

U.S. Customs and Border Protection

19 CFR PART 122

CBP DEC. 11-13

TECHNICAL AMENDMENT TO LIST OF USER FEE AIRPORTS: ADDITION OF DALLAS LOVE FIELD MUNICIPAL AIRPORT, DALLAS, TX

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

ACTION: Final rule; technical amendment.

SUMMARY: This document amends the regulations pertaining to the organization of U.S. Customs and Border Protection (CBP) by revising the list of user fee airports to reflect the recent user fee airport designation for Dallas Love Field Municipal Airport, in Dallas, Texas. User fee airports are those airports which, while not qualifying for designation as international or landing rights airports, have been approved by the Commissioner of CBP to receive, for a fee, the services of CBP officers for the processing of aircraft entering the United States, and the passengers and cargo of those aircraft.

EFFECTIVE DATE: June 2, 2011.

FOR FURTHER INFORMATION CONTACT: Roger Kaplan, Acting Director, Audits and Self-Inspection, Office of Field Operations, at 202-325-4543 or by e-mail at *Roger.Kaplan@dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Title 19, Code of Federal Regulations (CFR), sets forth at Part 122 the regulations relating to the entry and clearance of aircraft in international commerce and the transportation of persons and cargo by aircraft in international commerce.

Generally, a civil aircraft arriving from a place outside of the United States is required to land at an airport designated as an international airport. Alternatively, the pilot of a civil aircraft may request permis-

sion to land at a specific airport, and, if landing rights are granted, the civil aircraft may land at that landing rights airport.

Section 236 of Public Law 98–573 (the Trade and Tariff Act of 1984), codified at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international airport or a landing rights airport. A civil aircraft arriving from a place outside of the United States may ask for permission to land at an airport designated by the Secretary of Homeland Security as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Commissioner of CBP as delegated by the Secretary of Homeland Security determines that the volume of business at the airport is insufficient to justify customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of airport that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

As the volume of business anticipated at this type of airport is insufficient to justify its designation as an international or landing rights airport, the availability of customs services is not paid for out of appropriations from the general treasury of the United States. Instead, customs services are provided on a fully reimbursable basis to be paid for by the user fee airport on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the statute, shall be paid by each person using the customs services at the airport and shall be in the amount equal to the expenses incurred by the Commissioner of CBP in providing customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Commissioner of CBP to provide the customs services. To implement this provision, generally, the airport seeking the designation as a user fee airport or that airport's authority agrees to pay a flat fee for which the users of the airport are to reimburse the airport/airport authority. The airport/airport authority agrees to set and periodically review the charges to ensure that they are in accord with the airport's expenses.

The Commissioner of CBP designates airports as user fee airports pursuant to 19 U.S.C. 58b. If the Commissioner decides that the conditions for designation as a user fee airport are satisfied, a Memorandum of Agreement (MOA) is executed between the Commissioner of CBP and the local responsible official signing on behalf of the state, city or municipality in which the airport is located. In this manner, user fee airports are designated on a case-by-case basis. The regulation pertaining to user fee airports is 19 CFR 122.15. It addresses the

procedures for obtaining permission to land at a user fee airport, the grounds for withdrawal of a user fee designation and includes the list of user fee airports designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b. Periodically, CBP updates the list of user fee airports at 19 CFR 122.15(b) to reflect those that have been recently designated by the Commissioner. On January 28, 2011, the Commissioner signed an MOA approving the designation of user fee status for Dallas Love Field Municipal Airport. This document updates the list of user fee airports by adding Dallas Love Field Municipal Airport, in Dallas, Texas, to the list.

II. Statutory and Regulatory Requirements

A. Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely updates the list of user fee airports to include an airport already designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b and neither imposes additional burdens on, nor take away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

B. The Regulatory Flexibility Act and Executive Order 12866

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

C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Executive Order 13132

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Ex-

ecutive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Signing Authority

This document is limited to technical corrections of CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b).

List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Customs duties and inspection, Freight.

Part 122, Code of Federal Regulations (19 CFR part 122) is amended as set forth below:

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

§ 122.15 [Amended]

2. The listing of user fee airports in section 122.15(b) is amended by adding, in alphabetical order, in the “Location” column “Dallas, Texas” and in the “Name” column, “Dallas Love Field Municipal Airport”.

Dated: May 24, 2011

ALAN D. BERSIN,
Commissioner,
U.S. Customs and Border Protection.

[Published in the Federal Register, June 2, 2011 (76 FR 31823)]



NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING THE TRANSIT CONNECT ELECTRIC VEHICLE

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of the Transit Connect Electric Vehicle. Based upon the facts presented, CBP has concluded in the final

determination that the United States is the country of origin of the vehicle for purposes of U.S. Government procurement.

DATES: The final determination was issued on May 24, 2011. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Barbara Kunzinger, Valuation and Special Programs Branch: (202) 325-0359.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 24, 2011, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of the Transit Connect Electric Vehicle which may be offered to the U.S. Government under an undesignated procurement contract. This final determination, in HQ H155115, was issued at the request of Azure Dynamics under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18). In the final determination, CBP concluded that, based upon the facts presented, the Transit Connect Electric Vehicle, assembled in the United States from parts made in the United States, Turkey, Switzerland, Hungary, Japan, Germany, Canada, the United Kingdom, and various other countries is substantially transformed in the United States, such that the United States is the country of origin of the finished article for purposes of U.S. Government procurement.

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

Dated: May 24, 2011.

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

Attachment

HQ H155115

May 24, 2011

OT:RR:CTF:VS H155115 BGK

CATEGORY: Marking

SCOTT T. HARRISON
CHIEF EXECUTIVE OFFICER
AZURE DYNAMICS CORPORATION
14925 W 11 MILE ROAD
OAK PARK, MI 48237

RE: Government Procurement; Country of Origin of Electric Vehicles; Substantial Transformation

DEAR MR. HARRISON:

This is in response to your letter, dated March 16, 2011, as amended April 6, 2011, and April 7, 2011, requesting a final determination on behalf of Azure Dynamics (Azure), pursuant to subpart B of 19 C.F.R. part 177.

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

This final determination concerns the country of origin of the Transit Connect Electric Vehicle (TCE). We note that Azure, the U.S. importer and manufacturer, is a party-at-interest within the meaning of 19

C.F.R. 177.22(d)(1) and is entitled to request this final determination under 19 C.F.R. 177.23(a).

FACTS:

Azure purchases and imports a Transit Connect glider from Turkey. A glider is a non-functional base without a powertrain or exhaust components, and consists of a frame, body, axles, and wheels. The TCE is then assembled in the U.S. from both imported and U.S.-origin components.

A Bill of Materials was submitted with the request. Apart from the glider, parts for the TCE are also imported from Switzerland, Hungary, Japan, Germany, Canada, the United Kingdom, and various other countries. According to the submission, the TCE vehicle is composed of 31 components, of which 14 are of U.S.-origin. For purposes of this decision, we assume that the components of U.S. origin are produced in the U.S. or are substantially transformed in the U.S. and considered products of the U.S.

The U.S. assembly occurs at various stations. The assembly stations at AM General, the manufacturing subcontractor, are described as follows:

Station 0: A visual quality inspection of the glider is performed and the materials necessary for assembly are delivered to the proper stations.

Station 1: A Vehicle Identification Number is assigned. Holes are drilled into the glider and brackets are installed to support the battery pack and other electric assembly components. The fuel door of the glider is removed, assembled into a charge port, and the charge port is installed. The cab wiring harnesses and instrument clusters are removed and replaced with U.S. origin

cab wiring harnesses and Hungarian instrument clusters appropriate for electric vehicles. The low-voltage battery is removed.

Station 2: A U.S.-origin battery pack, U.S. engine bay wiring harness, German power steering pump and motor, German battery coolant pump heater, and Turkish power steering lines are installed. Four subassemblies, which previously are assembled at four substations using certain U.S. and foreign components, are also assembled and installed: Cooling pack subassembly, hoses assembly, high voltage junction box assembly, and traction assembly.

The cooling pack subassembly involves the removal of the condenser from the radiator included with the glider and the replacement of the radiator included with glider with a Canadian radiator that is compatible with electric vehicles. U.S. hoses are then installed onto the radiator.

The hoses subassembly involves measuring and cutting U.S.-origin coolant hoses and installing U.S.-origin hoses clips to the hoses.

The high voltage junction box subassembly involves integrating a Canadian active discharge unit with various U.S. and foreign origin vent plugs, mounting studs, internal harnesses, fuses and a fuse holder, and various cables.

The traction subassembly involves the assembly of a U.S. origin motor controller (manufactured by Azure at a different plant and referred to as the Force Drive electric powertrain), a U.S. origin gearbox, a German electric motor, a German origin vacuum pump, a Swiss charger, a Japanese AC compressor, and a Japanese DC-DC converter.

Station 3: Multiple quality control inspections are performed. Various brackets, gaskets, nuts and bolts, and cords and wires are installed. The original-low voltage battery is re-installed, along with the U.S. origin vehicle control unit, a German driveshaft, and a Japanese heater assembly.

Station 4: The coolant, power steering, and windshield washer reservoirs are filled. A functional electric test, a diagnostic test, and a complete system check are performed. Other various parts, including a potentiometer to the heater blend door, a data link control wiring harness, and a brake sensor to the brake pedal, are installed, and a tire inflation kit, labels, books, and manuals are added to the vehicle.

Station 5: A tire pressure check, wheel alignment, headlight aiming, brake test, battery charge, road test, and underbody check are performed.

ISSUE:

What is the country of origin of the subject TCE vehicles for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

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

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

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. *See also* 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 C.F.R. § 25.403(c)(1). The Federal Procurement Regulations, 48 C.F.R. § 25.003, define "U.S.-made end product" as:

[A]n article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 80-111, C.S.D. 85-25, C.S.D. 89-110, C.S.D. 89-118, C.S.D. 90-51, and C.S.D. 90-97. Whether an operation is complex and meaningful depends on the nature of the operation, including the number of components assembled, number of different operations, time, skill level required, attention to detail, quality control, the value added to the article, and the overall employment generated by the manufacturing process.

You claim that the U.S. assembly operations, along with the value of the U.S. origin contributions (labor and components), results in a substantial transformation of the imported parts, and warrants a determination that the U.S. is the country of origin for purposes of U.S. Government procurement. You also note that "the 16 foreign components used in the assembly of the TCE vehicle cannot function alone and must be assembled with the U.S.-origin parts in order to constitute a working TCE vehicle." You cite Headquarters Ruling Letter (HRL) H022169, dated May 2, 2008, and HRL H118435, dated October 13, 2010, in support of your argument.

In HRL H118435, the U.S. was determined to be the country of origin for purposes of U.S. Government procurement for a line of electric golf and recreational vehicles. In that case, the chassis, plastic body parts, and various miscellaneous pieces of plastic trim were imported into the U.S. from China and assembled with U.S.-origin battery packs, motors, electronics, wiring assemblies, seats, and chargers. The vehicles were composed of approxi-

mately 53 to 62 components, of which between 12 and 17 were of U.S. origin. HRL H118435 held that none of the imported parts could function as an electric vehicle on their own and needed to be assembled with other necessary U.S. components. Additionally, it was held that given the complexity and duration of the U.S. manufacturing process, the operations were more than mere assembly. It was determined that a substantial transformation occurred, and further, the critical components to making an electric vehicle—battery pack, motor, electronics, wiring assemblies, and charger—were of U.S.-origin. The same conclusion was reached in HRL H133455, dated December 9, 2010, in which a chassis and various parts were imported from China to be combined with U.S.-origin battery packs, motors, electronics, wiring assemblies, seats, and chargers. The ratio of imported components to U.S.-made components varied, but the assembly process was the same.

In HRL H022169, CBP found that an imported mini-truck glider was substantially transformed as a result of assembly operations performed in the U.S. to produce an electric mini-truck. The decision was based on the fact that, under the described assembly process, the imported glider lost its individual identity and became an integral part of a new article possessing a new name, character, and use. In addition, a substantial number of the components added to the imported glider were of U.S. origin. The glider was assembled with approximately 87 different components, 68 of which were of U.S. origin. The batteries, charger, and gear box were of U.S. origin, and other major parts, including the electric motor and brakes, were of foreign origin.

As stated in HRL H022169 (citing HRL 731076, dated November 1, 1988), CBP considers the manufacture of an automobile more than a mere simple assembly operation. The assembly process here is complex and time-consuming and involves a significant U.S. contribution, in both parts and labor. The components used to power the vehicle are assembled together in the U.S., and then incorporated into the vehicle in the U.S. For example, the U.S.-origin battery pack, motor controller, and wiring harnesses are all critical components for the operation of the electric vehicle. Furthermore, in HRLs H118435, H133455, and H022169, it was found that the assembly of the U.S. and imported components was necessary for the vehicles to function, and that the assembly resulted in a substantial transformation. We find the same to be true in this case. The glider and other components cannot function as an electric vehicle on their own. Therefore, based on the information discussed and the rulings cited, we find that the assembly of the glider and other components of various origins constitutes a substantial transformation and results in an article with a new name, character, and use, such that the country of origin for the TCE vehicle is the U.S. for purposes of U.S. Government procurement.

HOLDING:

Based on the facts of this case, the country of origin of the TCE vehicle is the United States for purposes of U.S. Government procurement.

Notice of this final determination will be given in the **Federal Register** as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31 that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within

30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

SANDRA L. BELL

Executive Director

Office of Regulations and Rulings

Office of International Trade

[Published in the Federal Register, May 31, 2011 (76 FR 31354)]

**PROPOSED REVOCATION OF THREE RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
AUTOMATIC PET FEEDERS**

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

ACTION: Notice of proposed revocation of three ruling letters and treatment relating to the tariff classification of automatic pet feeders.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this Notice advises interested parties that U.S. Customs and Border Protection (CBP) proposes to revoke three ruling letters relating to the tariff classification of automatic pet feeders under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 22, 2011.

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. (Mint Annex), Fifth Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the above address during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Beth Green, Tariff Classification and Marking Branch: (202) 325–0347.

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this Notice advises interested parties that CBP intends to revoke three ruling letters pertaining to the tariff classification of automatic pet feeders. Although in this Notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) I80281, dated April 16, 2002 (Attachment A), NY J83831, dated May 23, 2003 (Attachment B) and NY K87024, dated July 1, 2004 (Attachment C), this Notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this Notice should advise CBP during this notice period.

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

In NY I80281, NY J83831 and NY K87024, CBP determined that the subject automatic pet feeders were classified in heading 8543, HTSUS (2002–2004), which provided for, in pertinent part: “electrical machines..., having individual functions, not specified or included elsewhere in [chapter 85]...”. It is now CBP's position that the automatic pet feeders are properly classified in heading 8509, HT-

SUS, which provides for, in pertinent part: “electromechanical domestic appliances, with self-contained electric motor[s]...”.

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY I80281, NY J83831 and NY K87024, and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the automatic pet feeders according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H113636, set forth as Attachment D to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 31, 2011

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY I80281
April 16, 2002
CLA-2-85:RR:NC:1: 112 I80281
CATEGORY: Classification
TARIFF NO.: 8543.89.9695

MS. LUCIA BUCKMAN
CUSTOMS COMPLIANCE AUDITOR
ASSOCIATED MERCHANDISING CORPORATION
500 SEVENTH AVENUE
NEW YORK, NY 10018

RE: The Tariff Classification of a “Battery Operated Automatic Pet Feeder” from China.

DEAR MS. BUCKMAN:

In your letter dated March 28, 2002, you requested a tariff classification ruling. The sample will be returned to you as requested.

As indicated by the submitted sample, the pet feeder is a battery operated feeding dish for pets. It can be programmed to open every 8, 12, or 24-hour feeding cycle. At the preset time, the cover opens for the first feeding and the prerecorded voice message will be played to let your pet know it’s time to eat. The dish, which contains three large food trays, will remain open until the next programmed feeding time. At the preset time, the dish will cycle to the next food tray, allowing pets to eat at their own pace.

The applicable subheading for the “Battery Operated Automatic Pet Feeder” will be 8543.89.9695, Harmonized Tariff Schedule of the United States (HTS), which provides for other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85. The rate of duty will be 2.6 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist David Curran at 646-733-3017.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

NY J83831

May 23, 2003

CLA-2-85:RR:NC:1:112 J83831

CATEGORY: Classification

TARIFF NO.: 8543.89.9695

MR. STEVE BAKER
RADIO SYSTEMS CORPORATION
10427 ELECTRIC AVENUE
KNOXVILLE, TN 37932

RE: The tariff classification of automatic pet feeders. The country of origin is not stated.

DEAR MR. BAKER:

In your letter dated April 21, 2003 you requested a tariff classification ruling.

As indicated by the submitted sample and literature, the automatic pet feeders, identified as model #'s PF-2-19, PF-3-19 and PF-5-19, are battery operated devices that consists of a number of food trays and a timing device. In operation, the covers of the trays open automatically after a preset period of time so that the pet can be fed at that designated time.

The applicable subheading for the automatic pet feeders, model #'s PF-2-19, PF-3-19 and PF-5-19, will be 8543.89.9695, Harmonized Tariff Schedule of the United States (HTS), which provides for other electrical machines and apparatus, ..., not specified or included elsewhere in Chapter 85, HTS. The rate of duty will be 2.6 percent ad valorem

You express the opinion that these pet feeders are classifiable under subheading 8436.10.0000, HTS. These are not the class or kind of apparatus that are provided for by the language of that subheading and, therefore, classification in that provision is precluded.

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]

NY K87024

July 1, 2004

CLA-2-85: RR: NC: 1:112 K87024

CATEGORY: Classification

TARIFF NO.: 8543.89.9695

Ms. LESA HUBBARD
JC PENNY
P.O. Box 10001
DALLAS, TEXAS 75031-0001

RE: The tariff classification of a battery operated pet dish from China.

DEAR Ms. HUBBARD:

In your letter dated June 8, 2004 you requested a tariff classification ruling.

The item in question is a battery operated feeding dish for pets. It is denoted as model number 808-0437. The feeding dish can be programmed so that the opening rotates every 6,12,24 hour feeding cycle. It has six food trays that will remain open until the next programmed feeding time.

The applicable subheading for the battery operated feeding dish, model 808-0437 will be 8543.89.9695, Harmonized Tariff Schedule of the United States (HTS), which provides for other electrical machines and apparatus ... not specified or included elsewhere in Chapter 85, HTS. The rate of duty will be 2.6 percent ad valorem.

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

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

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT D]

HQ H113636
CLA-2 OT:RR:CTF:TCM H113636 EG
CATEGORY: Classification
TARIFF NO.: 8509.80.50

MS. LUCIA BUCKMAN
CUSTOMS COMPLIANCE AUDITOR
ASSOCIATED MERCHANDISING CORPORATION
500 SEVENTH AVENUE
NEW YORK, NEW YORK 10018

RE: Revocations of New York Ruling Letters (NY) I80281, NY J83831 and NY K87024; Classification of Automatic Pet Feeders

DEAR MS. BUCKMAN:

This is in reference to New York Ruling Letter (NY) I80281, dated April 16, 2002, issued to you concerning the tariff classification of a product identified as the “Battery Operated Automatic Pet Feeder” (automatic pet feeder) from China under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) classified the subject article in heading 8543, HTSUS, which provides for electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85. We have reviewed NY I80281 and find it to be in error. For the reasons set forth below, we hereby revoke NY I80281 and two other rulings with substantially similar merchandise: NY J83831, dated May 23, 2003 and issued to Radio Systems Corporation, as well as NY K87024, dated July 1, 2004 and issued to JC Penny.¹

FACTS:

The subject article is the automatic pet feeder. NY I80281 describes the automatic pet feeder as a battery operated feeding dish for pets. It can be programmed to open every 8, 12, or 24-hour feeding cycle. A signal from a printed circuit board (PCB) directs the electric motor, via a system of gears, to rotate the plastic dish underneath of the pet feeder’s cover. One of the plastic dish’s full trays of pet food will rotate to the open portion of the cover. This rotation exposes the pet food and the prerecorded voice message will be played to let the pet know that it is meal time. The dish, which contains three large food trays, will remain open until the next programmed feeding time. At the next meal time, the dish will cycle to the next filled food tray.

ISSUE:

Is the automatic pet feeder classified as an electrical machine not specified or included elsewhere under heading 8543, HTSUS, or as an electromechanical domestic appliance of heading 8509, HTSUS?

¹ The pet feeders in NY J83831 are described as “battery operated devices that consist of a number of food trays and a timing device. In operation, the covers of the trays open automatically after a preset period of time so that the pet can be fed at that designated time.” The pet feeder in NY K87024 is a “feeding dish [that] can be programmed so that the opening rotates every 6, 12 [and] 24 hour feeding cycle. It has six food trays that will remain open until the next programmed feeding time.”

LAW AND ANALYSIS:

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

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

The HTSUS provisions at issue are as follows:

8509 Electromechanical domestic appliances, with self-contained electric motor[s], other than vacuum cleaners of heading 8505; parts thereof

. . .

* * *

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

* * *

Note 4 to Section XVI, which includes Chapter 85, provides that:

Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function.

* * *

Note 3 to Chapter 85 provides, in pertinent part, that:

Heading 8509 covers only the following electromechanical machines of the kind commonly used for domestic purposes:

(a) Floor polishers, food grinders and mixers, and fruit or vegetable juice extractors, of any weight;

(b) Other machines provided the weight of such machines does not exceed 20 kg, exclusive of extra interchangeable parts or detachable auxiliary devices...

* * *

The Explanatory Note to Heading 8509 (EN 85.09) states, in pertinent part:

This heading covers a number of domestic appliances in which an electric motor is incorporated. The term "domestic appliances" in this heading means appliances normally used in the household. These appliances are identifiable, according to type, by one or more characteristic features such as overall dimensions, design, capacity, volume. The yardstick for judging

these characteristics is that the appliances in question must not operate at a level in excess of household requirements.

* * *

Applying GRI 1, the first issue is whether NY I80281 properly classified the automatic pet feeder as an electrical machine not specified or included elsewhere in Chapter 85. Heading 8543, HTSUS, is a catch-all basket provision for electrical machines which are not classified elsewhere in Chapter 85 because it contains the phrase: “not specified or included elsewhere in this chapter.” See *I.B.M. v. United States*, 152 F.3d 1332, 1338 (Fed. Cir. 1998). Therefore, if the automatic pet feeder can be classified elsewhere in Chapter 85, it cannot be classified in the basket provision of heading 8543, HTSUS.

Heading 8509, HTSUS, covers electromechanical domestic appliances with self-contained electric motors. Note 3 to Chapter 85 states that heading 8509, HTSUS, only includes machines used for domestic purposes. Moreover, Note 3(b) states that except for a few appliances listed in Note 3(a), the machines classified under heading 8509, HTSUS, cannot weigh more than 20 kg (44 lbs) exclusive of interchangeable parts or accessories. EN 85.09 explains this weight requirement as limiting articles classified under heading 8509, HTSUS, to household appliances. Heavier appliances could have industrial or commercial purposes rather than domestic purposes.

The automatic pet feeder weighs less than 20 kg (44 lbs). This low weight indicates that the automatic pet feeder is designed for use in the home, as opposed to use in a kennel or another commercial setting. As such, the automatic pet feeder is classifiable as a household appliance.

Note 4 to Section XVI states that a machine which has different components which contribute to a defined function must be classified under the heading which covers that function. The automatic pet feeder has both electrical and mechanical components. An electronic PCB controls the timer for feedings, as well as the pre-recorded voice which alerts pets to meal time. A system of gears rotates the dish to the cover’s opening. All of the automatic pet feeder’s components contribute to its defined function as a household appliance which feeds household pets. For all of the aforementioned reasons, the automatic pet feeder is properly classified under heading 8509, HTSUS, as an electromechanical domestic appliance with a self-contained electric motor.

The automatic pet feeder is a domestic appliance under heading 8509, HTSUS. This determination is consistent with NY R04367, dated July 17, 2006, which classified a substantially similar article under heading 8509, HTSUS. Since the automatic pet feeder is properly classified under heading 8509, HTSUS, it cannot be classified in the basket provision of heading 8543, HTSUS. Under the same analysis, the substantially similar automatic pet feeders described in NY J83831 and NY K87024 are also classified under heading 8509, HTSUS.

HOLDING:

By application of GRI 1, the automatic pet feeders in NY I80281, NY J83831, NY and K87024 are classifiable under heading 8509, HTSUS. Specifically, they are classifiable under subheading 8509.80.50, HTSUS, which provides for “Electromechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 8508; parts thereof:

other appliances: other...” The column one, general rate of duty is 4.2% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY I80281, dated April 16, 2002, NY J83831, dated May 23, 2003 and NY K87024, dated July 1, 2004 are hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
CERTAIN PLUSH ANIMALS WITH LIGHTS**

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

ACTION: Notice of Proposed Revocation of Two Ruling Letters and Treatment Relating to the Tariff Classification of the plush “Twilight Turtle” and “Kozy Light Monkey”.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) proposes to revoke two ruling letters relating to the tariff classification of plush stuffed animals with lights under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 22, 2011.

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. (Mint Annex), Fifth Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the above address during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Beth Green, Tariff Classification and Marking Branch: (202) 325–0347.

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 customs and related laws. In addition, both the trade community 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 requirements are met.

CBP has determined that certain plush animals with lights are incorrectly classified as lamps under heading 9405, HTSUS. In New York Ruling Letter (NY) L83764, dated April 27, 2005 (Attachment A) and NY K88764, dated September 3, 2004 (Attachment B), CBP determined that the Twilight Turtle and the Kozy Light Monkey were classified in heading 9405, HTSUS, which provides for, in pertinent part: “lamps and lighting fittings...not elsewhere specified or included...”. It is now CBP’s position that the Twilight Turtle and Kozy Light Monkey are properly classified in heading 9503, HTSUS, which provides for, in pertinent part: “...other toys...”.

REVOCATIONS

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this notice advises interested parties that CBP intends to revoke two ruling letters pertaining to the tariff classification of certain plush animals with lights. Although in this notice, CBP is specifically referring to the revocation of NY L83764 and NY K88764, 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 proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to

advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY L83764 and NY K88764, as well as any other ruling not specifically identified, in order to reflect the proper classification of certain plush animals with lights according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H128417, set forth as Attachment C to this document. CBP will not issue a Headquarters Ruling Letter which specifically addresses the facts of NY K88764. Rather, NY K88764 shall be revoked according to the analysis set forth in proposed HQ H128417. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 1, 2011

RICHARD MOJICA
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY L83764
April 27, 2005
CLA-2-94:RR:NC:1:108 L83764
CATEGORY: Classification
TARIFF NO.: 9405.40.8000

MS. LORI MURPHY
US JHI CORPORATION
5975 HWY T
SPRING GREEN, WI 53588

RE: The tariff classification of a novelty night-light from China.

DEAR MS. MURPHY:

In your letter dated April 4, 2005, you requested a tariff classification ruling.

The submitted sample is a battery-operated turtle-shaped night-light, which is referred to as "The Twilight Turtle," that is composed of textile plush body parts (the head, feet and tail), as well as a textile plush torso with a flap covering a battery case. The upper portion of its body is covered with a perforated-plastic shell, which depicts the pattern of seven actual constellations, that covers LED light bulbs. This shell also incorporates an on/off light switch with an automatic time-out after 15 or 35 minutes and a color-changing (blue and white) light switch. When activated, the light projects these constellation designs on to the ceiling for creating a star-filled sky. This night-light, which is imported with a star guide, is intended to produce a peaceful sleep.

The applicable subheading for this novelty night-light will be 9405.40.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for other electric lamps and lighting fittings, other than of base metal. The rate of duty will be 3.9 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 K88764
September 3, 2004
CLA-2-94:RR:NC:1:108 K88764
CATEGORY: Classification
TARIFF NO.: 9405.40.8000

MR. BRIAN KAVANAUGH
DERINGER LOGISTICS CONSULTING GROUP
1 LINCOLN BLVD., STE. 225
ROUSES POINT, NY 12979

RE: The tariff classification of a novelty night-light from China.

DEAR MR. KAVANAUGH:

In your letter dated August 16, 2004, on behalf of Jay Trends Merchandising, Inc., you requested a tariff classification ruling.

The submitted sample is a child's novelty night-light that is known as the Kozy Light, item number JTKL04361. It consists of a circular-shaped plastic LED night-light, measuring about $2\frac{7}{8}$ inches in diameter, that is incorporated within the torso of a plush-stuffed animal in the form of a charming monkey. The monkey, measuring approximately $6\frac{3}{4}$ inches in height, is depicted in a sitting position. The front portion of the night-light is exposed in simulating the animal's front torso, while the battery pack, which contains replaceable batteries, is accessed through the animal's bottom posterior opening. By pressing on the animal's front torso, the activated light soon begins a sequence of changing colors.

You claim that this article is properly classified under subheading 9503.41.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Toys representing animals or non-human creatures (for example, robots and monsters) and parts and accessories thereof: Stuffed toys and parts and accessories thereof. Although this article may impart an amusing, charming quality, it is the opinion of this office that the subject merchandise is primarily designed to function as a child's novelty night-light.

The applicable subheading for this novelty night-light will be 9405.40.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for other electric lamps and lighting fittings, other than of base metal. The rate of duty will be 3.9 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 C]

HQ H128417
CLA-2 OT:RR:CTF:TCM H128417 EG
CATEGORY: Classification
TARIFF NO.: 9503.00.00

Ms. LORI MURPHY
U.S. JHI CORPORATION
5975 HWY T
SPRING GREEN, WI 53588

RE: Revocation of NY L83764, dated April 27, 2005; Classification of the “Twilight Turtle”

DEAR Ms. MURPHY

This is in reference to New York Ruling Letter (NY) L83764, dated April 27, 2005, issued to you concerning the tariff classification of a product identified as the “Twilight Turtle” under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) classified the subject article in subheading 9405.40.80, HTSUS, which provides for lamps and lighting fittings of a material other than base metal. We have reviewed NY L83764 and find it to be in error. For the reasons set forth below, we hereby revoke NY L83764.

FACTS:

The subject article is the “Twilight Turtle,” a battery-operated plush turtle with lights. The Twilight Turtle is composed of textile plush body parts (the head, feet and tail), as well as a textile plush torso with a bottom flap covering a battery case. The upper portion of its body is covered with a perforated plastic shell. Underneath the shell are several LED light bulbs. When illuminated, light shines through the shell to project the pattern of seven constellations onto the surfaces surrounding the Twilight Turtle. The shell incorporates an on/off switch, as well as buttons the user may push to change the color of the light to blue or white. The Twilight Turtle includes an automatic timer that turns off the light after 45 minutes. The Twilight Turtle’s packaging includes a star guide booklet so that the user can identify and learn about the projected constellations.

The Twilight Turtle has received the following awards from the toy industry: “Specialty Toy of the Year,” “Creative Toy Award” and “Best Toys for Kids.” It is marketed as a toy and sold in toy stores.

ISSUE:

Is the Twilight Turtle classified as a lamp or lighting fitting of heading 9405, HTSUS, or as a toy of heading 9503, HTSUS?

LAW AND ANALYSIS:

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

The 2011 HTSUS provisions at issue are as follows:

9405	Lamps and lighting fittings including searchlights and spot-lights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
9405.40	Other electric lamps and lighting fittings:
9405.40.80	Other... * * *
9503.00.00	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof... * * *

Additional U.S. Rule of Interpretation 1(a), HTSUS, provides, in relevant part, that:

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

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

* * *

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

EN 95.03 states, in pertinent part:

D) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults)....

* * *

The first issue is whether NY L83764 properly classified the Twilight Turtle as a lamp or lighting fitting of heading 9405, HTSUS. Heading 9405, HTSUS, is a catch-all basket provision for lamps and lighting fittings which are not classified elsewhere in the HTSUS because it contains the phrase: "not elsewhere specified or included." *I.B.M. v. United States*, 152 F.3d 1332, 1338 (Ct. Int'l Trade 1998). As is pertinent here, Note 1(l) to Chapter 94 states that "toy furniture or toy lamps or lighting fittings (heading 9503)" are excluded from classification in Chapter 94. Therefore, if the Twilight Turtle can be classified under heading 9503, HTSUS, as a toy, according to GRI 1 it is precluded from classification under heading 9405, HTSUS.

Heading 9503 provides, in pertinent part, for “other toys.” In *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (Ct. Int’l Trade 2000), the U.S. Court of International Trade (CIT) concluded that heading 9503, HTSUS, is a “principal use” provision within the meaning of Additional U.S. Rule of Interpretation 1(a), HTSUS. Therefore, classification under heading 9503, HTSUS, is controlled by the principal use of goods of the class or kind to which the imported goods belong at or immediately prior to the date of the importation. *Id.* In *Lenox Collections v. United States*, 20 Ct. Int’l Trade 194, 196 (1996), the CIT held that principal use is “the use which exceeds any other single use.” Thus to be classified as a toy in heading 9503, HTSUS, an article must belong to the same class or kind of goods which have the same principal use as toys.

In *Minnetonka*, the court determined that a toy must be designed and used principally for amusement and should not serve a utilitarian purpose. *Id.*, 110 F. Supp. at 1026. In *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28 (1977), the U.S. Customs Court (predecessor to the U.S. Court of International Trade) held that when amusement and utility become locked in controversy, the question is whether the amusement is incidental to the utilitarian purpose, or vice versa. *Id.* at 33. EN 95.03(d) also states that the principal use of a toy is “for the amusement of persons (children or adults).”

To determine whether an article is included in a particular class or kind of merchandise, CBP considers a variety of factors, including: (1) the general physical characteristics of the merchandise; (2) the channels, class or kind of trade in which the merchandise moves (where the merchandise is sold); (3) the expectation of the ultimate purchasers; (4) the environment of the sale (i.e., accompanying accessories and marketing); (5) usage, if any, in the same manner as merchandise which defines the class. See *United States v. Carborundum Co.*, 536 F.2d 373, 377 (Cust. Ct. 1976).

Applying the *Carborundum* factors, we find that the Twilight Turtle belongs to a class or kind of goods principally used for people’s amusement. It is a three-dimensional turtle with a stuffed head, arms, legs and tail. Its size, shape, appearance and plush components provide a clear invitation for children to play, snuggle and relax with it. Secondly, it is marketed as a toy and is sold at toy stores such as Toys R Us.¹ Moreover, it has received numerous awards from the toy industry, including “Specialty Toy of the Year” and the “Creative Toy Award.” Thirdly, the expectation of its ultimate purchaser is that the Twilight Turtle will help a child fall asleep as he or she plays with it. Finally, the Twilight Turtle is used in the same manner as other toys; a child can play with it using the included storybook and star guide to identify the constellations or simply by pushing its buttons to change the colors of the projected lights.

Based on all of the foregoing, we conclude that the Twilight Turtle is classifiable as a toy in heading 9503, HTSUS. Inasmuch as the article is classified in heading 9503, HTSUS, it is precluded from classification under heading 9405, HTSUS. See Note 1(l) to Chapter 94.

¹ <http://www.toysrus.com> (last viewed on February 25, 2011).

HOLDING:

By application of GRI 1 (Additional U.S. Rule of Interpretation 1(a) and Note 1(l) to Chapter 94), the article identified as the “Twilight Turtle” is classifiable under heading 9503, HTSUS. Specifically, it is classifiable under subheading 9503.00.00, HTSUS, which provides for “... other toys ...” The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY L83764, dated April 27, 2005, and NY K88764, dated September 3, 2004, are hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF POLYPHENYLENE
SULFIDE**

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

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

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

DATES: Comments must be received on or before July 22, 2011.

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

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

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to revoke a ruling letter pertaining to the tariff classification of polyphenylene sulfide. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter N027045, dated May 22, 2008 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N027045, CBP determined that a polyphenylene sulfide homopolymer reinforced with glass was classified in heading 3907, HTSUS, which provides for “Polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms.” It is now CBP’s position that the reinforced polyphenylene sulfide is classified in

heading 3911, HTSUS, which provides for “Petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones and other products specified in note 3 to this chapter, not elsewhere specified or included, in primary forms.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N027045 and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject gloves according to the analysis contained in proposed Headquarters Ruling Letter H110997, 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, consideration will be given to any written comments timely received.

Dated: June 2, 2011

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N027045

May 22, 2008

CLA-2-39:OT:RR:NC:SP:237

CATEGORY: Classification

TARIFF NO.: 3907.20.0000

Ms. JANET C. WALLETT
825 OLD TRAIL ROAD
ETTERS, PA 17319

RE: Tariff classification of two polyphenylene sulfide resins CAS-25212-74-2 from Japan.

DEAR Ms. WALLETT:

In your letter dated April 22, 2008 you requested a tariff classification ruling. Your sample is being returned.

DIC PPS FZ-1140-D5 Black consists of polyphenylene sulfide homopolymer (CAS-25212-74-2) glass reinforced (40%) molding resin with carbon black (0.75%) and a mold release agent (1%). The black colored resin will be imported in pellet form for use in the manufacture of injection molded plastic housings for electronic connectors.

The applicable subheading for the DIC PPS FZ-1140-D5 Black polyphenylene sulfide resin will be 3907.20.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: Other polyethers in primary forms. The rate of duty will be 6.5% ad valorem.

DIC PPS FZ-1140-D5 Natural consists of polyphenylene sulfide homopolymer (CAS-25212-74-2) glass reinforced (40%) molding resin with a mold release agent (1%). The natural colored resin will be imported in pellet form for use in the manufacture of injection molded plastic housings for electronic connectors.

The applicable subheading for the DIC PPS FZ-1140-D5 Natural polyphenylene sulfide resin will be 3907.20.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: Other polyethers in primary forms. The rate of duty will be 6.5% ad valorem.

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

This merchandise may be subject to the requirements of the Toxic Substances Control Act administered by the U.S. Environmental Protection Agency. You may contact them at 402 M Street, S.W., Washington, D.C. 20460, telephone number (202) 554-1404.

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 control number shown 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 Frank Cantone at 646-733-3038.

Sincerely,

ROBERT SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H110997

CLA-2 OT:RR:CTF:TCM H110997 CkG

CATEGORY: Classification

TARIFF NO.: 3911.90.25

Ms. JANET C. WALLETT
 825 OLD TRAIL ROAD
 ETTERS, PA 17319

Re: Revocation of NY N027045; classification of polyphenylene sulfide

DEAR Ms. WALLETT,

This is in reference to New York Ruling Letter (NY) N027045, issued by the Customs and Border Protection (CBP) National Commodity Division on May 22, 2008, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of polyphenylene sulfide. We have reconsidered this decision, and for the reasons set forth below, have determined that classification of polyphenylene sulfide as polyether of heading 3907, HTSUS, is incorrect.

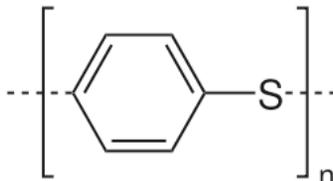
FACTS:

NY N027045, dated May 22, 2008, describes the product at issue as follows:

DIC PPS FZ-1140-D5 Black consists of polyphenylene sulfide homopolymer (CAS-25212-74-2) glass reinforced (40%) molding resin with carbon black (0.75%) and a mold release agent (1%). The black colored resin will be imported in pellet form for use in the manufacture of injection molded plastic housings for electronic connectors.

DIC PPS FZ-1140-D5 Natural consists of polyphenylene sulfide homopolymer (CAS-25212-74-2) glass reinforced (40%) molding resin with a mold release agent (1%). The natural colored resin will be imported in pellet form for use in the manufacture of injection molded plastic housings for electronic connectors.

Polyphenylene sulfide (PPS) is a thermoplastic polymer containing a phenylene ring (a modified aromatic compound derived from benzene by the removal of two hydrogen atoms—i.e., with a chemical formula of C_6H_4 instead of C_6H_6) and sulfur atom which are linked in alternating para-position. Polyphenylene sulfide has the empirical formula $(C_6H_4S)_n$. A diagram of its chemical structure is included below. The Chemical Abstracts Service Registry number of the DIC polyphenylene sulfide is CAS CAS-25212-74-2. Polyphenylene sulfide is thermoplastic, meaning that the plastic becomes soft and formable when heated, and rigid and usable as a formed article when cooled. Each time it is reheated it can be reshaped or formed into a new article.



ISSUE:

Whether polyphenylene sulfide is classified in heading 3907, HTSUS, as an “other” polyether, or in heading 3911, HTSUS, as a polysulfide.

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the HTSUS. While not legally binding or 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 at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

3907: Polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms:

3907.20.00: Other polyethers . . .
* * * * *

3911: Petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones and other products specified in note 3 to this chapter, not elsewhere specified or included, in primary forms:

3911.90: Other:
Other:
Containing monomer units which are aromatic or modified aromatic, or which are obtained, derived or manufactured in whole or in part therefrom:

Thermoplastic:

3911.90.25: Other . . .
* * * * *

Note 3(b) to Chapter 39, HTSUS, states as follows:

Headings 3901 to 3911 apply only to goods of a kind produced by chemical synthesis, falling in the following categories: Resins, not highly polymerized, of the coumarone-indene type (heading 3911);

* * * * *

Note 6 to Chapter 39 states:

In headings 3901 to 3914, the expression “primary forms” applies only to the following forms:

(a) Liquids and pastes, including dispersions (emulsions and suspensions) and solutions;

(b) Blocks of irregular shape, lumps, powders (including molding powders), granules, flakes and similar bulk forms.

* * * * *

The EN to Chapter 39 provides as follows:

Primary forms

Headings 39.01 to 39.14 cover goods in primary forms only. The expression “primary forms” is defined in Note 6 to this Chapter. It applies only to the following forms:

...

- (1) **Liquids and pastes.** These may be the basic polymer which requires “curing” by heat or otherwise to form the finished material, or may be dispersions (emulsions and suspensions) or solutions of the uncured or partly cured materials. In addition to substances necessary for “curing” (such as hardeners (cross-linking agents) or other co-reactants and accelerators), these liquids or pastes may contain other materials such as plasticisers, stabilisers, fillers and colouring matter, chiefly intended to give the finished products special physical properties or other desirable characteristics...
- (2) **Powder, granules and flakes.** In these forms they are employed for moulding, for the manufacture of varnishes, glues, etc. and as thickeners, flocculants, etc. They may consist of the unplasticised materials which become plastic in the moulding and curing process, or of materials to which plasticisers have been added; these materials may incorporate fillers (e.g., wood flour, cellulose, textile fibres, mineral substances, starch), colouring matter or other substances cited in Item (1) above.

EN 39.07 (2) provides as follows:

This heading covers:

- (2) **Other polyethers.** Polymers obtained from epoxides, glycols or similar materials and characterised by the presence of ether-functions in the polymer chain. They are not to be confused with the polyvinyl ethers of **heading 39.05**, in which the ether-functions are substituents on the polymer chain. The most important members of this group are poly(oxyethylene) (polyethylene glycol), polyoxypropylene and polyphenylene oxide (PPO) (more correctly named poly(dimethylphenylene-oxide)). These products have a variety of uses, PPO being used, like the polyacetals, as engineering plastics, polyoxypropylene as an intermediate for polyurethane foam.

EN 39.11 provides, in pertinent part, as follows:

This heading covers the following products:

...

(2) **Polysulphides** are polymers characterised by the presence of mono-sulphide linkages in the polymer chain, for example, poly(phenylene sulphide). In polysulphides each sulphur atom is bound on both sides by carbon atoms, as opposed to the thioplasts of Chapter 40, which contain sulphur-sulphur linkages. Polysulphides are used in coatings and in moulded articles, for example, aircraft and automobile parts, pump impellers.

* * * * *

Initially, we note that both headings at issue pertain to polymers in primary forms. Primary forms are defined in Note 6 to the Chapter as liquids and pastes, including dispersions (emulsions and suspensions) and solutions; and Blocks of irregular shape, lumps, powders (including molding powders), granules, flakes and similar bulk forms. The General ENs to the Chapter make clear that additions such as fillers, coloring matter and other substances added to primary forms do not effect classification as such. The glass reinforcement, mold release agent and color added to the instant PPS does not therefore effect its classification under GRI 1 as PPS. *See HQ 965290*, dated June 5, 2002.

The ENs make clear that PPS is a type of polysulfide because the sulfur atoms in the structure are bound on both sides by carbon atoms. It is therefore fully described by the terms of heading 3911, HTSUS. NY N027045 classified two polyphenylene sulfide homopolymer (CAS-25212-74-2) molding resins in heading 3907, HTSUS, as an “other” polyether. This classification was incorrect. Polyphenylene sulfide is not classifiable as a polyether of heading 3907, HTSUS. A polyether is characterized by an *oxygen atom* connected to two *alkyl* or *aryl* groups (i.e., an oxygen atom linked on both sides by carbon-hydrogen compounds). Polyphenylene sulfide does not contain any oxygen atoms in its chemical structure. Polyphenylene sulfide is thus classified in heading 3911, HTSUS, as a polysulfide.

HOLDING:

By application of GRI 1, polyphenylene sulfide is classified in heading 3911, HTSUS, specifically subheading 3911.90.25, which provides for “Petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones and other products specified in note 3 to this chapter, not elsewhere specified or included, in primary forms: Other: Other: Containing monomer units which are aromatic or modified aromatic, or which are obtained, derived or manufactured in whole or in part therefrom: Thermoplastic: Other.” The 2010 general, column one rate of duty is 6.1% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N027045, dated May 22, 2008, is hereby revoked.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

GENERAL NOTICE
19 C.F.R. PART 177

**MODIFICATION OF A RULING AND MODIFICATION OF
TREATMENT RELATING TO THE CLASSIFICATION OF
CERTAIN HEATER/DIFFUSERS**

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

ACTION: Notice of modification of a ruling letter and modification of treatment relating to the classification of certain heater/diffusers.

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, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain heater/diffusers. Similarly, CBP is modifying any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published in the *Customs Bulletin*, Vol. 45, No. 16, on April 13, 2011. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Barbara G. Kunzinger, Valuation and Special Programs Branch, at (202) 325–0359.

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 laws and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 45, No. 16, on April 13, 2011, proposing to modify New York Ruling N077738, dated October 28, 2009, concerning the tariff classification of certain heater/diffusers. No comments were received in response to the notice.

As stated in the notice, this modification covers any rulings on this merchandise which may exist but have not been 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 received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

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

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N077738 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise, pursuant to the analysis in Headquarters

Ruling Letter (HRL) H090975 (Attachment). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is modifying 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 7, 2011

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H090975

June 7, 2011

OT:RR:CTF:VS H090975 BGK

CATEGORY: Classification

MICHAEL T. SHOR
ARNOLD & PORTER LLP
555 TWELFTH STREET, NW
WASHINGTON, DC 20004-1206

RE: Modification of NY N077738; Tariff Classification and Eligibility for Duty-free Treatment under Subheading 9801.00.20, HTSUS, for Certain Heater/Diffusers

DEAR MR. SHOR:

This letter concerns New York Ruling Letter (NY) N077738, issued to you on October 28, 2009, on behalf of your clients Jeyes Limited and Jeyes, Inc. by the National Commodity Specialist Division, U.S. Customs and Border Protection (CBP). At issue in the ruling was the tariff classification of certain heater/diffusers and their eligibility for duty-free treatment under subheading 9801.00.20, Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered that ruling and found it to be incorrect as it relates to our finding that the heater/diffusers were not eligible for duty-free treatment. As we agree with your classification of the diffusers under subheading 9801.00.20, we will also address your other questions in your September 24, 2009 ruling request.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification was published on April 13, 2011, in the *Customs Bulletin*, Vol. 45, No. 16. No comments were received on the proposed action.

FACTS:

The merchandise was described in NY N077738, in relevant part, as follows:

The article in question is described as a plug-in electric room fragrance heater/diffuser you plan to import from China, pay duty, and then re-export to Mexico for packaging in retail sets with dedicated, replaceable scent bulbs filled with scented oil. . . . The heater/diffuser is an electrothermic device incorporating an electric heating element that heats scented oil within a scent bulb. The scent bulb is designed to attach directly to and is dedicated for use with the heater/diffuser.

Considering the provisions of subheading 9801.00.20, HTSUS, CBP found that the packaging with the scent bulb in Mexico created a “complete, albeit unassembled, electrothermic appliance. . .” which would not meet the “previously imported” requirement of subheading 9801.00.20, HTSUS. It was found that the heater/diffuser would not be separately eligible for treatment under subheading 9801.00.20, HTSUS.

ISSUES:

I. Whether the heater/diffuser is eligible for duty-free treatment under subheading 9801.00.20, HTSUS, upon re-importation from Mexico.

II. What is the tariff classification of the scent bulb if the heater diffuser is entered under subheading 9801.00.20, HTSUS?

III. What are the applicable marking requirements for the heater/diffuser and the scent bulb?

LAW AND ANALYSIS:

I. The eligibility of the heater diffuser for duty-free treatment under subheading 9801.00.20, HTSUS, upon re-importation from Mexico:

Subheading 9801.00.20, HTSUS, provides duty-free treatment for:

Articles, previously imported, with respect to which the duty was paid upon such previous importation or which were previously free of duty pursuant to the Caribbean Basin Economic Recovery Act or Title V of the Trade Act of 1974, if (1) reimported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad, after having been exported under lease or similar use agreements, and (2) reimported by or for the account of the person who imported it into, and exported it from the United States.

The heater/diffuser in this case will be imported by Jeyes into the U.S. from China. Duty will be paid upon importation into the U.S., and then the heater/diffusers will be exported to Mexico to be packaged with a scent bulb and reimported.

NY N077738 held that because the scent bulb and heater/diffuser are classifiable as one complete, unassembled article of commerce upon importation into the U.S., the heater diffuser would not meet the “previously imported” requirement of subheading 9801.00.20, HTSUS. NY N077738 considered Headquarters Ruling Letter (HRL) 964960, dated September 4, 2002, where sheets and pillowcases were imported from Pakistan into the U.S., exported to Mexico to become part of a bed in a bag set, and then reimported under subheading 9801.00.20, HTSUS. NY N077738 distinguished HRL 964960 on the ground that the scent bulb and heater/diffuser, when packaged together, create a complete, unassembled article of commerce classifiable under one HTSUS number under General Rule of Interpretation (GRI) 2(a), whereas the pieces in the bed in a bag set each remained separate articles of commerce *prima facie* classifiable under different HTSUS headings under GRI 3(b) as a set. We note that HRL 964960 did not consider the classification of the sheets and pillowcases as part of a set in determining that they were eligible for subheading 9801.00.20, HTSUS, treatment. Instead, relying on HRL 560511, dated November 18, 1997, it was determined that mere packaging of the sheets and pillowcases into the set was not an advancement in value or improvement in condition.

In HRL 560511, Gerber imported bibs into the U.S. from China and then exported them to the Dominican Republic to be packaged with onesies and reimported. These goods were not considered a set, and were classified separately. The focus of the inquiry with regard to whether the bibs would be

eligible for subheading 9801.00.20, HTSUS, treatment turned on whether the bibs met the requirements of subheading 9801.00.20, HTSUS, not their classification with respect to the onesies. It was determined that the bibs were eligible for subheading 9801.00.20, HTSUS, treatment upon reimportation into the U.S because “Customs does not consider merely packaging a good for retail sale as an advancement in value or improvement in condition.” HRL 560511 (citing *John v. Carr & Son, Inc.*, 69 Cust. Ct. 78, C.D. 43377 (1972), *aff’d*, 61 CCPA 52, C.A.D. 1118 (1974)).

Similarly, batteries imported from Singapore, exported to Canada for packaging and reimported were held to be eligible for subheading 9801.00.20, HTSUS, treatment in HRL H016586, dated October 15, 2007. This case was also decided on the principle that repackaging will not affect eligibility for subheading 9801.00.20, HTSUS, treatment. All these cases analyzed the eligibility of the articles for subheading 9801.00.20, HTSUS, treatment without regard to the classification of the goods or their packaging with other items.

The requirements of subheading 9801.00.20 are similar to those of subheading 9801.00.10, HTSUS,¹ the predecessor of which, item 800.00, Tariff Schedule of the United States (TSUS), was examined in *Superscope, Inc. v. United States*, 727 F. Supp. 629 (CIT 1989). In *Superscope*, glass panels manufactured in the U.S. were exported to New Zealand, packaged with the remaining components of unassembled cabinets, for which the glass would serve as doors or lids, and reimported into the U.S. *Superscope*, 727 F. Supp. at 630. The court held that “since the glass panels were not ‘advanced in value or improved in condition. . . while abroad,’ but were merely repacked, they are entitled to duty free entry under item 800.00 TSUS.” *Id.* at 632 (discussing *John v. Carr & Son*). The Court of International Trade reasoned that “strict construction of item 800.00, TSUS, would frustrate what seems to be the fundamental legislative policy embodied in that item.” *Id.* at 633. The court also stressed throughout the opinion that the mere sorting and repackaging of goods should not preclude goods from being classified under item 800.00, TSUS. *See id.* at 632–634. As subheading 9801.00.20, HTSUS, and subheading 9801.00.10, HTSUS, contain similar requirements, particularly “without having been advanced in value or improved in condition”, the reasoning given by the court in *Superscope*, should apply to goods being reimported under subheading 9801.00.20, HTSUS, the same as it would for American goods returned under subheading 9801.00.10, HTSUS.

The *Superscope* Court also discussed Headnote 1 to schedule 8, TSUS, (now U.S. Note 1, Subchapter 1, Chapter 98, HTSUS), which provides as follows:

The provisions of this chapter are not subject to the rule of relative specificity in general rule of interpretation 3(a). Any article which is described in any provision in this chapter is classifiable in said provision if the conditions and requirements thereof and of any applicable regulations are met.

¹ “Products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad.” Subheading 9801.00.10, HTSUS.

U.S. Note 1, Chapter 98, HTSUS (2010). Therefore, although *Superscope* involved a complete, unassembled, single article of commerce, the court determined that articles that meet the requirements of the provision would be afforded treatment under the provision, without regard to the classification of the article or articles.

In this case, like in *Superscope* and the above mentioned rulings, the heater/diffusers are merely repackaged with the scent bulbs in Mexico. While, like in *Superscope*, they are being repacked with other articles to create a complete, unassembled article, this alone will not preclude the application of subheading 9801.00.20, HTSUS. As long as the requirements of subheading 9801.00.20, HTSUS, are met, the classification of the repackaged heater/diffuser and scent bulb will not affect the heater/diffuser's eligibility for subheading 9801.00.20, HTSUS, treatment. Also, as emphasized by *Superscope* and the above rulings, "Customs does not consider merely packaging a good for retail sale as an advancement in value or improvement in condition." HRL 560511. The heater/diffusers are being reimported without having been advanced in value or improved in condition while abroad.

Subheading 9801.00.20, HTSUS, also requires that the articles be exported under a lease or similar use agreement. You state that there will be a written agreement between Jeyes and Jeyes Mexico, pursuant to which Jeyes will retain ownership of the diffuser at all times. You have provided a copy of the agreement.

In HRL 560511 it was found that the bibs were exported under a similar use agreement, for purposes of subheading 9801.00.20, HTSUS, as Gerber retained ownership throughout the process. As in HRL 560511, Jeyes will retain ownership of the heater/diffusers at all times. Therefore we find they are exported under a similar use agreement for purposes of subheading 9801.00.20, HTSUS.

In addition, subheading 9801.00.20, HTSUS, requires that the same party, who originally imported and exported the article to and from the U.S., reimport the article, or that the article is reimported on their behalf. In this case, Jeyes retains ownership of the articles throughout the whole process, and is the party importing, exporting, and reimporting the heater/diffusers.

Therefore, we find that the heater/diffusers are eligible for duty-free treatment under subheading 9801.00.20, HTSUS, upon reimportation into the U.S. after exportation for repackaging in Mexico.

II. The tariff classification of the scent bulb:

In NY N077738, CBP stated that the scent bulb would be classified, if presented separately, under subheading 8516.90.90, HTSUS. Further, under GRI 2(a), once packaged with the heater/diffuser, NY N077738 found that the classification is subheading 8516.79.00, HTSUS. The fact that the heater/diffuser is eligible for treatment under subheading 9801.00.20, HTSUS, does not change this determination. Therefore, as stated in NY N077738, the scent bulb will be classified under subheading 8516.79.00, HTSUS.

III. Marking Requirements for the heater/diffuser and scent bulb:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin (or its

container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. 19 U.S.C. § 1304(a). Part 134, Customs Regulations (19 C.F.R. Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. § 1304.

Section 134.1(b) of the Customs Regulations, defines “Country of origin” as: the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Section 134.1(j) provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a “good of a NAFTA country” as “an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.” As the heater/diffuser is being imported from Mexico, the NAFTA Marking Rules must be applied.

The NAFTA Marking Rules are set forth in 19 C.F.R. Part 102. Section 102.11(a) contains the “General rules” for determining country of origin:

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

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

The heater/diffuser and scent bulb packaged together in Mexico have different countries of origin, therefore, they cannot be considered wholly obtained or produced, nor produced exclusively from domestic materials. In such circumstances, section 102.11(a)(3) is applied next. Under section 102.11(a)(3), the country of origin of a good is the country in which each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20, Customs Regulations (19 C.F.R. § 102.20). However, section 102.17, Customs Regulations (19 C.F.R. § 102.17), states that a foreign material shall not be considered to have undergone an applicable change in tariff classification by reason of simple packing, repacking or retail packaging without more than minor processing. In the present case, the facts presented indicate that the Mexican operations on the heater/diffuser consist only of retail packaging.

In such circumstances, the next step in the hierarchy is section 102.11(b), Customs Regulations (19 C.F.R. § 102.11(b)). That section states:

- (b) Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:

(1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good....

19 C.F.R. § 102.11(b).

As described above, the heater/diffuser and scent bulb are not classified as a set under the HTSUS. Section 102.18(b)(1), Customs Regulations (19 C.F.R. § 102.18(b)(1)), provides that for purposes of applying section 102.11, only those domestic and foreign materials “that are classified in a tariff provision from which a change in tariff classification is not allowed under the section 102.20 specific rule or requirements applicable to the good” shall be taken into consideration in determining the parts or materials that determine the essential character of the good. Moreover, section 102.18(b)(2), Customs Regulations (19 C.F.R. § 102.18(b)(2)), states that for purposes of determining which material imparts the essential character to a good, various factors may be examined depending upon the type of good involved. Those factors may include, but are not be limited to, the nature of the material (such as its bulk, quantity or value) and the role the material plays relative to the good’s use.

In applying the above factors we first note that the heater/diffuser is the component that controls the release of the fragrance from the scent bulb. The purpose of the two components together is to release a fragrance into a room. CBP is of the opinion that the heater/diffuser represents the essential character of the article. Therefore, the country of origin of the complete, unassembled article of commerce consisting of the heater/diffuser and scent bulb is China, the country of origin of the heater/diffuser. *See* HRL 560352, dated October 23, 1997. Therefore, your proposal to mark the package, “Diffuser Made in China; Fragrance Made in Mexico” is inappropriate. Rather, the packaging should be marked “Made in China.”

HOLDING:

The portion of NY N077738 relating to the classification of the heater/diffusers under subheading 8516.79.00, HTSUS, remains the same. The heater/diffuser is eligible for duty-free treatment under subheading 9801.00.20, HTSUS, when returned to the United States. The scent bulb remains classified in subheading 8516.79.00, HTSUS, as an unassembled electrothermic device, when packaged with the heater/diffuser, even though the heater/diffuser is eligible for treatment under Chapter 98, HTSUS. Pursuant to 19 C.F.R. § 102.11(b), the country of origin is China, and the packaging should be marked as such.

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

EFFECT ON OTHER RULINGS:

NY N077738, dated October 28, 2009, is hereby modified.

Sincerely,

MYLES B. HARMON,

Director,

Commercial Trade and Facilitation Division.

AGENCY INFORMATION COLLECTION ACTIVITIES:**Crewman's Landing Permit**

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

ACTION: 60-Day notice and request for comments; extension of an existing collection of information: 1651-0114.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the: Crewman's Landing Permit (CBP Form I-95). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 1, 2011, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, *Attn:* Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for

Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Alien Crewman Landing Permit.

OMB Number: 1651-0114.

Form Number: Form I-95.

Abstract: CBP Form I-95, *Crewman's Landing Permit*, is prepared and presented to CBP by the master or agent of vessels and aircraft arriving in the United States for alien crewmen applying for landing privileges. This form is provided for by 8 CFR 251.1(c) which states that, with certain exceptions, the master, captain, or agent shall present this form to CBP for each nonimmigrant alien crewman on board. In addition, pursuant to 8 CFR 252.1(e), CBP Form I-95 serves as the physical evidence that an alien crewmember has been granted a conditional permit to land temporarily, and it is also a prescribed registration form under 8 CFR 264.1 for crewmen arriving by vessel or air. CBP Form I-95 is authorized by Section 252 of the Immigration and Nationality Act (8 U.S.C. 1282) and is accessible at http://forms.cbp.gov/pdf/CBP_Form_I95.pdf.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to this collection of information.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 433,000.

Total Number of Estimated Annual Responses: 433,000.

Estimated time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 35,939.

Dated: May 24, 2011.

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