

# U.S. Customs and Border Protection



## MODIFICATION OF A RULING LETTER AND REVOCAION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF MEDIA OPTICAL DISCS

**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 media optical discs.

**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 media optical discs 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. 44, No. 14, on March 31, 2010. One comment was received in response to the notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 7, 2010.

**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), 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 media optical discs. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) M86614, dated October 11, 2006, 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 M86614 in order to reflect the proper classification of media optical discs according to the analysis contained in Headquarters Ruling Letter (HQ) H083275, 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 action will become effective 60 days after publication in the *Customs Bulletin*.

Dated: June 17, 2010

IEVA K. O'ROURKE

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H083275

June 17, 2010

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.

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 NY M86614 was published on March 31, 2010, in Volume 44, Number 14, of the *Customs Bulletin*. CBP received one comment in response to this notice, which is addressed in the ruling.

**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 (citations 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.

CBP received one comment in response to the proposed modification. The commenter argues that, contrary to CBP’s position, anyone who purchases the subject optical discs buys them, not as optical discs, but for the game software programmed on it. Citing to *Data General v. U.S.*, 4 CIT 182 (1982) and HQ 651011, dated September 22, 1998, the commenter argues that the programming of electronic media has long been held to substantially transform the blank media into an article with a specific function. In response, we note that *Data General* and HQ 651011 are marking cases that discuss whether the programming of media optical discs is a substantial transformation for the purposes of country of origin marking under 19 C.F.R. §10.14(b), the precursor to 19 C.F.R. Part 134, the current country of origin marking regulations. The rules for country of origin marking do not apply to the classification of merchandise.

The commenter also noted that CBP has previously taken up the issue of reclassifying video game software from heading 9504, HTSUS, as parts of video games, to heading 8523, HTSUS, as media optical discs in HQ 965759, dated August 30, 2002. There, CBP published a notice in Customs Bulletin Volume 36, No. 33, on August 14, 2002 proposing to modify NY 813932, which classified a memory card that plugs into the front of the PlayStation in heading 9504, HTSUS, in order to reclassify the memory card in heading

8523, HTSUS. The proposed modification never went into final form, however, and NY 813932 remained unchanged. The commenter argues that this outcome speaks against reclassification of the subject media optical discs. In response, we note that the merchandise at issue in proposed HQ 965759 was a memory card for video game machines, distinguishable in form from the subject optical discs, which are provided for *eo nomine* in heading 8523, HTSUS.

**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 2010 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/](http://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,*

IEVA K. O’ROURKE

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED MODIFICATION OF A RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF DISTILLED ROSE AND  
ORANGE BLOSSOM WATERS**

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

**ACTION:** Notice of proposed modification of a classification ruling letter and revocation of treatment relating to the classification of products identified as “distilled rose water” and “distilled orange blossom water”.

**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 a ruling letter relating to the classification of articles identi-

fied as “Rose Water (Maward)” and “Orange Blossom Water (Maza-her)”. CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise.

**DATES:** Comments must be received on or before August 6, 2010.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Commercial Trade and 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 during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Ann Segura Minardi, Tariff Classification and Marking Branch; (202) 325–0031.

#### **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 by section 623 of Title VI, this notice advises interested parties that CBP is proposing to modify a ruling letter pertaining to the classification of distilled rose water and distilled orange blossom water. Although in this notice, CBP is specifically

referring to the modification of New York Ruling Letter (NY) I83744, dated July 1, 2002 (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 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 I83744, CBP classified the subject merchandise under heading 3303, HTSUS, which provides for "Perfumes and toilet waters". We have reviewed NY I83744 and found it to be in error. CBP has determined that the subject merchandise is classified as "aqueous distillates ... of essential oils" in subheading 3301.90.5000, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify NY I83744, dated July 1, 2002. Furthermore, CBP is proposing to revoke or modify any other ruling not specifically identified, to reflect the proper classification of rose and orange blossom waters according to the analysis contained in the proposed Headquarters Ruling Letter (HQ) W967898, 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: May 28, 2010

GAIL A. HAMILL  
*for*

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

Attachments

## [ATTACHMENT A]

NY I83744

July 1, 2002

CLA-2-21:RR:NC:2:228 I83744

CATEGORY: Classification

TARIFF NO.: 2106.90.9972; 3303.00.1000

MR. MARTIN K. BEHR  
 III FERRARA INTERNATIONAL LOGISTICS, INC.  
 460 HILLSIDE AVENUE  
 HILLSIDE, NJ 07205

RE: The tariff classification of flavored syrups and floral waters from Lebanon

DEAR MR. BEHR:

In your letter dated June 10, 2002, on behalf of European Mediterranean Importing Company, Inc., Jersey City, NJ, you requested a tariff classification ruling.

Samples, submitted with your letter, were examined and disposed of. Grenadine Syrup and Rose Syrup are red-colored liquids, packed for retail sale in glass bottles containing 570 milliliters. Both are composed of sugar, flavor (grenadine extract for the former and natural rose flavor for the latter), citric acid, and color. The syrups will be used to prepare a flavored beverage, after mixing with water. Rose Water (Maward) and Orange Blossom Water (Mazaher) are clear liquids packed for retail sale in glass bottles containing 300 milliliters. The sole ingredient in both is distilled rose water or distilled bitter orange blossom water, respectively.

The applicable subheading for the Grenadine Syrup and Rose Syrup will be 2106.90.9972, Harmonized Tariff Schedule of the United States (HTS), which provides for food preparations not elsewhere specified or included...other...other...preparations for the manufacture of beverages...containing sugar derived from sugar cane and/or sugar beets. The duty rate will be 6.4 percent ad valorem.

The applicable subheading for the Rose Water and the Orange Blossom Water will be 3303.00.1000, HTS, which provides for perfumes and toilet waters...not containing alcohol...floral or flower waters. The duty rate will be free.

Articles classifiable under subheading 2106.90.9972, HTS, which are products of Lebanon may be entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check the Customs Web site at [www.customs.gov](http://www.customs.gov). At the Web site, click on "CEBB", click on "Files", click on "Search" and then enter a key word search for the term "T-GSP".

Your inquiry does not provide enough information for us to give a classification ruling on the Mulberry Syrup. Your request for a classification ruling should include a complete ingredients breakdown, by weight, and clarification regarding the identity of the "mulberry" ingredient. Is this component of the syrup a single strength or concentrated juice (if the latter, state the Brix), a puree, an extract, etc? When this information is available, you may wish to

consider resubmission of your request. The sample of this product will be retained with the National Import Specialist for thirty (30) days, pending receipt of the above information.

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 Stanley Hopard at 646-733-3029.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ W967898  
 CLA-2 OT:RR:CTF:TCM W967898 ASM  
 CATEGORY: Classification  
 TARIFF NO.: 3301.90.5000

MR. MARTIN K. BEHR, III  
 FERRARA INTERNATIONAL LOGISTICS, INC.  
 460 HILLSIDE AVENUE  
 HILLSIDE, NJ 07205

RE: Modification of NY I83744; Classification of Distilled Rose Water and Distilled Orange Blossom Water

DEAR MR. BEHR:

This is in reference to New York Ruling Letter (NY) I83744, dated July 1, 2002, issued to you on behalf of European Mediterranean Importing Company, Inc., concerning the tariff classification of products identified as “Rose Water” and “Orange Blossom Water” under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise in the provision for perfumes and toilet waters at subheading 3303.00.10, HTSUS. We have reviewed NY I83744 and found it to be in error. For the reasons set forth below, we hereby modify NY I83744.

**FACTS:**

In NY I83744, the subject merchandise, identified as “Rose Water (Maward)” and “Orange Blossom Water (Mazaher)”. According to the description contained in NY I83744, the sole ingredient in each of these products is distilled rose water or distilled bitter orange blossom water, respectively.

**ISSUE:**

Whether the subject “Distilled Rose Water” and “Distilled Orange Blossom Water” is classified as “Perfumes and toilet waters” in heading 3303, HTSUS, or as a distillate of “essential oils” in heading 3301, HTSUS.

**LAW AND ANALYSIS:**

Classification under the 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 heading and legal notes do not otherwise require, the remaining GRI may then be applied.

The following provisions of the HTSUS are under consideration in classifying the subject article:

- |                |   |
|----------------|---|
| <b>3301</b>    | Essential oils (terpeneless or not), including concretes and absolutes; resinoids; extracted oleoresins; concentrates of essential oils in fats, in fixed oils, in waxes or the like, obtained by enfleurage or maceration; terpenic by-products of the deterpenation of essential oils; aqueous distillates and aqueous solutions of essential oils: |
| <b>3301.90</b> | Other:  |

- 3301.90.50** Other  
**3303** Perfumes and toilet waters:  
Not containing alcohol:  
**3303.00.10** Floral or flower waters

In comparing the two headings now at issue, we begin by noting that the products now in question have been identified as “distilled” rose and orange blossom waters. Therefore, the bottled rose water and orange blossom water is the result of steam distillation of rose and orange blossom oil that produces fragrant rose and orange blossom water as its by-product. As a result, these floral fragrances are in the distillate as a residue or by-product of the essential oil production.

The Explanatory Notes (ENs)<sup>1</sup> for heading 33.01 specifically state that the heading provides for essential oils of vegetable origin that are obtained by “steam distillation” and used in the perfumery and food industries. EN 33.01(D) defines aqueous distillates and aqueous solutions of essential oils as the “... aqueous portions of the distillates resulting when essential oils are extracted from plants by steam distillation. After the essential oils have been decanted, the aqueous distillates still retain a fragrance due to the presence of small quantities of essential oils.” It is further noted in EN 33.01(D) that the heading also covers solutions of essential oils in water and that the more common aqueous distillates are those of “**orange flowers, rose, ... etc.**” (emphasis supplied). Furthermore, in Headquarters Ruling Letter (HQ) 967833, dated September 21, 2005, we classified bottled distilled rose water, a product that is substantially similar to the merchandise now at issue, as an aqueous distillate of essential oil in subheading 3301.90.50, HTSUS.

Inasmuch as the subject distilled rose and orange blossom waters meet the description provided in the ENs to heading 33.01, we find that the subject merchandise should be classified in heading 3301, HTSUS, which provides for, among other things, aqueous distillates of essential oils, and specifically in subheading 3301.90.50, HTSUS. Please note that this classification determination is not intended to apply to the “flavored syrups” considered in NY 183744.

#### **HOLDING:**

The subject merchandise, identified as as “Rose Water (Maward)” and “Orange Blossom Water (Mazaher)” are correctly classified in subheading 3301.90.5000, HTSUSA, which provides for “Essential oils (terpeneless or not), including concretes and absolutes; resinoids; extracted oleoresins; concentrates of essential oils in fats, in fixed oils, in waxes or the like, obtained by enfleurage or maceration; terpenic by-products of the deterpenation of essential oils; aqueous distillates and aqueous solutions of essential oils: Other: Other”. This provision is duty free at the general column one rate of duty.

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<sup>1</sup> 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).

**EFFECT ON OTHER RULINGS:**

NY I83744, dated July 1, 2002, is hereby modified consistent with the foregoing.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

  
**GENERAL NOTICE****19 C.F.R. PART 177****Proposed Revocation of Two Ruling Letters and Proposed  
Revocation of Treatment Relating to the Tariff  
Classification of IPOD® Docking Stations With Speakers**

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

**ACTION:** Notice of proposed revocation of two ruling letters and revocation of treatment relating to the tariff classification of iPod® docking stations with speakers.

**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 pertaining to the tariff classification of iPod® docking stations with speakers under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP is also proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

**DATES:** Comments must be received on or before August 6, 2010.

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625(c)(1)), this notice advises interested parties that CBP is proposing to revoke two ruling letters pertaining to the classification of iPod® docking stations with speakers. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letters (NY) L88357, dated October 28, 2005 (Attachment A), and NY M80063, dated February 9, 2006 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. §1625(c)(2)), CBP is proposing to revoke any

treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a 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 L88357 and in NY M80063, CBP classified an iPod® docking station with speakers in heading 8522, HTSUS, as: “[p]arts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521”. It is now CBP's position that the iPod® docking stations with speakers are classified in heading 8518, HTSUS, as “loudspeakers, whether or not mounted in their enclosures”.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY L88357 and NY M80063, and to revoke or modify any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) H066797 (Attachment C) and in HQ H066798 (Attachment D). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 28, 2010

GAIL A. HAMILL  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

NY L88357  
October 28, 2005  
CLA-2-85: RR: NC: 1:108 L88357  
CATEGORY: Classification  
TARIFF NO.: 8522.90.7580

MS. STEPHANIE DE SILVA  
AVON PRODUCTS, INC.  
1251 AVENUE OF THE AMERICAS  
NEW YORK, NY 10020

RE: The tariff classification of an Ipod docking station from China.

DEAR MS. DE SILVA:

In your letter dated October 19, 2005 you requested a tariff classification ruling.

The item in question is an Ipod docking station. It is designed exclusively for use with an Ipod (Mp3 player). This particular docking station is portable and comes equipped with on/off control, volume control, and inputs for ear-phones and ports for connection to a personal computer and other audio devices and internal speakers. The docking station is to be placed on a flat surface and the Ipod is inserted vertically into a specifically designed connection slot. It enables the user to listen to Ipod from a distance.

The applicable subheading for the Ipod docking station will be 8522.90.7580, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521: Other: Other ... Other. The rate of duty will be 2 percent ad valorem.

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

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

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

NY M80063  
February 9, 2006  
CLA-2-85: RR: NC: 1:108 M80063  
CATEGORY: Classification  
TARIFF NO.: 8522.90.7580

MR. PETER JAY BASKIN  
SHARRETT, PALEY, CARTER & BLAUVELT, P.C.  
SEVENTY-FIVE BROAD STREET  
NEW YORK, NY 10004

RE: The tariff classification of an iPod docking station from an unspecified country of origin.

DEAR MR. BASKIN:

In your letter dated January 20, 2006, on behalf of SDI Technologies, you requested a tariff classification ruling.

The item in question is an iPod docking station denoted as model number iH19. The docking station is a portable device designed exclusively for an iPod music player. This particular docking station also incorporates speakers. As used it enables the user to place the iPod directly into it and play prerecorded music files and listen at a distance without the use of earphones by multiple people. The docking station has a front control panel for the functions of on/off, volume, track selection and play and pause.

This docking station can only be used with the iPod music player and cannot accommodate a radio or any other type of audio reproducing device. NY Ruling L87329 provides guidance in this matter. Classification will be accordingly

The applicable subheading for the iPod docking station, model iH19 will be 8522.90.7580, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521: Other: Other ... Other. The general rate of duty will be 2 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 Michael Contino at 646-733-3014.

*Sincerely,*

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

## [ATTACHMENT C]

HQ H066797

CLA-2 OT:RR:CTF:TCM H066797 JRB

CATEGORY: Classification

TARIFF NO.: 8518.22.00

Ms. STEPHANIE DE SILVA  
AVON PRODUCTS, INC.  
1251 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10020

RE: Revocation of NY L88357; Classification of an iPod® Portable Audio System docking station with speakers

DEAR Ms. DE SILVA:

This letter is in reference to New York Ruling Letter (“NY”) L88357, issued to you on behalf of your company, Avon Products, Inc. on October 28, 2005, concerning the tariff classification of an iPod® docking station with speakers. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under heading 8522, Harmonized Tariff Schedule of the United States (“HTSUS”), as a part or accessory suitable for use solely or principally with the apparatus of headings 8519 to 8521. We have reviewed NY L88357 and found it to be in error. For the reasons set forth below, we hereby revoke NY L88357.

**FACTS:**

In your ruling request letter sent to the National Commodity Specialist Division on October 19, 2005, you described the iPod® Portable Audio System as a portable docking station for iPod® MP-3 players. The base of the system has a plug that inserts into the base of the iPod® player, which is held vertically in the stand. The base charges the iPod® player and allows its music to be heard through speakers integrated into the product’s base. The docking station also has connection ports for earphones, other audio devices, or computers as well as volume control buttons on the front. Finally, the product is imported with a power cord and adjustable bases to fit the sizes of the various iPod® models.

**ISSUE:**

Whether the iPod® Portable Audio System is classified in heading 8504, HTSUS, as an electrical transformer, static converter, or inductor; in heading 8518, HTSUS, as a loudspeaker; or in heading 8522, HTSUS, as a part or accessory suitable for use solely or principally with apparatus of headings 8519 to 8521.

**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:

8504	Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof:
8518	Microphones and stands therefor; 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.
8522	Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521:

Note 3 to Section XVI (which includes Chapter 85), HTSUS, provides:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

Note 5 to Section XVI, HTSUS, provides, “[f]or the purposes of these notes, the expression “*machine*” means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.”

Additional U.S. Rule 1(c), HTSUS, provides:

In the absence of special language or context which otherwise requires—

- (c) a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part or accessory

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 on the contracting parties, and therefore not dispositive, the ENs 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 ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

General EN (VI) to Section XVI, HTSUS, on multi-function and composite machines provides:

Where it is not possible to determine the principal function, and where, as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretative Rule 3(c)...

Composite machines consisting of two or more machines or appliances of different kinds, fitted together to form a whole, consecutively or simultaneously performing **separate** functions which are generally complementary and are described in different headings of Section XVI, are also classified according to the principal function of the composite machines.

For the purposes of the above provisions, machines of different kinds are taken to be **fitted together to form a whole** when incorporated one in the other or mounted one on the other, or mounted on a common base or frame or in a common housing.

EN (II) to heading 85.04 provides that electrical static converters are “used to convert electrical energy in order to adapt it for further use.” According to this EN, an example of an electrical static converter is a rectifier that operates by converting alternating current to direct current and usually involves a voltage change.

The charger that is integrated into the docking station is a specific type of static converter, known as a rectifier, which converts alternating current into direct current. See Headquarters Ruling Letter (HQ) 962985, dated December 13, 1999 and HQ 957324, dated January 25, 1995. Heading 8504, HTSUS, provides for electrical static converters. Thus, heading 8504, HTSUS, partially describes the subject docking station with speakers because the subject merchandise has an electrical charger component. The speakers are classified by name in heading 8518, HTSUS, as loudspeakers. As a result, the subject merchandise is a composite machine because it consists of two or more machines and those two machines are fitted together as a whole to perform complementary or alternative functions.

Note 3 to Section XVI, HTSUS, provides that the classification of composite machines is to be performed using a principal function analysis. CBP has found the analysis developed and utilized by the courts in relation to “principal use” (the “*Carborundum factors*”) to be a useful aid in determining principal function. Generally, the courts have provided several 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 *Lennox Collections v. United States*, 20 CIT 194, 196 (1996). See also *United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), cert denied, 429 U.S. 979 (1976); *Kraft, Inc. v. United States*, 16 CIT 483, 489 (1992); and *G. Heileman Brewing Co. v. United States*, 14 CIT 614, 620 (1990). See also HQ H012561, dated April 25, 2009.

Applying these factors to the information that we have available, we first look to the expectation of the ultimate purchaser. The speakers give the purchaser the expectation that several people will be able to listen to the music on the iPod® at once. The speakers also would lead a purchaser to expect that they could listen to an iPod® from varying distances. Further, the name of the product includes the word “audio,” which we believe would cause a consumer to believe that (s)he was purchasing a speaker system.

A consumer may also purchase the product for its ability to charge their iPod®. We note that the user must recharge the battery on their iPod® on a regular basis. The Apple Corporation’s website provides that the battery life for an iPod® ranges from ten to thirty-six hours of music playing time depending on the model and whether the user is using the machine to play

music or video.<sup>1</sup> However, because iPods® are sold with their own chargers at no additional cost, we believe that it would be economically impractical to buy the imported product mainly for its charging capabilities.

On the other hand, we must also consider the way in which docking stations are generally used. Docking stations are used on a regular basis to store iPods® or simply to maintain a charged battery so that the charger function is used every time the user plugs their iPod® into the system. Unlike the charger, the speakers are not always used when an iPod® is docked in its base. Thus, the charging function would seem to prevail on this factor.

Based on these factors, we are unable to conclude which one of the two component machines provides the principal function of the composite machine. EN (VI) to Section XVI, HTSUS, provides that if it is not possible to determine the principal function of a composite machine then it should be classified as the component that is described last in the HTSUS, by application of GRI 3(c). Therefore, between headings 8504 and 8518, HTSUS, classification is appropriate in heading 8518, HTSUS.

Finally, because the system is provided for in heading 8518, HTSUS, it is precluded from classification in heading 8522, HTSUS, because Additional U.S. Rule 1(c) provides that a “parts and accessories” provision shall not prevail over a specific provision.

#### **HOLDING:**

By application of GRIs 1 (Note 3 to Section XVI) and 3(c), the iPod Portable Audio System docking station with speakers is classified in heading 8518, HTSUS, which provides for, in relevant part, “loudspeakers, whether or not mounted in their enclosures”. They are specifically provided for in subheading 8518.22.00, HTSUS, which provides for “loudspeakers, whether or not mounted in their enclosures: [m]ultiple loudspeakers, mounted in the same enclosure”. The 2010 column one, general rate of duty, is 4.9% *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/](http://www.usitc.gov/tata/hts/).

#### **EFFECT ON OTHER RULINGS:**

New York Ruling Letter (“NY”) L88357, dated October 28, 2005, is hereby revoked.

*Sincerely,*

MYLES B. HARMON

*Director,*

*Commercial and Trade Facilitation Division*

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<sup>1</sup> <http://www.apple.com/ipod/whichipod/>

## [ATTACHMENT D]

HQ H066798  
CLA-2 OT:RR:CTF:TCM H066798 JRB  
CATEGORY: Classification  
TARIFF NO.: 8518.22.00

MR. PETER JAY BASKIN  
SHARRETT, PALEY, CARTER & BLAUVELT, P.C.  
75 BROAD STREET  
NEW YORK, NEW YORK 10004

RE: Revocation of NY M80063; Classification of the iH19, an iPod® docking station with speakers

DEAR MR. BASKIN:

This letter is in reference to New York Ruling Letter (“NY”) M80063, issued to you on February 9, 2006, on behalf of your client SDI Technologies, concerning the tariff classification of an iPod® docking station with speakers. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under heading 8522, Harmonized Tariff Schedule of the United States (“HTSUS”), as a part or accessory suitable for use solely or principally with the apparatus of headings 8519 to 8521. We have reviewed NY M80063 and found it to be in error. For the reasons set forth below, we hereby revoke NY M80063.

**FACTS:**

In NY M80063 the subject merchandise was described as follows:

The item in question is an iPod® docking station denoted as model number iH19. The docking station is a portable device designed exclusively for an iPod® music player. This particular docking station also incorporates speakers. As used it enables the user to place the iPod directly into it and play prerecorded music files and listen at a distance without the use of earphones by multiple people. The docking station has a front control panel for the functions of on/off, volume, track selection and play and pause.

In addition to the facts provided in the New York Ruling letter, the iH19 is being marketed as a “Boombox”<sup>1</sup>, which is a term that was developed in late 1970’s and early 1980’s to describe radio and cassette players with large speakers.<sup>2</sup>

**ISSUE:**

Whether the iH19 is classified in heading 8504, HTSUS, as an electrical transformer, static converter, or inductor; in heading 8518, HTSUS, as a loudspeaker; or in heading 8522, HTSUS, as a part or accessory suitable for use solely or principally with apparatuses of headings 8519 to 8521.

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<sup>1</sup> [http://shopper.cnet.com/portable-audio-devices/sdi-ihome2go-ih19-ipod/4014-6450\\_9-32029361.html?tag=mncol;lst](http://shopper.cnet.com/portable-audio-devices/sdi-ihome2go-ih19-ipod/4014-6450_9-32029361.html?tag=mncol;lst)

<sup>2</sup> <http://www.npr.org/templates/story/story.php?storyId=103363836>

**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:

8504	Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof:
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:
8522	Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521:

Note 3 to Section XVI (which includes Chapter 85), HTSUS, provides:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

Note 5 to Section XVI, HTSUS, provides, “[f]or the purposes of these notes, the expression “*machine*” means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.”

Additional U.S. Rule 1(c), HTSUS, provides:

In the absence of special language or context which otherwise requires—

- (c) a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part or accessory

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 on the contracting parties, and therefore not dispositive, the ENs 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 ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

General EN (VI) to Section XVI, HTSUS, on multi-function and composite machines provides:

Where it is not possible to determine the principal function, and where, as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretative Rule 3(c)...

Composite machines consisting of two or more machines or appliances of different kinds, fitted together to form a whole, consecutively or simultaneously performing **separate** functions which are generally complementary and are described in different headings of Section XVI, are also classified according to the principal function of the composite machines.

For the purposes of the above provisions, machines of different kinds are taken to be **fitted together to form a whole** when incorporated one in the other or mounted one on the other, or mounted on a common base or frame or in a common housing.

EN (II) to heading 85.04 provides that electrical static converters are “used to convert electrical energy in order to adapt it for further use.” According to this EN, an example of an electrical static converter is a rectifier that operates by converting alternating current to direct current and usually involves a voltage change.

The charger that is integrated into the docking station is a specific type of static converter, known as a rectifier, which converts alternating current into direct current. See Headquarters Ruling Letter (HQ) 962985, dated December 13, 1999 and HQ 957324, dated January 25, 1995. Heading 8504, HTSUS, provides for electrical static converters. Thus, heading 8504, HTSUS, partially describes the subject docking station with speakers because the subject merchandise has an electrical charger component. The speakers are classified by name in heading 8518, HTSUS, as loudspeakers. As a result, the subject merchandise is a composite machine because it consists of two or more machines and those two machines are fitted together as a whole to perform complementary or alternative functions.

Note 3 to Section XVI, HTSUS, provides that the classification of composite machines is to be performed using a principal function analysis. CBP has found the analysis developed and utilized by the courts in relation to “principal use” (the “*Carborundum factors*”) to be a useful aid in determining principal function. Generally, the courts have provided several 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 *Lennox Collections v. United States*, 20 CIT 194, 196 (1996). See also *United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), cert denied, 429 U.S. 979 (1976); *Kraft, Inc. v. United States*, 16 CIT 483, 489 (1992); and *G. Heileman Brewing Co. v. United States*, 14 CIT 614, 620 (1990). See also HQ H012561, dated April 25, 2009.

Applying these factors to the information that we have available, we first look to the expectation of the ultimate purchaser. The speakers give the purchaser the expectation that several people will be able to listen to the music on the iPod® at once. The speakers also would lead a purchaser to expect that they could listen to an iPod® from varying distances. Further, the name of the product is “Boombox”, which we believe would cause the consumer to believe that they were purchasing a speaker system.

A consumer may also purchase the product for its ability to charge their iPod®. We note that the user must recharge the battery on their iPod® on a regular basis. The Apple Corporation's website provides that the battery life for an iPod® ranges from ten to thirty-six hours of music playing time depending on the model and whether the user is using the machine to play music or video.<sup>3</sup> However, because iPods® are sold with their own chargers at no additional cost, we believe that it would be economically impractical to buy the imported product mainly for its charging capabilities.

On the other hand, we must also consider the way in which docking stations are generally used. Docking stations are used on a regular basis to store iPods® or simply to maintain a charged battery so that the charger function is used every time the user plugs their iPod® into the system unlike the charger, the speakers are not always used when an iPod® is docked onto its base. Thus, the charging function would seem to prevail on this factor.

Based on these factors, we are unable to conclude which one of the two component machines provides the principal function of the composite machine. EN (VI) to Section XVI, HTSUS, provides that if it is not possible to determine the principal function of a composite machine then it should be classified as the component that is described last in the HTSUS, by application of GRI 3(c). Therefore, between headings 8504 and 8518, HTSUS, classification is appropriate in heading 8518, HTSUS.

Finally, because the system is provided for in either heading 8504 or heading 8518, HTSUS, it is precluded from classification in heading 8522, HTSUS, because Additional U.S. Rule 1(c) provides that a "parts and accessories" provision shall not prevail over a specific provision.

#### **HOLDING:**

By application of GRIs 1 (Note 3 to Section XVI) and 3(c), the iH19 iPod® Boombox docking station with speakers is classified in is classified in heading 8518, HTSUS, which provides for, in relevant part, "loudspeakers, whether or not mounted in their enclosures". They are specifically provided for in subheading 8518.22.00, HTSUS, which provides for "loudspeakers, whether or not mounted in their enclosures: [m]ultiple loudspeakers, mounted in the same enclosure". The 2010 column one, general rate of duty, is 4.9% *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/](http://www.usitc.gov/tata/hts/).

#### **EFFECT ON OTHER RULINGS:**

New York Ruling Letter ("NY") M80063, dated February 9, 2006, is hereby revoked.

*Sincerely,*

MYLES B. HARMON

*Director,*

*Commercial and Trade Facilitation Division*

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<sup>3</sup> <http://www.apple.com/ipod/whichipod/>

## GENERAL NOTICE

### 19 C.F.R. PART 177

#### **Proposed Revocation of Two Ruling Letters and Proposed Revocation of Treatment Concerning the Classification of Wafer Probe Cards**

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

**ACTION:** Notice of proposed revocation of two ruling letters and proposed revocation of treatment relating to the tariff classification of certain wafer probe cards.

**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 relating to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of wafer probe cards. CBP is also proposing to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

**DATES:** Comments must be received on or before August 6, 2010.

**ADDRESSES:** 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 above-stated address during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** 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 is proposing to revoke two ruling letters relating to the tariff classification of certain wafer probe cards. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) K89734, dated September 20, 2004 (Attachment A), and NY K82192, dated January 22, 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

In NY K89734 and NY K82192, CBP classified the probe cards in subheading 8536.90.80, HTSUS, as “Electrical apparatus ... for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V: Other apparatus: Other.” After review, we now believe that the merchandise is properly classified in subheading 8536.90.40, HTSUS, as “Electrical apparatus ... for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V: Other apparatus: ... wafer probers.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY K89734, NY K82192, and any other ruling not specifically identified to reflect the correct classification of the probe cards, pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ)

H011054 (Attachment C) and HQ H011056 (Attachment D). CBP is also proposing to revoke any treatment previously accorded by it to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: May 28, 2010

GAIL A. HAMILL

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## [ATTACHMENT A]

NY K89734  
October 12, 2004  
CLA-2-85:RR:NC:1:110 K89734  
CATEGORY: Classification  
TARIFF NO.: 8536.90.8085

MS. BARI WOLFSON  
KULICKE & SOFFA  
2101 BLAIR MILL RD.  
WILLOW GROVE, PA 19090

RE: The tariff classification of probe cards from China and France.

DEAR MS. WOLFSON:

In your letter dated September 20, 2004 on behalf of K & S Interconnect, Inc. you requested a tariff classification ruling.

The merchandise under consideration is three probe cards describer in your request as the Cantilever, Dura Plus or Vertical Probe Card (Part numbers 145, 121 and 124). From the information provided, the probe cards are circular in design and contain needle-like pieces of metal (probes) used as contact pins, a ring which consist of a sturdy piece of material to which the probes are attached and a printed circuit board (PCB). The probe cards are electromechanical components that enable electrical test signals to pass from automatic test equipment (ATE) to the integrated circuit (IC) and analyze the device under test (DUT). The probe cards act as an electrical interconnect between an electrical wafer tester and the IC, condition the signals passing between the ATE and the IC, sends data to the ATE or alters the functions in the wafer itself.

The applicable subheading for the Probe Cards Card (Part numbers 145, 121 and 124) will be 8536.90.8085, Harmonized Tariff Schedule of the United States (HTS), which provides for "Electrical apparatus for switching or protecting electrical circuits...for a voltage not exceeding 1,000 V: Other apparatus: Other: Other." The general 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 Eileen S. Kaplan at 646-733-3016.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

NY K82192  
January 22, 2004  
CLA-2-85:RR:NC:1:112 K82192  
CATEGORY: Classification  
TARIFF NO.: 8536.90.8085

MS. JOYCE FORD  
INFINEON TECHNOLOGIES, RICHMOND  
6000 TECHNOLOGY BLVD.  
SANDSTON, VA 23150

RE: The tariff classification of a probe card from Japan

DEAR MS. FORD:

In your letter dated December 23, 2003 you requested a tariff classification ruling.

As indicated by the submitted information, the probe card is a device that makes an electrical connection between an electrical wafer tester and the wafer prober. It is circular in design and contains contact pins that interface between the tester and prober.

The applicable subheading for the probe card will be 8536.90.8085, Harmonized Tariff Schedule of the United States (HTS), which provides for other apparatus for making connections to or in an electrical circuit: Other. The rate of duty will be 2.7 percent ad valorem.

You have proposed possible classifications under subheadings 9030.90.8400, HTS and 8538.90.3000, HTS. Neither of these subheadings is applicable since the probe card is more specifically described by subheading 8536.90.80, 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 David Curran at 646-733-3017.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT C]

HQ H011054  
CLA-2 OT:RR:CTF:TCM H011054 RM  
CATEGORY: Classification  
TARIFF NO.: 8536.90.40

Ms. BARI WOLFSON  
MANAGER, U.S. TRADE COMPLIANCE  
KULICKE & SOFFA  
2101 BLAIR MILL RD.  
WILLOW GROVE, PA 19090

RE: Revocation of New York Ruling Letter K89734, Classification of Wafer Probe Cards

DEAR Ms. WOLFSON:

This is in reference to New York Ruling Letter (“NY”) K89734, dated September 20, 2004, issued to you on behalf of K&S Interconnect, Inc. (“K&S”). In that ruling, U.S. Customs and Border Protection (“CBP”) determined that a certain wafer probe cards were classified under heading 8536, Harmonized Tariff Schedule of the United States (“HTSUS”), specifically in subheading 8536.90.80, which provides in relevant part for “Electrical apparatus ... for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V: Other apparatus: Other.” For the reasons set forth below, CBP is revoking K89734.

**FACTS:**

At issue are the K&S Cantilever (part No. 145), DuraPlus (part No. 121), and Vertical (part No. 124) probe cards; hardware devices used to test the electrical properties of the integrated circuits (“ICs”) etched on a semiconductor wafer. They consist of a printed circuit board, probe needles, and a ring to which the probe needles are attached. The probe cards provide an interface between automatic test equipment (“ATE”), which sends electrical signals to the ICs and analyzes their response, and the wafer. When in use, the cards’ probes make contact with the bonding pads of the wafer to measure the electric characteristics of the ICs.

**ISSUE:**

Whether the probe cards are classified in subheading 8536.90.40, HTSUS, as wafer probers, or in subheading 8536.90.80, HTSUS, as other apparatus for making connections to or in electrical circuits?

**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 as follows:

8536	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes) for a voltage not exceeding 1,000 V; connectors for optical fibers, optical fiber bundles or cables:
8536.90	Other apparatus:
<b>8536.90.40</b>	Terminals, electrical splices and electrical couplings; wafer probers ...
<b>8536.90.80</b>	Other ...

At issue is the classification of the probe cards at the eight-digit national tariff rate subheading level. GRI 6 provides, in pertinent part:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable.

The tariff does not define the term “wafer probers.” When, as in this instance, a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). (“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’ (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271 (Fed. Cir. 1982))).

The *Oxford English Dictionary* defines the term “wafer” in relevant part as “4: a very thin slice of semiconductor crystal used in solid-state circuitry,” and the term “probe” (verb) as “1: to physically explore or examine. 2: to enquire into closely.”<sup>1</sup> Similarly, the *SEMATECH Dictionary of Semiconductor Terms* defines the term “wafer” as “in semiconductor technology, a thin slice with parallel faces cut from a semiconductor crystal.”<sup>2</sup> The term “prober” is defined as “a piece of hardware that allows a collection of probes to be brought into contact with the die on a wafer for the purpose of testing an integrated circuit.”<sup>3</sup>

Based on the foregoing, and in keeping with the text of heading 8536, HTSUS, we conclude that “wafer probers” are devices which enable an electric connection between a machine that tests semiconductor wafers, and a wafer, by way of probing (i.e., physically exploring or examining) the wafer. As explained above, the instant probe cards function as electrical interconnects between the ATE and the ICs on a wafer. The electrical connection is established when the cards’ probe needles make contact with the wafer’s ICs.

<sup>1</sup> <http://www.oed.com>

<sup>2</sup> <http://www.sematech.org/publications/dictionary.htm>

<sup>3</sup> *Id.*

We conclude, therefore, that the cards are classified under heading 8536, HTSUS, specifically in subheading 8536.90.40, as wafer probers.<sup>4</sup>

**HOLDING:**

By application of GRIs 1 and 6, the probe cards are classified under heading 8536, HTSUS, specifically in subheading 8536.90.40, which provides for “Electrical apparatus ... for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V: Other apparatus: ... wafer probers.” The 2010 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.usits.gov/tata/hts/](http://www.usits.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY K89734, dated September 20, 2004, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

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<sup>4</sup> Subheading 8536.90.40, HTSUS, was included in the HTSUS after the U.S. entered into the Information Technology Agreement (“ITA”), which went into effect on July 1, 1997, pursuant to Presidential Proclamation No. 7011 (62 FR 35909 (July 2, 1997)). The amendments set forth in said Proclamation are based on the framework established in the Declaration on Trade in Information Technology Products, which, together with its Annex, constitute the ITA. The Annex is comprised of two attachments. Attachment A, Section 1 lists the Harmonized System (“HS”) headings and subheadings covered by the ITA. Attachment A, Section 2, lists certain semiconductor manufacturing and testing equipment and parts thereof to be covered by the ITA. Attachment B is a positive list of specific products to be covered by the ITA wherever they are classified in the HS.

## [ATTACHMENT D]

HQ H011056  
CLA-2 OT:RR:CTF:TCM H011056 RM  
CATEGORY: Classification  
TARIFF NO.: 8536.90.40

Ms. JOYCE FORD  
INFINEON TECHNOLOGIES  
6000 TECHNOLOGY BLVD.  
SANDSTON, VA 23150

RE: Revocation of New York Ruling Letter K82192, Classification of a Wafer Probe Card

DEAR Ms. FORD:

This is in reference to New York Ruling Letter (“NY”) K82192, dated January 22, 2004, issued to you on behalf of Infineon Technologies. In that ruling, U.S. Customs and Border Protection (“CBP”) determined that a certain wafer probe card was classified under heading 8536, Harmonized Tariff Schedule of the United States (“HTSUS”), specifically in subheading 8536.90.80, which provides in relevant part for “Electrical apparatus ... for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V: Other apparatus: Other.” For the reasons set forth below, CBP is revoking NY K82192.

**FACTS:**

The merchandise at issue is a probe card; a hardware device used to test the electrical properties of the integrated circuits (“ICs”) etched on a semiconductor wafer. It consists of a printed circuit board, probe needles, and a ring to which the probe needles are attached. The probe card provides an interface between automatic test equipment (“ATE”), which sends electrical signals to the ICs and analyzes their response, and the wafer. When in use, the card’s probes make contact with the bonding pads of the wafers to measure the electric characteristics of the ICs.

**ISSUE:**

Whether the probe card is classified in subheading 8536.90.40, HTSUS, as a wafer prober, or in subheading 8536.90.80, HTSUS, as other apparatus for making connections to or in electrical circuits?

**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 as follows:

8536	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes) for a voltage not exceeding 1,000 V; connectors for optical fibers, optical fiber bundles or cables:
8536.90	Other apparatus:
<b>8536.90.40</b>	Terminals, electrical splices and electrical couplings; wafer probers ...
<b>8536.90.80</b>	Other ...

At issue is the classification of the probe card at the eight-digit national tariff rate subheading level. GRI 6 provides, in pertinent part:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable.

The tariff does not define the term “wafer probers.” When, as in this instance, a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). (“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’ (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271 (Fed. Cir. 1982))).

The *Oxford English Dictionary* defines the term “wafer” in relevant part as “4: a very thin slice of semiconductor crystal used in solid-state circuitry,” and the term “probe” (verb) as “1: to physically explore or examine. 2: to enquire into closely.”<sup>1</sup> Similarly, the *SEMATECH Dictionary of Semiconductor Terms* defines the term “wafer” as “in semiconductor technology, a thin slice with parallel faces cut from a semiconductor crystal.”<sup>2</sup> The term “prober” is defined as “a piece of hardware that allows a collection of probes to be brought into contact with the die on a wafer for the purpose of testing an integrated circuit.”<sup>3</sup>

Based on the foregoing, and in keeping with the text of heading 8536, HTSUS, we conclude that “wafer probers” are devices which enable an electric connection between a machine that tests semiconductor wafers, and a wafer, by way of probing (i.e., physically exploring or examining) the wafer. As explained above, the instant probe card functions as an electrical interconnect between the ATE and the ICs on a wafer. The electrical connection is established when the card’s probe needles make contact with the wafer’s

<sup>1</sup> <http://www.oed.com>

<sup>2</sup> <http://www.sematech.org/publications/dictionary.htm>

<sup>3</sup> *Id.*

ICs. We conclude, therefore, that the card is classified under heading 8536, HTSUS, specifically in subheading 8536.90.40, as a wafer prober.<sup>4</sup>

**HOLDING:**

By application of GRIs 1 and 6, the probe card is classified under heading 8536, HTSUS, specifically in subheading 8536.90.40, which provides for “Electrical apparatus ... for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V: Other apparatus: ... wafer probers.” The 2010 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.usits.gov/tata/hts/](http://www.usits.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY K82132, dated January 22, 2004, is hereby revoked.

*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 OF 6-BROMO-1-HEXANOL**

**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 of 6-Bromo-1-hexanol.

**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 revoke a ruling letter concerning the tariff classification of 6-Bromo-1-hexanol. Similarly, CBP proposes to revoke any treatment previously accorded by CBP to

<sup>4</sup> Subheading 8536.90.40, HTSUS, was included in the HTSUS after the U.S. entered into the Information Technology Agreement (“ITA”), which went into effect on July 1, 1997, pursuant to Presidential Proclamation No. 7011 (62 FR 35909 (July 2, 1997)). The amendments set forth in said Proclamation are based on the framework established in the Declaration on Trade in Information Technology Products, which, together with its Annex, constitute the ITA. The Annex is comprised of two attachments. Attachment A, Section 1 lists the Harmonized System (“HS”) headings and subheadings covered by the ITA. Attachment A, Section 2, lists certain semiconductor manufacturing and testing equipment and parts thereof to be covered by the ITA. Attachment B is a positive list of specific products to be covered by the ITA wherever they are classified in the HS.

substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before August 6, 2010.

**ADDRESSES:** Written comments are to be addressed to the 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:** Albenia Peters, Penalties Branch at (202) 325-0321.

#### **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 of 6-Bromo-1-hexanol. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) J84387, dated June 17, 2003 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been

specifically identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should 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 J84387, CBP determined in relevant part that 6-Bromo-1-hexanol is classified under subheading 2905.19.00, HTSUS, currently 2905.19.90, HTSUS, as another saturated monohydric alcohol. It is now CBP's position that 6-Bromo-1-hexanol is classified under subheading 2905.59.10, HTSUS, as a halogenated derivative of monohydric alcohol.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY J84387, 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) H017862, 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: May 28, 2010

GAIL A. HAMILL

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

NY J84387  
June 17, 2003  
CLA-2-29:RR:NC:2:240 J84387  
CATEGORY: Classification  
TARIFF NO.: 2905.19.0050

MR. JOSEPH J. CHIVINI  
AUSTIN CHEMICAL COMPANY, INC.  
1565 BARCLAY BOULEVARD  
BUFFALO GROVE, ILLINOIS 60089

RE: The tariff classification of 6-Bromo-1-hexanol, CAS # 4286-55-1, imported in bulk form, from Slovak Republic

DEAR MR. CHIVINI:

In your letter dated May 1, 2003, you requested a tariff classification ruling.

The subject product, 6-Bromo-1-hexanol, is a halogenated derivative of saturated acyclic monohydric alcohol indicated for use as a pharmaceutical intermediate.

The applicable subheading for 6-Bromo-1-hexanol will be 2905.19.0050, Harmonized Tariff Schedule of the United States (HTS), which provides for Saturated monohydric alcohol: Other..... Other..... The rate of duty will be 3.7 percent ad valorem.

Articles classifiable under subheading 2905.19.0050, HTS, which are products of Slovak Republic, may be entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check our Web site at [www.cbp.gov](http://www.cbp.gov) and search for the term "GSP".

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 Stephanie Joseph at 646-733-3268.

*Sincerely,*

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

## [ATTACHMENT B]

HQ H017862  
CLA-2 OT:RR:CTF:TCM H017862 AP  
CATEGORY: Classification  
TARIFF NO.: 2905.59.1000

MR. JOSEPH J. CHIVINI  
DIRECTOR OF OPERATIONS  
AUSTIN CHEMICAL COMPANY, INC.  
1565 BARCLAY BOULEVARD  
BUFFALO GROVE, ILLINOIS 60089

RE: Revocation of NY J84387; Classification of 6-Bromo-1-hexanol from Slovak Republic

DEAR MR. CHIVINI:

This is in regard to New York Ruling Letter NY J84387, issued to you by U.S. Customs and Border Protection (“CBP”), on June 17, 2003, regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of 6-Bromo-1-hexanol. In NY J84387, we determined that 6-Bromo-1-hexanol was classified under subheading 2905.19.00, HTSUS, currently 2905.19.90, HTSUS, which provides for “Acylic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives: Saturated monohydric alcohols: Other: Other.” CBP has determined that NY J84387 is incorrect. Therefore, this ruling revokes NY J84387.

**FACTS:**

The merchandise, 6-Bromo-1-hexanol has a molecular formula of  $C_6H_{13}BrO$ , and is assigned Chemical Abstracts Service (“CAS”) number 4286-55-9.<sup>1</sup> It is indicated for use as a pharmaceutical intermediate. CBP Laboratories and Scientific Service Report No. NY20030881, dated June 3, 2003, states, in pertinent part, the following:

The Chapter 29 structural characteristics of the nonaromatic product are a halogen (brominated) group and an alcohol group. The product is a halogenated derivative of a saturated acyclic monohydric alcohol.

**ISSUE:**

Whether the substance, 6-Bromo-1-hexanol, is classified in subheading 2905.19.90, HTSUS, as an other saturated monohydric alcohol, or in subheading 2905.59.10, HTSUS, as a halogenated derivative of a monohydric alcohol.

**LAW AND ANALYSIS:**

Classification under the HTSUS is governed by the General Rules of Interpretation (“GRIs”), which need to be applied in numerical order. 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. The provisions at issue are the following:

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<sup>1</sup> This CAS number is not listed in the chemical appendix to the tariff schedule.

## II. ALCOHOLS AND THEIR HALOGENATED, SULFONATED, NITRATED OR NITROSATED DERIVATIVES

### 2905 Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives:

#### Saturated monohydric alcohols:

\* \* \*

2905.19 Other:

\* \* \*

2905.19.90 Other .....

#### Halogenated, sulfonated, nitrated or nitrosated derivatives of acyclic alcohols:

\* \* \*

2905.59 Other:

2905.59.10 Derivatives of monohydric alcohols .....

In understanding the language of the HTSUS, the Explanatory Notes (“ENs”) may be used. The ENs, even though not dispositive or legally binding, may provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the harmonized system at the international level. CBP believes that ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). EN 29.05(A)(5) lists “[h]exanols and heptanols” as “Saturated Monohydric Alcohols.”

There is no dispute that 6-Bromo-1-hexanol is classified in heading 2905, HTSUS, at GRI 1. At issue is the proper 6-digit subheading. GRI 6 states that the classification of goods in a subheading is determined according to the terms of the subheadings and any related subheading notes, and that only subheadings at the same level are comparable.

In NY B80147, dated January 16, 1997, we determined that the same chemical product is classified under subheading 2905.50.10, HTSUS, which provides for “Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives: Halogenated, sulfonated, nitrated or nitrosated derivatives of acyclic alcohols: Other: Derivatives of monohydric alcohols.”

Additionally, the laboratory report concludes that the product is a halogenated derivative of a saturated acyclic monohydric alcohol. CBP laboratory reports are presumed to be correct. *See Aluminum Co. of America v. United States*, 60 C.C.P.A. 148, 151, 477 F.2d 1396, 1398 (1973). Absent a conclusive showing that the testing method used by the CBP laboratory is in error, or that the laboratory results are erroneous, there is a presumption that the laboratory results are correct. *See Exxon Corp. v. United States*, 81 Cust. Ct. 87, 91, 462 F. Supp. 378, 381 (Cust. Ct. 1978), *aff’d*, 607 F.2d 985 (C.C.P.A. 1979). In view of the CBP laboratory report issued in this case, 6-Bromo-1-hexanol is a compound with a halogen (brominated) group and an alcohol group making it a halogenated derivative of a hexanol. The hexanol is a saturated monohydric alcohol. However, the instant product is not a saturated monohydric alcohol itself. It is a derivative of monohydric alcohols. Accordingly, the substance is classified in subheading 2905.50.10, HTSUS, as a halogenated derivative of acyclic alcohols.

**HOLDING:**

Pursuant to GRIs 1 and 6, 6-Bromo-1-hexanol is classified in heading 2905, HTSUS. Specifically, it is classified in subheading 2905.59.10, HTSUS, which provides for “Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives: Halogenated, sulfonated, nitrated or nitrosated derivatives of acyclic alcohols: Other: Derivatives of monohydric alcohols.” The general, column one applicable rate of duty is 5.5 percent *ad valorem*.

Duty rates are provided for 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 J84387, dated June 17, 2003, is revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

