processes are maintained; equipments, material, mechanism, machinery; material appendages or arrangements.” *Id.* In keeping with the above definitions, the Explanatory Notes (“ENs”) ¹ to heading 9019 [EN 90.19 (II)] indicate that massage apparatus are:

[a]pparatus for massage of parts of the body (abdomen, feet, legs, back arms, hands, face, etc.) usually operate by friction, vibration, etc. They may be hand-or power-operated, and may be of an electro-mechanical type with a motor built into the working unit (vibratory-massaging appliances). The latter type in particular may include interchangeable attachments (usually of rubber) to allow various methods of application (brushes, sponges, flat or toothed discs, etc.).

This group includes simple rubber rollers or similar massaging devices. It also covers hydromassage appliances for all-over or partial massage of the body, using the action of water or a blend of water and air under pressure.

¹ The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Examples of these appliances include spa baths, presented complete with pumps, turbines or blowers, ducts, controls and all fittings; devices for massaging the breasts, using the action of water distributed by a series of small nozzles mounted inside a form fitted over the breast, and made to revolve by a stream of water introduced through a flexible tube.

* * *

In NY N03185, CBP indicated that to be classified as a massage apparatus, a device must not only manipulate muscles by way of kneading, stroking, vibration, etc., but also provide a therapeutic benefit. Upon review, based on the common meaning of the term massage, and the ENs, we find that our interpretation of the heading text in that ruling was too narrow. The text of heading 9019, HTSUS, does not require that a massage apparatus provide a therapeutic benefit.

The Finger Vibrator is a power-operated, electro-mechanical apparatus designed to massage muscles of the body by way of friction and vibration. As such, it is classified under heading 9019, HTSUS, as a “massage apparatus.” See EN 90.19(II). Insofar as the device is classified therein, it is precluded from classification under heading 8543, HTSUS, by the terms of that heading, because it is specified elsewhere in the tariff.

Our determination is in accord with NY L81893, dated February 28, 2005, and NY B89414, dated October 8, 1997, wherein CBP classified similar battery-operated, vibrating sex toys under heading 9019, HTSUS, as massage apparatus.

HOLDING:

By application of GRI 1, the Finger Vibrator is classified under heading 9019, HTSUS, specifically in subheading 9019.10.20, as “Massage apparatus: ... massage apparatus: ... massage apparatus.” The 2009, column one, general rate of duty is: Free.

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

EFFECT ON OTHER RULINGS:

NY N013185, dated July 12, 2007, is hereby revoked.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT D]

HQ H053897
 CLA-2 OT:RR:CTF:TCM H053897RM
 CATEGORY: Classification
 TARIFF NO.: 9019.10.20

Ms. MAURINE CECIL
 WEST COAST REGIONAL VICE PRESIDENT AMERICAN SHIPPING COMPANY, INC.
 400 OCEANGATE AVE, SUITE 1106
 LONG BEACH, CA 90802

RE: Revocation of New York Ruling Letter K89943, dated October 27, 2004;
 Classification of a Vibrating Condom Ring

DEAR Ms. CECIL:

This is in reference to New York Ruling Letter (“NY”) “K89943, dated October 27, 2004, issued to you on behalf of Pacific Entertainment Holdings, LLC, concerning the tariff classification of a vibrating condom ring. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under heading 8543, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85].” We have reviewed the ruling and found this classification to be incorrect.

FACTS:

In K89943, CBP described the merchandise as follows:

The item concerned is the Vibrating Condom Ring. It is a beaded, circular piece of pink, soft plastic measuring approximately 1 ½ inches wide and 1 ¾ inches in height. Enclosed at the bottom of the circle is a small silicon-encased battery with an on-off twist switch on one end. Its purpose is to enhance the pleasure of one or both partners when they are engaged in sexual intercourse.

ISSUE:

Whether the vibrating condom ring is classified under heading 9019, HTSUS, as a massage apparatus.

LAW AND ANALYSIS:

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

The 2009 HTSUS provisions under consideration are as follows:

8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
8543.70	Other machines and apparatus:
8543.70.96	Other ...

* * *

- 9019** Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus; parts and accessories thereof:
- 9019.10 Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; parts and accessories thereof:
- 9019.10.20 Mechano-therapy appliances and massage apparatus; parts and accessories thereof ...

* * *

Heading 9019, HTSUS, provides in relevant part for “Massage apparatus.” When, as in this case, a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

The *Oxford English Dictionary* defines the term “massage” as “the rubbing, kneading, or percussion of the muscles and joints of the body with the hands, usually performed by one person on another, esp. to relieve tension or pain; an instance of this.” See www.oed.com. The term “apparatus” is defined in pertinent part as “the things collectively in which this preparation consists, and by which its processes are maintained; equipments, material, mechanism, machinery; material appendages or arrangements.” *Id.* In keeping with the above definitions, the Explanatory Notes (“ENs”) ¹ to heading 9019 [EN 90.19 (II)] indicate that massage apparatus are:

[a]pparatus for massage of parts of the body (abdomen, feet, legs, back arms, hands, face, etc.) usually operate by friction, vibration, etc. They may be hand-or power-operated, and may be of an electro-mechanical type with a motor built into the working unit (vibratory-massaging appliances). The latter type in particular may include interchangeable attachments (usually of rubber) to allow various methods of application (brushes, sponges, flat or toothed discs, etc.).

This group includes simple rubber rollers or similar massaging devices. It also covers hydromassage appliances for all-over or partial massage of the body, using the action of water or a blend of water and air under pressure. Examples of these appliances include spa baths, presented complete with pumps, turbines or blowers, ducts, controls and all fittings; devices for massaging the breasts, using the action of water distributed by a series of

¹ The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

small nozzles mounted inside a form fitted over the breast, and made to revolve by a stream of water introduced through a flexible tube.

* * *

In NY K89943, CBP indicated that to be classified under heading 9019, HTSUS, as a massage apparatus, a device must not only manipulate muscles by way of kneading, stroking, vibration, etc., but also provide a therapeutic benefit. Upon review, based on the common meaning of the term “massage,” and the ENs, we find that our interpretation of the heading text in that ruling was too narrow. The text of heading 9019, HTSUS, does not require that a massage apparatus provide a therapeutic benefit.

The subject vibrating condom ring is a power-operated, electro-mechanical apparatus designed to massage muscles of the body by way of friction and vibration. As such, it is classified under heading 9019, HTSUS, as a “massage apparatus.” See EN 90.19(II). Insofar as the device is classified therein, it is precluded from classification under heading 8543, HTSUS, by the terms of that heading, because it is specified elsewhere in the tariff.

Our determination is in accord with NY L81893, dated February 28, 2005, and NY B89414, dated October 8, 1997, wherein CBP classified similar battery-operated, vibrating sex toys under heading 9019, HTSUS, as massage apparatus.

HOLDING:

By application of GRI 1, the vibrating condom ring is classified under heading 9019, HTSUS, specifically in subheading 9019.10.20, as: “Massage apparatus: ... massage apparatus: ... massage apparatus.” The 2009, column one, general rate of duty is: Free.

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

EFFECT ON OTHER RULINGS:

NY K89943, dated October 27, 2004, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



GENERAL NOTICE

19 CFR PART 177

Proposed Revocation of Ruling Letter and Proposed Revocation of Treatment Relating to Classification of a Customized Moveable Plasma Television Mount

AGENCY: U.S. Customs and Border Protection (“CBP”), Department of Homeland Security.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the classification of customized moveable plasma TV mounts.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB proposes to revoke a ruling concerning the classification of customized moveable plasma TV mounts under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before April 30, 2010.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor Washington, D.C. 20229–1179. Comments submitted may be inspected at 799 9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke a ruling pertaining to the classification of a customized moveable plasma TV mount. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) R03515, dated April 19, 2006 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

In NY R03515, CBP ruled that a customized moveable plasma TV mount is classified in subheading 8543.89.96, HTSUS, which provides for: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere...: Other machines and apparatus: Other: Other: Other: Other: Other." The referenced ruling is incorrect because the TV mount at issue is largely a mechanical device and is therefore classified as such in subheading 8479.89.98, 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."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY R03515, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set

forth in Proposed Headquarters Ruling Letter H017937. (*see* Attachment “B” to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: March 26, 2010

GAIL A. HAMILL

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

NY R03515
April 19, 2006
CLA-2-85:RR:NC:N1:112 R03515
CATEGORY: Classification
TARIFF NO.: 8543.89.9695

ANTHONY JOHNSON PRESIDENT,
ANTHONY JOHNSON III – CHB
100 W. IMPERIAL AVENUE UNIT J
EL SEGUNDO, CA 90245-2286

RE: The tariff classification of a moveable wall mount from South Korea

DEAR MR. JOHNSON,

In your letter dated March 22, 2006, you requested a tariff classification ruling on behalf of CLO Systems, LLC of West Covina, California.

The item concerned is the X-arm (X700CB and X700CS). It is an accordion-shaped, motorized, remote-controlled apparatus that is mounted to a wall on one end and attached to a flat panel or plasma television screen on the other.



The purpose of the item is to move the flat panel or plasma television screen up or down or side to side.

The applicable classification subheading for the X-arm (X700CB and X700CS) will be 8543.89.9695, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere ... : Other machines and apparatus: Other: Other: Other: Other: Other”. The rate of duty will be 2.6%.

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 Richard Laman at 646-733-3017.

Sincerely,

ROBERT B. SWIERUPSKI
Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H017937

CLA-2-85:RR:NC:N1:112 H017937 TNA

CATEGORY: Classification

TARIFF NO.: 8479.89.98

ANTHONY JOHNSON, PRESIDENT
ANTHONY JOHNSON, III – CHB
100 W. IMPERIAL AVENUE, UNIT J
EL SEGUNDO, CA 90245

RE: Revocation of NY R03515; Classification of X-arm moveable plasma television mount from South Korea

DEAR MR. JOHNSON:

This letter is in reference to New York Ruling Letter (“NY”) R03515, issued to you on April 19, 2006, concerning the tariff classification of the X-Arm moveable TV wall mount from South Korea. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 8543.89.96, Harmonized Tariff Schedule of the United States (“HTSUS”), as “electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other.” We have reviewed NY R03515 and found it to be in error. For the reasons set forth below, we hereby revoke NY R03515.

FACTS:

The X-Arm is a motorized, moveable, robotic arm that is affixed to a vertical wall and is designed to mount a plasma or flat-screened television (“TV”). It contains a base plate that measures 26.57 inches in length by 22.64 inches in height. The mount measures 4.6 inches when collapsed and 12 inches when expanded. It is telescopic to twelve inches and can tilt seven degrees up and twenty degrees down, and swivels 56 degrees to the right and left. The X-Arm moves via a combination of motorized robotic arms and rollers.

In NY R03515, dated April 19, 2006, CBP classified the X-Arm under 8543.89.9695, HTSUS, as: “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other.” As such, the rate of duty is 2.6% *ad valorem*.

ISSUE:

Whether the X-Arm TV mount is properly classified under heading 8543, HTSUS, under “electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter,” or under heading 8479, HTSUS, as “machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter”?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). 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 GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

- | | |
|------|---|
| 8543 | Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: |
| 8479 | Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: |

In NY R03515, CBP classified the X-Arm under Heading 8543 as an electrical machine. However, the EN for Heading 8543 explains that:

Most of the appliances of this heading consist of an assembly of electrical goods or parts (valves, transformers, capacitors, chokes, resistors, etc.) operating wholly electrically. However, the heading also includes electrical goods incorporating mechanical features provided that such features are subsidiary to the electrical function of the machine or appliance.

While the X-Arm contains both electrical features, such as the remote control, and mechanical features, such as the X-Arm itself, the mechanical features are not subsidiary to the electrical functioning of the product. As a result, the terms of the heading do not describe the good.

Heading 8479, HTSUS, provides for “machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof.” The EN to heading 8479, HTSUS, states, in pertinent part, the following:

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

(a) Is not excluded from this Chapter by the operation of any Section or Chapter Note.

and (b) Is not covered more specifically by a heading in any other Chapter of the Nomenclature.

and (c) Cannot be classified in any other particular heading of this Chapter since:

(i) No other heading covers it by reference to its method of functioning, description or type.

and (ii) No other heading covers it by reference to its use or to the industry in which it is employed.

or (iii) It could fall equally well into two (or more) other such headings (general purpose machines)

For this purpose the following are to be regarded as having individual functions: (A) Mechanical devices, with or without motors or other driving force, whose function can be performed distinctly from and independently of any other machine or appliance.

CBP has long classified motorized machines that could not be classified elsewhere in heading 8479, HTSUS. This has been true even where the machine in question has incorporated some electrical features, as long as the mechanized function is not subsidiary to the electrical function of the machine or appliance (EN 8543). In NY G86267, dated February 2, 2001, for example, CBP classified a motorized, illuminated advertising module into heading 8479, HTSUS. There the unit could be placed either on a counter or mounted on a wall, and, while it used a light to illuminate three different advertisements, it also used a motor to rotate the display. In HQ 089831, dated October 4, 1991, CBP classified a music box that incorporated both mechanical and electrical features to play the national anthem as an American flag was mechanically raised up a flag pole. These items were all classified under heading 8479, HTSUS, because their mechanical features were not subsidiary to their electrical functions, and they were all mechanical devices whose function was performed distinctly from and independently of any other machine or appliance. In HQ 953671, dated July 2, 1993, CBP classified a mechanical billboard display under the same heading.

The X-Arm is similar to the products at issue in HQ 089831, HQ 953671, and NY G86267 in that its function is an electronically controlled mechanical function. In addition, classification in heading 8479, HTSUS, is consistent with the description in the EN to that heading. As a result, the X-Arm is classified under subheading 8479.89.98, HTSUS, for “machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances, other.”

HOLDING:

Under the authority of GRI 1, the X-Arm Full-Motion Motorized Mount is provided for in heading 8479, HTSUS. Specifically, it is classified under subheading 8479.89.98, as “machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances, other.” The column one general rate of duty is 2.5% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY R03515, dated April 19, 2006, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE

19 CFR PART 177

Proposed Revocation of Ruling Letter and Proposed Revocation of Treatment Relating to Classification of Reed Diffuser Bottles

AGENCY: U.S. Customs and Border Protection (“CPB”), Department of Homeland Security.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the classification of reed diffuser bottles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB proposes to revoke a ruling concerning the classification of glass jar from China under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before April 30, 2010.

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

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke a ruling pertaining to the classification of a reed diffuser bottle from China. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N048031, dated January 23, 2009 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

In NY N048031, CBP ruled that a small reed diffuser bottle is classified in subheading 7010.90.50, HTSUS, which provides for: “carboys, bottles, flasks, jars, pots, vials, ampoules and other containers,

of glass, of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass: other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N048031, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H078900. (*see* Attachment “B” to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: March 26, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

N048031

January 23, 2009

CLA-2-70:OT:RR:NC:1:126

CATEGORY: Classification

TARIFF NO.: 7010.90.50

MR. MARK METHENITIS
THE VERNON LAW GROUP, PLLC
1201 ELM STREET SUITE 4242
DALLAS, TX 75270

RE: The tariff classification of a glass jar from China

DEAR MR. METHENITIS:

In your letter dated December 23, 2008, on behalf of your client, Delicious Brands LLC, you requested a tariff classification ruling. A representative sample was submitted with your ruling request.

The product under consideration, item number DB080607001, is a small, round, clear glass jar with a short neck and a cork or rubber closure. The item measures approximately three inches in height. You state in your letter that the jar is produced by an automatic machine and has a total volume of four ounces (0.118 liters). You further state that the jar will be imported empty, and then filled with scented oil for sale to consumers.

In your letter you indicate that the glass jar is primarily for the conveyance of the oil to the consumer. It is not intended for reuse, refill or decoration.

The applicable subheading for the glass jar with cork or rubber closure will be 7010.90.50, Harmonized Tariff Schedule of the United States (HTSUS), which provides for glass containers of the kind used for the conveying or packing of goods. The rate of duty will be free.

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 Jacob Bunin at (646) 733-3027.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H078900
 CLA-2-85:CTF:TCM H078900 TNA
 CATEGORY: Classification
 TARIFF NO.: 7013.99.50

MARK METHENITIS
 THE VERNON LAW GROUP, PLLC
 1201 ELM STREET, SUITE 4242
 DALLAS, TX 75270

RE: Revocation of NY N048031; Classification of a glass jar from China

DEAR MR. METHENITIS:

This letter is in reference to New York Ruling Letter (“NY”) N048031, issued to you on January 23, 2009, concerning the tariff classification of a glass bottle from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 7010.90.50, Harmonized Tariff Schedule of the United States (“HTSUS”), as bottles of a kind used for the conveyance or packing of goods. We have reviewed NY N048031 and found it to be in error. For the reasons set forth below, we hereby revoke NY N048031.

FACTS:

The merchandise at issue is Item Number DB080607001, a small, round, clear glass jar with a short neck and a rubber stopper. It measures approximately three inches in height and has a volume of four ounces. The jar is imported empty, and then filled with scented oil for sale to consumers. It is also sold with reeds to diffuse the oil and its scent throughout a room. As such, it is known as a “reed diffuser bottle.”

ISSUE:

Whether a glass jar used as a reed diffuser bottle should be classified under heading 7010, HTSUS, as a bottle of a kind used for the conveyance or packing of goods, or under heading 7013, as glassware of the kind used for table, kitchen, toilet, office, indoor decoration or similar purposes?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). 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 GRI may then be applied.

The HTSUS provisions under consideration are as follows:

7010	Carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass
7010.90	Other
7010.90.50	Other containers (with or without their closures)

* * * * *

7013 Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)

Other glassware

7013.99 Other

Other

7013.99.50 Valued over \$0.30 but not over \$3 each

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to heading 7010, HTSUS, states, in pertinent part:

This heading covers all glass containers of the kinds commonly used commercially for the conveyance or packing of liquids or of solid products (powders, granules, etc.). They include :

(A) Carboys, demijohns, bottles (including syphon vases), phials and similar containers, of all shapes and sizes, used as containers for chemical products (acids, etc.), beverages, oils, meat extracts, perfumery preparations, pharmaceutical products, inks, glues, etc.

These articles, formerly produced by blowing, are now almost invariably manufactured by machines which automatically feed molten glass into moulds where the finished articles are formed by the action of compressed air. They are usually made of ordinary glass (colourless or coloured) although some bottles (*e.g.*, for perfumes) may be made of lead crystal, and certain large carboys are made of fused quartz or other fused silica.

The above-mentioned containers are generally designed for some type of closure; these may take the form of ordinary stoppers (of cork, glass, etc.), glass balls, metal caps, screw caps (of metal or plastics), or special devices (*e.g.*, for beer bottles, bottles for aerated waters, soda water syphons, etc.).

These containers remain in this heading even if they are ground, cut, sand-blasted, etched or engraved, or decorated (this applies, in particular, to certain perfume or liqueur bottles), banded, wickered or otherwise trimmed with various materials (wicker, straw, raffia, metal, etc.); they may also have tumbler-caps fitted to the neck. They may be fitted with drop measuring devices or may be graduated, provided that they are not of a kind used as laboratory glassware.

The EN to heading 7013, HTSUS, states, in pertinent part:

This heading covers the following types of articles, most of which are obtained by pressing or blowing in moulds :

(1) Table or kitchen glassware, *e.g.* drinking glasses, goblets, tankards, decanters, infants' feeding bottles, pitchers, jugs, plates, salad bowls, sugar-bowls, sauce-boats, fruit-stands, cake-stands, hors-d'oeuvres

dishes, bowls, basins, egg-cups, butter dishes, oil or vinegar cruets, dishes (for serving, cooking, etc.), stew-pans, casseroles, trays, salt cellars, sugar sifters, knife-rests, mixers, table hand bells, coffee-pots and coffee-filters, sweetmeat boxes, graduated kitchenware, plate warmers, table mats, certain parts of domestic churns, cups for coffee-mills, cheese dishes, lemon squeezers, ice-buckets.

(2) Toilet articles, such as soap-dishes, sponge-baskets, liquid soap distributors, hooks and rails (for towels, etc.), powder bowls, perfume bottles, parts of toilet sprays (other than heads) and tooth-brush holders.

(3) Office glassware, such as paperweights, inkstands and inkwells, book ends, containers for pins, pen-trays and ashtrays.

(4) Glassware for indoor decoration and other glassware (including that for churches and the like), such as vases, ornamental fruit bowls, statuettes, fancy articles (animals, flowers, foliage, fruit, etc.), table-centres (other than those of heading 70.09), aquaria, incense burners, etc., and souvenirs bearing views.

NY N048031 classified the subject merchandise under heading 7010, HTSUS, as jars that are used for conveyance or packing. The classification was based on the importer's assertion that the bottles would not be reused once the reeds and scented oil with which they were sold were finished.

Bottles, flasks, jars, pots, vials and other containers of a kind used for the conveyance or packing of goods of heading 7010, HTSUS, are jars that are designed to remain closed as they transport liquids or solids from one location to another. Glassware of the kind used for table, kitchen, toilet, office, indoor decoration or similar purposes of heading 7013, HTSUS, are designed to be displayed in the home or office as they hold material inside of them. They may remain open as they display their contents and are meant to lend decoration to the items they display.

The subject merchandise is filled with scented oil and reeds and, although they can be closed, they generally remain open to allow the scent to permeate the area. In addition, the bottles are generally placed in an open setting, rather than being hidden, to add decoration to their surroundings. Furthermore, counsel admits that its reed diffuser bottles are used in the same manner as larger, fancier reed diffuser bottles—i.e., as reed diffuser bottles.

Moreover, with the exception of the subject merchandise's small size, there is essentially no difference between it and the larger reed diffuser bottles that CBP routinely classifies in heading 7013, HTSUS. *See, e.g.*, HQ 960162; HQ 956470; HQ 961353; HQ 961409, among others, for a detailed explanation on the characteristics that differentiate bottles of heading 7010, HTSUS, and bottles of heading 7013, HTSUS. Given the similarities between the small bottles classified in NY N04031 and the larger bottles of the rulings noted above, the subject reed diffuser bottles should also be classified under heading 7013, HTSUS.

HOLDING:

Under the authority of GRI 1, small glass reed diffuser bottles are provided for in heading 7013, HTSUS. Specifically, they are classified under subheading 7013.99.50, as glassware of a kind used for table, kitchen, toilet, office,

indoor decoration or similar purposes (other than that of heading 7010 or 7018): Other glassware: other: Valued over \$0.30 but not over \$3 each. As such, the rate of duty is 30% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N048031, dated January 23, 2009, is REVOKED.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division



GENERAL NOTICE

19 CFR PART 177

Proposed Modification of a Ruling Letter and Proposed Revocation of Treatment Relating to Classification of Optical Discs for Video Game Consoles

AGENCY: U.S. Customs and Border Protection (“CBP”), Department of Homeland Security.

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the classification of optical discs for video game consoles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB is proposing to modify a ruling concerning the classification of optical discs for video game consoles under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before April 30, 2010.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor Washington, D.C. 20229–1179. Comments submitted may be inspected at the

above address during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325-0036.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP is proposing to modify a ruling pertaining to the classification of video game optical discs. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) M86614, dated October 11, 2006 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest

review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

In NY M86614, CBP found that optical discs for video game consoles, when imported separately, are classified in heading 9504, HTSUS, as "Video games of a kind used with a television receiver and parts and accessories thereof." It is now our view that the correct classification for this merchandise is under heading 8523, HTSUS, which provides for: "Discs... for the recording of sound or of other phenomena, whether or not recorded."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY M86614, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter ("HQ") H083275 (*see* Attachment B to this document). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: March 26, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

NY M86614
October 11, 2006
CLA-2-95:RR:NC:2:224 M86614
CATEGORY: Classification
TARIFF NO.: 9504.10.0000

MR. STEVEN W. BAKER
250 BEL MARIN KEYS BLVD.
SUITE B-6
NOVATO, CA 94949-5707

RE: The tariff classification of a video game system and components from China

DEAR MR. BAKER:

In your letter dated September 22, 2006, you requested a tariff classification ruling, on behalf of Nintendo of America, Inc., your client.

You are requesting the tariff classification on a Nintendo video game system known as "Wii", designed for use with a television receiver. The "Wii" system incorporates the components of a traditional video game: a central processor, internal flash memory with 512 megabytes, and a graphics-processing unit. The unit will be capable of playing single or double layered 12 centimeter proprietary optical disks for "Wii", as well as 8 centimeter disks for the Nintendo Game Cube. The unit may be connected to hand held controllers for input of commands and to a television for visual display. The "Wii" controller is a motion sensitive, wireless device. The remote includes an expansion port, a speaker, a rumble feature, and may also be used as a pointer. A remote accessory called a nunchuck provides an analog control stick, and C and Z buttons.

The unit includes 4 ports for classic Nintendo Game Cube controllers, 2 slots for Nintendo Game Cube memory cards, and an AV multi-output port for component, composite, or S-video. The "Wii" system will be imported as an integrated unit including the game console, proprietary media optical disks, and 2 or more hand-held controllers. In addition, the central unit, game disks, and controllers may be imported separately and may be packaged in the United States for subsequent sale, or sold as individual units.

The applicable subheading for the "Wii" Video Game System and Components, either imported separately or together, will be 9504.10.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for articles for arcade, table or parlor games...parts and accessories thereof: video games of a kind used with a television receiver and parts and accessories thereof. The rate of duty will be free.

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 Tom McKenna at 646-733-3025.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H083275

CLA-2: OT:RR:CTF:TCM H083275 TNA

CATEGORY: Classification

TARIFF NO.: 8523.40.40

MR. STEVEN W. BAKER
250 BEL MARTIN KEYS BLVD,
SUITE B-6
NOVATO, CA 94949-5707

RE: Modification of NY M86614; Classification of media optical discs

DEAR MR. BAKER:

This letter concerns New York Ruling Letter (“NY”) M86614, which the National Commodity Specialist Division of U.S. Customs and Border Protection (“CBP”) issued to you on behalf of your client, Nintendo of America, Inc., on October 11, 2006. In NY M86614, a Nintendo Wii video game system, wireless controllers and “proprietary media optical disks” were classified in heading 9504, Harmonized Tariff Schedule of the United States (HTSUS), as a video game, its parts and accessories, “whether imported separately or together.” We have reconsidered this ruling and now believe that it is incorrect with respect to the classification of the media optical discs when imported separately.

FACTS:

The optical discs at issue are slightly less than 5 inches in diameter and are produced using single-layer technology. They contain proprietary Wii software and can only be used with Wii game consoles and not with personal computers (“PCs”) or other gaming machines.

ISSUE:

Whether optical discs that contain video game software should be classified under heading 8523, HTSUS, as optical discs, or under heading 9504, as parts and accessories of video games?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification 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 headings at issue are as follows:

- | | |
|------|--|
| 8523 | Discs, tapes, solid-state non-volatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37: |
| 9504 | Articles for arcade, table or parlor games, including pinball machines, bagatelle, billiards and special tables for casino games; automatic bowling alley equipment; parts and accessories thereof: |

Note 3 to Chapter 95, HTSUS, states, in pertinent part:

Subject to note 1 above, parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System at the international level. CBP believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The EN to heading 8523, HTSUS, states, in pertinent part:

This heading covers different types of media, whether or not recorded, for the recording of sound or of other phenomena (*e.g.*, numerical data; text; images, video or other graphical data; software). Such media are generally inserted into or removed from recording or reading apparatus and may be transferred from one recording or reading apparatus to another.

In particular, this heading covers:

(B) OPTICAL MEDIA

Products of this group are generally in the form of discs made of glass, metal or plastics with one or more light-reflective layers. Any data (sound or other phenomena) stored on such discs are read by means of a laser beam. This group includes recorded discs and unrecorded discs whether or not rewritable.

This group includes, for example, compact discs (*e.g.*, CDs, V-CDs, CD-ROMs, CD-RAMs), digital versatile discs (DVDs).

The EN to heading 9504, HTSUS, states, in pertinent part, that:

This heading includes:

(2) Video game consoles and other electronic games which can be used with a television receiver, a video monitor or an automatic data processing machine monitor...

The heading also includes parts and accessories of video game consoles (for example cases, game cartridges, game controllers, steering wheels), provided they fulfil the conditions of Note 3 to this Chapter.

The heading **excludes**:

(b) Optical discs recorded with game software and used solely with a game machine of this heading (**heading 85.23**).

Heading 9504, HTSUS, provides for, among other things, parts and accessories of video games. Note 3 to Chapter 95, HTSUS, requires that parts and accessories which are suitable for use solely or principally with articles of the chapter are to be classified with those articles. The Court of Appeals for the Federal Circuit has found that “an imported item dedicated solely for use with another article is a ‘part’ of that article within the meaning of the HTSUS.” *Bauerhin Technologies v. United States* (“*Bauerhin*”), 110 F.3d 774, 779 (citations omitted), (Fed. Cir. 1997). An accessory is a subordinate article that bears “a direct relationship to the primary article that it accessorizes.” *Rollerblade Inc. v. United States* (“*Rollerblade*”), 282 F.3d 1349, 1352 (cita-

tions omitted) (Fed. Cir. 2002), *citing with approval* the Court of International Trade's consultation of the common (dictionary) meaning of the term "accessory." *See id.*; 116 F. Supp. 2d 1247, 1253 (Ct. Int'l Trade 2000).

In the case of optical discs containing video game software, the good to be classified is the disc itself and not the software recorded on it. There is nothing inherent in an optical disc that makes it a part or accessory of a game system. Optical discs are not solely used with video game consoles and do not bear a direct relationship to them. Such discs can also be used with, for example, CD players, DVD players, and ADP machines. As such, we find that they are not provided for in heading 9504, HTSUS, and that Note 3 to Chapter 95, HTSUS, is not applicable to their classification. This finding is supported by EN 95.04 2(b), which explains that optical discs recorded with game software and used solely with a game machine of heading 9504, HTSUS, are classified in heading 8523, HTSUS. The ENs are especially persuasive "when they specifically include or exclude an item from a tariff heading." *H.I.M./Fathom, Inc. v. United States*, 981 F. Supp. 610, 613 (1997).

Heading 8523, HTSUS, provides *eo nomine* for discs for the recording of sound and other phenomena. The discs at issue here have software recorded on them. Thus, they are described by heading 8523, HTSUS, and must be classified there.

HOLDING:

Under the authority of GRI 1, the media optical discs are provided for in heading 8523, HTSUS. Specifically, they are classified in subheading 8523.40.40, HTSUS, which provides for "Discs, tapes, solid-state non-volatile storage devices, 'smart cards' and other media for the recording of sound or of other phenomena, whether or not recorded...: Optical media: Recorded optical media: Other: ... proprietary format recorded discs." The 2009 column one, general rate of duty is free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the Internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY M86614, dated October 11, 2006, is modified with respect to the classification of optical discs when imported separately. The classification of the other items described therein remains unchanged.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



PROPOSED REVOCATION OF RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A CERTAIN LABELING TOOL

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

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to tariff classification of the “ID Pal™” labeling tool.

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) proposes to revoke one ruling letter relating to the tariff classification of the “ID Pal™” labeling tool under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before April 30, 2010.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W. (Mint Annex), Fifth Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the above address during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of the “ID Pal™” labeling tool. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) J83032, dated April 25, 2003 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, 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 proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY J83032, CBP determined that the subject labeling tool was classified in heading 9611, HTSUS (2003), which provided for, in pertinent part: “[d]ate, sealing or numbering stamps and the like, (including devices for printing or embossing labels), designed for operating in the hand...”. It is now CBP’s position that the labeling tool is properly classified in heading 8443, HTSUS, which provides for, in pertinent part: “...other printers, copying machines and facsimile machines, whether or not combined...”.

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY J83032 and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the “ID Pal™” labeling tool according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H011692, set forth as Attachment B to

this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: March 26, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY J83032
April 25, 2003
CLA-2-96:RR:NC:N2:224 J83032
CATEGORY: Classification
TARIFF NO.: 9611.00.0000

SHANNON MARKS
BRADY CORP.
P.O. Box 571
MILWAUKEE WI 53201-0571

RE: The tariff classification of a labeling tool from Malaysia.

DEAR Ms. MARKS:

In your letters dated March 26 and April 2, 2003, you requested a tariff classification ruling.

The merchandise is identified as the ID Pal™ labeling tool. The tool is described as a hand-held thermal transfer printer of specialized labeling materials. The 1.2-lb. portable tool is particularly designed for use in field applications such as wire and cable marking, electrical patch and control panel surfaces, storerooms and tool cribs, and in maintenance/engineering, electrical data communications, and laboratory applications.

The applicable subheading for the ID Pal™ labeling tool will be 9611.00.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for date, sealing or numbering stamps and the like, (including devices for printing or embossing labels), designed for operating in the hand; hand-operated composing sticks and hand printing sets incorporating such composing sticks. The rate of duty will be 2.7 percent *ad valorem*.

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

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

Sincerely,

ROBERT B. SWIERUPSKI
Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H011692
CLA-2 OT:RR:CTF:TCM H011692 GC
CATEGORY: Classification
TARIFF NO.: 8443.39.90

MR. GRANT SMITH
TRADE COMPLIANCE SPECIALIST
BRADY CORPORATION
6555 WEST GOOD HOPE ROAD
MILWAUKEE, WISCONSIN 53223

RE: Tariff classification of ID Pal™ labeling tool; Revocation of NY J83032

DEAR MR. SMITH:

This letter is in response to your request, dated April 26, 2007, on behalf of your company, Brady Corporation, for U.S. Customs and Border Protection (CBP) to reconsider New York Ruling Letter (NY) J83032, dated April 25, 2003. NY J83032 concerns the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the ID Pal™ labeling tool imported by your company. We have reviewed NY J83032 and find it to be in error.

FACTS:

The “ID Pal™” labeling tool was described in NY J83032 as a hand-held thermal transfer printer of specialized labeling materials that weighs approximately 1.2 pounds. Your written submission and the provided sample indicate that the “ID Pal™” is powered either by six AA batteries or through an AC adapter that is sold separately. It features an LCD screen and one cartridge of label paper, which is adhesive on one side. The device is capable of printing labels incorporating different font sizes on multiple lines. It is specifically designed for use in field operations such as wire and cable marking, on electrical patch and control panel surfaces, storerooms and tool cribs, and in maintenance/engineering, electrical data communications and laboratory applications.

ISSUE:

Whether the subject merchandise is classified in heading 9611, HTSUS, which provides for, in pertinent part, “date, sealing or numbering stamps, and the like”, or in heading 8443, HTSUS, which provides for “other printers”?

LAW AND ANALYSIS:

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

scope of heading 9611, HTSUS, EN 96.11 confirms that the heading covers “date, sealing and similar stamps” that are designed to be used independently in the hand. The instant “ID Pal™” is a handheld labeling tool used to print labels; it is not a stamp or similar to a stamp. It incorporates a thermal transfer printer to create labels of differing sizes and fonts. This operation falls outside the scope of heading 9611, HTSUS, which only provides for stamps and similar items.

Heading 8443, HTSUS, is an *eo nomine* provision for printers and printing machinery. *Eo Nomine* provisions provide for all articles named in the legal text unless specifically excluded. No type of printer is excluded from heading 8443, HTSUS. Furthermore, the function of the subject merchandise falls within the operation described in EN 84.43(II)(A). Specifically, the instant “ID Pal™” labeling tool incorporates a thermal transfer printer to print text onto print media. Accordingly, it is specifically provided for in heading 8443, HTSUS, as an “other printer”.

HOLDING:

By application of GRI 1, the subject “ID Pal™” labeling tool is classified in heading 8443, HTSUS, and is specifically provided for in subheading 8443.39.90, HTSUS, which provides for, in pertinent part: “...other printers, copying machines and facsimile machines, whether or not combined...: Other: Other...”. The general, column one 2009 rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY J83032, dated April 25, 2003, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



PROPOSED REVOCATION OF RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF ATOVAQUONE

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

ACTION: Notice of proposed revocation of one ruling letter and treatment relating to the tariff classification of Atovaquone.

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 inter-

ested parties that Customs and Border Protection (CBP) proposes to revoke one ruling letter relating to the tariff classification of Atovaquone under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before April 30, 2010.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W. 5th Floor, Washington, D.C. 20229-1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325-0024.

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 one ruling letter pertaining to the tariff classifi-

cation of Atovaquone. Although in this notice, CBP is specifically referring to the proposed revocation of New York Ruling Letter (NY) K89730, dated September 27, 2004 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., 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 proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY K89730, CBP determined that Atovaquone was classified in subheading 2914.69.20, HTSUS, HTSUS, which provides for "Ketones and quinones, whether or not with other oxygen function, and their halogenated, sulfonated, nitrated, or nitrosated derivatives: Quinones: Other: Drugs." It is now CBP's position that Atovaquone is properly classified in subheading 2914.70.40, which provides for "Ketones and quinones, whether or not with other oxygen function, and their halogenated, sulfonated, nitrated, or nitrosated derivatives: Halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY K89730 and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of Atovaquone according to the analysis contained in proposed Headquarters Ruling Letter H048948, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: March 26, 2010

GAIL A. HAMILL
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY K89730
September 27, 2004
CLA-2-30:RR:NC:2:238 K89730
CATEGORY: Classification
TARIFF NO.: 2914.69.2000

MS. INGE FORSTENZER
REN-PHARM INTERNATIONAL, LTD.
350 JERICHO TURNPIKE
JERICHO, NY 11753

RE: The tariff classification of **Atovaquone**(CAS-95233-18-4), imported in bulk form, from Spain

DEAR MS. FORSTENZER:

In your letter dated September 17, 2004, you requested a tariff classification ruling.

The subject product, Atovaquone, is indicated for the prevention of *Pneumocystis carinii* pneumonia in patients who are intolerant to trimethoprim-sulfamethoxazole. It is also indicated, in combination with proguanil hydrochloride, for the prevention of *P. falciparum* malaria.

The applicable subheading for Atovaquone, imported in bulk form, will be 2914.69.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Ketones and quinones, whether or not with other oxygen function, and their halogenated, sulfonated, nitrated or nitrosated derivatives: Quinones: Other: Drugs." Pursuant to General Note 13, HTS, the rate of duty will be free.

This merchandise may be subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number 1-888-443-6332.

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 Harvey Kuperstein at 646-733-3033.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT B]

HQ H048948
 CLA-2 OT:RR:CTF:TCM H048948 CkG
 CATEGORY: Classification
 TARIFF NO.: 2914.70.40

MS. INGE FORSTENZER
 REN-PHARM INTERNATIONAL, LTD.
 350 JERICO TURNPIKE, SUITE 204
 JERICO, NY 11753

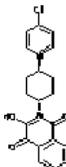
RE: PROPOSED REVOCATION OF NY K89730; CLASSIFICATION OF
 ATOVAQUONE, CAS 95233-18-4

DEAR Ms. FORSTENZER,

This is in reference to New York Ruling Letter (NY) K89730, issued by the Customs and Border Protection (CBP) National Commodity Specialist Division on September 27, 2004, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the chemical compound Atovaquone. We have reconsidered this decision, and for the reasons set forth below, have determined that classification of Atovaquone in subheading 2914.69.20, HTSUS, as an "other" quinone, was incorrect.

FACTS:

Atovaquone (CAS 95233-18-4), has the chemical formula C₂₂H₁₉O₃Cl. Its chemical name is *trans*-2-[4-(4-chlorophenyl)cyclohexyl]-3-hydroxy-1,4-naphthalenedione. It is imported in bulk form for manufacture into a preparation for the prevention of *Pneumocystis carinii* pneumonia in patients who are intolerant to trimethoprim-sulfamethoxazole. It is also indicated, in combination with proguanil hydrochloride, for the prevention of *P. falciparum* malaria. Atovaquone is listed in the Pharmaceutical Appendix to the HTSUS. A diagram of its chemical structure is included below.



ISSUE:

Whether Atovaquone is more specifically described as a quinone of subheading 2914.69, HTSUS, or a halogenated, aromatic compound of subheading 2914.70, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6. GRI 6, HTSUS, requires that the GRI's be applied at the subheading level on the understanding

that only subheadings at the same level are comparable. The GRI's apply in the same manner when comparing subheadings within a heading.

The HTSUS provisions under consideration are as follows:

- 2914: Ketones and quinones, whether or not with other oxygen function, and their halogenated, sulfonated, nitrated, or nitrosated derivatives:
- Quinones:
- 2914.69: Other:
- 2914.69.20: Drugs....
- 2914.70: Halogenated, sulfonated, nitrated or nitrosated derivatives:
- Aromatic:
- 2914.70.40: Other....
- * * * * *

Subheading Note 1 to Chapter 29 provides as follows:

Within any one heading of this chapter, derivatives of a chemical compound (or group of chemical compounds) are to be classified in the same subheading as that compound (or group of compounds) provided that they are not more specifically covered by any other subheading and that there is no residual subheading named "Other" in the series of subheadings concerned.

* * * * *

The HTSUS Pharmaceutical Appendix provides, in pertinent part, as follows:

This table enumerates products described by International Non-proprietary Names (INN) which shall be entered free of duty under general note 13 to the tariff schedule...

ATOVAQUONE 95233-18-4

* * * * *

There is no dispute that Atovaquone is classifiable at GRI 1 in heading 2914, HTSUS, as a halogenated quinone with an oxygen function. A quinone consists of a hydrocarbon ring with two double-bonded oxygen atoms substituted for two hydrogen atoms, as seen above. As a quinone, the compound is thus properly classifiable in heading 2914, HTSUS, as a quinone. The issue arises at the six-digit subheading level. Subheading 2914.70, HTSUS, provides for, *inter alia*, halogenated quinone derivatives. The instant quinone compound is halogenated due to the substitution of a hydrogen atom with a chlorine atom. A derivative of a compound results from the modification of that compound by adding to the moiety or basic structure of the compound without loss of that basic structure. *See e.g.*, HQ 085775, dated February 27, 1990. The substitution of a hydrogen atom with a chlorine atom modified the original quinone compound so as to create a quinone derivative. Furthermore, Atovaquone is also an aromatic compound, due to the presence of a six-membered carbon ring with three double bonds. While subheading 2914.69, HTSUS, describes Atovaquone as an "other" quinone, it is more specifically described in subheading 2914.69, HTSUS, as a halogenated, aromatic quinone derivative of subheading 2914.70, HTSUS, pursuant to subheading note 1 to Chapter 29.

HOLDING:

By application of GRIs 1 and 6, Atovaquone is classified in subheading 2914.70.40, which provides for “Ketones and quinones, whether or not with other oxygen function, and their halogenated, sulfonated, nitrated, or nitrosated derivatives: Halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic: Other.”

There is a “K” in the “special” subcolumn for subheading 2914.70.40, HTSUS. General Note 13 states that whenever a rate of duty of “Free” followed by the symbol “K” in parentheses appears in the “Special” column for a tariff provision, products classifiable in such provision shall be entered free of duty, provided that such product is listed in the Pharmaceutical Appendix. Pursuant to GN 13 of the HTSUS, Atovaquone is entered free of duty.

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

EFFECT ON OTHER RULINGS:

NY K89730, dated November 21, 2008, is hereby revoked.

Sincerely,

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

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**PROPOSED MODIFICATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF MEN’S SLEEPWEAR
PANTS**

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

ACTION: Notice of proposed modification of a ruling letter and treatment relating to the tariff classification of men’s sleepwear pants.

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) proposes to modify one ruling letter relating to the tariff classification of two styles men’s sleepwear pants under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before April 30, 2010.

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. (Mint Annex), Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20001 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325-0025

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to modify a ruling letter pertaining to the tariff classification of two styles of men's knit and woven pants. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N025263, dated May 2, 2008 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., 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 proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY N025263, set forth as Attachment A to this document, CBP determined that the subject men's knit and woven pants, styles 230316 and 230317, were classified in headings 6103 and 6203, HTSUS, respectively; specifically subheading 6103.42.1020, which provides for: "Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted: of cotton: trousers, breeches and shorts: trousers and breeches: men's," and subheading 6203.42.4016, which provides for "Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear): trousers, bib and brace overalls, breeches and shorts: of cotton: other: other: men's trousers and breeches: other." It is now CBP's position that the subject men's woven and knit pants are properly classified in headings 6107 and 6207, HTSUS, respectively; specifically subheading 6107.91.0030, which provides for "Men's or boys' underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles, knitted or crocheted: Other: Of cotton," and subheading 6207.91.3010, providing for "Men's or boys' singlets and other undershirts, underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles: Other: Sleepwear."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N025263 and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject men's woven and knit pants according to the analysis contained in proposed Headquarters Ruling Letter H030421, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to modify any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: March 26, 2010

GAIL A. HAMILL
for

MYLES B. HARMON, DIRECTOR
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N025623

May 2, 2008

CLA-2-61:OT:RR:NC:WA:356

CATEGORY: Classification

TARIFF NO.: 6103.42.1020; 6203.42.4016

Ms. ALLISON WIRES

TARGET STORES

7000 TARGET PARKWAY, NCD-0456

BROOKLYN PARK, MN 55445

RE: The tariff classification of men's knit and woven pants from Cambodia, Bangladesh and China.

DEAR Ms. WIRES:

In your letter dated March 31, 2008, you requested a tariff classification ruling. Your samples have been retained for our files.

Style 230316 is a pair of men's pants constructed from 60% cotton, 40% polyester, jersey knit fabric. Style 230316 has a covered elastic waistband with an outside drawstring; a short, fly front opening positioned high on the front rise; side seam pockets; and hemmed legs.

Style 230317 is a pair of men's pants constructed from 55% cotton, 45% polyester, yarn dyed woven fabric. Style 230317 has a covered elastic waistband with an outside drawstring; a short, deep, fly front opening positioned high on the front rise; side seam pockets; and hemmed legs.

Style 230318 is a pair of men's pants constructed from 100% cotton, woven, yarn dyed, flannel fabric. Style 230318 has a covered elastic waistband with an outside drawstring; a short, fly front opening positioned high on the front rise; side seam pockets; and hemmed legs.

Style 230320 is a pair of men's pants constructed from 100% cotton, woven, yarn dyed, heavy weight flannel fabric. Style 230320 has a wide, tunnel elastic waistband with a coarse, rough texture; two large metal grommets at the center front waistband; an outside drawstring; a belt loop at the center rear waistband; a deep fly front opening positioned high on the front rise; quarter pockets at each side with deep pocket bags; two rear patch pockets; and hemmed legs.

Style 230321 is a pair of men's pants constructed from 100% cotton, woven flannel fabric. Style 230321 has a wide, tunnel elastic waistband with a rough texture; two small metal grommets at the center front waistband; an outside drawstring; a fly front opening positioned high on the front rise; quarter pockets at each side with deep pocket bags; two rear patch pockets; and hemmed legs.

Although you refer to Styles 230316, 230317, 230318, 230320, and 230321 as sleep pants, the construction and styling features of the garments are not characteristic of sleepwear. The short and/or deep fly is impractical for its intended use and the position of the fly high on the front rise does not compromise modesty. The belt loop, metal grommets, wide rough waistbands, and deep and/or excessive pockets are characteristic of multi-use garments. Consequently, Styles 230316, 230317, 230318, 230320, and 230321 are considered multi-use garments capable of being worn in a variety of situations in

and around the home. As such, the pants are not classified in headings 6107 or 6207, HTSUS, which are limited to garments that are designed for wear only to bed for sleeping.

The applicable subheading for Style 230316 will be 6103.42.1020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for men's or boys'... trousers, ...breeches and shorts (other than swimwear), knitted or crocheted: of cotton: trousers and breeches ... men's. The duty rate is 16.1% ad valorem.

The applicable subheading for Styles 230317, 230318, 230320, and 230321 will be 6203.42.4016, Harmonized Tariff Schedule of the United States (HTSUS), which provides for men's or boys'...trousers, bib and brace overalls, breeches and shorts: of cotton: other: other: other: trousers and breeches: men's: other. The duty rate is 16.6% 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/>.

Styles 230316, 230317, 230318, 230320, and 230321 fall within textile category designation 347. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). A copy of this ruling letter 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 this ruling, contact National Import Specialist Mary Ryan at 646-733-3271.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H030421
CLA-2 OT:RR:CTF:TCM H030421 CKG
CATEGORY: Classification
TARIFF NO.: 6107.91.0030; 6207.91.3010

MR. JOHN PETERSON, ESQ.
NEVILLE PETERSON LLP
17 STATE STREET, 19TH FLOOR
NEW YORK, NY 10004

Re: Modification of NY N025623; Classification of men's knit and woven pants

DEAR MR. PETERSON,

This is in response to your letter of June 6, 2008, on behalf of your client, Target Corporation, requesting the reconsideration, in part, of New York Ruling Letter (NY) N025623, dated May 2, 2008, as it pertains to the classification of two styles of men's sleepwear pants under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed N025623 and have determined that it is in error. Therefore, this ruling modifies N025623 with respect to two styles of men's sleepwear pants.

FACTS:

The submitted samples are two styles of men's cotton pants, identified as styles PID # 230316 and 230317. The classification of the additional styles subject to NY Ruling Letter N025623 is not at issue.

Style PID # 230316 is made of 60% cotton and 40% polyester jersey knit fabric. Style PID # 230317 is made of 55% cotton and 45% polyester yarn died woven fabric. Both garments feature an elasticized waistband with an outside drawstring, side seam pockets, hemmed legs, and an unsecured, 5.5 inch fly front opening with no means of closure. The subject articles are described by the importer as "sleep pants" and "sleep bottoms" and are offered for sale as "sleepwear" in the intimate apparel section of target stores.

Style PID # 230316 was classified in NY N025623 under heading 6103, HTSUS, which provides for: "Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted."

Style PID # 230317 was classified under heading 6203, HTSUS, which provides for "Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear)."

Additional marketing information submitted with the request for reconsideration indicates that the subject styles are characterized as sleepwear and sold in the intimate apparel department of Target stores.

ISSUE:

Whether the instant merchandise is classifiable as sleepwear of headings 6107 and 6207, HTSUS, or as trousers of headings 6103 and 6203, HTSUS.

LAW AND ANALYSIS:

Classification of merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to

the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's, applied in sequential order.

The HTSUS provisions at issue are as follows:

- 6103: Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted
- 6103.42: Of cotton:
- 6103.42.10: Trousers, breeches and shorts
 - Trousers and breeches:
 - 6103.42.1020: Men's (347)
 - * * * * *
- 6107: Men's or boys' underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles, knitted or crocheted
 - Other:
 - 6107.91.00: Of cotton
 - 6107.91.0030: Sleepwear (351)
 - * * * * *
- 6203: Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear)
 - Trousers, bib and brace overalls, breeches and shorts
 - 6203.42: Of cotton
 - 6203.42.40: Other
 - 6203.42.4016: Other (347)
 - * * * * *
- 6207: Men's or boys' singlets and other undershirts, underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles
 - Other:
 - 6207.91: Of cotton:
 - 6207.91.30: Other
 - 6207.91.3010: Sleepwear (351)
 - * * * * *

You propose classification in heading 6107, HTSUS, which provides for "Men's or boys' underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles, knitted or crocheted" and heading 6207, HTSUS, which provides for "Men's or boys' singlets and other undershirts, underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles."

The determination of whether garments are classified as sleepwear or multi-purpose apparel is controlled by the principal use of the garments. A tariff classification controlled by use, other than actual use, is to be determined by the principal use in the United States at, or immediately prior to, the date of importation, of goods of the same class or kind of merchandise. Additional U.S. Rule of Interpretation 1(a).

Several court cases have also addressed the classification of sleepwear. In

Mast Industries, Inc. v. United States, 9 CIT 549, 552 (1985), *aff'd* 786 F.2d 144 (CAFC, 1986), the Court of International Trade considered the classification of a garment claimed to be sleepwear. The court cited several lexicographic sources, among them *Webster's Third New International Dictionary* which defined "nightclothes" as "garments to be worn to bed." In *Mast*, the court determined that the woman's nightshirt at issue therein was designed, manufactured, and used as nightwear and therefore was classifiable as nightwear. Similarly, in *St. Eve International, Inc. v. United States*, 11 CIT 224 (1987), the court ruled that the subject nightgowns were manufactured, marketed and advertised as nightwear and were chiefly used as nightwear.

Finally, in *Inner Secrets/Secretly Yours, Inc. v. United States*, 885 F. Supp. 248 (1995), the court was faced with the issue of whether women's boxer style shorts were classifiable as "outerwear" under heading 6204, HTSUS, or as "underwear" under heading 6208, HTSUS. The court stated the following, in pertinent part:

[P]laintiff's preferred classification is supported by evidence that the boxers in issue were designed to be worn as underwear and that such use is practical. In addition, plaintiff showed that the intimate apparel industry perceives and merchandises the boxers as underwear. While not dispositive, the manner in which plaintiff's garments are merchandised sheds light on what the industry perceives the merchandise to be.

Further, evidence was provided that plaintiff's merchandise is marketed as underwear. While advertisements also are not dispositive as to correct classification under the HTSUS, they are probative of the way that the importer viewed the merchandise and of the market the importer was trying to reach.

On the other hand, in *International Home Textile, Inc. v. United States*, 21 CIT 280, 282 (1997), *aff'd* 153 F.3d 1378 (CAFC, 1998), the court classified the men's top, pants and shorts at issue as loungewear in heading 6103, HTSUS. The court therein stated:

Based upon a careful examination of the loungewear as well as the testimony of the various witnesses, the court finds that the loungewear items at issue do not share that essential character of privateness or private activity. As the parties have already stipulated, the loungewear is used primarily for lounging and not for sleeping. The court finds no basis in the exhibits, the witness testimony, or the loungewear's construction and design to find that it is inappropriate, at a minimum, for the loungewear to be worn at informal social occasions in and around the home, and for other individual, non private activities in and around the house e.g., watching movies at home with guests, barbecuing at a backyard gathering, doing outside home and yard maintenance work...

When ruling on similar merchandise in the past, CBP's policy has been to carefully examine the physical characteristics of the garments in question. When this has not proven substantially helpful, we consider other extrinsic evidence such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise, i.e., purchase orders, invoices, and other internal documentation. It should be noted that CBP considers these factors in totality and no single factor is determinative of classification

as each factor viewed alone may be flawed. *See* HQ 964513, dated February 11, 2002.

In the instant case, the physical characteristics of the subject styles are suggestive of sleepwear, such as the lightweight and loose construction characteristic of sleepwear, an elasticized waistband with an outside drawstring, and an unsecured fly front opening with no means of closure. While the New York Ruling at issue found that the short fly opening did not compromise modesty or privacy, we disagree. The unsecured, 5.5 inch open fly clearly indicates the intended use of the garment to be that of nightwear, and would not normally be considered appropriate for informal social gatherings. We have reached this same conclusion in prior rulings on similar merchandise. For instance, in HQ 962703, dated November 2, 2000, we stated: “An open fly is a feature whose essential character is privateness or private activity, which is indicative of sleepwear and pajamas. An unsecured fly does not satisfy the conventional standards of modesty necessary on a garment that would be worn for the type of non-private activities named in *International Home Textiles, Inc.*” Furthermore, in HQ 963906, dated April 4, 2001, we noted that a pair of men’s pants possessing a fly opening secured by a one-button closure did not provide the appropriate privacy for individual, non private activities in and around the house. Both the button and the button hole in this case were very close to the outside edge of the fly, allowing for “very little overlapping of the fabric around the opening, resulting in the fly front gaping open when the garment is worn.” *See* HQ 963906. Other rulings classifying similar garments as sleepwear include HQ 966345, dated February 6, 2004; NY L81656, dated February 3, 2005; and NY N023207, dated February 27, 2008.

The subject pants also feature two side-seam pockets. NY N025623 noted the “deep and/or excessive pockets” as characteristic of multi-use garments. However, we have held previously that such a feature “will not preclude a garment from being classified as sleepwear inasmuch as these pockets do not interfere with the garment’s practical use for sleeping.” *See* HQ 963906, dated April 4, 2001. The physical characteristics of the subject garments are thus consistent with sleepwear. We also find that the environment of sale supports classification as sleepwear. The marketing material which was submitted describes the items as “sleep pants,” “sleep bottoms,” and “pajama pants”. The subject articles are offered for sale as “sleepwear” in the intimate apparel section of Target stores, with other nightwear such as pajamas. The environment of sale thus indicates that both of these garments are being presented as sleepwear for the primary purpose of wearing to bed for sleeping. Nothing else in the environment of sale suggests the garments are designed or intended for wear other than while sleeping.

It is thus the opinion of this office, based on the physical characteristics of the garments in question and the general environment of sale that the subject articles are designed, marketed and used as sleepwear.

HOLDING:

Pursuant to GRI 1, the instant merchandise is properly classifiable as men’s sleepwear. Style PID # 230316 is classified under the provision for “Men’s or boys’ underpants, briefs, nightshirts, pajamas, bathrobes, dressing

gowns and similar articles, knitted or crocheted: Other: Of cotton”, in subheading 6107.91.0030, HTSUSA, and is dutiable under the general column one rate of 8.7 percent ad valorem. Style PID # 230317 is classified under subheading 6207.91.3010, HTSUSA, which provides for “Men’s or boys’ singlets and other undershirts, underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles: Other: Sleepwear,” dutiable under the general column one rate of 6.1 percent ad valorem. The textile quota category for both garments is 351.

EFFECT ON OTHER RULINGS:

New York Ruling Letter N025623, dated May 2, 2008, is hereby modified.

Sincerely,

MYLES B. HARMON, DIRECTOR
Commercial and Trade Facilitation Division

◆◆◆◆◆

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION AND STATUS UNDER THE
CARIBBEAN BASIN TRADE PARTNERSHIP ACT (CBTPA)
OF GIRLS’ GARMENTS FROM GUATEMALA**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification and status under the Caribbean Basin Trade Partnership Act (CBTPA) of girls’ garments from Guatemala.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB proposes to revoke a ruling concerning the tariff classification and status under the Caribbean Basin Trade Partnership Act (CBTPA) of girls’ garments from Guatemala. Similarly, CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before April 30, 2010.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the

address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification and status under the Caribbean Basin Trade Partnership Act (CBTPA) of girls’ garments from Guatemala. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) L86713, dated August 18, 2005 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY L86713, CBP classified a girl's skirt under subheading 6204.52.2080, of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Skirts and divided skirts: Of cotton: Other. Other: Girls' (342)" and a girl's jumper under subheading 6211.42.0060, HTSUS, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton. Jumpers (359)".

In NY L86713, CBP also determined that the girls' garments met the requirements of the "NAFTA short supply" provision of the CBTPA contained in subheading 9820.11.24, HTSUS, and qualified for preferential, duty free treatment under the CBTPA, based on the tariff shift rules in General Note 12(t) for subheadings 6204.52 and 6211.42, HTSUS. It is now CBP's position that the applicable provision is Note 2 to Chapter 62 of GN 12(t) and the girls' garments may meet the requirements for "short supply" fabric under subheading 9820.11.24 of the HTSUS, and may be eligible for preferential, duty free treatment under the CBTPA, provided that they are imported directly into the customs territory of the United States from a CBTPA beneficiary country and the apparel garments meet the requirements of the relevant subheading.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY L86713, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H081216, set forth as Attachment B to this notice. 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, consideration will be given to any written comments timely received.

Dated: March 26, 2010

GAIL A. HAMILL
for

MYLES B. HARMON, DIRECTOR
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY L86713
August 18, 2005
CLA-2-62:RR:NC:WA:358 L86713
CATEGORY: Classification
TARIFF NO.: 6204.52.2080, 6211.42.0060

MS. PRISCILLA ROYSTER
THE IRWIN BROWN COMPANY
14092 CUSTOMS BLVD.
GULFPORT, MS 39503

RE: The tariff classification and status under the Caribbean Basin Trade Partnership Act (CBTPA) for girls' garments from Guatemala.

DEAR MS. ROYSTER:

In your letter dated August 11, 2005, you requested a ruling on the tariff classification and status under the Caribbean Basin Trade Partnership Act (CBTPA) for a girl's skirt, Style GG5403, and a girl's jumper, Style GG5405. This request was made on behalf of Isfel Company.

The pleated skirt has a flat front waistband and an elasticized rear waistband. It has non-functional pocket flaps that are set into seams between the waistband and the skirt body. It also has a fabric lining with separate contrast color netting fabric that extends below the lining hemline and forms an extension to the garment silhouette.

The dropped waist jumper has a back zipper opening extending from the rear waist to the nape of the neck and a skirt portion composed of pleated fabric. It has a lightweight, contrast color, sheer fabric belt that secures to the waist by means of five belt loops. It also has a fabric lining with separate contrast color netting fabric that extends below the lining hemline and forms an extension to the garment silhouette.

You state that the garment shells are made of cotton velveteen fabric from China and that the woven polyester lining is from China and the polyester netting extensions and belt fabric are from Taiwan. The fabric will be sent to Guatemala where it will be cut and sewn into the completed garments. The submitted samples are girls' size 5.

The outer shell fabric, i.e., the cotton velveteen, imparts the essential characteristic of both garments.

The applicable subheading for the skirt will be 6204.52.2080, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' skirts and divided skirts, of cotton, other, other, girls'. The general rate of duty is 8.2% ad valorem.

The applicable subheading for the jumper will be 6211.42.0060, Harmonized Tariff Schedule of the United States (HTS), which provides for other garments, women's or girls', of cotton, jumpers. The general rate of duty is 8.1% ad valorem.

You inquire whether the skirt and jumper are eligible for preferential tariff treatment under the CBTPA based on articles assembled from fabric not formed in the United States as identified in NAFTA short supply?

You specifically ask whether the skirt and jumper will meet the eligibility requirements of the "short supply" provision. The provision commonly referred to as the "NAFTA short supply" provision is contained in subheading

9820.11.24, of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Subheading 9820.11.24, HTSUSA, provides as follows:

Articles imported from a designated beneficiary Caribbean Basin Trade Partnership country enumerated in general note 17(a) to the tariff schedule: Apparel articles both cut (or knit-to-shape) and sewn or otherwise assembled in one or more such countries from fabrics or yarn not formed in the United States or in one or more such countries, provided that such apparel articles of such fabrics or yarn would be considered an originating good under the terms of general note 12(t) to the tariff schedule without regard to the source of the fabric or yarn if such apparel article had been imported from the territory of Canada or the territory of Mexico directly into the customs territory of the United States.

None of the fabric used in the manufacture of the garments is formed in the U.S. or a CBTPA beneficiary country. Thus, in order to determine whether the goods are eligible for preferential treatment under the CBTPA, we must determine whether the skirt and jumper would be considered originating goods under General Note 12(t), HTSUSA.

General Note 12(t), HTSUSA, sets out the tariff shift rules for determining whether non-originating materials used in the production of a good have been transformed into originating goods under the North American Free Trade Agreement.

For the skirt, subheading 6204.52, HTSUSA, General Note 12(t), HTSUSA, provides that a good will be originating if there is:

A change to subheadings 6204.51 through 6204.53, from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, or 5310 through 5311, chapter 54, or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, *provided* that: (A) the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties, and (B) the visible lining fabric listed in chapter rule 1 for chapter 62 satisfies the tariff change requirements provided therein.

The cotton velveteen fabrics imported into Guatemala are classified under heading 5801.23, HTSUSA. Since heading 5801.23, HTSUSA, is not excepted from the tariff shift rule, the skirt would qualify as an originating good assuming the pants are cut and sewn in Guatemala.

The polyester lining fabrics imported into Guatemala are classified under heading 5407.6199, HTSUSA. Since heading 5407.6199, HTSUSA, is not excepted from the tariff shift rule for visible lining fabric, the skirt would qualify as an originating good assuming the skirt is cut and sewn in Guatemala.

The skirt has polyester lining and netting fabric that are not formed in the U.S. or a CBTPA beneficiary country. However, Chapter rule 3 to Chapter 62, GN 12(t), HTSUSA, provides as follows:

For purposes of determining the origin of a good of this chapter, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in the rule for that good. If the rule requires that the good must also satisfy the tariff change requirements for visible lining fabrics listed in chapter rule 1 for this chapter, such requirement shall only apply to the visible lining fabric in the main body of the

garment, excluding sleeves, which covers the largest surface area, and shall not apply to removable linings.

Thus, for the purposes of determining whether the skirt is originating under GN 12(t), HTSUSA, we disregard the polyester fabrics because they are not the components that determine the tariff classification of the good.

Based upon the information you supplied, the girl's skirt, Style GG5403, meets the requirements of subheading 9820.11.24 for free duty treatment under the CBTPA.

For the jumper, subheading 6211.42, HTSUSA, General Note 12(t), HTSUSA, provides that a good will be originating if there is:

A change to subheadings 6204.51 through 6204.53, from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, or 5310 through 5311, chapter 54, or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.

The cotton velveteen fabrics imported into Guatemala are classified under heading 5801.23, HTSUSA. Since heading 5801.23, HTSUSA, is not excepted from the tariff shift rule, the jumper would qualify as an originating good assuming the jumper is cut and sewn in Guatemala.

The jumper has polyester lining and netting fabric and a shear polyester belt that is not formed in the U.S. or a CBTPA beneficiary country. Chapter rule 3 to Chapter 62, GN 12(t), HTSUSA, provides as follows:

For purposes of determining the origin of a good of this chapter, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in the rule for that good.

Thus, for the purposes of determining whether the jumper is originating under GN 12(t), HTSUSA, we disregard the polyester fabrics because they are not the components that determine the tariff classification of the good.

Based upon the information you supplied, the girl's jumper, Style GG5405 meets the requirements of subheading 9820.11.24 for free duty treatment under the CBTPA.

Cotton skirts fall within textile category designation 342. Cotton jumpers fall within textile category designation 359. Based upon international textile trade agreements products of Guatemala are not subject to quota and do not require a visa.

Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov. 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 Bruce Kirschner at 646-733-3048.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H081216
CLA-2 OT:RR:CTF:TCM H081216 JPJ
CATEGORY: Classification
TARIFF NO.: 6204.52.2080, 6211.42.0060

MS. PRISCILLA ROYSTER
THE IRWIN BROWN COMPANY
14092 CUSTOMS BLVD.
GULFPORT, MS 39503

RE: Classification and status under the Caribbean Basin Trade Partnership Act (CBTPA) of girls' garments from Guatemala; Revocation of NY L86713

DEAR MS. ROYSTER:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling letter (NY) L86713, issued to you on August 18, 2005.

In NY L86713, CBP classified a girl's skirt under subheading 6204.52.2080, of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Skirts and divided skirts: Of cotton: Other: Other: Girls'" and a girl's jumper under subheading 6211.42.0060, HTSUS, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton. Jumpers".

In NY L86713, CBP also determined that the girls' garments met the requirements of the "North American Free Trade Agreement ("NAFTA") short supply" provision of the Caribbean Basin Trade Partnership Act ("CBTPA") contained in subheading 9820.11.24, HTSUS, and qualified for preferential, duty free treatment under the CBTPA.

CBP has determined that NY L86713 is incorrect.

FACTS:

In NY L86713, the merchandise was described as follows:

The pleated skirt [Style GG5403] has a flat front waistband and an elasticized rear waistband. It has non-functional pocket flaps that are set into seams between the waistband and the skirt body. It also has a fabric lining with separate contrast color netting fabric that extends below the lining hemline and forms an extension to the garment silhouette.

The dropped waist jumper [Style GG5405] has a back zipper opening extending from the rear waist to the nape of the neck and a skirt portion composed of pleated fabric. It has a lightweight, contrast color, sheer fabric belt that secures to the waist by means of five belt loops. It also has a fabric lining with separate contrast color netting fabric that extends below the lining hemline and forms an extension to the garment silhouette.

You state that the garment shells are made of cotton velveteen fabric from China and that the woven polyester lining is from China and the polyester netting extensions and belt fabric are from Taiwan. The fabric will be sent to Guatemala where it will be cut and sewn into the completed garments. The submitted samples are girls' size 5.

The outer shell fabric, i.e., the cotton velveteen, imparts the essential characteristic of both garments.

ISSUE:

Whether the girls' garments qualify for preferential tariff treatment under the "NAFTA short supply" provision of the CBTPA contained in subheading 9820.11.24, HTSUS.

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

The CBTPA provides certain specified trade benefits for countries of the Caribbean region. The Act extends NAFTA duty treatment standards to non-textile articles that previously were ineligible for preferential treatment under the Caribbean Basin Economic Recovery Act (CBERA) and provides duty-free and quota-free treatment for certain textile and apparel articles which meet the requirements set forth in Section 211 of the CBTPA (amended 213(b) of the CBERA, codified at 19 U.S.C. 2703(b)).

Beneficiary countries are designated by the President of the United States after having met eligibility requirements set forth in the CBTPA. Eligibility for benefits under the CBTPA is contingent on designation as a beneficiary country by the President of the United States and a determination by the United States Trade Representative (USTR), published in the Federal Register, that a beneficiary country has taken the measures required by the Act to implement and follow, or is making substantial progress toward implementing and following, certain customs procedures, drawn from Chapter 5 of the NAFTA, that allow the United States to verify the origin of products. Once both these designations have occurred, a beneficiary country is entitled to preferential treatment provided for by the CBTPA.

Guatemala was designated a beneficiary country by Presidential Proclamation 7351 on October 2, 2000, published in the Federal Register (65 Fed. Reg. 59329). It was determined to have met the second criteria concerning customs procedures by the USTR and thus eligible for benefits under the CBTPA effective October 2, 2000. *See* 65 Fed. Reg. 60236.

The provisions implementing the textile provisions of the CBTPA in the Harmonized Tariff Schedule of the United States (HTSUS) are contained, for the most part, in subchapter XX, Chapter 98, HTSUS (two provisions may be found in subheading 9802.00.80, HTSUS). The regulations pertinent to the textile provisions of the CBTPA may be found at §§10.221 through 10.228 of the CBP Regulations (19 CFR 10.221 through 10.228).

The provision, commonly referred to as the “NAFTA short supply” provision, is contained in subheading 9820.11.24, HTSUS.

Subheading 9820.11.24, HTSUS, provides as follows:

Articles imported from a designated beneficiary Caribbean Basin Trade Partnership country enumerated in general note 17(a) to the tariff schedule: Apparel articles both cut (or knit-to-shape) and sewn or otherwise assembled in one or more such countries from fabrics or yarn not formed in the United States or in one or more such countries, provided that such apparel articles of such fabrics or yarn would be considered an originating good under the terms of general note 12(t) to the tariff schedule without regard to the source of the fabric or yarn if such apparel article had been imported from the territory of Canada or the territory of Mexico directly into the customs territory of the United States.

None of the fabric used in the manufacture of the girls’ garments is formed in the U.S. or in a CBTPA beneficiary country. Thus, in order to determine whether the goods are eligible for preferential treatment under the CBTPA, we must determine whether the garments would be considered originating goods under the terms of General Note 12(t), HTSUS.

General Note 12(t), HTSUS, sets forth the applicable tariff shift rules under the North American Free Trade Agreement (NAFTA) for determining whether non-originating materials used in the production of a good transform the good into an originating good under the NAFTA.

The outer shell of the garments is said to be constructed of cotton velveteen fabric classifiable in subheading 5801.23, HTSUS, which provides for “Woven pile fabrics and chenille fabrics, other than fabrics of heading 5802 or 5806: Of cotton: Other weft pile fabrics (224).”

Chapter rule 2 to Chapter 62 of General note 12(t) states, in relevant part:

Apparel goods of this chapter shall be considered to originate if they are both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties and if the fabric of the outer shell, exclusive of collars or cuffs, is wholly of one or more of the following:

(A) Velveteen fabrics of subheading 5801.23, containing 85 per cent or more by weight of cotton; . . .

Therefore, as long as the girls’ garments are both cut and sewn in a CBTPA beneficiary country and the outer shell, exclusive of collars and cuffs, is wholly of velveteen fabric, the girls’ garments may qualify as originating goods under the terms of General note 12(t).

HOLDING:

Provided that all the requirements of the subheading are satisfied, the apparel articles are classifiable under subheading 9820.11.24 of the HTSUS, and are eligible for preferential, duty free treatment under the CBTPA, provided they are imported directly into the customs territory of the U.S. from a CBTPA beneficiary country and all other documentary requirements are satisfied.

EFFECT ON OTHER RULINGS:

NY L86713, dated August 18, 2005, is revoked.

Sincerely,

MYLES B. HARMON, DIRECTOR
Commercial and Trade Facilitation Division



**PROPOSED REVOCATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A STUFFED BEAR
BANK**

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

ACTION: Notice of proposed revocation of a ruling letter and revocation of treatment relating to tariff classification of a stuffed bear bank.

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) proposes to revoke one ruling letter relating to the tariff classification of a stuffed bear bank under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before April 30, 2010.

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. (Mint Annex), Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20001 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

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 a ruling letter pertaining to the tariff classification of a stuffed bear bank. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 087133, dated October 18, 1990 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., 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 proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care

on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In HQ 087133, set forth as Attachment A to this document, CBP determined that the subject stuffed bear bank was classified in subheading 6307.90.95, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other: Other.” It is now CBP’s position that the subject bear bank is properly classified in subheading 9503.00.00, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke HQ 087133 and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject bear bank according to the analysis contained in proposed Headquarters Ruling Letter H065119, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: March 26, 2010

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ 087133

October 18, 1990

CLA-2 CO:R:C:G 087133 SLR

CATEGORY: Classification

TARIFF NO.: 6307.90.9590

DISTRICT DIRECTOR OF U.S. CUSTOMS
300 SOUTH FERRY STREET
TERMINAL ISLAND, CA 90731

RE: Protest No. 2704-89-002117; Bear Bank

DEAR SIR:

This correspondence constitutes our decision regarding Application for Further Review of Protest No. 2704-89-002117, filed by Gootnick Enterprises on June 2, 1989.

FACTS:

The submitted sample, item #0225, is a partially stuffed bear figure measuring approximately 8-1/2 inches in height and 7 inches in width. The head and appendages of the bear are stuffed, while the torso incorporates a hollow plastic container for the holding of coins. The sample contains a coin slot and bottom plug for the removal of coins. Its exterior is made of soft plush pile fabric.

A shipment of the subject merchandise was liquidated in subheading 6307.90.9030, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for other made up articles of textile materials, dutiable at 7 percent ad valorem.

This provision is now subheading 6307.90.9590.

The importer requests classification in subheading 9503.49.0020, HTSUSA, which provides for toys representing animals or non-human creatures, dutiable at 6.8 percent ad valorem. It is claimed that the subject item enjoys duty free status by virtue of subheading 9902.95.02, HTSUSA. Accordingly, the protestant requests that the entry in question be re-liquidated under subheadings 9503.49.0020 and 9902.95.02, resulting in a refund of duties.

ISSUE:

Whether the subject article is classifiable in subheading 9503.49.0020, HTSUSA, and, if not, what classification is appropriate.

LAW AND ANALYSIS:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

Heading 9503, HTSUSA, provides, in pertinent part, for "[o]ther toys." The Explanatory Notes to Chapter 95 indicate that: "This Chapter covers toys of all kinds whether designed for the amusement of children or adults." The

phrase “designed for the amusement of” is generally understood to indicate that the use of an article will be a factor when classification as a toy is being considered.

Additional U.S. Rule of Interpretation 1(a), HTSUSA, provides that absent language to the contrary:

[A] tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

Therefore, in order to be classified as a toy, the bear bank would need to be principally used for amusement. We do not believe this to be the case.

Here, the subject bear bank serves primarily as a receptacle or storage space for coins. The commercial viability depends primarily on the item functioning as a bank, not as a toy plaything. While Explanatory Note (a)(21) to heading 9503 indicates that toy money banks are included within the heading, we do not interpret this provision as encompassing static, passive child or adult novelty banks. In light of this reasoning, the bear bank does not qualify as a toy within the purview of Chapter 95, HTSUSA; and, correspondingly, it is not classifiable in any of the headings which accompany that chapter.

Since proper classification cannot be determined by applying GRI 1, reference to the subsequent GRI's is necessary. GRI 2 contains two clauses, the second of which pertains to mixtures or combinations of a material or substance, and goods consisting of two or materials or substances. GRI 2(b) further provides: “The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.” As the instant bear bank is made up of two different materials (and, thus, classifiable in two separate headings:

heading 3926, for other articles of plastic; and heading 6307, for other made up articles of textile materials), GRI 3 must be consulted.

Here, the two headings at issue refer to part only of the subject bear bank, and according to GRI 3(a) are to be regarded as equally specific, thereby making resort to GRI 3(b) necessary.

According to GRI 3(b), mixtures and composite goods consisting of different materials, or made up of different components, shall be classified as if they consisted of the component or material which gives them their essential character. The Explanatory Notes to GRI 3(b) indicate that essential character may be determined by considering “the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the good.”

While the plastic container allows for the holding of coins, the bank's textile covering comprises the bulk of the article and provides for the product's visual appeal. Consequently, the textile covering represents the essential character of the subject bear bank.

HOLDING:

Item #0225 is classifiable in subheading 6307.90.9590, HTSUSA, which provides for other made up articles, including dress patterns, other, other, other, other. The applicable rate of duty is 7 percent ad valorem. The bear bank was correctly classified as liquidated.

You should deny the protest in full. A copy of this decision should be sent to the protestant along with the Form 19 Notice of Action.

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

[ATTACHMENT B]

HQ H065119
CLA-2 OT:RR:CTF:TCM H065119 CkG
Category: Classification

PORT DIRECTOR
U.S. CUSTOMS AND BORDER PROTECTION
301 E. OCEAN BLVD.
SUITE 1400
LONG BEACH, CA 90802

Re: Revocation of HQ 087133; classification of stuffed bear coin bank

DEAR PORT DIRECTOR:

This letter is to inform you that Customs and Border Protection has reconsidered Headquarters Ruling Letter (HQ) 087133, issued to you on October 18, 1990, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a stuffed bear coin bank. In HQ 087133, CBP classified the bear bank in heading 6307, HTSUS, as an “other” made up article. We have reconsidered this ruling and have determined that it is incorrect.

FACTS:

The subject article is described in HQ 087133 as follows:

The submitted sample, item #0225, is a partially stuffed bear figure measuring approximately 8-1/2 inches in height and 7 inches in width. The head and appendages of the bear are stuffed, while the torso incorporates a hollow plastic container for the holding of coins. The sample contains a coin slot and bottom plug for the removal of coins. Its exterior is made of soft plush pile fabric.

ISSUE:

Whether the subject article is a toy of heading 9503, HTSUS, or a made up article of heading 6307, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

6307: Other made up articles, including dress patterns:

6307.90: Other:
 Other:
 6307.90.98: Other

9503: Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.....

9503.00.00: Other.....

EN 95.03 states, in pertinent part:

D) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults)...This group includes:

(xvi) Educational toys (e.g., toy chemistry, printing, sewing and knitting sets).

(xxii) Toy money boxes; babies; rattles, jack-in-the-boxes; toy theatres with or without figures, etc.

Certain toys (e.g., electric irons, sewing machines, musical instruments, etc.) may be capable of a limited use; but they are generally distinguishable by their size and limited capacity from real sewing machines, etc.

* * * * *

Although the term "toy" is not defined in the HTSUS, EN 95.03 provides that heading 9503, HTSUS, covers toys intended essentially for the amusement of persons. *U. S. v. Topps Chewing Gum*, 58 CCPA 157, C.A.D. 1022 (1971) (hereafter *Topps*), is illustrative in determining whether an article is intended for the amusement of the user. In *Topps*, various decorative buttons with humorous quotes were classified as toys of heading 9503. *Topps* held that if the purpose of an object is to give the same kind of enjoyment as playthings give, its purpose is amusement. It is the quality of mind or emotion induced by the object which is controlling. Therefore, an article classified as a toy does not have to be a plaything, provided that the quality of emotion induced by the article takes on the character of frivolous amusement. Therefore, an article may be considered a toy if it is inherently or evidently amusing. See HQ 959749, dated October 23, 1997; HQ 960136 (July 24, 1997); HQ 963907 (July 12, 2001); and HQ 964834 (May 23, 2002).

Where merchandise might have another purpose in addition to providing amusement, the primary purpose of the item must be its amusement value for it to be classified as a toy. In *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (CIT 2000), the court held that an object is a toy only if it is designed and used for amusement, diversion or play, rather than practicality. In *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977), the Customs Court similarly held that "when amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement."

In HQ 088983, dated August 12, 1991, a plush bear approximately eight inches in height constructed of plush man-made textile fabric with a hollow body cavity that formed an interior compartment designed to hold an 8-ounce infant feeding bottle, was classified in heading 9503, HTSUS. We found that the bear bottle warmer had “the appearance and play value of any toy, plush bear and can therefore be used for amusement without being used as a bottle holder. If the item is used as a bottle holder, however, it will continue to provide amusement and a sense of companionship to the child.” *See also* NY M87270, dated October 27, 2006; NY L88374, dated October 27, 2005; and NY D88231, dated February 24, 1999. Similarly, we find that a stuffed bear bank is likely to be used much in the same way that any stuffed animal would be used—for comfort, companionship, and amusement.

We therefore do not agree that the commercial viability of the item depends on the item functioning as a bank. The article is commercially viable as a stuffed bear alone. Therefore, it is classified in heading 9503, HTSUS.

HOLDING:

By application of GRI 1, the subject article is classified in subheading 9503.00.00, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other.” The 2009 column one, general rate of duty is Free.

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

EFFECT ON OTHER RULINGS:

HQ 087133, dated October 18, 1990, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
CLASSIFICATION OF ETHEPHON 73.81% TECHNICAL AND
ETHEPHON 65% FROM CHINA**

AGENCY: U.S. Customs and Border Protection (“CBP”), Department of Homeland Security.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the classification of Ethephon 73.81% Technical and Ethephon 65% from China.

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 Implementa-

tion Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB proposes to revoke a ruling concerning the classification of Ethephon 73.81% Technical and Ethephon 65% under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before April 30, 2010.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor Washington, D.C. 20229–1179. Comments submitted may be inspected at 799 9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch, (202) 325–0036.

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 (Customs Modernization) of the North American Free Trade Agreement Implementation

Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke a ruling pertaining to the classification of Ethephon 73.81% Technical and Ethephon 65%. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N046978, dated December 24, 2008 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

In NY N046978, CBP ruled that Ethephon (2-Chloroethylphosphonic acid, CAS–16672–87–0) 73.81% Technical and Ethephon 65% MUP from China were classified in heading 3808, HTSUS, as an anti-sprouting product. After reviewing supplemental information regarding the contents of the product, we now believe that the product is a separate, chemically-defined compound of heading 2931, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N046978, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H064895. (see Attachment “B” to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: March 26, 2010

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT A]

N046978

December 24, 2008

CLA-2-38:OT:RR:E:NC:2:238

CATEGORY: Classification

TARIFF NO.: 3808.93.5000

Ms. SUSAN PARKER
ARYSTA LIFESCIENCE N.A.
15401 WESTON PARKWAY, SUITE 150
CARY, NC 27513

RE: The tariff classification of Ethephon (2-Chloroethylphosphonic acid, CAS-16672-87-0) 73.81% Technical and Ethephon 65% MUP from China

DEAR Ms. PARKER:

In your letter dated December 12, 2008, you requested a tariff classification ruling.

The subject products are based on Ethephon, a name approved by the American National Standards Institute for 2-Chloroethylenephosphonic acid, a plant-growth regulator/ethylene releaser. In your request, you suggested that proper classification for the both the Ethephon 73.81% Technical and the Ethephon 65% MUP products would be in subheading 2931.90.0043, and that the special legislative provision 9902.24.73 would be applicable. We respectfully disagree.

The EPA label for the Ethephon Technical 73.81% clearly indicates the presence of 26.19% inerts, while the label for the Ethephon 65% MUP indicates 35% inerts. Only Ethephon not mixed with inerts would be classifiable in Chapter 29. The presence of inerts gives both products the characteristics of preparations. The labels further indicate that these are intermediate preparations “[f]or formulation into end-use plant growth regulators...” Such intermediate preparations requiring further compounding to produce the ready for use insecticides, fungicides, disinfectants, etc., are classifiable in heading 3808, provided they already possess insecticidal, fungicidal, herbicidal, etc., properties.

The applicable subheading for both the Ethephon 71.3% Technical and the Ethephon 65% MUP will be 3808.93.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Herbicides, anti-sprouting products and plant-growth regulators: Other: Other.” The rate of duty will be 5% ad valorem.

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

This merchandise may be subject to the requirements of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), which are administered by the U.S. Environmental Protection Agency, Office of Pesticide Programs. Information on the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) can be obtained by contacting the National Pesticide Information

Center (NPIC) at 1-800-858-7378, or by visiting the EPA website at *ww-www.epa.gov*.

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 Harvey Kuperstein at (646) 733-3033.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H064895
CLA-2 OT:RR:CTF:TCM HQ H064895 TNA
CATEGORY: Classification
TARIFF NO.: 2931.00.90

SUSAN PARKER
ARYSTA LIFESCIENCE N.A.
15401 WESTON PARKWAY, SUITE 150
CARY, NC 27513

RE: Revocation of NY N046978; Classification of Ethephon (2-Chloroethylphosphonic acid, CAS-16672-87-0) 73.81% Technical and Ethephon 65% MUP from China

DEAR MS. PARKER:

This letter is in reference to New York Ruling Letter (“NY”) N046978, issued to Arysta Lifescience N.A. (“Arysta”) on December 24, 2008, concerning the tariff classification of Ethephon. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 3808.93.50, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Herbicides, anti-sprouting products and plant-growth regulators: Other: Other.” We have reviewed NY N046978 and found it to be in error. For the reasons set forth below, we hereby revoke NY N046978.

FACTS:

The merchandise at issue in NY N046978 is two different formulations of ethephon, a name approved by the American National Standards Institute for 2-Chloroethylenephosphonic acid, a plant-growth regulator/ethylene releaser. The first product, Ethephon 73.81% Technical, consists of approximately 74% ethephon, 17% water, and 9% impurities. The second product at issue, Ethephon 65% MUP, consists of approximately 65% ethephon, 28% water, and 7% impurities.

In NY N046978, dated December 24, 2008, CBP classified both types of ethephon under subheading 3808.93.50, HTSUS, as: “Herbicides, anti-sprouting products and plant-growth regulators: Other: Other,” noting that the Environmental Protection Agency’s (“EPA”) label for the Ethephon Technical listed 26.19% inert ingredients, and the EPA label for the Ethephon MUP listed 35% inert ingredients.

In its request for reconsideration, Arysta has now submitted evidence as to the nature of the inert ingredients. EPA Registered Ethephon end-use formulations are between 3.9% and 55.4%. EPA regulations allow up to 55.4% Ethephon in end use products. *See, e.g.*, 40 C.F.R. 180.300; <http://www.epa.gov/opprrd1/REDs/0382.pdf> at 19.

ISSUE:

Whether ethephon formulations with 65% and 73.8% ethephon, respectively, are classifiable under subheading 3808.93.50, HTSUS, as “herbicides, anti-sprouting products and plant-growth regulators,” or under subheading 2931.00.90, HTSUS, as “other organo-inorganic compounds”?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). 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 GRI may then be applied.

The HTSUS provisions under consideration are as follows:

2931.00	Other organo-inorganic compounds:
	Other:
2931.00.90	Other
2931.00.9043	Other
	* * * * *
3808	Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers):
	Other:
3808.93	Herbicides, anti-sprouting products and plant-growth regulators:
	Other:
3808.93.50	Other

Chapter 29 Note 1 reads, in pertinent part:

Except where the context otherwise requires, the headings of this Chapter apply only to:

- (a) Separate chemically defined organic compounds, whether or not containing impurities;...
- (d) Products mentioned in (a), (b) or (c) above dissolved in water

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Part A of the General Explanatory Notes to Chapter 29, defines, in relevant part, a “separate chemically defined compound” as:

[a] substance which consists of one molecular species (e.g., covalent or ionic) whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram...

Separate chemically defined compounds containing other substances deliberately added during or after their manufacture (including purification) are excluded from this Chapter.

The separate chemically defined compounds of this Chapter may contain impurities (Note 1(a))....

The term “impurities” applies exclusively to substances whose presence in the single chemical compound results solely and directly from the manufacturing process (including purification). These substances may result from any of the factors involved in the process and are principally the following:

- (a) Unconverted starting materials.
- (b) Impurities present in the starting materials
- (c) Reagents used in the manufacturing process (including purification)
- (d) By-products

It should be noted, however, that such substances are **not** in all cases regarded as “impurities” permitted under Note 1(a). When such substances are deliberately left in the product with a view to rendering it particularly suitable for specific use rather than for general use, they are **not** regarded as permissible impurities....

The separately chemically defined compounds of this chapter may be **dissolved in water**.

The EN for heading 2931 states, in pertinent part:

Organo-phosphorus compounds: these are organic compounds containing at least one phosphorous atom linked directly to a carbon atom.

The EN for heading 3808 states, in pertinent part:

This Chapter covers a large number of chemical and related products. It does not cover separate chemically defined elements or compounds (usually classified in Chapter 28 or 29), with the exception of the following:...

(2) Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant growth regulators, disinfectants and similar products, put up as described in heading 3808.

These products are classified here in the following cases only:

(1) When they are put up in packings (such as metal containers or paperboard cartons) for retail sale as disinfectants, insecticides, etc., or in such forms (e.g., in balls, strings of balls, tablets or plates) that there can be no doubt that they will normally be sold by retail.

Products put up in these ways may or may not be mixtures. The unmixed products are mainly chemically defined products which would otherwise fall in Chapter 29, e.g., naphthalene, or 1,4 dichlorobenzene.

(2) When they have the character of preparations, whatever the presentation (e.g., as liquids, washes or powders)... Intermediate preparations, requiring further compounding to produce the ready for use insecticides, fungicides, disinfectants, etc., are also classified here, provided they already possess insecticidal, fungicidal, etc., properties...

In NY N046978, CBP classified the subject merchandise under heading 3808, HTSUS, as plant growth regulators based on the product's EPA label, which listed a significant percentage of inert ingredients in the merchandise. Under the General Explanatory Notes to heading 3808, HTSUS, intermediate preparations that require further compounding to produce insecticides, fungicides, disinfectants, etc., that are ready to be used are classified under

heading 3808, HTSUS, as long as they already possess insecticidal, fungicidal properties. “Only Ethephon not mixed with inerts would be classifiable in Chapter 29. The presence of inerts gives both products the characteristics of preparations,” and such intermediate preparations “are classifiable in heading 3808,” HTSUS, the opinion stated.

In its request for reconsideration, however, Ayrsta submits that the EPA label was misleading in that the ingredients it listed as “inert” are actually manufacturing impurities and water rather than ingredients purposely added to the ethephron. The company’s recently submitted EPA Confidential Statement of Formula supports this contention. Furthermore, Ayrsta asserts that both products at issue are labeled for “formulation into end-use plant growth regulators.” As imported, the products contain concentrations of ethephron that are higher than the concentration the EPA allows in plant growth inhibitors. As a result, they are too concentrated to be used as plant growth regulators.

In light of this new information, CBP reexamines whether the merchandise should be classified under heading 3808, HTSUS, or under heading 2931, HTSUS. Chapter 38 Note 1(a) states that in order to be classifiable in its imported condition in heading 3808, the merchandise must be put up in forms or packings for retail sale or as preparations or articles. Examples from prior CBP rulings that have been classified according to this guidance are insecticide in the form of a chalk packaged for resale in a clear plastic bag and “House Fly Traps” designed for insect control, packaged for retail sale, and consisting of a small fold-up house motif and a glue board of light cardboard construction, coated on one side with a “glue” adhesive material consisting of styrene copolymer, hydrocarbon resin, and paraffin oil. *See, e.g.,* HQ 088109 and HQ 563064. In the present case, Ayrsta’s products are not preparations because the inert ingredients are actually impurities.

In the present case, ethephron is a separately defined chemical compound with the chemical name of 2-chloroethylphosphonic acid, consisting of carbon, hydrogen, chlorine, oxygen, and phosphorus in a constant ratio and with a definite structural formula. The inert ingredients are not intentionally added but rather are unintended results of the manufacturing process. These impurities were not deliberately left in to render the product particularly suitable for specific use. The separately defined chemical compounds, as defined in general EN, are then dissolved in water. Therefore, the merchandise meets the terms of Chapter 29, note 1(a) and (d) and the general EN thereto. Additionally, the chemical structure of the ethephron includes a phosphorous atom directly linked to a carbon atom. Therefore, the substance meets the terms of heading 2931, HTSUS.

As a result, CBP finds that Ayrsta’s Ethephon plant growth regulators are classified under subheading 2931.00.90, HTSUS, the provision for “other organo-inorganic compounds: other: other.” The applicable duty rate will be 3.7% *ad valorem*. However, special legislative provision 9902.24.73 applies to both products; as a result, the subject merchandise that is imported on or before December 31, 2009, is duty-free.

HOLDING:

Under the authority of GRI 1, Ayrsta’s Ethephon (2-Chloroethylphosphonic acid, CAS-16672-87-0) 73.81% Technical and Ethephon 65% MUP from China are provided for in subheading 2931.00.90, HTSUS, the provision for

“other organo-inorganic compounds: other: other.” The applicable duty rate is normally 3.7% ad valorem. However, special legislative provision 9902.24.73 applies to both products; as a result, the subject merchandise that is imported on or before December 31, 2009 is duty-free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N046978, dated December 24, 2008, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF ONE RULING LETTER
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF A
CERTAIN TEXTILE DRAWSTRING BAG**

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

ACTION: Notice of proposed modification of one ruling letter and proposed revocation of treatment relating to tariff classification of a certain textile drawstring bag.

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) proposes to modify one ruling letter relating to the tariff classification of a certain textile drawstring bag under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before April 30, 2010.

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. - 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20001 during regular business hours. Arrangements to inspect submitted

comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP proposes to modify one ruling letter pertaining to the tariff classification of a certain textile drawstring bag. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N020461, dated December 17, 2007, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transac-

tions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action. In NY N020461, set forth as Attachments A to this document, CBP determined that the subject merchandise was classified under heading 9504, HTSUS, and specifically under subheading 9504.90.60, HTSUS, which provides for: "[a]rticles for arcade, table or parlor games, including pinball machines, bagatelle, billiards and special tables for casino games; automatic bowling alley equipment; parts and accessories thereof: Other: Other: Chess, checkers, parchisi, backgammon, darts and other games played on boards of a special design, all the foregoing games and parts thereof (including their boards); mah-jong and dominoes; any of the foregoing games in combination with each other, or with other games, packaged together as a unit in immediate containers of a type used in retail sales; poker chips and dice..."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N020461 and revoke or modify any other ruling not specifically identified, in order to reflect the proper tariff classification of the subject drawstring bags according to the factual basis and classification analysis contained in proposed Headquarters Ruling Letter H061738, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: March 26, 2010

GAIL A. HAMILL

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N020461
December 17, 2007
CLA-2-95:OT:RR:NC:2:224
CATEGORY: Classification
TARIFF NO.: 9504.90.6000

Ms. CONNIE ROSE
HASBRO, INC.
P.O. Box 200
PAWTUCKET, RI 02862-0200

RE: The tariff classification of Polyester Bag with a cotton drawstring from China

DEAR Ms. ROSE:

In your letter dated November 28, 2007, you requested a tariff classification ruling.

The sample submitted, Polyester Bag with a cotton drawstring, measures approximately 5 ½ inches by 7 inches and the bag is made from polyester and has a cotton drawstring. According to the importer's letter, the bag will be imported from China and will be used to carry a USA board game.

The applicable subheading for the Polyester Bag with a Cotton drawstring will be 9504.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for articles for arcade, table or parlor games...parts and accessories thereof: other: chess, checkers, parchisi, backgammon, darts and other games played on boards of a special design, all the foregoing games and parts thereof (including their boards)...poker chips and dice. The rate of duty will be free..

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 Wayne Kessler at 646-733-3025.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT B]

HQ H061738
 CLA-2 OT:RR:CTF:TCM H061738 GC
 CATEGORY: Classification
 TARIFF NO.: 9504.90.60

CONNIE ROSE
 HASBRO, INC.
 POST OFFICE BOX 200
 PAWTUCKET, RHODE ISLAND 02862-0200

RE: Tariff classification of textile drawstring bags; Modification of NY N020461

DEAR Ms. ROSE:

This letter is to inform you that Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) N020461, dated December 17, 2007, which concerns the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a polyester bag with a cotton drawstring that is used with a board game manufactured by Hasbro, Inc. (Hasbro). We have since reviewed NY N020461 and find that the factual basis for the ruling, along with the analysis contained therein, to be incomplete.

FACTS:

The subject bag is a polyester bag with a cotton drawstring that measures approximately 5 ½ by 7 inches used to carry a USA board game. The hem around the opening of the bag, the seams running the length of one side and the bottom are secured by a single row of stitching. The opening of the bag is closed when the drawstring is pulled from one end of the opening. Prior to pulling the drawstring, the opening of the bag has a diameter of approximately 3.5 inches, with a circumference of approximately 11 inches. When the drawstring is pulled, there is a small opening remaining at the top of the bag.

The subject bag also features the screen printing on one side of the bag identifying the game with which the bag will be attached after importation into the United States. The text on the screen printing, which is in white lettering on top of an orange background, reads phrase “Learning made fun!TM” above the word “GAMES” below. We searched the Hasbro website and found that several games manufactured by Hasbro bear the “Learning made fun” trademark.

In your initial ruling request, you stated that “[t]he bag is part of game play”. You also submitted the instructions for the “Mickey Mouse Clubhouse Letters & NumbersTM Game”, which direct the players to take one game token per turn from the subject bag and match it with the spaces on the game board.

ISSUE:

Whether the subject drawstring bag is a made up textile article of heading 6307, HTSUS, or an accessory of games covered by heading 9504, HTSUS?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration in this case are as follows:

- 6307 Other made up articles, including dress patterns:
- 6307.90 Other:
 - Other:
 - 6307.90.98 Other...
 - * * *
- 9504 Articles for arcade, table or parlor games, including pinball machines, bagatelle, billiards and special tables for casino games; automatic bowling alley equipment; parts and accessories thereof:
- 9504.90 Other:
 - Other:
 - 9504.90.60 Chess, checkers, parchisi, backgammon, darts and other games played on boards of a special design, all the foregoing games and parts thereof (including their boards); mah-jong and dominoes; any of the foregoing games in combination with each other, or with other games, packaged together as a unit in immediate containers of a type used in retail sales; poker chips and dice...

Note 7 to Section XI, HTSUS (which covers heading 6307, HTSUS), states, in pertinent part:

For the purposes of this section, the expression “made up” means:

* * *

- (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets);

Note 1(t) to Section XI, HTSUS, excludes, in pertinent part, “articles of chapter 95...” Note 3 to chapter 95, HTSUS, states, in pertinent part, that “...parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles.”¹

¹ Additional U.S. Rule of Interpretation 1(c) states that, “[i]n the absence of special language or context which otherwise requires —[a] provision for parts of an article covers products solely or principally used as 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.” Because the terms of Note 3 to chapter 95 constitute “special language... which otherwise requires”, Additional U.S. Rule of Interpretation 1(c) is not applicable here.

The term “accessory” is not defined in the HTSUS or in the Harmonized Commodity Description and Coding Explanatory Notes (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) (referred to herein as *Rollerblade*); see also HQ 966216, dated May 27, 2003.

The instant drawstring bag is a textile article produced in the finished state, ready for use without sewing or other working. See Note 7(b) to Section XI, HTSUS. As such, the subject liner meets the terms of Note 7, and the terms of Note 1 to Chapter 63, HTSUS. Therefore, they are provided for under 6307, HTSUS. See HQ 960757, dated August 26, 1997; HQ W964711, dated April 2, 2002. However, if the drawstring bag is also prima facie classifiable under heading 9506, HTSUS, as an accessory to a game, it cannot be classified in heading 6307, HTSUS. See Note 1(t) to Section XI, HTSUS, and Note 3 to Chapter 95, HTSUS.

As evidenced by the fact that the players of the “Mickey Mouse Clubhouse Letters & Numbers™ Game” are directed to pick one game piece out of the instant bag when they take their respective turns, the subject bag is used directly with a game of heading 9405, HTSUS, contributes to the effectiveness of the game, and is suitable for sole or principal use with games of heading 9405, HTSUS. These features are supported by the fact that the screen printing on the bag is specific to a certain type of game sold by Hasbro. Accordingly, we find that the instant textile drawstring bag fits the terms of heading 9405, HTSUS, by operation of Note 3 to Chapter 95, HTSUS. Consequently, Note 1(t) to Section XI, HTSUS, precludes classification in heading 6307, HTSUS.

HOLDING:

By application of GRI 1, Note 1(t) to Section XI, HTSUS, and Note 3 to Chapter 95, HTSUS, the subject textile drawstring bags are classified in heading 9504, HTSUS, and more specifically provided for in subheading 9504.90.60, HTSUS, which provides for: “[a]rticles for arcade, table or parlor games, including pinball machines, bagatelle, billiards and special tables for casino games; automatic bowling alley equipment; parts and accessories thereof: Other: Other: Chess, checkers, parchisi, backgammon, darts and other games played on boards of a special design, all the foregoing games and parts thereof (including their boards); mah-jong and dominoes; any of the foregoing games in combination with each other, or with other games, pack-

aged together as a unit in immediate containers of a type used in retail sales; poker chips and dice...” The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY N020461, dated December 17, 2007, is hereby MODIFIED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177

**Modification of Ruling Letters and Revocation of Treatment
Relating to Classification Of Everest® T and G Blanks**

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

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

SUMMARY: PURSUANT TO SECTION 625(C), TARIFF ACT OF 1930 (19 U.S.C. 1625 (C)), AS AMENDED BY SECTION 623 OF TITLE VI (CUSTOMS MODERNIZATION) OF THE NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT (PUB. L. 103–182, 107 STAT. 2057), THIS NOTICE ADVISES INTERESTED PARTIES THAT CUSTOMS AND BORDER PROTECTION (“CBP”) IS MODIFYING TWO RULINGS CONCERNING THE CLASSIFICATION OF **Everest® T and G blanks**, UNDER THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTSUS). SIMILARLY, CBP IS REVOKING ANY TREATMENT PREVIOUSLY ACCORDED BY CBP TO SUBSTANTIALLY IDENTICAL TRANSACTIONS. NOTICE OF THE PROPOSED MODIFICATION WAS PUBLISHED ON MAY 29, 2009, IN VOLUME 43, NUMBER 22, OF THE CUSTOMS BULLETIN. NO COMMENTS WERE RECEIVED IN RESPONSE TO THIS NOTICE.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after June 1, 2010.

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the CUSTOMS BULLETIN, Volume 43, Number 22, on May 29, 2009, proposing to modify New York (NY) Ruling Letter J89431, dated October 7, 2003, and NY K81158, dated November 20, 2003, and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

As stated in the proposed notice, this modification will cover any rulings on this issue that may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the issue 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 Title VI, CBP is revoking any treatment it previously accorded to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of rea-

sonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

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

Pursuant to section 625(c)(1), CBP is modifying NY J89431 and K81158, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) H021885, which is set forth as an attachment to this notice. Additionally, pursuant to section 625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 26, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H021885
CLA-2 OT:RR:CTF:TCM H021885ARM
CATEGORY: Classification
TARIFF NO.: 7020.60.00, 8108.90.30

MS. JENNIFER HENGLES
KAVO AMERICA CORPORATION
340 EAST MAIN STREET
LAKE ZURICH, IL 60047

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

DEAR MS. HENGLES:

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the CUSTOMS BULLETIN, Volume 43, Number 22, on May 29, 2009, proposing to modify New York (NY) Ruling Letter J89431, dated October 7, 2003, and NY K81158, dated November 20, 2003, and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

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

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

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

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

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

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

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

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

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

ISSUE:

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

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6 may be applied. GRI 2(a) states “Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.”

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

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

RULE 2 (a)

(Incomplete or unfinished articles)

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

The HTSUS provisions under consideration are as follows:

- 7020 Other articles of glass:
 - 7020.00.60 Other
 - * * * * *
 - 8108 Titanium and articles thereof, including waste and scrap:
 - 8108.90 Other:
 - 8108.90.30 Articles of titanium
 - * * * * *
 - 9021 Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof:
 - Artificial teeth and dental fittings, and parts and accessories thereof:
 - 9021.21 Artificial teeth and parts and accessories thereof:
 - 9021.21.40 Of plastics
 - 9021.21.80 Other

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

This Chapter also covers :

* * * * *

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

EN 70.20 states, in pertinent part, the following:

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

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

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

* * * * *

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

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

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

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

* * * * *

(B) Artificial teeth and dental fittings, for example:

(1) Solid artificial teeth, usually made of porcelain or plastics (acrylic polymers in particular). These may be "diatoric" teeth having a small number of holes into which the fixing material penetrates (generally molars), or may be fitted with two metallic pins for fixing (generally incisors and canines) or with a groove for sliding on to a metal ridge fixed to the dental plate (also usually incisors and canines).

(2) Hollow artificial teeth, also made of porcelain or plastics and with the external shape of teeth (incisors, canines or molars).

According to the method of fixing, they are called "pivot teeth" (placed on a small metallic pin or pivot fitted into the prepared root), or "crowns" (fitted by means of artificial resin on to a previously shaped stump).

(3) Dentures, whole or part, comprising a plate of vulcanised rubber, plastics or metal to which the false teeth are fitted.

(4) Other articles such as, prefabricated metal crowns (gold, stainless steel, etc.) used for the protection of real teeth; cast tin bars ("heavy bars") for weighting and increasing the stability of dentures; stainless steel bars for reinforcing vulcanised rubber dental plates; various other dentists'

accessories, clearly identifiable as such, for making metal crowns or dentures (sockets, rings, pivots, hooks, eyelets, etc.).

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

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

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

Under GRI 2(a), an unfinished article is classified in the heading for the finished article if it has the essential character of the complete or finished article. The EN to GRI 2(a) explains that a covered unfinished article may be a “blank”, which it defines as “an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part . . .” As commentary on the scope of the heading, the EN can neither expand nor decrease that scope of the heading. Therefore, the description of a “blank” in the EN cannot be taken to mean that an article named a blank in the trade, but which does not contain the essential character of the finished article, can be classified in the provision for the finished article. Hence, the immediate question is whether the T and G blanks contain the essential character of the dental artifice which they become.

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

In addition, the EN to GRI 2(a) lists “bottle preforms of plastics” as an example of blanks describing them thus: “intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape.” The bottle preforms of the EN have the tubular shape of a bottle, with one closed and one open end. The threads are already formed. Once expanded, the bottle is formed. Unlike the process in creating artificial teeth from the instant blanks, there is no addition or deletion of material. There is no sintering or other process to harden or

otherwise change the tensile strength or other physical properties of the plastic other than the fact of the plastic becoming slightly thinner by means of the expansion. This physical change is part and parcel of creating the shape of the bottle from the blank, whereas the processes employed with the subject blanks are in addition to those milling procedures that create the shape of the dental artifice. Lastly, the EN excludes profile shapes such as bars and rods from classification as unfinished articles under GRI 2(a). The cylindrical blanks here are similar to the bars and rods of the example.

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

In HQ 951620, dated August 4, 1992, circular steel blanks were classified according to their material component rather than as unfinished automotive wheels. They consisted of non alloy SAE 1015 steel cut by an automated process, die sunk with an identifying part number designating a specific wheel for a particular automobile. After importation, the wheel blanks are drawn, strengthened, formed with pockets, bolt hole mounting pads and other specific features, trimmed and turned under to create a rim, and the center hole is punched. In that ruling we state the following:

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

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

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

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

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

HOLDING:

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

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

EFFECT ON OTHER RULINGS:

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

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

Sincerely,

GAIL A. HAMILL

for

MYLES B. HARMON,

Director

Classification and Trade Facilitation Division

**MODIFICATION OF RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF ELECTRIC LIGHTING SETS**

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

ACTION: Notice of modification of one ruling letter and revocation of treatment relating to tariff classification of electric light sets.

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 modifying HQ 963264, dated May 4, 2001, relating to the tariff classification of

electric light sets under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* Vol. 43, No. 30, on July 30, 2009. One comment was received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 1, 2010.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325-0024

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), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 43, No. 30, on July 30, 2009, proposing to modify HQ 963264, dated May 4, 2001, relating to the tariff classification of electric light sets. Although in this notice CBP is specifically referring to the modification of HQ 963264, dated May 4, 2001, 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

rulings identified above. 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 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 revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in 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 this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying HQ 963264 with respect to the classification of items one through nine, in order to reflect the proper classification of the subject lighting sets according to the analysis contained in Headquarters Ruling Letter H066795, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 26, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H066795
CLA-2 OT:RR:CTF:TCM H066795 CkG
CATEGORY: Classification
TARIFF NO.: 9405.30.0010

PORT DIRECTOR
CUSTOMS AND BORDER PROTECTION
PORT OF CHICAGO
9915 BRYN MAWR
ROSEMONT, IL 60018

Re: Modification of HQ 963264; classification of Christmas light sets

DEAR PORT DIRECTOR,

This is in reference to Headquarters Ruling Letter (HQ) 963264, issued to the Port Director in Chicago, Illinois, on May 4, 2001, with regard to Protest # 3901-99-101340, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of electric light sets. The articles were classified in subheading 9405.40.80, HTSUS, which provides for other electric lamps and lighting fittings, other than of base metal. Since the issuance of that ruling, Customs and Border Protection (CBP) has reviewed the classification of these items and has determined that the cited ruling is in error.

HQ 963264 is a decision on a specific protest. A protest is designed to handle entries of merchandise which have entered the U.S. and been liquidated by CBP. A final determination of a protest, pursuant to Part 174, Customs Regulations (19 CFR 174), cannot be modified or revoked as it is applicable only to the merchandise which was the subject of the entry protested. Furthermore, CBP lost jurisdiction over the protested entries in HQ 963264 when notice of disposition of the protest was received by the protestant. *See, San Francisco Newspaper Printing Co. v. U.S.*, 9 CIT 517, 620 F.Supp. 738 (1935).

However, CBP can modify or revoke a protest review decision to change the legal principles set forth in the decision. Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), 60 days after the date of issuance, CBP may propose a modification or revocation of a prior interpretive ruling or decision by publication and solicitation of comments in the CUSTOMS BULLETIN. This modification will not affect the entries which were the subject of Protest 3901-99-101340, but will be applicable to any entries of similar merchandise made 60 days after publication of the final notice of revocation in the CUSTOMS BULLETIN.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify HQ 963264 was published on July 30, 2009, in Volume 43, Number 30, of the *Customs Bulletin*. CBP received one comment in response to this notice, which is addressed in the ruling.

FACTS:

At issue in HQ 963264 were eighteen styles of electric light sets composed of a wire harness incorporating different numbers of sockets and light bulbs.

This modification pertains only to nine of the styles at issue in HQ 963264. The nine articles are described as follows:

- (1) UL 50 Clear STS Indoor/Outdoor Light (Item #873644)
- (2) UL 50 STS Indoor/Outdoor Light (Item #873645)
- (3) UL 105 Motion Clear Chasing Light (Item #897095)
- (4) UL 105 Motion Multiple Color Chasing Light (Item #987096)
- (5) UL 70 Solid Red Light Set (Item #896661)
- (6) UL 70 Solid Blue Light Set (Item #896662)
- (7) UL 70 Solid Green Light Set (Item #896663)
- (8) UL 150 STS Indoor/Outdoor Clear Light (Item #899234)
- (9) UL 150 STS Indoor/Outdoor Multi Light (Item #899235)

The protestant entered the merchandise under subheading 9405.40.80, HTSUS, which provides for other electric lamps and lighting fittings, other than of base metal. The entries were liquidated under subheading 9405.30.00, HTSUS, which provides for “lighting sets of a kind used for Christmas trees”. In HQ 963264 the articles at issue were determined to be classified in subheading 9405.40.80, HTSUS. In HQ 963264 and in the proposed Notice of Modification item 9 was described as an “outdoor” light. However, a review of our file indicates that it is a lighting set for indoor/outdoor use.

ISSUE:

Whether the subject light sets are classified as lighting sets of a kind used for Christmas trees under subheading 9405.30.00, HTSUS, or as other electric lamps and lighting fittings under subheading 9405.40.80, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The HTSUS provisions under consideration are as follows:

9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
9405.30.00	Lighting sets of a kind used for Christmas trees....
9405.40	Other electric lamps and lighting fittings:
9405.40.80	Other.....
* * * * *	

At GRI 1, there is no dispute that the instant merchandise is described by and is thus classifiable in heading 9405, HTSUS, as a lamp or lighting fitting, not elsewhere specified or included. The issue arises at the eight-digit level. Therefore, we begin the analysis using GRI 6. The issue is whether, at GRI 6, the instant lighting sets are of a kind used for Christmas trees.

We initially note that subheading 9405.30.00, HTSUS, is a principal use provision. See *Primal Lite v. United States*, 15 F. Supp. 2d 915 (CIT 1998);

aff'd 182 F.3d 1362, 1364 (Fed. Cir. 1999). In *Primal Lite*, the Court of Appeals for the Federal Circuit concluded that subheading 9405.30.00, HTSUS, is a principal use provision and therefore subject to Additional U.S. Rule of Interpretation 1(a), HTSUS. Therefore, classification under the subheading is controlled by the principal use of goods of that class or kind to which the imported goods belong in the United States at or immediately prior to the date of the importation. In determining the principal use of a product, CBP considers a variety of factors including general physical characteristics, the expectation of the ultimate purchaser, channels of trade, and the environment of sale (accompanying accessories, manner of advertisement and display). See *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), *cert. denied*, 429 U.S. 979.

Additionally, the Court of Appeals for the Federal Circuit in *Primal Lite*, in discussing principal use, held that "it is the use of the class or kind of goods being imported that is controlling, rather than the specific use to which the importation itself is put," i.e., goods need not be actually used in the same manner as the entire class or kind in order to be recognized as part of that class or kind. "Thus, a classification covering vehicles principally used for automobile racing would cover a race car, even if the particular imported car was actually used solely in an advertising display." *Primal Lite*, 182 F.3d at 1364. CBP has repeatedly upheld this analysis by defining principal use as the use of the class or kind of the merchandise at issue that exceeds any other use. See *e.g.*, *HQ 964954*, dated, April 18, 2002, and *HQ 963032*, dated July 24, 2000.

CBP held in *HQ 963264* that the instant light sets were classifiable in subheading 9405.40, HTSUS rather than 9405.30 because they were capable of

indoor and outdoor use. The comment submitted in response to the Notice of Proposed Modification also claims that outdoor capability excludes string light sets from classification as lighting sets of a kind used with Christmas trees. CBP does not believe that this factor by itself is determinative for finding the lights at issue are part of a class or kind of light that is principally used for purposes other than with Christmas trees. CBP has repeatedly classified electric string lights capable of both indoor and outdoor use under subheading 9405.30.00, HTSUS, when it was determined that they were of the class or kind of merchandise that was principally used for decorating Christmas trees. See *HQ 967408*, dated February 9, 2005; *HQ 967008*, dated June 29, 2004; *HQ 966882*, dated March 10, 2004; *NY N027154*, dated May 21, 2008; *NY N006432*, dated February 22, 2007; *NY I83154*, dated July 17, 2002; *NY I83156*; dated July 17, 2002, *NY J89048*; dated November 7, 2003; *NY I83157*, dated July 10, 2002; *NY I82127*, dated July 1, 2002; *NY I82362*, dated July 1, 2002; and *NY 887043*, dated June 18, 1993.

The lighting sets under reconsideration in the instant case share the physical characteristics as the lighting sets classified as Christmas tree lights in the above opinions: a string of single or multi-colored lights, of varying lengths but long enough to wind around a Christmas tree, and

usually featuring (but not limited to) 50–100 light bulbs. They are clearly distinct from the light sets at issue in *Primal Lite*, which included plastic covers sized to fit over the light bulbs and depicting various objects including fruits, vegetables, hearts, horses, and American flags, none of which had any particular connection to the Christmas season. The instant light sets also clearly differ from light strands which CBP has recognized as not being of the class or kind of merchandise that is principally used for decorating Christmas trees because of their physical characteristics. See *NY J84195*, dated June 19, 2003 (light sets consisting of light bulbs in the center of artificial poinsettias); *NY I83486*, dated August 5, 2002 (lawn-edge net light sets); *NY I81176*, dated May 20, 2002 (lighting set consisting of electric lights in the shape of icicles); and *HQ 962901*, dated September 28, 2001 (electric garland with plastic covered light covers in the form of dreidels, a recognized symbol of Chanukah).

Moreover, while the submitted comment alleges that potential safety hazards of using outdoor-rated lights indoors may discourage consumers from such use, the instant light sets are all rated for outdoor and indoor use. Consumers are not likely to avoid purchasing such dual-use lights for use indoors where the rating indicates that they are safe for such use. Given the foregoing, CBP believes that the general expectation of the ultimate purchaser is that these lights are intended for use on Christmas trees.

Despite the fact these lights may be designed for use both inside and outside a house, and for decorating objects other than Christmas trees, they represent the class or kind of light that is recognized as being principally used for Christmas trees. As such, they are classified under subheading 9405.30.00, HTSUS, as “Lighting sets of a kind used for Christmas trees.”

As noted in *HQ 963264* with regard to items 10–12, “curtain” or “ice” lights and orange lights with Halloween light covers are also not of the class or kind of merchandise that is principally used for decorating Christmas trees. The curtain lights are articles designed for home exteriors in that the long string of lights is affixed horizontally to the roofline and the shorter light strings hang vertically to produce the appearance of hanging icicles. The orange lights with Halloween covers clearly indicate an intended use outside of the Christmas season. These items were thus correctly classified in subheading 9405.40.80, HTSUS.

Items 1 through 9, however, were incorrectly classified as “other electric lamps and lighting fittings” of subheading 9405.40.80, HTSUS. They are properly classified in subheading 9405.30, as “lighting sets of a kind used for Christmas trees.”

HOLDING:

By application of GRI 1and 6, the instant light sets are classified in subheading 9405.30.00, HTSUS, which provides for: “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included: Lighting sets of a kind used for Christmas trees.” The 2009 column one, general rate of duty is 8% ad valorem.

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

EFFECT ON OTHER RULINGS:

HQ 963264, dated May 4, 2001, is hereby modified with respect to the classification of items 1 through 9.

Sincerely,

GAIL A. HAMILL

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**MODIFICATION OF RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CERTAIN BASE METAL OFFICE
ARTICLES**

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to tariff classification of base metal office articles.

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 a ruling letter relating to the tariff classification of base metal prong fasteners under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 43, No. 34, on August 20, 2009. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 1, 2010.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024.

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), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI, this notice advises interested parties that CBP is modifying a ruling letter relating to the tariff classification of certain base metal prong fasteners. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) N026040, dated April 17, 2008, 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 rulings identified above. 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 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 revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in 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.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N026040 in order to reflect the proper classification of prong fasteners according to the analysis contained in Headquarters Ruling Letter (HQ) H027186, which is attached to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 26, 2010

GAIL A. HAMILL

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H027186
CLA-2 OT:RR:CTF:TCM H027186 CkG
CATEGORY: Classification
TARIFF NO: 8305.10.00
8305.90.60

MR. DARREN LENOX
ACCO BRANDS CORP.
300 TOWER PARKWAY
LINCONSHIRE, ILLINOIS 60069-36407

RE: Modification of New York Ruling Letter N026040; base metal office articles

DEAR MR. LENNOX:

This is in response to your letter of April 29, 2008, on behalf of your company, ACCO Brands Corporation, requesting the reconsideration of New York Ruling Letter (NY) N026040, issued to you on April 17, 2008. At issue in that ruling was the classification of various base metal prong fasteners under the Harmonized Tariff Schedule of the United States (HTSUS). U.S. Customs and Border Protection (CBP) classified these items in subheading 8305.90.60, HTSUS, which provides for: "Fittings for looseleaf binders or files, letter clips, letter corners, paper clips, indexing tags and similar office articles, and parts thereof, of base metal;...Other, including parts: Other."

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 proposing to modify NY N026040 was published in the *Customs Bulletin*, Vol. 43, No. 34, on August 20, 2009. CBP received no comments in response to the notice.

FACTS:

The merchandise in NY N026040 was described as follows:

[A] Prong Fastener, item number A7012990; a Prong Fastener Base, item number A7012991; A Prong Fastener Compressor, item number A7012994; and a Self-Adhesive Prong Fastener Base, item number A7070011. All items are made of base metal.

Prong fasteners are used to secure a large number of papers that have been two-hole punched. Item number A7012990, identified as the Prong Fastener (complete set), consists of two parts: a base and a compressor. The base has two prongs that are folded through the holes of the paper and compressor. The compressor fits over the base to secure the prongs and hold the paper firmly. Item number A7012991 consists of a prong fastener base. Item number A7012994 consists of a prong fastener compressor. Item number A7070011 is a self-adhesive prong fastener base, which is similar to a prong fastener base, except that it has a self-adhesive backing for affixing permanently onto a file folder.

Your request for reconsideration is limited to the classification of the Prong Fastener complete set, the Prong Fastener Base, and the Self-Adhesive Prong Fastener Base. You contend that the proper classification for the subject merchandise is under subheading 8305.10.00, HTSUS, which provides for fittings for looseleaf binders or files or, in the alternative, under subheading 8305.90.30, HTSUS, which provides for paper clips and their parts.

ISSUE:

Whether the subject prong fasteners and base are properly classified in subheading 8305.10.00, HTSUS, as fittings for looseleaf binders or files, subheading 8305.90.30, HTSUS, as paper clips and parts thereof, or in subheading 8305.90.60, HTSUS, as “other” office articles of base metal.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that classification 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:

8305	Fittings for looseleaf binders or files, letter clips, letter corners, paper clips, indexing tags and similar office articles, and parts thereof, of base metal; staples in strips (for example, for offices, upholstery, packaging), of base metal:
8305.10.00	Fittings for looseleaf binders or files.....
8305.90	Other, including parts:
8305.90.30	Paper clips, and parts thereof....
8305.90.60	Other.....
	* * * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP’s practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The Explanatory Note to heading 8305, HTSUS, provides, in pertinent part, as follows:

This heading covers base metal fittings of the clip, cord, spring lever, ring, screw, etc., types, for loose leaf binders or box files. It further includes protecting rings, bands and corners for ledgers or other stationery books; also office stationery in metal of the type used in fastening together or index marking papers (e.g., letter clips, paper clips, paper fasteners, letter corners, card indexing tags, file tags, spike files)....

* * * * *

At GRI 1, there is no dispute that the instant merchandise is described by and is thus classifiable in heading 8305, HTSUS, because they are office articles of base metal.

You argue that the prong fasteners may be used as fittings for looseleaf binders or files and that they meet the description of “base metal fittings” of the “clip” type provided for in EN 83.05. However, whereas EN 83.05 indicates that these types of fittings are “for ... box files”, you believe that the term “box files” is a very narrow interpretation of the term “files” found in heading 8305 (8305.10.00), HTSUS. You state that “loose-leaf papers can be

maintained in various types of files and file folders beyond box files, nor are other files explicitly excluded from the Explanatory Notes for that subheading.” In support of your contention, you direct our attention to Headquarters Ruling Letter (HQ) 962366 (July 12, 1999) in which CBP classified metal clamps for oversized paper documents within subheading 8305.10.00, HTSUS. You state that, in that ruling, CBP did not limit the interpretation of the term “file” in the text of heading 8305, HTSUS, to the Explanatory Notes example of box files.

We agree with your contention that the term “box files” used in EN 83.05 is a very narrow interpretation of the *eo nomine* term “files” used in the text of heading 8305 and subheading 8305.10.00, HTSUS. The ENs, which are persuasive but not binding authority, cannot be used to narrow the scope of the legal text of a heading. Consequently, fittings for any type of files and not just box files may be classified in subheading 8305.10.00, HTSUS, unless the legal text requires otherwise. *See Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984). *See, e.g.*, Headquarters Ruling Letter (HQ) 956644, dated December 18, 1994, in which CBP stated that the examples provided in the ENs for heading 3504, HTSUS, were illustrative and not restrictive.

Subheading 8305.10.00, HTSUS, is a use provision, in that fittings of the subheading are for use with looseleaf binders or files. Classification under a use provision is determined by the principal use in the United States at, or immediately prior to, the date of importation, of the class or kind of goods to which the imported goods belong. *See* Additional U.S. Rule of Interpretation 1(a), HTSUS. Generally, the courts have provided additional factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: (1) general physical characteristics, (2) expectation of the ultimate purchaser, (3) channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), (4) use in the same manner as merchandise which defines the class, (5) economic practicality of so using the import, and (6) recognition in the trade of this use. *See United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976).

Self-Adhesive Prong Fastener Base

The Self-Adhesive Prong Fastener Base is designed to adhere to some sort of backing. In addition, they are marketed and sold as “easy to use, one-piece fasteners for file folders.” Based on their physical characteristics and the way in which they are marketed and sold, we find that purchasers would expect to be able to use the Self-Adhesive Prong Fastener Base with file folders. Accordingly, we find that this merchandise is principally used as fittings for files and is therefore provided for in subheading 8305.10.00, HTSUS.

Non-adhesive Prong Fastener Base and Prong Fastener complete set

There is nothing inherent in the design of the non-adhesive Prong Fastener Base or the complete set which indicates that they are principally used with a binder or a file. The remaining Carborundum factors are also inconclusive. On one hand, the ACCO product information for the complete non-adhesive set makes no mention of its suitability for use with file folders. In addition, some retailers categorize prong paper fastener bases and compressors sepa-

rately from filing accessories or as general office supplies. See e.g., http://www.officedepot.com/a/browse/fasteners-and_posts/N=5+1936/; <http://www.officemax.com/office-supplies/clips-fasteners-rubberbands/fasteners/product-prod1600015?sp=true>. On the other hand, some office supply retailers consider the non-adhesive base and compressor set to be filing supplies, as noted in the product descriptions (e.g., “Standard Two-Piece Paper File Fasteners,” “Brass prong paper file fasteners,” “Prong Bases for Premium Two-Piece Paper File Fasteners”), and as evidenced by their being advertised as “filing accessories” or “filing supplies”. See e.g., <http://www.officeworld.com/Worlds-Biggest-Selection/1151/09Q1/>; http://www.staples.com/office/supplies/c21_File-Fasteners-File-Folders-Accessories/10376_Business_Supplies_10061_0_10051; <http://www.instaoffice.com/2-piece-paper-fasteners-2-capacity-2-3-4-center-to-center-2piece-accessories-file-fasteners-p.acc12992-ctn.0.7.htm>. Based on the way in which these products are marketed and sold, we find that purchasers would expect to be able to use the non-adhesive prong fastener base and complete set both with and without file folders.

Based on these facts, we conclude that the Prong Fastener complete set and Prong Fastener Base are not principally used as fittings for files of subheading 8305.10.00, HTSUS, and fall to be classified under subheading 8305.90. We find that neither item meets the description of subheading 8305.90.30, HTSUS, (paper clips) because they secure papers primarily by the bending of the prongs and not by the application of pressure. See *Webster’s New World Dictionary* (3rd Edition), which defines “paper clip” as “a flexible clasp, typically of metal wire, for holding loose sheets of paper together by pressure.” The *Oxford English Dictionary* similarly defines a “paper clip” as “a device used for holding together several sheets of paper, esp. in an office environment; *spec.* (a) a small spring-loaded clamp, often made of cast iron; (b) a single piece of wire which is shaped (esp. by bending or looping) into a design suitable for fastening papers; a similar device made of plastic or other material.” CBP has previously classified items such as binder clips in subheading 8305.90.30, HTSUS. See NY R01259, dated January 18, 2005, and NY D87052, dated January 26, 1999. As we do not consider the Prong Fastener Base or complete set to be types of paper clips, we find that they were correctly classified in subheading 8305.90.60, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the Self-Adhesive Prong Fastener [Base] #A7070011 is classified in subheading 8305.10.00, HTSUS, which provides for: “Fittings for looseleaf binders or files, letter clips, letter corners, paper clips, indexing tags and similar office articles, and parts thereof, of base metal:...Fittings for looseleaf binders or files.” The 2009 column one, general rate of duty is 2.9% *ad valorem*.

By application of GRIs 1 and 6, the Prong Fastener Base (item no. A7012991) and the Prong Fastener complete set (item no. A7012990) are classified in subheading 8305.90.60, HTSUS, as “Fittings for looseleaf binders or files, letter clips, letter corners, paper clips, indexing tags and similar office articles, and parts thereof, of base metal:... Other, including parts:

Other.” The 2009 column one, general rate of duty is 5.7% *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/>.

EFFECT ON OTHER RULINGS:

NY N026040, dated April 17, 2008, is hereby modified with respect to the classification of the Self-Adhesive Prong Fastener (Base), item no. A7070011. The classification of the Prong Fastener Base, item no. A7012991, and the Prong Fastener complete set, item no. A7012990, is not affected by this ruling.

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

Sincerely,

GAIL A. HAMILL

for

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters relating to the classification of MP-3 player cases with speakers. CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 43, No. 33, on August 13, 2009. Two comments were received in response to this notice.

DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 1, 2010.

FOR FURTHER INFORMATION CONTACT: Jean R. Broussard, 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 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. Section 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended, a notice was published in the *Customs Bulletin*, Vol. 43, No. 33, on August 13, 2009, proposing to revoke two ruling letters pertaining to the classification of MP–3 player cases with speakers. Although in that notice, CBP specifically proposed to revoke New York Ruling letters (NY) N019513, dated December 5, 2007 and NY N005234, February 2, 2007, the notice covers any rulings on this merchandise which may exist but have not been specifically identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should 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, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the

part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N019513 and N005234, and revoking or modifying any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letters (HQ) H026521 and HQ H068738, set forth in the “Attachments” to this document. Additionally pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 26, 2010

GAIL A. HAMILL

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ H026521
CLA-2 OT:RR:CTF:TCM H026521 JRB
CATEGORY: Classification
TARIFF NO.: 4202

MS. CECILIA CASTELLANOS
VICE PRESIDENT 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”) 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 N019513 and found it to be in error. For the reasons set forth below, we hereby revoke NY N019513.

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 August 13, 2009, in the *Customs Bulletin*, Volume 43, No. 33. One comment was received in response to the notice to 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. 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. 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. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

MYLES B. HARMON

Director,

Commercial and Trade Facilitation Division

[ATTACHMENT B]

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.

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 August 13, 2009, in the *Customs Bulletin*, Volume 43, No. 33. One comment was received in response to this notice.

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.

In addition, based on the information presented the merchandise is not imported with an MP-3 player.

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 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).

Heading 4202, HTSUS, describes various types of cases and containers. In particular, the EN to heading 4202 specifically provides that "the articles covered by the first part of the heading may be of any material. The expression "similar containers" in the first part includes hat boxes, camera accessory cases, cartridge pouches, sheaths for hunting or camping knives, portable tool boxes or cases, specially shaped or internally fitted to contain particular tools with or without their accessories, etc." Applying this guidance to the subject merchandise, the Aquapod Splash Proof MP3 Speaker, can be described as a rigid case that is "specially shaped or internally fitted to contain particular tools", because it is specially designed to hold an MP3 player. In addition the case is meant to hold the MP3 for a prolonged use. Thus, heading 4202, HTSUS partially describes the subject merchandise.

In addition, heading 8518, HTSUS, describes the subject merchandise because it provides the classification for loudspeakers whether or not mounted in their enclosures. The subject merchandise also includes a speaker. Therefore, heading 8518, HTSUS, partially describes the subject merchandise.

Therefore, the Aquapod Splash Proof MP3 Speaker is described by both headings 4202 and 8518, HTSUS, as it is a hard 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.

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 hard 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, the case imparts the essential character for this product.

One commenter raised the issue of whether GRI 5(a) would apply to this case. GRI 5(a)¹ is inapplicable because based on the information provided in the initial ruling request the Aquapod Splash Proof MP3 Speaker case is not being imported with the MP3 player.

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

¹ GRI 5 provides:

In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred therein:

- (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character.

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

Sincerely,

MYLES B. HARMON

Director,

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF RULING LETTERS AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE ELIGIBILITY OF CERTAIN JEWELRY FOR
PREFERENTIAL TARIFF TREATMENT UNDER THE
GENERALIZED SYSTEM OF PREFERENCES**

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

ACTION: Notice of proposed revocation of two ruling letters and proposed revocation of any treatment relating to the alloying and casting of metal for purposes of jewelry production.

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 proposing to revoke two ruling letters, Headquarters Ruling Letter (HQ) 562035, dated June 22, 2001, and HQ 562526, dated November 15, 2002, relating to the eligibility for preferential treatment under the GSP of certain jewelry. CBP is also proposing to revoke any treatment previously accorded to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before April 30, 2010.

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. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. 20001 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at 202-325-0118.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Valuation and Special Classification Branch, (202) 325-0046.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify two rulings, HQ 562035, dated June 22, 2001, and HQ 562526, dated November 15, 2002, relating to the eligibility for preferential treatment under the GSP of certain jewelry produced by the "lost wax" technique or substantially similar technique. Although in this notice CBP is specifically referring to the revocations of HQ 562035 and HQ 562526, this modification will cover 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 (19 U.S.C.1625 (c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions, or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In HQ 562035, set forth as Attachment A to this document, CBP determined, in pertinent part, that when gold was mixed with alloying metals and the mixture was melted to form an alloy and then poured into flasks and cast for jewelry pieces, the gold and alloying materials did not undergo a double substantial transformation. Therefore, the value of the gold and alloying metals could not be counted toward meeting the 35 percent value content requirement of the GSP.

In HQ 562526, set forth as Attachment B to this document, CBP determined that when silver and copper were mixed to form sterling silver, melted, and poured into molds and cast for jewelry pieces using a method referred to as the "lost wax" technique, the silver and copper did not undergo a double substantial transformation. Therefore, the value of the silver and copper could not be counted toward meeting the 35 percent value content requirement of the GSP.

HQ 562035 and HQ 562526 are in conflict with the decisions in HQ 560331, dated December 2, 1997 and HQ H022844, dated June 20, 2008 which held that similar processing of metal mixtures, *i.e.* mixing, melting, and pouring into molds, resulted in a double substantial transformation of the materials. HQ H022844 dealt specifically with the "lost wax" technique and found the gold and alloy metals in the case to have undergone a double substantial transformation.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke HQ 562035 and HQ 562526, and revoke or modify any other ruling not specifically identified that is contrary to the determination set forth in this notice. CBP proposes to revoke these rulings to eliminate the current conflict in rulings on this subject. Proposed HQ H072082 and proposed H072776, set forth as Attachments C and D to this document, reflect the proper analysis of eligibility of the jewelry processed

as described herein for preferential tariff treatment under the GSP. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: March 26, 2010

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ W562035

June 22, 2001

CLA-2 RR:CR:SM 562035 KSG

CATEGORY: Classification

PORT DIRECTOR
U.S. CUSTOMS SERVICE
605 W. FOURTH AVENUE
ANCHORAGE, ALASKA 99501

RE: Eligibility of gold jewelry for duty-free treatment under the GSP;
double substantial transformation; stones

DEAR DIRECTOR:

This is in response to your request for internal advice of February 1, 2001, concerning the eligibility of gold jewelry imported from Sri Lanka for duty-free treatment under the Generalized System of Preferences ("GSP").

FACTS:

Hansa Jewellery Ltd. Purchases pure gold from a foreign country other than Sri Lanka. The company purchases alloying metals in Italy. In their production facilities in Sri Lanka, the pure gold is mixed with the appropriate percentages of alloying metals. This mixture is then melted to form an alloy. The alloy is then poured into flasks and cast into various styles, typically used to make rings and pendants. The castings are then set with diamonds and/or colored stones ("stones"). The gold castings, set with stones, are then polished. The country of origin of the diamonds and stones is not indicated. We will assume for the purposes of this ruling that the diamonds and stones are not of U.S. or Sri Lankan origin.

ISSUE:

Whether the imported gold jewelry is eligible for special tariff treatment under the GSP.

LAW AND ANALYSIS:

Congress originally enacted the GSP program to extend preferential tariff treatment to the exports of less-developed countries to encourage economic diversification and export development within the developing world. *SDI Technologies Inc. v. United States*, 977 F. Supp. 1235 (CIT 1997), quoting S. Rep. No. 93-1298, (1974). Under the GSP, eligible articles the growth, product or manufacture of a designated beneficiary developing country (BDC) which are imported directly into the customs territory of the U.S. from a BDC may receive duty-free treatment if the sum of (1) the cost or value of materials produced in the BDC, plus (2) the direct costs of the processing operations performed in the BDC, is equivalent to at least 35 percent of the appraised value of the article at the time of entry into the U.S. See 19 U.S.C. 2463(a). General Note 3I(i), HTSUS, provides, in part, that special tariff treatment under the GSP is indicated in the "Special" subcolumn in the tariff by the symbols "A", "A*," or "A+." It is assumed for the purposes of this ruling that the imported gold jewelry is classified in Chapter 71, HTSUS. All the

tariff provisions of Chapter 71 are GSP-eligible. Under General Note 4(a), HTSUS, Sri Lanka is designated as a beneficiary developing country for GSP purposes.

The first issue involved in this case is whether the imported jewelry is a “product of” Sri Lanka. The “product of” requirement means that to receive duty-free treatment, an article either must be made entirely of materials originating in the BDC, or if made of materials imported into the BDC, those materials must be substantially transformed in the BDC into a new and different article of commerce.

A substantial transformation occurs “when an article emerges from a manufacturing process with a name, character, or use which differs from those of the original material subjected to the process.” *Texas Instruments Inc. v. United States*, 681 F.2d 778 (1982).

Customs considered a similar issue in Headquarters Ruling Letter (“HRL”) 560331, dated December 2, 1997, involving imported jewelry from the Dominican Republic. The stones were from a foreign country other than a BC. In one scenario, the alloying and casting was done in the Dominican Republic. Customs held that casting non-beneficiary precious metal alloys into jewelry and setting foreign gem stones resulted in a substantial transformation and therefore, the jewelry was considered a product of the Dominican Republic. In HRL 556457, dated March 5, 1992, Customs ruled that gold, silver and alloys of U.S. origin shipped to Costa Rica to be alloyed to create shot and then cast into jewelry and the setting of stones was considered a substantial transformation. Therefore, the finished pieces of jewelry were considered products of Costa Rica for the purposes of the CBERA. *See also* HRL 555801, dated January 2, 1991.

In this case, the gold, the alloying materials and the stones are imported into Sri Lanka from a foreign country. The facts that you have provided are similar to the above cited rulings. Like HRL 560331 and HRL 556457, the casting and setting of stones that transform the metals and stones into jewelry are performed in the GSP beneficiary country. There is a change in name from gold, alloy materials and the stones into a finished ring or pendant. There is also a change in character; the gold is mixed with the other materials and therefore, the resulting material has different characteristics than pure gold or the alloy materials. Gold, alloying materials and stones have many potential uses while the finished jewelry has a single use. Therefore, we conclude that the gold, alloy materials and stones are substantially transformed into a finished piece of jewelry in Sri Lanka with a different name, character and use. Thus, there is a substantial transformation and the finished jewelry is a “product of” Sri Lanka for the purposes of the GSP.

To be eligible for duty-free treatment under the GSP statute, merchandise must also satisfy the 35% value-content requirement. If an article consists of materials that are imported into a BDC, as in the instant case, the cost or value of these materials may be counted toward the 35% value-content requirement only if they undergo a double substantial transformation in the BDC. *See* 19 CFR 10.177(a)(2). Materials imported into the BDC must first be substantially transformed into a new and different article of commerce which becomes “material produced” and these materials produced in the BDC must then be substantially transformed into a new and different article of commerce (the final article). This intermediate product must be a distinct article

of commerce. An article of commerce is commercially recognizable as an article which is readily susceptible of trade and one that persons might well wish to buy and acquire for their own purposes of consumption or production. *See Azteca Mill Co. v. U.S.*, 703 F. Supp. 949 (CIT 1988), and *F.F. Zuniga a/c Refractarios Monterrey, S.A. v. United States*, 996 F.2d 1203 (Fed. Cir. 1993).

Therefore, the issue is whether the gold, the alloying materials from Italy and the finished stones undergo a double substantial transformation in Sri Lanka when they are used to make jewelry and therefore, may be counted toward the 35 percent requirement.

In HRL 560331, Customs considered the issue of whether the materials imported into the Dominican Republic were subjected to a double substantial transformation so that their value could be included in the 35% value-content requirement. Customs held that the gold bars, silver, copper, zinc, nickel, or brass, which were alloyed to the desired specification from shot and cast into jewelry pieces were subjected to a double substantial transformation, but that the finished stones which were set into the castings in the Dominican Republic were not subjected to a double substantial transformation. In HRL 555337, dated March 8, 1990, Customs concluded that "the conversion of the pure gold and alloy shot in Mexico into 14-karat gold shot produces an intermediate article of commerce, which itself is then substantially transformed by casting into rings." In HRL 555546, dated January 30, 1990, Customs stated that 24-karat gold made into 14-karat gold shot by an alloying process and cast into jewelry items underwent a double substantial transformation for purposes of the GSP statute. *See also* HRL 556457, dated March 5, 1992, which held that finished precious and semiprecious stones set into castings are not subjected to a double substantial transformation.

In this case, based on the facts presented, there is no conversion of the metals and alloying materials into shot, an article that was held to be an intermediate article of commerce. *See* HRL 555337 and HRL 555546. Further, there is no other article created that would be considered an intermediate article of commerce. Based on the facts presented, there is one continuous process involved that transforms the gold, the alloying materials and the stones into finished jewelry pieces. As discussed above, this processing in Sri Lanka would constitute a single substantial transformation for the gold, alloying materials and stones. Setting the stones into the castings is not considered a double substantial transformation. *See* HRL 556457. Accordingly, none of the materials of the finished jewelry undergo a double substantial transformation in Sri Lanka and therefore, none of the materials could be counted toward the 35 percent value content requirement under the GSP.

HOLDING:

Based on the information provided, the gold, alloying materials and stones undergo a single substantial transformation in Sri Lanka and therefore, would be considered a product of Sri Lanka for the purposes of the GSP. None of the materials of the finished jewelry undergo a double substantial transformation in this case and therefore, none of the materials may be counted toward the 35 percent value content requirement under the GSP.

Sincerely,

JOHN DURANT

Director,

Commercial Rulings Division

[ATTACHMENT B]

HQ 562526

November 15, 2002

CLA-2 RR:CR:SM 562526 KSG

CATEGORY: Classification

PORT DIRECTOR
U.S. CUSTOMS SERVICE
605 W. FOURTH AVENUE
ANCHORAGE, ALASKA 99501

RE: Eligibility of sterling silver jewelry for duty-free treatment under the GSP; double substantial transformation; castings

DEAR DIRECTOR:

This is in response to your request for internal advice of August 20, 2002, (initiated by counsel for Toucan, Inc. by letter of February 13, 2002) concerning the eligibility of silver jewelry imported from Thailand for duty-free treatment under the Generalized System of Preferences ("GSP").

FACTS:

Toucan, Inc. (dba "Tomas Jewelry"), imports sterling silver jewelry from Thailand. The jewelry is made from pure silver and copper imported into Thailand from many foreign countries. In Thailand, the pure silver is mixed with the copper in a ratio of 92.5% silver to 7.5% copper, known as sterling silver. This mixture is then melted to form an alloy known as 925 silver. The alloy is then poured into molds and cast into various styles. The castings are created using the traditional "lost wax" technique. The design is either carved into hard wax using a stylus or an original piece of jewelry can be used in lieu of a wax model. A rubber mold is then made, and multiple patterns of the original design are produced by injecting wax into this mold. The wax images are then attached to a base, forming a tree-like shape, a process called sprueing. This wax "tree" is placed into a metal flask and is covered with investment, a substance that resembles plaster of Paris.

When the investment sets or hardens, the flask is placed in a kiln set at 1,275 degrees Fahrenheit until the wax vaporizes, leaving a hollow impression in the plaster. The molten sterling silver is then poured into the hot flask under a vacuum-like pressure created in a centrifuge. After cooling slightly, the container is "quenched" in water, thus dissolving the plaster and leaving the metal "tree" intact. When it is completely cool, the cast tree is chemically cleaned.

Each cast piece is then cut off the tree at the base, and lightly filed to smoothness. Oxidizing agents may also be applied, if desired, to enhance the detail of the piece. The castings are eventually buffed and polished, either before or after further manufacture, to remove any chemical residue left by processing and to remove any scratches.

The castings are then assembled with either metal posts or wires (hooks) to make earrings.

In addition to being used to make earrings, counsel for Tomas states that the castings are used in making anklets and bracelets, or as decoration on

other items such as pillboxes, bookmarks, key rings, pocket pieces, cake pulls, wine glass identifiers, shoestring decorations and zipper pulls. However, we understand that this particular case only involves the production and importation of earrings.

ISSUE:

Whether the imported sterling silver earrings are eligible for special tariff treatment under the GSP.

LAW AND ANALYSIS:

Congress originally enacted the GSP program to extend preferential tariff treatment to the exports of less-developed countries to encourage economic diversification and export development within the developing world. *SDI Technologies Inc. v. United States*, 977 F. Supp. 1235 (CIT 1997), quoting S. Rep. No. 93-1298, (1974). Under the GSP, eligible articles the growth, product or manufacture of a designated beneficiary developing country (BDC) which are imported directly into the customs territory of the U.S. from a BDC may receive duty-free treatment if the sum of (1) the cost or value of materials produced in the BDC, plus (2) the direct costs of the processing operations performed in the BDC, is equivalent to at least 35 percent of the appraised value of the article at the time of entry into the U.S. See 19 U.S.C. 2463(a).

General Note 3(c)(i), HTSUS, provides, in part, that special tariff treatment under the GSP is indicated in the "Special" subcolumn in the tariff by the symbols "A", "A*", or "A+". It is assumed for the purposes of this ruling that the imported silver jewelry is classified in Chapter 71, HTSUS. All the tariff provisions of Chapter 71 are GSP-eligible. Under General Note 4(a), HTSUS, Thailand is designated as a beneficiary developing country for GSP purposes.

The first issue involved in this case is whether the imported jewelry is a "product of" Thailand. The "product of" requirement means that to receive duty-free treatment, an article either must be made entirely of materials originating in the BDC, or if made of materials imported into the BDC, those materials must be substantially transformed in the BDC into a new and different article of commerce.

A substantial transformation occurs "when an article emerges from a manufacturing process with a name, character, or use which differs from those of the original material subjected to the process." *Texas Instruments Inc. v. United States*, 681 F.2d 778 (1982).

In regard to the "product of" requirement, Customs considered a similar issue to that involved here in Headquarters Ruling Letter ("HRL") 560331, dated December 2, 1997, involving imported jewelry from the Dominican Republic. The stones were from a foreign country other than a BC. In one scenario, the alloying and casting was done in the Dominican Republic. Customs held that casting non-beneficiary precious metal alloys into jewelry and setting foreign gem stones resulted in a substantial transformation and therefore, the jewelry was considered a product of the Dominican Republic. In HRL 556457, dated March 5, 1992, Customs ruled that gold, silver and alloys of U.S. origin shipped to Costa Rica to be alloyed to create shot and then cast into jewelry

and the setting of stones was considered a substantial transformation. Therefore, the finished pieces of jewelry were considered products of Costa Rica for the purposes of the CBERA. *See also* HRL 555801, dated January 2, 1991.

In this case, the silver, and copper are imported into Thailand from a foreign country. The facts that you have provided are similar to the above cited rulings. Like HRL 560331 and HRL 556457, the casting that transform the metals into jewelry are performed in the GSP beneficiary country. There is a change in name from silver, and copper into finished earrings. There is also a change in character; the silver is mixed with copper and therefore, the resulting material has different characteristics than pure silver or copper. Silver and copper have many potential uses while the finished jewelry has a single use. The processing involved to manufacture the earrings from silver and copper is complex and intricate rather than of a minor nature. Therefore, based on the above, we conclude that the silver and copper are substantially transformed into a finished piece of jewelry in Thailand with a different name, character and use. Thus, the finished jewelry is a "product of" Thailand for the purposes of the GSP. To be eligible for duty-free treatment under the GSP statute, merchandise must also satisfy the 35% value-content requirement. If an article consists of materials that are imported into a BDC, as in the instant case, the cost or value of these materials may be counted toward the 35% value-content requirement only if they undergo a double substantial transformation in the BDC. *See* 19 CFR 10.177(a)(2). Materials imported into the BDC must first be substantially transformed into a new and different article of commerce which becomes "material produced" and these materials produced in the BDC must then be substantially transformed into a new and different article of commerce (the final article). This intermediate product must be a distinct article of commerce. An article of commerce is commercially recognizable as an article which is readily susceptible of trade and one that persons might well wish to buy and acquire for their own purposes of consumption or production. *See Azteca Mill Co. v. U.S.*, 703 F. Supp. 949 (CIT 1988), and *F.F. Zuniga a/c Refractorios Monterrey, S.A. v. United States*, 996 F.2d 1203 (Fed. Cir. 1993).

Therefore, the second issue in this case is whether the silver and copper undergo a double substantial transformation in Thailand when they are used to make jewelry and therefore, their value may be counted toward the 35 percent requirement. Counsel for Tomas contends that production of the silver castings from the imprinted silver and copper results in the first substantial transformation and that processing the castings into finished earrings constitutes a second substantial transformation.

In HRL 555337, dated March 8, 1990, Customs concluded that "the conversion of the pure gold and alloy shot in Mexico into 14-karat gold shot produces an intermediate article of commerce, which itself is then substantially transformed by casting into rings." In HRL 555546, dated January 30, 1990, Customs stated that 24-karat gold made into 14-karat gold shot by an alloying process and cast into jewelry items underwent a double substantial transformation for purposes of the GSP statute. However, a contrary result was reached in a recent similar case (HRL 562035, dated June 22, 2001) involving pure gold and alloying metals that were imported into a GSP BDC where they were mixed together and melted to form an alloy that was then cast into rings and pendants. Customs stated that, unlike HRL's 555337 and 555546, there was no conversion of the gold and alloying material into shot—

an article previously held to be an intermediate article of commerce. Rather, the creation of the molten alloy and the subsequent casting of the alloy into specific jewelry articles was determined to represent a continuous production sequence which did not result in an identifiable, separate article of commerce. Customs held that only one substantial transformation resulted from the above processing.

In this case, based on the facts presented, we find that there is essentially one continuous process that transforms the silver and copper into finished jewelry pieces. As discussed above, the processing in Thailand would constitute a single substantial transformation of the silver and copper. The processing necessary to convert the purported intermediate article of commerce (the casting) into a finished earring merely involves adding an ear post or hook to the casting. This is a very simple assembly process which, in our opinion, does not result in a new and different article. Accordingly, neither the silver nor the copper undergo a double substantial transformation in Thailand and therefore, neither the cost of the silver nor the copper may be counted toward the 35 percent value content requirement under the GSP.

HOLDING:

Based on the information provided, the silver and copper undergo a single substantial transformation in Thailand and therefore, the earrings would be considered a product of Thailand for the purposes of GSP. Neither the silver nor the copper undergo a double substantial transformation in this case and therefore, neither one of the materials may be counted toward the 35 percent value content requirement under the GSP. This decision should be mailed by your office to the internal advice requester no later than sixty (60) days from the date of this letter. On that date the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel and to the public on the Customs Home Page on the World Wide Web at www.customs.ustreas.gov, by means of the Freedom of Information Act, and other means of public distribution.

Sincerely,

MYLES B. HARMON
Acting Director

Commercial Rulings Division

[ATTACHMENT C]

HQ H072082
VAL-2 OT:RR:CTF:VS H072082 CMR
CATEGORY: Classification

PORT DIRECTOR
U.S. CUSTOMS AND BORDER PROTECTION
605 W. FOURTH AVENUE
ANCHORAGE, ALASKA 99501

RE: Revocation of Internal Advice Decision, Headquarters Ruling Letter 562035, dated June 22, 2001; alloying; casting; double substantial transformation

DEAR PORT DIRECTOR:

This ruling revokes our earlier decision in Headquarters Ruling Letter (HQ) 562035, dated June 22, 2001, issued in response to an internal advice request from your port regarding the eligibility of gold jewelry imported from Sri Lanka for duty-free treatment under the Generalized System of Preferences (GSP). We have reviewed our decision in HQ 562035 and found it to be in conflict with earlier and later decisions on substantially identical transactions.

FACTS:

The facts of the transaction at issue in HQ 562035 were set forth in the ruling as follows:

Hansa Jewellery Ltd. purchases pure gold from a foreign country other than Sri Lanka. The company purchases alloying metals in Italy. In their production facilities in Sri Lanka, the pure gold is mixed with the appropriate percentages of alloying metals. This mixture is then melted to form an alloy. The alloy is then poured into flasks and cast into various styles, typically used to make rings and pendants. The castings are then set with diamonds and/or colored stones ("stones"). The gold castings, set with stones, are then polished. The country of origin of the diamonds and stones is not indicated. We will assume for the purposes of this ruling that the diamonds and stones are not of U.S. or Sri Lankan origin.

ISSUE:

Whether the imported gold jewelry is eligible for special tariff treatment under the GSP.

LAW AND ANALYSIS:

Congress originally enacted the GSP program to extend preferential tariff treatment to the exports of less-developed countries to encourage economic diversification and export development within the developing world. *SDI Technologies Inc. v. United States*, 977 F. Supp. 1235 (CIT 1997), quoting S. Rep. No. 93-1298, (1974). Under the GSP, eligible articles the growth, product or manufacture of a designated beneficiary developing country (BDC) which are imported directly into the customs territory of the U.S. from a BDC may receive duty-free treatment if the sum of (1) the cost or value of mate-

rials produced in the BDC, plus (2) the direct costs of the processing operations performed in the BDC, is equivalent to at least 35 percent of the appraised value of the article at the time of entry into the U.S. See 19 U.S.C. 2463(a).

General Note 3(c)(i), HTSUS, provides, in part, that special tariff treatment under the GSP is indicated in the "Special" subcolumn in the tariff by the symbols "A", "A*," or "A+". Under General Note 4(a), HTSUS, Sri Lanka is designated as a beneficiary developing country for GSP purposes. It is assumed for the purposes of this ruling that the imported gold jewelry is classified in Chapter 71, HTSUS. At the time that HQ 562035 was issued, all the tariff provisions of Chapter 71 were GSP-eligible. Currently, gold jewelry classified in subheading 7113.19, HTSUS (which we believe to be the applicable tariff provision for classification of the merchandise described herein), and a product of Sri Lanka is eligible for preferential tariff treatment under the GSP provided the requirements of that program are met.

The first issue involved in this case is whether the imported jewelry is a "product of" Sri Lanka. The "product of" requirement means that to receive duty-free treatment, an article either must be made entirely of materials originating in the BDC, or if made of materials imported into the BDC, those materials must be substantially transformed in the BDC into a new and different article of commerce. A substantial transformation occurs "when an article emerges from a manufacturing process with a name, character, or use which differs from those of the original material subjected to the process." *Texas Instruments Inc. v. United States*, 681 F.2d 778 (1982).

CBP considered a similar issue in Headquarters Ruling Letter ("HQ") 560331, dated December 2, 1997, involving imported jewelry from the Dominican Republic. The stones were from a foreign country other than a beneficiary country. In one scenario, the alloying and casting was done in the Dominican Republic. CBP held that casting non-beneficiary precious metal alloys into jewelry and setting foreign gem stones resulted in a substantial transformation and therefore, the jewelry was considered a product of the Dominican Republic. In HQ 556457, dated March 5, 1992, CBP ruled that gold, silver and alloys of U.S. origin shipped to Costa Rica to be alloyed to create shot and then cast into jewelry and the setting of stones was considered a substantial transformation. Therefore, the finished pieces of jewelry were considered products of Costa Rica for the purposes of the CBERA. See also HQ 555801, dated January 2, 1991.

In this case, the gold, the alloying materials and the stones are imported into Sri Lanka from a foreign country. The facts that you have provided are similar to the above cited rulings. Like HQ 560331 and HQ 556457, the casting and setting of stones that transform the metals and stones into jewelry are performed in the GSP beneficiary country. There is a change in name from gold, alloy materials and the stones into a finished ring or pendant. There is also a change in character; the gold is mixed with the other materials and therefore, the resulting material has different characteristics than pure gold or the alloy materials. Gold, alloying materials and stones have many potential uses while the finished jewelry has a single use. Therefore, we conclude that the gold, alloy materials and stones are substantially transformed into a finished piece of jewelry in Sri Lanka with a different

name, character and use. Thus, there is a substantial transformation and the finished jewelry is a “product of” Sri Lanka for the purposes of the GSP.

If an article consists of materials that are imported into a BDC, as in the instant case, the cost or value of these materials may be counted toward the 35% value-content requirement only if they undergo a double substantial transformation in the BDC. *See* 19 CFR 10.177(a)(2). Materials imported into the BDC must first be substantially transformed into a new and different article of commerce which becomes “material produced,” and these materials produced in the BDC must then be substantially transformed into a new and different article of commerce (the final article). This intermediate product must be a distinct article of commerce. An article of commerce is commercially recognizable as an article which is readily susceptible of trade and one that persons might well wish to buy and acquire for their own purposes of consumption or production. *See Azteca Mill Co. v. U.S.*, 703 F. Supp. 949 (CIT 1988), and *F.F. Zuniga a /c Refractorios Monterrey, S.A. v. United States*, 996 F.2d 1203 (Fed. Cir. 1993).

With regard to the gold and metal alloys, we must determine whether they undergo a double substantial transformation in Sri Lanka when they are used to make jewelry to determine whether their value may be counted toward the 35 percent requirement. The description of the processing of the gold and metal alloys set forth in the facts portion of this decision indicates that the gold and metal alloys are mixed and melted, and the molten mixture is poured into flasks and cast. This is similar to the process described in HQ H022844, dated June 20, 2008, which cited to HQ 560331, dated December 2, 1997, for holding that gold and alloy metals so processed underwent a double substantial transformation.

Furthermore, we have considered the concept of double substantial transformation in the context of chemicals in HQ H022286, dated July 10, 2008, wherein we found that 5-(*t*-butyl)-2-methylamino-1,2,4-thiadiazole (“BTDA”) created by a chemical reaction and used in the manufacture of tebuthiuron technical (“tab-tech”) underwent a double substantial transformation in South Africa. We concluded that the BTDA could be isolated and had been, or may be, marketed in its form as manufactured. Similarly, in HQ 555403, dated June 6, 1990, CBP determined that the production of para-phenetidine acetone anil (“anil”) in the course of the production of ethoxyquin created an intermediate product of commerce, *i.e.* the anil, even though the manufacturing process was continuous and the anil did not appear to be actually isolated.

In this case, if the processing ceased after the gold and metal alloys were mixed and melted to form the alloy to be used in casting the jewelry, and the alloy was allowed to cool and harden, the alloy would be an intermediate article of commerce. So, similar to the BTDA in HQ H022286, and the anil in HQ 555402, the alloy could be isolated, *i.e.*, cooled and hardened, and sold as an intermediate article of commerce. Following HQ H022844 and HQ 560331, the gold and metal alloys in this case undergo a double substantial transformation and the value of the gold and metal alloys may be counted toward meeting the required 35 percent value content requirement of the GSP.

With regard to the diamonds and/or colored stones which are set in the gold castings, setting the diamonds and/or colored stones into the castings is not

considered a double substantial transformation. See HQ 556467, dated March 5, 1992 which held that finished precious and semiprecious stones set into castings are not subjected to a double substantial transformation.

HOLDING:

The jewelry produced as described herein is a product of Sri Lanka as the materials used to produce the jewelry, *i.e.*, the gold, metal alloys, and diamonds and/or colored stones, are substantially transformed in Sri Lanka. Furthermore, the value of the gold and metal alloys may be counted toward meeting the required 35 percent value content requirement of the GSP as these materials undergo a double substantial transformation. The value of the diamonds and/or colored stones may not be counted toward meeting the required 35 percent value content of the GSP.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT D]

HQ H072776
VAL-2 OT:RR:CTF:VS H072776 CMR
CATEGORY: Classification

PORT DIRECTOR
U.S. CUSTOMS AND BORDER PROTECTION
605 W. FOURTH AVENUE
ANCHORAGE, ALASKA 99501

RE: Revocation of Internal Advice Decision, Headquarters Ruling Letter 562526, dated November 15, 2002; alloying; casting; double substantial transformation

DEAR PORT DIRECTOR:

This ruling revokes our earlier decision in Headquarters Ruling Letter (HQ) 562526, dated November 15, 2001, issued in response to an internal advice request from your port regarding the eligibility of silver jewelry imported from Thailand for duty-free treatment under the Generalized System of Preferences (GSP). We have reviewed our decision in HQ 562625 and found it to be in conflict with earlier and later decisions on substantially identical transactions.

FACTS:

The facts of the transaction at issue in HQ 562625 were set forth in the ruling as follows:

Toucan, Inc. (dba "Tomas Jewelry"), imports sterling silver jewelry from Thailand. The jewelry is made from pure silver and copper imported into Thailand from many foreign countries. In Thailand, the pure silver is mixed with the copper in a ratio of 92.5% silver to 7.5% copper, known as sterling silver. This mixture is then melted to form an alloy known as 925 silver. The alloy is then poured into molds and cast into various styles.

The castings are created using the traditional "lost wax" technique. The design is either carved into hard wax using a stylus or an original piece of jewelry can be used in lieu of a wax model. A rubber mold is then made, and multiple patterns of the original design are produced by injecting wax into this mold. The wax images are then attached to a base, forming a tree-like shape, a process called sprueing. This wax "tree" is placed into a metal flask and is covered with investment, a substance that resembles plaster of Paris.

When the investment sets or hardens, the flask is placed in a kiln set at 1,275 degrees Fahrenheit until the wax vaporizes, leaving a hollow impression in the plaster. The molten sterling silver is then poured into the hot flask under a vacuum-like pressure created in a centrifuge. After cooling slightly, the container is "quenched" in water, thus dissolving the plaster and leaving the metal "tree" intact. When it is completely cool, the cast tree is chemically cleaned.

Each cast piece is then cut off the tree at the base, and lightly filed to smoothness. Oxidizing agents may also be applied, if desired, to enhance the detail of the piece. The castings are eventually buffed and polished,

either before or after further manufacture, to remove any chemical residue left by processing and to remove any scratches.

The castings are then assembled with either metal posts or wires (hooks) to make earrings.

In addition to being used to make earrings, counsel for Tomas states that the castings are used in making anklets and bracelets, or as decoration on other items such as pillboxes, bookmarks, key rings, pocket pieces, cake pulls, wine glass identifiers, shoestring decorations and zipper pulls. However, we understand that this particular case only involves the production and importation of earrings.

ISSUE:

Whether the imported sterling silver earrings are eligible for special tariff treatment under the GSP.

LAW AND ANALYSIS:

Congress originally enacted the GSP program to extend preferential tariff treatment to the exports of less-developed countries to encourage economic diversification and export development within the developing world. *SDI Technologies Inc. v. United States*, 977 F. Supp. 1235 (CIT 1997), quoting S. Rep. No. 93-1298, (1974). Under the GSP, eligible articles the growth, product or manufacture of a designated beneficiary developing country (BDC) which are imported directly into the customs territory of the U.S. from a BDC may receive duty-free treatment if the sum of (1) the cost or value of materials produced in the BDC, plus (2) the direct costs of the processing operations performed in the BDC, is equivalent to at least 35 percent of the appraised value of the article at the time of entry into the U.S. See 19 U.S.C. 2463(a).

General Note 3(c)(i), HTSUS, provides, in part, that special tariff treatment under the GSP is indicated in the "Special" subcolumn in the tariff by the symbols "A", "A*," or "A+". Under General Note 4(a), HTSUS, Thailand is designated as a beneficiary developing country for GSP purposes. It is assumed for the purposes of this ruling that the imported sterling silver jewelry is classified in Chapter 71, HTSUS. At the time that HQ 562526 was issued, all the tariff provisions of Chapter 71 were GSP-eligible. Currently, sterling silver jewelry classified in subheading 7113.11, HTSUS (which we believe to be the applicable tariff provision for classification of the merchandise described herein), and a product of Thailand is eligible for preferential tariff treatment under the GSP provided the requirements of that program are met.

The first issue involved in this case is whether the imported jewelry is a "product of" Thailand. The "product of" requirement means that to receive duty-free treatment, an article either must be made entirely of materials originating in the BDC, or if made of materials imported into the BDC, those materials must be substantially transformed in the BDC into a new and different article of commerce. A substantial transformation occurs "when an article emerges from a manufacturing process with a name, character, or use

which differs from those of the original material subjected to the process.” *Texas Instruments Inc. v. United States*, 681 F.2d 778 (1982).

CBP considered a similar issue in Headquarters Ruling Letter (“HQ”) 560331, dated December 2, 1997, involving imported jewelry from the Dominican Republic. The stones were from a foreign country other than a beneficiary country. In one scenario, the alloying and casting was done in the Dominican Republic. CBP held that casting non-beneficiary precious metal alloys into jewelry and setting foreign gem stones resulted in a substantial transformation and therefore, the jewelry was considered a product of the Dominican Republic. In HQ 556457, dated March 5, 1992, CBP ruled that gold, silver and alloys of U.S. origin shipped to Costa Rica to be alloyed to create shot and then cast into jewelry and the setting of stones was considered a substantial transformation. Therefore, the finished pieces of jewelry were considered products of Costa Rica for the purposes of the CBERA. *See also* HQ 555801, dated January 2, 1991.

In this case, the silver and copper are imported into Thailand from a foreign country. The facts that you have provided are similar to the above cited rulings. Like HQ 560331 and HQ 556457, the casting that transforms the metals and stones into jewelry are performed in the GSP beneficiary country. There is a change in name from silver and copper into finished earrings. There is also a change in character; the silver is mixed with copper and therefore, the resulting material has different characteristics than pure silver or copper. Silver and copper have many potential uses while the finished jewelry has a single use. The processing involved to manufacture the earrings from silver and copper is complex and intricate rather than of a minor nature. Therefore, based on the above, we conclude that the silver and copper are substantially transformed into finished earrings in Thailand with a different name, character and use. Thus, the finished jewelry is a “product of” Thailand for the purposes of the GSP.

If an article consists of materials that are imported into a BDC, as in the instant case, the cost or value of these materials may be counted toward the 35% value-content requirement only if they undergo a double substantial transformation in the BDC. *See* 19 CFR 10.177(a)(2). Materials imported into the BDC must first be substantially transformed into a new and different article of commerce which becomes “material produced,” and these materials produced in the BDC must then be substantially transformed into a new and different article of commerce (the final article). This intermediate product must be a distinct article of commerce. An article of commerce is commercially recognizable as an article which is readily susceptible of trade and one that persons might well wish to buy and acquire for their own purposes of consumption or production. *See Azteca Mill Co. v. U.S.*, 703 F. Supp. 949 (CIT 1988), and *F.F. Zuniga a/c Refractorios Monterrey, S.A. v. United States*, 996 F.2d 1203 (Fed. Cir. 1993).

With regard to the silver and copper, we must determine whether they undergo a double substantial transformation in Thailand when they are used to make jewelry to determine whether their value may be counted toward the 35 percent requirement. The description of the processing of the silver and copper set forth in the facts portion of this decision indicates that the silver and copper are mixed and melted, and the molten mixture is poured into molds and cast. This is similar to the process described in HQ H022844, dated

June 20, 2008, which cited to HQ 560331, dated December 2, 1997, for holding that gold and alloy metals so processed underwent a double substantial transformation.

Furthermore, we have considered the concept of double substantial transformation in the context of chemicals in HQ H022286, dated July 10, 2008, wherein we found that 5-(*t*-butyl)-2-methylamino-1,2,4-thiadiazole (“BTDA”) created by a chemical reaction and used in the manufacture of tebuthiuron technical (“tab-tech”) underwent a double substantial transformation in South Africa. We concluded that the BTDA could be isolated and had been, or may be, marketed in its form as manufactured. Similarly, in HQ 555403, dated June 6, 1990, CBP determined that the production of para-phenetidine acetone anil (“anil”) in the course of the production of ethoxyquin created an intermediate product of commerce, *i.e.* the anil, even though the manufacturing process was continuous and the anil did not appear to be actually isolated.

In this case, if the processing ceased after the silver and copper were mixed and melted to form the alloy to be used in casting the jewelry, and the alloy was allowed to cool and harden, the alloy would be an intermediate article of commerce. So, similar to the BTDA in HQ H022286, and the anil in HQ 555402, the alloy could be isolated, *i.e.*, cooled and hardened, and sold as an intermediate article of commerce. Therefore, following HQ H022844 and HQ 560331, the silver and copper in this case undergo a double substantial transformation and the value of the silver and copper may be counted toward meeting the required 35 percent value content requirement of the GSP.

HOLDING:

The earrings produced as described herein are a product of Thailand as the materials used to produce the jewelry, *i.e.*, the silver and copper, are substantially transformed in Thailand. Furthermore, the value of the silver and copper may be counted toward meeting the required 35 percent value content requirement of the GSP as these materials undergo a double substantial transformation.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division