

U.S. Customs and Border Protection



MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN BATTERY- OPERATED PAINT ROLLERS

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

ACTION: Notice of modification and revocation of ruling letters and treatment relating to tariff classification of certain battery-operated paint rollers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying and revoking ruling letters relating to the tariff classification of certain battery-operated paint rollers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 23, on June 1, 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EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Aaron Marx, Tariff Classification and Marking Branch: (202) 325–0195.

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 modifying one ruling letter and revoking one ruling letter pertaining to the tariff classification of certain battery-operated paint rollers. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N042191, dated November 20, 2008, and the revocation of NY 870922, dated February 21, 1992, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

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

In NY N042191, CBP determined that the TurboRoll Battery Paint Roller was classified in the heading 9603, HTSUS, by operation of General Rule of Interpretation (GRI) 3(b). Specifically, CBP classified the product in subheading 9603.40.20, HTSUS, which provides for

“Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees): Paint, distemper, varnish or similar brushes (other than brushes of subheading 9603.30); paint pads and rollers: Paint rollers”. It is now CBP’s position that the TurboRoll Battery Paint Roller is properly classified in subheading 9603.40.20, HTSUS, by operation of GRI 1.

In NY 870922, CBP determined that the Wagner Cordless Power Roller was classified in the heading 8413, HTSUS, by operation of GRI 3(b). Specifically, CBP classified the product in subheading 8413.50.00, HTSUS, which provides for “Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; part thereof: Other reciprocating positive displacement pumps”. It is now CBP’s position that the Wagner Cordless Power Roller is properly classified in the heading 9603, HTSUS, by operation of GRI 1. Specifically, it is classified in subheading 9603.40.20, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N042191 and revoking NY 870922, to reflect the proper classification of battery operated paint rollers according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H050436, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 11, 2011

RICHARD MOJICA

for

MYLES B. HARMON

Director

Commercial and Trade Facilitation Division

Attachment

HQ H050436

July 11, 2011

CLA-2 OT:RR:CTF:TCM H050436 AMM**CATEGORY:** Classification**TARIFF NO.:** 9603.40.20

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

RE: Modification of New York Ruling Letter N042191; Revocation of New York Ruling Letter 870922; Classification of Battery-Operated Paint Rollers

DEAR MR. PETERSON,

This is in reference to the request for reconsideration of New York Ruling Letter (NY) N042191, dated November 20, 2008, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a battery-operated paint roller identified as the “TurboRoll Battery Paint Roller” (TurboRoll). In that ruling, Customs and Border Protection (CBP) classified the TurboRoll under heading 9603, HTSUS, which provides in relevant part for “[P]aint pads and rollers”, by application of General Rule of Interpretation (GRI) 3(b). We have reviewed NY N042191 and found it to be incorrect. Accordingly, for the reasons set forth below, we intend to modify that ruling.

CBP also intends to revoke NY 870922, dated February 21, 1992, regarding the classification of the Wagner Cordless Power Roller (Cordless Roller) under the HTSUS. In that ruling, CBP classified the Cordless Roller under heading 8413, HTSUS (1992), which provides for “[O]ther reciprocating pumps”, by application of GRI 3(b).

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY J80608 and NY M84902 was published on May 11, 2011, in Volume 45, Number 20, of the Customs Bulletin. CBP received no comments in response to this notice.

FACTS:

In NY N042191, CBP described the TurboRoll as follows:

This roller features a 24 inch rigid plastic cylinder with a duckbill valve on one end, a plastic plunger that travels inside the cylinder, a plunger head that contains two sealing o-rings, a battery-operated handle and a roller arm with a nine inch roller nap. The roller operates by having a continuous flow of paint moved through the cylinder by the action of the motorized pump.

A sample of the TurboRoll was submitted. A picture is included below:



ISSUE:

What is the correct classification under the HTSUS of the TurboRoll?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation. 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 2011 HTSUS provisions under consideration are as follows:

8413	Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; part thereof:
8413.50.00	Other reciprocating positive displacement pumps

9603	Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees):
9603.40	Paint, distemper, varnish or similar brushes (other than brushes of subheading 9603.30); paint pads and rollers:
9603.40.20	Paint rollers

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to Heading 84.13 states, in pertinent part:

This heading covers most machines and appliances for raising or otherwise continuously displacing volumes of liquids (including molten metal and wet concrete), whether they are operated by hand or by any kind of power unit, integral or otherwise.

* * *

(A) RECIPROCATING POSITIVE DISPLACEMENT PUMPS

These use the linear suction or forcing action of a piston or plunger driven within a cylinder, the inlet and outlet being regulated by valves. "Single-acting" pumps utilise the thrust or suction of one end of the piston only; "double-acting" types pump at both ends of the piston thus using both the forward and reverse strokes. In simple "lift" pumps the liquid is merely raised by suction and discharged against atmospheric pressure. In "force" pumps, the compression stroke is used, in addition to the suction stroke, to force the liquid to heights or against pressure. Multi-cylinder pumps are used for increased output. The cylinders may be either in line or in a star shape.

* * *

The EN to Heading 96.03 states, in pertinent part:

(F) PAINT PADS AND ROLLERS; SQUEEGEES (OTHER THAN ROLLER SQUEEGEES)

Paint rollers consist of a roller covered with lambskin or other material mounted on a handle.

* * *

In NY N042191, you argued that the TurboRoll was properly classified as a pump in heading 8413, HTSUS. CBP determined that the TurboRoll was classified pursuant to GRI 3(b) as a composite good under heading 9603, HTSUS, specifically under subheading 9603.40.20, HTSUS, which provides for “[P]aint pads and rollers; . . . : [P]aint pads and rollers: Paint rollers”. CBP found that the essential character was imparted by the paint roller component that actually applies the paint to the surface being painted.

In *Wagner Spray Tech Corp., Inc., v. United States*, 493 F. Supp. 2d 1265, (Ct. Int’l. Trade 2007), the Court of International Trade (CIT) considered the classification of paint rollers identified as the “Paint-N-Roll”, “PaintMate Plus”, “StainMate”, and “Trim-It”. CBP had previously described these articles in the following manner:

Although each model differs slightly both in appearance and individual characteristics, they operate essentially on the same principle. By inserting a fill tube into a can of paint or stain and subsequently attaching it to the bottom of the product’s arm and opening the fill valve, a vacuum is created which draws the liquid into a reservoir located within the arm. This is done by pulling back on a plunger at the handle, forcing in the liquid. Once the reservoir is full, the valve is closed, the liquid is under pressure, and the product is ready for use. In the Paint-N-Roll Plus, the liquid is dispensed by pushing forward a plunger that forces it through the device’s nozzles and onto the roller. In the remaining three models, a trigger is used to dispense a controlled amount of liquid from the reservoir onto the pad or roller. In all four models it is the pad or roller that dispenses the paint or stain onto a surface.

See Headquarters Ruling Letter (HQ) 966933, dated April 27, 2004.

Heading 9603, HTSUS, is an *eo nomine* provision, in that it identifies “paint rollers” by name. According to the CIT in *Wagner*:

An *eo nomine* provision describes goods according to their common and commercial meaning. A court may rely upon its own understanding of the terms used consult lexicography or other reliable sources to define the tariff term. In addition, an *eo nomine* provision that names an article without terms of limitation, absent evidence of a contrary legislative intent, is deemed to include all forms of the article. Furthermore, an article which has been improved or amplified but whose essential characteristic is preserved or only incidentally altered is not excluded from an unlimited *eo nomine* statutory designation.

Wagner, 493 F. Supp. 2d at 1269–1270 (internal citations and quotations omitted). The CIT went on to define a “paint roller” as “one that consists typically of a rotating cylinder . . . covered with an absorbent material and

mounted on a handle so that the cylinder can be dipped into paint or otherwise ... be supplied with paint and rolled over a flat surface ... so as to apply the paint.” *Wagner*, 493 F. Supp. 2d at 1271 (citing *Webster’s Third New Int’l Dictionary* (1986) at 1622).

With respect to the products at issue in *Wagner*, the CIT also noted that:

Each Wagner product contains a paint pad or a paint roller, which resembles a conventional pad or roller, and the function of each product is identical to traditional pads and rollers, to spread paint onto surfaces.

The method by which this is accomplished does not warrant classification based only on component parts of the products, nor does it render the products prima facie classifiable in more than one heading.

Wagner, 493 F. Supp. 2d at 1271 (emphasis added). Noting that “an *eo nomine* designation includes all forms of the product, including improved forms” (*Id.*, at 1271, citing *Chevron Chemical Co. v. United States*, 59 F. Supp. 2d 1361 (Ct. Int’l. Trade 1999)), the CIT held that “[h]eading 9603 properly classifies the products according to their common and commercial meaning as paint pads or rollers, albeit amplified by the patented Wagner roller core and handle.” *Wagner*, 493 F. Supp. 2d at 1271.

Like the products considered in *Wagner*, the TurboRoll is a “paint roller” as defined above. It consists of a rotating cylinder covered with an absorbent material, which is mounted on a handle so that the cylinder can be supplied with paint and rolled over a flat surface. *See Wagner*, 493 F. Supp. 2d at 1271. The TurboRoll is an improved version of the traditional paint roller in that it contains a mechanism which supplies paint directly to the absorbent material on the rotating cylinder. The user no longer has to repeatedly dip the rotating cylinder in a tray of paint to coat the absorbent surface. However, its function is identical to traditional rollers – it is used to spread paint onto surfaces. As stated by the CIT, “[t]he method by which this is accomplished does not warrant classification based on only component parts of the products, nor does it render the products *prima facie* classifiable in more than one heading.” *Id.* Therefore, the TurboRoll is properly classified by operation of GRI 1 in heading 9603, HTSUS, specifically under subheading 9603.40.20, HTSUS, which provides for: “[P]aint pads and rollers; ... : [P]aint pads and rollers: Paint rollers”.

Inasmuch as this good is described in full by heading 9603, HTSUS, as a paint roller, its classification under heading 8413, HTSUS, by GRI 3(b) is precluded.

Our analysis also applies to the classification of Wagner’s Cordless Roller, a hand-held paint roller fitted with a battery-operated pump, which we classified in NY 870922 under heading 8413, HTSUS, specifically in subheading 8413.50.00, the provision for “Other reciprocating positive displacement pumps.” As the Cordless Roller is substantially similar to the TurboRoll, we find that it is properly classified by operation of GRI 1 under heading 9603, HTSUS, as a paint roller, based on all of the foregoing.

HOLDING:

By application of GRI 1, the TurboRoll Battery Paint Roller is classified under heading 9603, HTSUS, specifically in subheading 9603.40.20, HTSUS, which provides in relevant part for “Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees): Paint, distemper, varnish or similar brushes (other than brushes of subheading 9603.30); paint pads and rollers: Paint rollers”. The column one, general rate of duty is 7.5% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, NY N042191, dated November 20, 2008, is hereby MODIFIED and NY 870922, dated February 21, 1992, is hereby REVOKED.

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

Sincerely,

RICHARD MOJICA

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**REVOCAION OF RULING LETTERS AND REVOCAION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF THE ANTIBIOTIC DRUG
TELITHROMYCIN**

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

ACTION: Notice of revocation of ruling letters and treatment relating to tariff classification of the antibiotic drug Telithromycin.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking two ruling letters relating to the tariff classification of the antibiotic drug Telithromycin under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 20, on May 11, 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 September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Aaron Marx, Tariff Classification and Marking Branch: (202) 325–0195.

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 revoking two ruling letters pertaining to the tariff classification of the antibiotic drug Telithromycin. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) J80608, dated February 7, 2003, and NY M84902, dated July 17, 2006, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

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

In NY J80608 and NY M84902, CBP determined that the drug Telithromycin was classified in subheading 2941.50.00, HTSUS, as an Erythromycin derivative. It is now CBP's position that the drug Telithromycin is properly classified in subheading 2941.90.30, HTSUS, as an other antibiotic.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY J80608 and NY M84902 in order to reflect the proper classification of the antibiotic drug Telithromycin according to the analysis set forth in Headquarters Ruling Letter (HQ) H128138, which is set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 29, 2011

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H128138

June 29, 2011

CLA-2 OT:RR:CTF:TCM H128138 AMM**CATEGORY:** Classification**TARIFF NO.:** 2941.90.30

MS. KIMBERLY A. CARLSON, ESQ.
KATTEN MUCHIN ZAVIS ROSENMAN
525 WEST MONROE ST, SUITE 1600
CHICAGO, ILL 60661-3693

MR JOSEPH CHIVINI
AUSTIN CHEMICAL COMPANY, INC.
1565 BARCLAY BLVD
BUFFALO GROVE, IL 60089

RE: Revocation of New York Ruling Letters J80608 and M84902; classification of antibiotic drug Telithromycin

DEAR MS. CARLSON AND MR. CHIVINI,

This is in regard to New York Ruling Letter (NY) J80608, issued to Ms. Carlson on February 7, 2003, and NY M84902, issued to Mr. Chivini on July 17, 2006, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of the antibiotic drug Telithromycin. In both NY J80608 and NY M84902, Customs and Border Protection (CBP) classified Telithromycin under subheading 2941.50.00, HTSUS, as an Erythromycin derivative. We have reconsidered these rulings and have determined that Telithromycin is provided for in subheading 2941.90.30, HTSUS, as an other antibiotic.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY J80608 and NY M84902 was published on May 11, 2011, in Volume 45, Number 20, of the Customs Bulletin. CBP received no comments in response to this notice.

FACTS:

Telithromycin (CAS-191114-48-4) is described in the technical literature as a semisynthetic derivative of Erythromycin (CAS-114-07-8), a naturally occurring macrolide antibiotic. In structure, the central skeleton of Erythromycin consists of a 14-membered lactone ring (13-ethyl-13-tridecanolide) with ten asymmetric centers, and two linked sugars. The first sugar can be either L-Cladinose or L-Mycarose. The second sugar is D-Desosamine. Telithromycin differs chemically from Erythromycin in two ways. First, there is no L-Cladinose or L-Mycarose attached to the lactone ring. It is replaced with a ketogroup. Second, there is a carbamate ring attached to the side of the lactone ring. The nitrogen molecule of this carbamate ring is attached to a propyl alkyl, which is in turn attached to an imidazole ring, and finally to a pyridine ring.

ISSUE:

Is the antibiotic drug Telithromycin properly classified under subheading 2941.50.00, HTSUS, which provides for: "Antibiotics: Erythromycin and its derivatives; salts thereof", or under subheading 2941.90.30, HTSUS, as "Antibiotics: Other: Other: Aromatic or modified"?

LAW AND ANALYSIS:

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

The 2011 HTSUS provisions at issue are as follows:

2941	Antibiotics:
2941.50.00	Erythromycin and its derivatives; salts thereof

2941	Antibiotics:
2941.90	Other:
	Other:
2941.90.30	Aromatic or modified aromatic

Additional U.S. Note 2(b) to Section VI (which covers Chapter 29), HTSUS, states:

For the purposes of the tariff schedule:

* * *

(b) The term “modified aromatic” describes a molecular structure having at least one six-membered heterocyclic ring which contains at least four carbon atoms and having an arrangement of molecular bonds as in the benzene ring or in the quinone ring, but does not include any such molecular structure in which one or more pyrimidine rings are the only modified aromatic rings present;

* * *

Note 1(a) to Chapter 29, HTSUS, states, in pertinent part: “Except where the context otherwise requires, the headings of this chapter apply only to: (a) Separate chemically defined organic compounds, whether or not containing impurities ...”.

Subheading Note 1 to Chapter 29, HTSUS, states:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP’s practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to Heading 29.41 states, in pertinent part, the following: “In this heading, the term ‘derivatives’ refers to active antibiotic compounds which

could be obtained from a compound of this heading and which retain the essential characteristics of the parent compound, including its basic chemical structure.”

The EN to Subheading 2941.50 states, in pertinent part:

Erythromycin derivatives are active antibiotics whose molecules contain the following constituents of the erythromycin skeleton: 13-ethyl-13-tridecanolide with linked desosamine and mycarose (or cladinose). Esters are also considered as derivatives. This subheading includes, *inter alia*, clarithromycin (INN) and dirithromycin (INN). However, azithromycin (INN) which contains a 15-atom central ring and picromycin which contains no cladinose or mycarose, are not regarded as erythromycin derivatives.

There is no dispute that Telithromycin is classified in heading 2941, HTSUS. Rather, the issue is the proper 8-digit national tariff rate that is applicable. As a result, GRI 6 applies.

GRI 6 states:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

Telithromycin is an antibiotic, and the technical literature describes it as a semi-synthetic derivative of Erythromycin. Classification of derivatives proceeds under Subheading Note 1 of Chapter 29, HTSUS. Here, derivatives are specifically covered by subheading 2941.50, so the definition of the word “derivative” is at issue.

The word “derivative” is not specifically defined in Chapter 29 of the HTSUS. “Derivative” is “a term used in organic chemistry to express the relation between certain known or hypothetical substances and the compound formed from them by simple chemical processes in which the nucleus or skeleton of the parent substance exists.” *Van Nostrand’s Scientific Encyclopedia, 5th Edition*, 2005, p. 475. Under the EN for Heading 29.41, a derivative must “retain the essential characteristics of the parent compound, including its basic chemical structure.”

Erythromycin’s basic chemical structure contains a 14-member lactone ring and two linked sugars. The first sugar is either mycarose or cladinose. The second sugar is desosamine. See EN to Subheading 2941.50. Telithromycin’s chemical structure is similar, but it contains only one of the linked sugars. The mycarose/cladinose sugar has been removed, and replaced with a single oxygen atom. Telithromycin no longer contains the nucleus or skeleton of the parent substance, as specified in *Van Nostrand’s Encyclopedia*, nor the parent compound’s basic chemical structure, in accordance with EN 29.41, because the mycarose/cladinose group has been removed.

The EN to Subheading 2941.50 does not specifically exclude Telithromycin from classification as an Erythromycin derivative. However, EN 2941.50 states that Picromycin is not a derivative of Erythromycin for tariff purposes, because it contains no cladinose or mycarose. Telithromycin and Picromycin

are the same in that respect. Therefore, Telithromycin is likewise not a derivative of Erythromycin for tariff purposes.

Telithromycin contains a pyridine ring, which is a six member cyclic compound similar to benzene. Where benzene contains six carbon atoms and 6 hydrogen atoms, pyridine contains five carbon atoms, five hydrogen atoms, and one nitrogen atom. Thus, Telithromycin meets the definition of “modified aromatic” contained in Additional U.S. Note 2(b) to Section VI, HTSUS, in that it contains a six-membered heterocyclic ring which contains at least four carbon atoms and having an arrangement of molecular bonds as in the benzene ring. Telithromycin is properly classified under heading 2941, HTSUS, specifically under subheading 2941.90.30, HTSUS, which provides for: “Antibiotics: Other: Other: Aromatic or modified aromatic”. It should be noted that pyridine and pyrimidine (which is excluded from the definition of modified aromatic compounds) are two different molecules.

HOLDING:

By application of GRI 6, the antibiotic drug product Telithromycin is classified in subheading 2941.90.30, HTSUS, which provides for: “Antibiotics: Other: Other: Aromatic or modified aromatic”. The rate of duty is free. Duty rates are provided for your convenience and are subject to change.

EFFECT ON OTHER RULINGS:

New York Ruling Letter J80608, dated February 7, 2003, and NY M84902, dated July 17, 2006, are hereby REVOKED.

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

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**MODIFICATION OF TWO RULING LETTERS AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF VODKA**

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

ACTION: Notice of modification of two ruling letters and revocation of treatment relating to tariff classification of vodka.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying two ruling letters relating to the tariff classification of vodka under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 22, on May 25, 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 September 26, 2011.

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

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (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. 22, on May 25, 2011, proposing to revoke Headquarters Ruling Letter (HQ) H099760, dated May 25, 2010 and New York Ruling Letter (NY) N064255, dated July 8, 2009, in which CBP determined that the subject merchandise was classified under heading 2207, HTSUS, and specifically under subheading 2207.10.30, HTSUS, which provides for: “[u]ndenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher; ethyl alcohol and other spirits, denatured, of any strength: Undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher: For beverage purposes”.

As stated in the proposed notice, this action will cover any rulings on the subject 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 ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying HQ H099760 and NY N064255 to reflect the proper tariff classification of this merchandise under subheading 2208.60, HTSUS, which provides for: “Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages: Vodka”, pursuant to the analysis set forth in HQ H112716, which is attached to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions.

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

Dated: July 01, 2011

RICHARD MOJICA

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H112716

July 01, 2011

CLA-2 OT:RR:CTF:TCM H112716 GC

CATEGORY: Classification

TARIFF NO.: 2208.60

MR. MUNFORD PAGE HALL, II, ESQ.
ADDUCI, MASTRIANI & SCHAUMBERG, LLP
1200 SEVENTEENTH STREET, NW
WASHINGTON, DC 20036

RE: Modification of HQ H099760 and NY N064255; classification of vodka

DEAR MR. HALL:

This is in response to your letter, dated June 16, 2010, requesting reconsideration of Headquarters Ruling Letter (HQ) H099760, dated May 25, 2010, which pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) and country of origin of vodka. You request reconsideration of HQ H099760 only with respect to the tariff classification of the vodka. We have since reviewed HQ H099760 along with New York Ruling Letter (NY) N064255, dated July 8, 2009, which pertains to the classification of a similar product.¹ We find both rulings to be in error.

Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 22, on May 25, 2011. No comments were received in response to the notice.

FACTS:

The vodka subject to HQ H099760 is produced in Sweden from ethyl alcohol followed by fermentation with yeast of cereals. The vodka is imported in bulk and contains 96% alcohol/volume. In HQ H099760, the instant vodka was found to be classified under subheading 2207.10.30, HTSUS, which provides for: “[u]ndenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher; ethyl alcohol and other spirits, denatured, of any strength: Undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher: For beverage purposes”.

In addition to the above information, you informed us in an e-mail submission, dated January 24, 2010, that the instant vodka is the product of at least five distillations as well as charcoal filtration, which removes virtually all of the alcohol’s secondary constituents. As a consequence, the subject merchandise possesses the distinctive characteristics of vodka inasmuch as it has no color, taste, or aroma.

As imported, the subject vodka is fit for human consumption. Related to that, you noted in your reconsideration request that equivalent products (i.e. vodka that is 96% alcohol by volume) are sold commercially as vodka in Europe and in the United States. You also noted that the subject merchan-

¹ In NY N064255, the subject vodka, as described in “scenario 1” was to be imported at a strength greater to or equal to 80 percent alcohol by volume. After importation, it would be diluted with water, sugar and flavor to produce a flavored-vodka of 35 percent alcohol by volume.

dise satisfies the definition of “vodka” set forth in regulations of the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury (“TTB”) and the European Union.²

ISSUE:

Whether the instant vodka is properly classified under heading 2207, HTSUS, as undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher, or heading 2208, HTSUS, as a spirit?

LAW AND ANALYSIS:

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

2207	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher; ethyl alcohol and other spirits, denatured, of any strength: * * *
2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages:

At the outset, we note that heading 2207, HTSUS, and heading 2208, HTSUS, are both divided by a semicolon. Accordingly, in this instance, the subject merchandise falls under the scope of either the provision for “undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher” (heading 2207, HTSUS), or “spirits, liqueurs and other spirituous beverages” (heading 2208, HTSUS).

In HQ H099760, we noted that the instant vodka would be diluted to 40 percent alcohol by volume after importation, and therefore was described by heading 2207, HTSUS, because it is ethyl alcohol of a strength of 96 percent alcohol by volume at the time of importation.

This conclusion overlooks the fact that the scope of the provision for “spirits, liqueurs and other spirituous beverages” of heading 2208, HTSUS, is not limited to certain products of a certain alcoholic strength by volume. Accordingly, it must be determined whether the instant merchandise falls under the scope of the *eo nomine* provision for “spirits”.

When a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial

² Section 5.22, TTB Regulations (27 C.F.R. §5.22) sets forth the standards of identity for labeling and advertising of several classes and types of distilled spirits, and EC Regulation 110–2008 pertains to the definition, description, presentation, labeling and protection of geographical indications of spirit drinks.

meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576. The Oxford English Dictionary defines “spirit”, in pertinent part, as follows:

21. a. A liquid of the nature of an essence or extract from some substance, esp. one obtained by distillation...
- b. Without article: Liquid such as is obtained by distillation, *spec.* that which is of an alcoholic nature...
- c. orig. *pl.* Strong alcoholic liquor for drinking, obtained from various substances by distillation; *sing.* any particular kind of this...

We note that that the instant merchandise meets this definition for “spirits”. Particularly with respect to the scope of heading 2208, HTSUS, the subject merchandise is a strong alcoholic liquor for drinking obtained by distillation. The fact that it is suitable for consumption and substantially identical to varieties of vodka commercially available at 96 percent alcohol percent by volume serves as evidence that the instant vodka is recognizable as such. Based on the foregoing, we find that the product falls under the scope of the phrase “spirits, liqueurs and other spirituous beverages”, and is thus *prima facie* classifiable under heading 2208, HTSUS.³

This finding is supported by the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) to heading 22.08. The ENs constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN’s provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

Regarding the scope of “spirits, liqueurs and other spirituous beverages” of heading 2208, HTSUS, EN 22.08 provides a list of finished products that meet the terms of the heading. In so doing, EN 22.08 states, in pertinent part:

In addition to undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol, the heading includes, *inter alia*:

* * *

- (5) Vodka obtained by distilling fermented mach of agricultural origin (e.g., cereals, potatoes) and sometimes treated with activated charcoal or carbon.

(Emphasis in original)

While it may be the case that spirits of heading 2208, HTSUS, are typically of an alcoholic strength of less than 80 percent by volume, this is not a requirement imposed by the legal text. Moreover, the fact that vodka is listed in EN 22.08 among the examples of spirits, liqueurs and other spirituous

³ We note that the above referenced TTB and European Union regulations pertain to labeling and advertising of alcoholic products, not as guidance for classification of imported merchandise. Accordingly, they have limited utility with respect to the analysis of the scopes of headings 2207 and 2208, HTSUS. See *Amersham Corp. v. United States*, 5 C.I.T. 49, 56, 564 F.Supp. 813, 817 (1983) (Noting that “statutes, regulations and administrative interpretations relating to ‘other than tariff purposes’ are not determinative of [CBP] classification disputes.”).

beverages covered by the heading in addition to those of an alcoholic strength by volume of less than 80 percent indicates that the heading covers beverages of a greater alcoholic content.

However, we note that the instant vodka is also described by heading 2207, HTSUS, which provides for, in pertinent part, “undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher”. EN 22.07 provides, in pertinent part, that heading 2207, HTSUS, “...covers **neutral spirits**, i.e., ethyl alcohol containing water from which the secondary constituents... present in the first distillate have been almost completely removed by fractional distillation.” (Emphasis in original).

Ethyl alcohol, also referred to as ethanol, is defined in Merriam-Webster Collegiate Dictionary Online (2011), in pertinent part, as “a colorless...liquid that is the intoxicating agent in liquors and is also used as a solvent and in fuel”. Considering the fact that the instant merchandise is solely the result of multiple distillations of yeast with cereals along with charcoal filtration, it constitutes ethyl alcohol. In this regard, vodka is unique among spirits inasmuch as it is neutral, meaning that it contains no secondary constituents that provide flavor or aroma as a result of multiple distillations and charcoal filtration. See also EN 22.07, *supra*. The pertinent definition of the word “denature” in the Oxford English Dictionary is “[t]o alter (anything) so as to change its nature; e.g. to render alcohol... unfit for consumption”. As noted above, the subject vodka is fit for human consumption and is thus “undenatured”. Accordingly, vodka is undenatured ethyl alcohol. The fact that the subject merchandise is imported at an alcoholic strength by volume of 96 percent vol. means that it is *prima facie* classifiable under heading 2207, HTSUS.

Because the instant merchandise is *prima facie* classifiable under two HTSUS headings, GRI 3 applies. It provides, in pertinent part, as follows:

When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

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

GRI 3(a) is known as the “rule of relative specificity.” See *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998) (*Orlando Food*). Where articles can be classified under two HTSUS headings, under GRI 3(a) the classification “turns on which of these two provisions are more specific.” *Orlando Food*, 140 F.3d at 1441. Courts undertaking the GRI 3(a) comparison “look to the provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy and certainty.” *Faus Group, Inc. v. United States*, 581 F.3d 1369 (Fed. Cir. 2009) (quoting *Orlando Food*, 140 F.3d at 1441).

In this particular case, it is more difficult to satisfy the provision for “spirits, liqueurs and other spirituous beverages” than the provision for

“[u]ndenatured ethyl alcohol of an alcoholic strength by volume of 80 percent or higher”, as spirits are a finished commercial product and undenatured ethyl alcohol is a mere raw material used in the creation of spirits and for other industrial purposes. While vodka’s status as a “neutral spirit” places it under the scope of heading 2207, HTSUS, not all ethyl alcohol of heading 2207, HTSUS, meets the terms of heading 2208, HTSUS, as spirits, liqueurs and other spirituous beverages. The instant product has been distilled five times and subjected to charcoal filtration. It is also indistinguishable from products sold and consumed as vodka. Accordingly, the instant product is a spirit, liqueur or other spirituous beverage of heading 2208, HTSUS.

HOLDING:

By application of GRI 3(a), the subject vodka is classified under heading 2208, HTSUS, and is specifically provided for under subheading 2208.60, HTSUS, as: “Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages: Vodka”. Classification beyond the six-digit level is determined by the capacity of the container in which the vodka is imported. 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:

HQ H099760, dated May 25, 2010, and NY N064255, dated July 8, 2009, are hereby MODIFIED.

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

Sincerely,

RICHARD MOJICA
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**MODIFICATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERTAIN STYLES OF BAGS**

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

ACTION: Notice of modification of one ruling letter and revocation of treatment relating to the tariff classification of three styles of Coach bags.

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 one ruling letter relating to the tariff classification of the following three styles of Coach bags: Style No. 11229 (Gallery Leather Laced Tote); Style No. 11230 (Gallery Leather Laced N/S Tote) and Style No. 11409 (Holiday Patchwork Book Tote) 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. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 20, on May 11, 2011. One comment was received in support of the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 26, 2011.

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 commu-

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

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI, this notice advises interested parties that CBP is modifying a ruling letter relating to the tariff classification of the bags. Although in this notice CBP is specifically referring to the modification of Headquarters Ruling Letter (HQ) H061115, dated October 1, 2010, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. No further rulings have been found. One comment was received in support of this notice.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ H061115 in order to reflect the proper classification of the bags according to the analysis contained in Headquarters Ruling Letter (HQ) H061115, which is attached to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 07, 2011

RICHARD MOJICA
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H133616

July 07, 2011

CLA-2 OT:RR:CTF:TCM H133616 EG

CATEGORY: Classification

TARIFF NO.: 4202.91.0030

JOHN B. PELLEGRINI, ESQ.
MCGUIRE WOODS, LLP
1345 AVENUE OF THE AMERICAS
SEVENTH FLOOR
NEW YORK, NY 10105-0106

RE: Modification of HQ H061115, dated October 1, 2010; Classification of Three Coach Bags

DEAR MR. PELLEGRINI:

This is in response to your correspondence dated November 17, 2010, in which you request reconsideration of Headquarters Ruling Letter (HQ) H061115, dated October 1, 2010. In HQ H061115, U.S. Customs and Border Protection (CBP) responded to a request for internal advice filed by you on behalf of Coach Services, Inc. (Coach) concerning the tariff classification of five Coach bags under the Harmonized Tariff Schedule of the United States (HTSUS). In HQ H061115, CBP classified the subject merchandise in sub-heading 4202.21.90, HTSUS, which provides for leather handbags.

In your request for reconsideration, you ask CBP to review the tariff classification of three of the five Coach bags in the original ruling. The three bags at issue are Style No. 11229 (Gallery Leather Laced Tote); Style No. 11230 (Gallery Leather Laced N/S Tote); and Style No. 11409 (Holiday Patchwork Book Tote). You do not dispute the tariff classification of the remaining two Coach bags in HQ H061115. Per your request, we have reviewed HQ H061115 with regard to the three subject bags and find the ruling to be in error. For the reasons set forth below, we hereby modify HQ H061115.

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 in the *Customs Bulletin*, Vol. 45, No. 20, on May 11, 2011. One comment was received in response to this notice and is addressed in this ruling.

FACTS:

In HQ H061115, CBP described the subject merchandise as follows:

Style No. 11229 (Gallery Leather Laced Tote)

Style No. 11229 has an outer surface of leather and measures 12.5" in length, 9" in height and 4" in width. It features an inside zip pocket, cellular phone/multifunction pockets, a ring to clip an accessory or key fob, two side pockets with turn lock closures, feet to prevent bottom from scuffing, a partial zippered closure, interior lining and handles.

Style No. 11230 (Gallery Leather Laced N/S Tote)

Style No. 11230 has an outer surface of leather and measures 12" in length, 12" in height and 5" in width. It features an inside zip pocket, cellular

phone/multifunction pockets, a ring to clip an accessory or key fob, two side pockets with turn lock closures, feet to prevent the bottom from scuffing, a partial zippered closure, interior lining and handles.

Style No. 11409 (Holiday Patchwork Book Tote)

Style No. 11409 has an outer surface of leather and measures 12.6" in length, 12.25" in height and 4.1" in width. It features an inside zip pocket, cellular phone/multifunction pockets, a ring to clip an accessory or key fob, two side pockets with turn lock closures, a partial zippered closure, interior lining and handles.

ISSUE:

Are the Coach bags classified in subheading 4202.21.90, HTSUS, as handbags or in subheading 4202.91.00, HTSUS, as travel, sports or similar bags?

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. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs 1 through 5.

The 2011 HTSUS provisions at issue are as follows:

4202 Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:

Handbags, whether or not with shoulder strap, including those without handle:

4202.21 With outer surface of leather, of composition leather or of patent leather:

Other:

4202.21.9000 Valued over \$20 each...

* * *

Other:

4202.91.00 With outer surface of leather, of composition leather or of patent leather:

4202.91.0030 Travel, sports and similar bags...

* * *

Subheading 4202.91, HTSUS, provides in pertinent part for travel, sports and similar bags of leather. Additional U.S. Note (AUSN) 1 to Chapter 42 states:

For the purposes of heading 4202, [HTSUS,] the expression “*travel, sports and similar bags*” means goods, other than those falling in subheadings 4202.11 through 4202.39, [HTSUS,] of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases, bottle cases and similar containers.

* * *

Coach does not dispute that the bags are classified in heading 4202, HTSUS. At issue is the applicable six-digit subheading. Therefore, we must apply GRI 6 to determine the correct classification of the bags.

Subheading 4202.21, HTSUS, provides for “handbags” – a term which is not defined in the HTSUS. A tariff term that is not defined in the HTSUS is construed in accordance with its common and commercial meaning. *Nippon Kogaku (USA) Inc. v. United States*, 69 C.C.P.A. 89, 92 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 C.C.P.A. 128, 134, 673 F.2d 1268, 1271 (1982). In HQ H004184, dated July 2, 2007, CBP set forth several dictionary definitions of handbags, such as “[an] accessory carried primarily by women and girls to hold such items as money, credit cards, and cosmetics” and “a woman’s bag held in the hand or hung from a shoulder strap and used for carrying small personal articles and money.”¹ Thus the common meaning of a handbag is a bag carried by women to hold small personal items such as money, credit cards and cosmetics.

Subheading 4202.91, HTSUS, provides for “other” bags with an outer surface of leather. CBP has developed a practice of referring to certain bags in subheading 4202.91, HTSUS, as “tote bags.” See, e.g. *J.E. Mamiye & Sons, Inc. v. United States*, 85 Cust. Ct. 92, 102 (1980), HQ 082271, dated December 1, 1988 and HQ H004184, July 2, 2007. In *J.E. Mamiye & Sons*, the U.S. Customs Court (predecessor to the U.S. Court of International Trade) stated that “tote bags are utilized by women as second handbags to carry items which do not ordinarily fit within a handbag.” *Id.* at 102. This decision was made when the Tariff Schedule of the United States (“TSUS”) was in effect. As noted in House Conference Report No. 100–576, dated April 20, 1998, on the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418), decisions by the Customs Service and the courts interpreting nomenclature under the TSUS are not to be deemed dispositive in interpreting the HTSUS. Nevertheless, on a case-by-case basis, prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no

¹ *Id.* citing Charlotte M. Calasibetta, *Essential Terms of Fashion: A Collection of Definitions* (Fairchild Publications 1986) and *Webster’s New Collegiate Dictionary* (G & C Merriam Co. 1977) respectively.

dissimilar interpretation is required by the text of the HTSUS. *See HQ 961127*, dated February 16, 1999; *HQ H016036*, dated April 1, 2008.

In the present case, both the TSUS and the HTSUS contain provisions with similar language that provide for similar merchandise. For example, Item 706, TSUS, which provided for luggage and handbags, contained breakouts for handbags and “other” bags. The breakout for “other” bags contained further provisions for travel bags “designed to contain clothing or other personal effects during travel.” *See, e.g.*, Items 706.04, 706.06, 706.13, TSUS. Similarly, the HTSUS contains breakouts for handbags, both of leather and of other material, as well as “other” bags. *See, e.g.*, subheadings 4202.21 and 4202.91, HTSUS. Furthermore, subheading 4202.91.00, HTSUS, also contains a breakout for “travel, sports and similar bags.” As a result, both the merchandise and the nomenclature of the tariff provisions lend themselves to similar interpretations under both tariff systems.

CBP has established several factors to distinguish handbags of subheading 4202.21, HTSUS, from tote bags of subheading 4202.91, HTSUS. With regard to handbags, CBP has stated that they typically: are smaller than tote bags, are designed to carry small personal items, include an inner lining, are reinforced along the bottom and corners, incorporate a substantial closure such as a zipper closure and include compartments to organize small personal items. *See HQ 959062*, dated January 28, 1997, *HQ 960899*, dated September 24, 1999 and *HQ H005625*, dated November 28, 2007. Regarding tote bags, CBP has stated that a tote bag generally has at least one side which exceeds 12 inches in length and can carry many different sundry items such as food, books or clothing. *See HQ 082271*, dated December 1, 1988 and *HQ 950708*, dated December 24, 1991.

On January 18, 2011, counsel for Coach brought samples of the three subject Coach bags to CBP. The two larger bags (style nos. 11229 and 11409) each had at least one side which exceeded 12 inches in length, while the third and smallest bag (style no. 11230) had a side which measured exactly 12 inches. Coach’s counsel demonstrated how even the smallest of the three bags could hold a variety of sundry items, such as shoes, an umbrella, a book, a water bottle and other items. While the three bags had several similarities with handbags, such as an inner pocket, lining, reinforcements and a secure top closure, the bags also had a large carrying capacity.

A handbag is a bag carried by women to hold small personal items such as money, credit cards and cosmetics. The two bigger Coach bags (style nos. 11229 and 11409) are larger than a typical handbag because they each have one side which exceeds 12 inches in length. These two bags can also hold a variety of large items, such as shoes, an umbrella, a book, a water bottle and other items. As such, we find that these two Coach bags are classifiable as tote bags under subheading 4202.91, HTSUS.

The third bag (style no. 11230) does not have a side which exceeds 12 inches (it measures 12 inches in height, 12 inches in length and 5 inches in width). However, it holds the same variety of sundry items as the two bigger bags (*e.g.*, clothing, bottled water, shoes, books, umbrellas and other larger items for longer trips). Having one side which exceeds 12 inches is just one factor in distinguishing a handbag from a tote bag. Therefore, we find that the smallest Coach bag (style no. 11230) is also classifiable as a tote bag under subheading 4202.91, HTSUS.

CBP received one comment in response to the proposed revocation. The commenter noted that the proposed modification helps to clarify the distinction between handbags and bags classified in subheading 4202.91, HTSUS, on the basis of carrying capacity. The commenter also stated that while the carrying capacity analysis is useful, the analysis is also largely subjective. In response, we disagree that the test is largely subjective. Rather, the test is an objective analysis of the multiple factors derived from the common meaning of the terms “handbag” and “tote,” which distinguish one from the other - like their carrying capacity.

HOLDING:

By application of GRI 6, Coach bag Style No. 11229 (Gallery Leather Laced Tote), Style No. 11230 (Gallery Leather Laced N/S Tote) and Style No. 11409 (Holiday Patchwork Book Tote) are classifiable under subheading 4202.91.0030, HTSUS, which provides for “Trunks, suitcases ... traveling bags ... sports bags ... and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: other: with outer surface of leather, of composition leather or of patent leather: travel, sports and similar bags.” The column one, general rate of duty is 4.5% *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:

HQ H061115, dated October 1, 2010, is hereby modified.

Sincerely,

RICHARD MOJICA

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**REVOCAION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A CERTAIN THREADED
FASTENER**

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to the tariff classification of the Rolls-Royce double hexagon head extended washer fastener (hex head fastener).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification of the hex head fastener under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 20, on May 11, 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 September 26, 2011.

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), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI, this notice advises interested parties that CBP is revoking a ruling letter relating to the tariff classification of the hex head fastener. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) N004775, dated December 29, 2006, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N004775 in order to reflect the proper classification of the hex head fastener according to the analysis contained in Headquarters Ruling Letter (HQ) H110418, which is attached to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 11, 2011

RICHARD MOJICA
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H110418

July 11, 2011

CLA-2 OT:RR:CTF:TCM H110418 EG**CATEGORY:** Classification**TARIFF NO.:** 7318.15.80

CARMEN R. MORROW
CUSTOMS COMPLIANCE ANALYST
ROLLS-ROYCE NORTH AMERICA, INC.
2001 SOUTH TIBBS AVE.
INDIANAPOLIS, IN 46241

RE: Revocation of NY N004775: Tariff classification of Double Hexagon Head Extended Washer Stainless Steel Fastener

DEAR Ms. MORROW:

This letter is in response to your request, dated May 20, 2010, for U.S. Customs and Border Protection (CBP) to reconsider New York Ruling Letter (NY) N004775, dated December 29, 2006. NY N004775 concerns the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a double hexagon head extended washer stainless steel fastener, part number AS21023 (hex head fastener), imported by your company. We have reviewed NY N004775 and find it to be in error.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed revocation was published on May 11, 2011, in the *Customs Bulletin*, Volume 45, No. 20. CBP received no comments in response to this notice.

FACTS:

The article in question is a stainless steel hex head fastener imported from the United Kingdom by Rolls-Royce North America, Inc. (Rolls-Royce). Rolls-Royce imports the hex head fasteners for use in airplane engines. It is 6.3 mm in diameter and 36.5 mm in length. The top of the hex head fastener includes a twelve-point wrench configuration for torquing. Underneath the twelve-point wrench configuration is a flange, or extended washer head. The hex head fastener's shank attaches to the flange at a curved fillet instead of at a hard right angle. The hex head fastener's shank is fully threaded with a chamfered point at the end. The request included the following drawing of the hex head fastener:

The drawing provides dimensional specifications for the hex head fastener. The hex head fastener's body diameter is a minimum of 6.25 mm and a maximum of 6.32 mm. The under-head fillet has a minimum radius of 0.38 mm and a maximum radius of 0.64 mm. The drawing sets forth the permissible variation of the thread concentricity by stating that "for bolts having a shank length of less than 1.5 mm x nominal bolt diameter, the thread pitch diameter should be made the datum [or reference] and the concentricity tolerance applied to the shank."

According to the drawing, the thread length at the shank bottom cannot exceed two pitches including the chamfer. The drawing indicates that the incomplete threads at the top of the shank must not encroach on the under-head radius. Within these boundaries, the shank is fully threaded. The drawing also indicates that the under-head bearing surface of the flange must be blended out smoothly into the shank, and that no excrescence or bumps are permissible on the under-head bearing surface.

In NY N004775, CBP classified the hex head fastener as a bolt under subheading 7318.15.20, HTSUS. Rolls-Royce now asserts that the fastener is sometimes, but not always, used with a nut. Moreover, Rolls-Royce claims that the extended washer head of the fastener renders it a cap screw and not a bolt. Therefore, Rolls-Royce requests that CBP revoke NY N004775 and reclassify the hex head fastener as a screw under subheading 7318.15.80, HTSUS.

ISSUE:

Whether the subject hex head fastener is classified as a bolt under subheading 7318.15.20, HTSUS, or as a screw under subheading 7318.15.80, HTSUS?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs 1 through 5.

Index to all of these Standards is published separately. All references to Standards include reference to RS and TS publications. Details of this and any further information can be obtained from A|D|S. ADS Group Limited Registered in England and Wales no. 7016635 ©2011 ADS Group Ltd. The information in this document is copyright and the property of ADS Group Ltd. It shall not be copied, or communicated to a third party, or used, for any purpose other than that for which it is supplied without the express written consent of ADS Group Ltd.

The 2011 HTSUS provisions under consideration in this case are as follows²:

7318	Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel:
	Threaded articles:
7318.15	Other screws and bolts, whether or not with their nuts or washers:
7318.15.20	Bolts and bolts and their nuts or washers entered or exported in the same shipment . . .
	Having shanks or threads with a diameter of 6 mm or more . . .
	* * *
	Other:
7318.15.80	Having shanks or threads with a diameter of 6 mm or more . . .
	* * *

CBP uses fastener industry standards to distinguish bolts from screws. When a fastener is described in a fastener industry dimensional standard as either a screw or a bolt, we follow that standard. When, as in this case, we have no dimensional standard, we consult the “Specification for Identification of Bolts and Screws,” in the American National Standards Institute (ANSI)/ American Society of Mechanical Engineers (ASME) B18.2.1 specification (1981). In *Rocknel Fastener, Inc. v. United States*, the court cited ANSI/ASME B18.2.1 as “provid[ing] a well-recognized, comprehensive basis for the common and commercial meaning of bolt and screw as understood by the fastener industry in the United States.” 24 Ct. Int’l Trade 900, 906 (2000).

ANSI/ASME B18.2.1 provides as follows:

A bolt is an externally threaded fastener designed for insertion through holes in assembled parts, and is normally intended to be tightened or released by torquing a nut.

A screw is an externally threaded fastener capable of being inserted into holes in assembled parts, of mating with a preformed internal thread or forming its own thread, and of being tightened or released by torquing the head.

A bolt is designed for assembly with a nut. A screw has features in its design which makes it capable of being used in a tapped or other preformed hole in the work. Because of the basic design, it is possible to use certain types of screws in combination with a nut. Any externally threaded fastener which has a majority of the design characteristics which assist its proper use in a tapped or other preformed hole is a screw, regardless of how it is used in its service application.

² The 2011 HTSUS provisions and duty rates are identical to the 2006 HTSUS provisions and duty rates.

ANSI/ASME B18.2.1 provides four Primary Criteria and nine Supplementary Criteria for consideration in distinguishing bolts from screws. If the fastener conforms to any of the Primary Criteria for either a bolt or a screw, it is classified accordingly. If none of the Primary Criteria are met, CBP consults the Supplementary Criteria.³ The Supplementary Criteria detail the principal features in the design of an externally threaded fastener which contribute to its proper use as a screw. A fastener having a majority of these characteristics is classified as a screw. *See, e.g.* Headquarters Ruling Letter (HQ) 951362, dated June 24, 1992 and HQ 965864, dated January 10, 2003.

The Primary Criteria are the following: 1) a fastener which can only be tightened or released by torquing a nut is a bolt; 2) a fastener which has a thread form which prohibits assembly with a nut is a screw; 3) a fastener which must be assembled with a nut to perform its intended service is a bolt; 4) a fastener which must be torqued by its head into a tapped or other preformed hole to perform its intended service is a screw. Since the subject hex head fastener is sometimes, but not always, used with a nut, it does not satisfy any of the Primary Criteria.

As such, we must examine the hex head fastener under the Secondary Criteria. If the hex head fastener satisfies a majority of the criteria, then it is classified as a screw. The nine Secondary Criteria are: 1) a screw must have a controlled fillet at the junction of the head with the body; 2) the under-head bearing surface of a screw should be smooth and flat; 3) the under-head bearing surface should be square with the shank of a screw; 4) the body diameter of a screw should be closely controlled; 5) the shank of a screw must be straight; 6) the threads of a screw must be concentric with the body axis within close limits; 7) the length of the thread must be sufficient to develop the full strength of the fastener in the hole; 8) a screw should have a chamfered or specially prepared point and 9) the length of a screw (from bearing surface to end point) should be closely controlled.

An examination of the drawing submitted by Rolls-Royce shows that the hex head fastener satisfies at least seven of the nine Secondary Criteria. Specifically, the hex head fastener: 1) has a controlled under-head fillet with a minimum radius of 0.38 mm and a maximum radius of 0.64 mm; 2) has a smooth under-head bearing surface; 3) has a closely controlled body diameter with a minimum diameter of 6.25 mm and a maximum diameter of 6.32 mm; 4) has a closely controlled thread concentricity; 5) has a fully-threaded shaft to develop the full strength of the fastener; 6) has a chamfered point and 7) has a controlled length of 36.5 mm. The drawing does not provide information regarding the following two criteria: the squareness of the under-head bearing to the hex head fastener's shank and the straightness of the hex head fastener's shank.

We note, additionally, that the hex head fastener has an extended washer head to facilitate torquing with a wrench. The washer-like flange on the underside of the head is the functional equivalent of a washer face. CBP has previously treated a washer face, or its equivalent, as a characteristic of screws. *See Heads and Threads, Div. of MSL Industries, Inc. v. United States*,

³ U.S. Customs and Border Protection, "What Every Member of the Trade Community Should Know About: Distinguishing Bolts from Screws," Informed Compliance Publication (March 2010) at http://www.cbp.gov/linkhandler/cgov/trade/legal/informed_compliance_pubs/icp013.ctt/icp013.pdf.

56 C.C.P.A. 95, 98–99 (1969); *see also* Headquarters Ruling Letter (HQ) 956811, dated April 14, 1995, and HQ 959280, dated December 19, 2000. For all of the foregoing reasons, the hex head fastener is classifiable as a screw and not as a bolt.

HOLDING:

By application of GRI 1 and GRI 6, the subject hex head fastener is classified in heading 7318, HTSUS. Since the hex head fastener is a screw with a thread which exceeds six millimeters in diameter, it is specifically provided for in subheading 7318.15.80, HTSUS, which provides for: “Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: threaded articles: other screws and bolts, whether or not with their nuts or washers: other: having shanks or threads with a diameter of 6 mm or more.” The 2011 column one, general rate of duty is 8.5 percent *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 N004775, dated December 29, 2006, is hereby revoked.

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

Sincerely,

RICHARD MOJICA

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A STEEL FURNITURE
LIFTER**

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

ACTION: Notice of proposed modification of a ruling letter and treatment relating to the tariff classification of a steel furniture lifter.

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 modify one ruling letter relating to the tariff classification of a steel furniture lifter 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 August 26, 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: Elizabeth 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 modify a ruling letter pertaining to the tariff classification of a steel furniture lifter. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) 853529, dated July 3, 1990, (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY 853529, CBP determined that the subject steel furniture lifter was classified in subheading 7326.90.85, HTSUS, which provides for "Other articles of iron or steel: other: other ..." It is now CBP's position that the steel furniture lifter is properly classified in subheading 8428.90.01, HTSUS, which provides, in pertinent part, for "Other lifting ... machinery: other machinery ..."

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to modify NY 853529 and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the steel furniture

lifter according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H161860, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated:

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY 853529

July 3, 1990

CLA-2-40:S:N:N3G:221 853529

CATEGORY: Classification

TARIFF NO.: 4016.99.5050; 7326.90.9090

MR. JEAN MARC BELLEMARE
SOLENO SPD, INC.
1160, ROUTE 133, C.P. 147
IBERVILLE, QUEBEC J2X 4J5, CANADA

RE: The tariff classification of the "Glisdome" sliding pad and a steel furniture lifter from Canada.

DEAR MR. BELLEMARE:

In your letter received in this office on June 14, 1990, you requested a tariff classification ruling.

The Glisdome sliding pad is composed of 97 percent synthetic rubber and 3 percent teflon. It is a flat circular product meant to be placed under furniture so that the furniture can be easily pushed or pulled along the surface of a floor or carpet. The Glisdome sliding pad is for use in offices, warehouses and homes. The furniture lifter is composed of 98 percent steel and 2 percent felt and plastic. Through means of a lever action, it aids in lifting furniture.

The applicable subheading for the Glisdome sliding pad will be 4016.99.5050, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of vulcanized rubber other than hard rubber, other. The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for the steel furniture lifter will be 7326.90.9090, HTS, which provides for other articles of iron or steel. The rate of duty will be 5.7 percent ad valorem.

Goods classifiable under subheading 4016.99.5050, HTS, which have originated in the territory of Canada, will be entitled to a 4.2 percent ad valorem rate of duty under the United States-Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

Goods classifiable under subheading 7326.90.9090, HTS, which have originated in the territory of Canada, will be entitled to a 4.5 percent ad valorem rate of duty under the United States-Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

[ATTACHMENT B]

HQ H161860

CLA-2 OT:RR:CTF:TCM H161860 EG**CATEGORY:** Classification**TARIFF NO.:** 8428.90.01

MR. JEAN MARC BELLEMARE

SOLENO SPD, INC.

1160, ROUTE 133

C.P. 147

IBERVILLE, QUEBEC J2X 4J5

CANADA

RE: Modification of New York Ruling Letter (NY) 853529; Classification of a Steel Furniture Lifter

DEAR MR. BELLEMARE:

This is in reference to New York Ruling Letter (NY) 853529, dated July 3, 1990, issued to you concerning the tariff classification of Glisdome furniture sliding pads and a steel furniture lifter from Canada under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) classified the steel furniture lifter in heading 7326, HTSUS, which provides for "other articles of iron or steel."¹ We have reviewed NY 853529 and find it to be in error. For the reasons set forth below, we hereby modify NY 853529.

FACTS:

The subject article is the steel furniture lifter. NY 853529 describes the steel furniture lifter as being comprised of 98 percent steel and two percent felt and plastic. Through means of a lever action, it aids in lifting furniture onto the Glisdome sliding pads.

ISSUE:

Is the steel furniture lifter classified under heading 7326, HTSUS, as other articles of steel, or under heading 8428, HTSUS, as other lifting machinery?

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 HTSUS provisions at issue are as follows:

7326	Other articles of iron or steel . . .
	* * *

¹ In NY 853529, CBP classified the Glisdome sliding pads in subheading 4016.99.50, HTSUS, as articles of vulcanized rubber. The classification of the Glisdome sliding pads is not at issue in this modification ruling.

8428 Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics) ...

* * *

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 84.28 states, in pertinent part, that:

With the exception of the lifting and handling machinery of headings 84.25 to 84.27, this heading covers a wide range of machinery for the mechanical handling of materials, goods, etc. (lifting, conveying, loading, unloading, etc.). They remain here even if specialized for a particular industry, for agriculture, metallurgy, etc. ...

* * *

Applying GRI 1, the first issue is whether NY 853529 properly classified the steel furniture lifter as an article of steel. Heading 7326, HTSUS, is the provision for articles of steel which are not classified elsewhere. See *I.B.M. v. United States*, 152 F.3d 1332, 1338 (Ct. Int'l Trade 1998). Therefore, if the furniture lifter can be classified elsewhere, it cannot be classified in heading 7326, HTSUS, by its terms.

The subject furniture lifter is a simple machine used to lift furniture based on the principles of a lever and fulcrum, where the handle serves as the lever and the plastic wheels serve as a fulcrum. Nothing in the terms of the heading, or in the ENs, excludes simple manual lifting machines based on the principals of a fulcrum. In fact, EN 84.28 emphasizes the “wide range” of lifting machines included in the heading. Therefore, the instant steel furniture lifter is described by the terms of heading 8428, HTSUS, and cannot be classified in heading 7326, HTSUS.²

HOLDING:

By application of GRI 1 and AUSR 1(a), the furniture lifter in NY 853529 is classifiable under heading 8428, HTSUS. Specifically, it is classifiable under subheading 8428.90.01, HTSUS, which provides, in pertinent part, for “Other lifting ... machinery: Other machinery ...” 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.

² In NY N087021, dated December 29, 2009, CBP classified a steel furniture lifter packaged together for retail sale with four furniture rollers (a non-slip cushion pad on top of a plastic wheel) as a set under heading 3926, HTSUS, as articles of plastic. That ruling is distinguishable from the case at hand because the furniture lifter was not individually classified. Rather, the plastic-wheeled furniture rollers were found to impart the essential character of the set.

EFFECT ON OTHER RULINGS:

NY 853529, dated July 3, 1990, is hereby modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**MODIFICATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF DIASORIN DYNABEADS
M-450 TOSYLACTIVATED AND M-280 TOSYLACTIVATED**

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to tariff classification of Diasorin Dynabeads M-450 Tosylactivated and M-280 Tosylactivated.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying one ruling letter relating to the tariff classification of a certain Diasorin Dyanbeads products under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 22, on May 25, 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 September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Aaron Marx, Tariff Classification and Marking Branch: (202) 325–0195.

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 modifying one ruling letter pertaining to the tariff classification of Diasorin Dynabeads M-450 Tosylactivated and M-280 Tosylactivated. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) 860953, dated March 38, 1991, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

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

In NY 860953, CBP determined that the Diasorin Dynabeads M-450 Tosylactivated and M-280 Tosylactivated were classified in heading 3903, HTSUS, specifically under subheading 3903.19.00, HTSUS, which provides for "Polymers of styrene, in primary forms: Polystyrene: Other". It is now CBP's position that the subject merchandise is properly classified in heading 3822, HTSUS, specifically in subheading 3822.00.50, HTSUS, which provides for "Diagnostic or laboratory reagents on a backing and prepared diagnostic or laboratory reagents, whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials: Diagnostic or

laboratory reagents on a backing, prepared diagnostic or laboratory reagents, whether or not on a backing, other than those of heading 3002 or 3006: Other”.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY 860953, and revoking any other ruling not specifically identified, in order to reflect the proper classification of the Diasorin Dynabeads M-450 Tosylactivated and M-280 Tosylactivated according to the analysis contained in Headquarters Ruling Letter (HQ) H129336, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP revokes any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 11, 2011

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H129336

July 11, 2011

CLA-2 OT:RR:CTF:TCM H129336 AMM**CATEGORY:** Classification**TARIFF NO.:** 3822.00.50

MR. GREGORY BLYSKAL
 DYNAL, INC.
 475 NORTHERN BLVD.
 GREAT NECK, NY 11021

RE: Modification of New York Ruling Letter 860953; Tariff Classification of Diasorin Dynabeads M-450 Tosylactivated and Dynabeads M-280 Tosylactivated products

DEAR MR. BLYSKAL,

This is in regard to New York Ruling Letter (NY) 860953, issued to Dynal, Inc. (Dynal), dated March 38, 1991, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of Dynabeads M-450 Tosylactivated (M-450 TOS) and Dynabeads M-280 Tosylactivated (M-280 TOS) products. Customs and Border Protection (CBP) classified the above-identified products under heading 3903, HTSUS, which provides for "Polymers of styrene, in primary forms". We have reviewed NY 860953 and found it to be incorrect. For the reasons set forth below, we propose to modify that ruling.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY 860953 was published on May 25, 2011, in Volume 45, Number 22, of the Customs Bulletin. CBP received no comments in response to this notice.

FACTS:

In NY 860953, CBP described the products in the following manner:

The beads (both the M-450 and M-280) are polystyrene spheres that contain an iron oxide salt. The polystyrene bead acts as a solid phase for the attachment of antibodies. There are two groups of products as follows:

Group I types are uncoated beads which allow researchers to attach an antibody of their choice directly onto the bead: Dynabeads M-450 uncoated Dynabeads M-450 Tosylactivated Dynabeads M-280 Tosylactivated

* * *

In NY 860953, CBP classified M-280 TOS and M-450 TOS in heading 3903, HTSUS, specifically under subheading 3903.19.00, HTSUS, which provides for "Polymers of styrene, in primary forms: Polystyrene: Other".

According to the product manual provided at <[http://tools.invitrogen.com/content/sfs/manuals/140_13.Dynabeads_M-450_Tocylactivated\(rev002\).pdf](http://tools.invitrogen.com/content/sfs/manuals/140_13.Dynabeads_M-450_Tocylactivated(rev002).pdf)>, the M-450 TOS product is described in the following manner:

1.1 Intended Use

Dynabeads M-450 Tosylactivated coupled with antibodies or other ligands provide a versatile tool for isolation of both cells and non-cell targets (e.g. proteins and other biomolecules). Their size makes them particularly suitable for stimulation and expansion of e.g. T cells (2,3,4,7). Cells can be directly isolated from any sample such as whole blood, bone marrow, mononuclear cell suspensions (MNC) or tissue digests.

* * *

1.2 Principle of Coupling

Dynabeads M-450 Tosylactivated provide reactive sulphonyl esters that can react covalently with proteins (e.g. antibodies) or other ligands containing primary amino or sulphhydryl groups. No further activation is necessary. Dynabeads M-450 Tosylactivated will bind proteins physically and chemically with an increasing number of covalent bonds with higher temperature and pH.

* * *

1.4 Description of Materials

Dynabeads M-450 Tosylactivated are uniform, superparamagnetic polystyrene beads (4.5 µm diameter) with a surface suitable for physical and chemical binding of antibodies and other biomolecules.

* * *

4. GENERAL INFORMATION

* * *

Warning And Limitations

This product is for research use only. Not intended for any animal or human therapeutic or diagnostic use unless otherwise stated.

* * *

According to the product manual provided at <<http://tools.invitrogen.com/content/sfs/manuals/142.03.04rev009.pdf>>, the M-280 TOS product has a similar construction, except that the beads are smaller (2.8 µm diameter instead of 4.5 µm). In addition, the M-280 TOS product is recommended for Target Protein Isolation procedures and Immunoassay procedures, rather than Cell Isolation.

ISSUE:

What is the proper classification of the Dynabeads M-280 Tosylactivated and Dynabeads M-450 Tosylactivated products under the HTSUS?

LAW AND ANALYSIS:

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

The 2011 HTSUS provisions at issue are as follows:

3822 Diagnostic or laboratory reagents on a backing and prepared diagnostic or laboratory reagents, whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials:

Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents, whether or not on a backing, other than those of heading 3002 or 3006:

3822.00.50 Other

3903 Polymers of styrene, in primary forms:

Polystyrene

3903.19.00

Other

Note 2(k) to Chapter 39, HTSUS, states, in pertinent part: “This chapter does not cover: ... (k) Diagnostic or laboratory reagents on a backing of plastics (heading 3822); ...”.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP’s practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to Heading 38.22 states, in pertinent part:

Prepared laboratory reagents include not only diagnostic reagents, but also other analytical reagents used for purposes other than detection or diagnosis. Prepared diagnostic and laboratory reagents may be used in medical, veterinary, scientific or industrial laboratories, in hospitals, in industry, in the field or, in some cases, in the home.

* * *

The instant merchandise, as imported, consists of three layers. The first two layers are a manufactured “bead,” which has a core of iron oxide salt encapsulated by a polystyrene polymer. The beads are manufactured in a special process, giving them two important characteristics. First, all the beads are the same size. This is a function of the emulsification process of the polystyrene polymerizing process. Second, the beads are magnetic. This is a function of the added iron oxide salt. These beads functions as the “backing.” The beads are then coated with a third layer, which is a polyurethane polymer. Finally, the hydroxyl groups of the polyurethane polymer are reacted with p-toluenesulfonyl chloride, which attaches sulfonyl ester groups to the hydroxyl groups of the polyurethane.

M-450 TOS is used in Cell Isolation procedures. M-280 TOS is used in Protein Purification and Immunoassay procedures. All of these procedures use a ligand (such as an antibody, protein, peptide, or glycoprotein) to isolate and separate a target molecule. However, the instant merchandise, as imported, cannot be used for either procedure. The end user must employ the Ligand Coupling Protocol as outlined in the product manuals.¹ This process is a chemical reaction which removes the sulfonyl ester groups from the polyurethane layer and replaces them with the ligand chosen by the end user. Once this procedure is complete, the user has a new chemical substance which can be used for some other purpose, be it Cell Isolation, Protein Purification or Immunoassays.

A reagent is “a substance employed as a test to determine the presence of some other substance by means of the *reaction* which is produced. Now, any substance employed in chemical reactions.” *The Compact Oxford English Dictionary*, Second Edition (p. 271, 1991). Such substances are also called

¹ See <[http://tools.invitrogen.com/content/sfs/manuals/140_13.Dynabeads_M-450_Tocylactivated\(rev002\).pdf](http://tools.invitrogen.com/content/sfs/manuals/140_13.Dynabeads_M-450_Tocylactivated(rev002).pdf)>, Section 2.2;<<http://tools.invitrogen.com/content/sfs/manuals/142.03.04rev009.pdf>>, Section 2.2.

reactants. A reactant is defined as “a substance that is consumed in the course of a chemical reaction. It is sometimes known, especially in the older literature, as a reagent, but this term is better used in a more specialized sense as a test substance that is added to a system in order to bring about a reaction or to *see* whether a reaction occurs (e.g. an analytical reagent).” *Compendium of Chemical Terminology, IUPAC Recommendations*, Second Edition. (p. 342, 1997).

Typically, a reagent is mixed with another chemical, reacts with it, and is consumed in that reaction, creating a different set of chemicals. For instance, silver nitrate is a reagent used for the detection of certain halide ions (chloride, iodide, bromide), particularly for chloride. When clear silver nitrate and sodium chloride solutions are combined, the silver and chloride ions react with one another to form a silver chloride solid precipitate and a solution of sodium nitrate. Hence, the addition of silver nitrate to a clear sodium chloride solution allows one to detect the presence of chloride in the solution, because the white silver chloride precipitate could not have formed without its presence.

The instant merchandise meets the definition of “reagent.” Both are mixed with another chemical, specifically, the chosen ligand and buffer solutions. A chemical reaction occurs, wherein the sulfonyl ester groups attached to the polyurethane polymer are removed and replaced with the chosen ligand. The chemical composition of the polyurethane layer is changed. The reaction creates a different set of chemicals, usable for a new purpose. Therefore, the M-450 TOS and M-280 TOS products are properly classified under heading 3822, HTSUS, as “... prepared ... laboratory reagents, whether or not on a backing ...”.

New York Ruling (NY) 863359, dated May 24, 1991, considered four similar products, namely Dynabeads M-280 streptavidin, Dynabeads Oligo (dt)25, Dynabeads Template preparation kit and Dynabeads mRNA. All of these products use the same superparamagnetized polystyrene bead as the instant merchandise. However, they use a different coating. The Dynabeads M-280 streptavidin product is a bead coated with streptavidin, which is a protein used to capture biotin from a sample. This product is ready to use for numerous applications, including purification of proteins and nucleic acids, protein interaction studies, immunoprecipitation, immunoassays, phage display, biopanning, drug screening and cell isolation. The Dynabeads Oligo (dt) 25 product is a bead coated with oligonucleotides, which is a nucleic acid used to capture intact mRNA from a sample. The product is ready to use for the rapid isolation of highly purified, intact mRNA from eukaryotic total RNA or directly from crude extracts of cells, animal and plant tissues. The Dynabeads Template preparation kit is a package containing Dynabeads M-280 streptavidin and several buffer solutions. The Dynabeads mRNA purification kit is a package containing Dynabeads Oligo (dt)25 and several buffer solutions. These products are different from the instant merchandise, in that they do not have to go through the Coating Procedure. A chosen ligand has already been attached. However, they are similar in that the products coated with streptavidin and oligonucleotide form strong chemical bonds with their target molecule, changing their chemical composition. CBP classified them under heading 3822, HTSUS, as reagents, even though the reactions are reversible.

In Headquarters Ruling (HQ) 967094, dated May 11, 2006, CBP considered HyperD® products similar to the instant merchandise. The HyperD® products are composite materials in bead form consisting of a co-polymeric crosslinked network (hydrogel) distributed inside the pores of a rigid, mineral (mixture of sintered zirconium and calcium silicates) “ceramic” support (substrate). The substrate acts as a solid skeleton, while the hydrogel polymer governs the exchange mechanism for macromolecule or particle adsorption. The polymer provides a tridimensional network for the capture of separated molecules. Affinity ligands are chemically attached to the hydrogel polymers at one end, leaving the other end free to react with the targeted substance to form a complex or coordination compound with that substance. CBP held that these products were “separation media,” rather than reactants, and found that they were not classifiable under heading 3822, HTSUS.

Separation media are not reagents because there is no chemical reaction that consumes the reagent. Rather, the HyperD® products are used in “adsorption chromatography,” the “separation of a chemical mixture (gas or liquid) by passing it over an adsorbent bed which adsorbs different compounds at different rates.” “Adsorption” is defined as “the surface retention of solid, liquid, or gas molecules, atoms, or ions by a solid or liquid” *McGraw-Hill Dictionary of Scientific and Technical Terms, Fifth Ed.*, Parker, Sybil P., ed. (1994, p. 38). While the EN’s specifically include a seemingly broad spectrum of reagents, including “other analytical reagents used for purposes other than detection or diagnosis,” separation media cannot be considered a reagent, analytical or otherwise, as explained above.

Chapter 39, HTSUS, does not cover laboratory reagents on a backing of plastics. See Note 2(k) to Chapter 39, HTSUS. As described above, the instant merchandise is a prepared laboratory reagent. In addition, it is on a backing of plastics, in the form of a polystyrene and polyurethane superparamagnetic bead. Therefore, the M-450 TOS and M-280 TOS products are precluded from classification under heading 3903, HTSUS.

HOLDING:

By application of GRI 1, the Dynabeads M-450 and Dynabeads M-280 Tosylactivated products are properly classified under heading 3822, HTSUS, specifically under subheading 3822.00.50, HTSUS, which provides for “Diagnostic or laboratory reagents on a backing and prepared diagnostic or laboratory reagents, whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials: Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents, whether or not on a backing, other than those of heading 3002 or 3006: Other”.

The general, column one duty rate is free. Duty rates are provided for your convenience and are subject to change.

EFFECT ON OTHER RULINGS:

NY 860953, dated March 28, 1991, is hereby MODIFIED in accordance with the above analysis.

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

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

19 CFR PART 177

Proposed Revocation of Ruling Letters and Proposed Revocation of Treatment Relating to Classification of Salad Spinners

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

ACTION: Notice of proposed revocation of two ruling letters and treatment relating to the classification of salad spinners.

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

DATES: Comments must be received on or before August 26, 2011.

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

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

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke two rulings pertaining to the classification of salad spinners. Although in this notice CBP is specifically referring to New York Ruling Letters (NY) N047346, dated January 14, 2009 (Attachment A), and NY N061380, dated June 15, 2009 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP 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 his agents for importations of merchandise subsequent to this notice.

In NY N047346 and NY N061380, CBP ruled that subject merchandise was classified in subheading 8479.89.98, HTSUS, which provides for "Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts

thereof: Other machines and mechanical appliances: Other: Other.” These rulings are incorrect because the subject salad spinners use centrifugal force to dry salad greens and are therefore classified *eo nomine* in subheading 8421.19.00, HTSUS, which provides for “Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: Centrifuges, including centrifugal dryers: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N047346 and NY N061380, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H121095. (*see* Attachment “C” to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: June 9, 2011

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

N047346

January 14, 2009

CLA-2-84:OT:RR:E:NC:1:104

CATEGORY: Classification

TARIFF NO.: 8479.89.9899

MR. MAHIR AKARSU
BJ'S WHOLESALE CLUB, INC.
ONE MERCER ROAD
NATICK, MA 01760

RE: The tariff classification of a KitchenAid® Salad Spinner from China

DEAR MR. AKARSU:

In your letter dated December 17, 2008 you requested a tariff classification ruling.

The imported merchandise is a salad spinner. The body of the salad spinner is plastic. It contains a nonslip base which provides for better stability and is 7-1/2 H" X 11" inches in diameter. The basket holds up to 6 quarts of food. The salad spinner is ideal for multiple kitchen tasks. The salad spinner features 3 removable, divided compartments that allow for washing and spinning different foods without mixing the foods together. The plastic lid of the bowl contains a mechanical feature which is a soft-grip plunger pump with a quick stop mechanism.

The applicable subheading for the KitchenAid® Salad Spinner will be 8479.89.9899, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other...Other...Other. The rate of duty will be 2.5% ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patricia O'Donnell at (646) 733-3011.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

N061380

June 15, 2009

CLA-2-84:OT:RR:NC:1:104

CATEGORY: Classification

TARIFF NO.: 8479.89.9899

MR. NICHOLAS D'ANDREA
DELMAR INTERNATIONAL INC.
147-55 175th STREET
NEW YORK, NY 11434

RE: The tariff classification of a Commercial Salad Spinner Dryer from China

DEAR MR. D'ANDREA:

In your letter dated May 18, 2009 on behalf of your client MR. BAR.B.Q. Inc., you requested a tariff classification ruling.

Item #90005 is a commercial salad spinner dryer to be used to assist with the drying of salad in the food service industry and restaurants. The spinner salad dryer is made of heavy duty plastic material, consisting of an outer casing with an inner spinning basket and a cover that incorporates the hand cranking mechanism. The hand crank shaft is made of rust resistant commercial grade aluminum. The mechanical cranking mechanism contains the cranking handle, gear box and gear braking system. The inner basket holds the salad which can spin both clockwise and counter-clockwise. This action facilitates the drying of the wet salad. The salad dryer has a 5 gallon capacity and can accommodate 5-6 heads of lettuce.

In your letter you stated that the classification of the commercial salad spinner dryer should be 8438.60.0000, Harmonized Tariff Schedule of the United States (HTSUS). This classification calls for the industrial preparation or manufacture of food or drink. The commercial salad spinner dryer is not performing any preparation of the contents such as baking or changing the contents by mixing, cutting or blending, among other processes. It is merely extracting excess water from the surface of the contents by centrifugal force. As this is not preparing or processing, it would be excluded from HTSUS 8438.

The applicable subheading for the commercial salad spinner dryer will be 8479.89.9899, HTSUS, which provides for Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter, parts thereof; Other machines and mechanical appliances: Other...Other...Other. The rate of duty will be 2.5% ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patricia O'Donnell at (646) 733-3011.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT C]

HQ H121095

CLA-2 OT:RR:CTF:TCM HQ H121095 TNA**CATEGORY:** Classification**TARIFF NO.:** 8421.19.00

MR. MAHIR AKARSU
BJ'S WHOLESALE CLUB, INC.
ONE MERCER ROAD
NATICK, MA 01760

RE: Revocation of NY N047346 and NY N061380; Classification of Salad Spinners

DEAR MR. AKARSU:

This letter is in reference to New York Ruling Letter ("NY") N047346, issued to BJ's Wholesale Club, Inc. on January 14, 2009, and NY N061380, issued to Delmar International, Inc. on June 15, 2009, concerning the tariff classification of Salad Spinners from China. In those rulings, U.S. Customs and Border Protection ("CBP") classified the merchandise under subheading 8479.89.98, Harmonized Tariff Schedule of the United States ("HTSUS"), as "Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other: Other." We have reviewed NY N04738 and NY N061380 and found them to be in error. For the reasons set forth below, we hereby revoke NY N04738 and NY N061380.

FACTS:

The subject merchandise consists of salad spinners. The spinner at issue in NY N047346 contains a plastic body and a nonslip base for better stability. It is 7-1/2 H" X 11" inches in diameter. The basket holds up to 6 quarts of food and features 3 removable, divided compartments that allow for washing and spinning different foods without mixing the foods together. The plastic lid of the bowl contains a mechanical feature which is a soft-grip plunger pump that initiates the spinner that whisks the water away from the salad material inside the bowl. The lid also has a quick stop mechanism.

The merchandise at issue in NY N061380 is a commercial salad spinner dryer used to dry salad in the food service industry and restaurants. It is made of heavy duty plastic material and consists of an outer casing with an inner spinning basket and a cover that incorporates a hand cranking mechanism. The hand crank shaft is made of rust resistant commercial grade aluminum. The mechanical cranking mechanism contains the cranking handle, gear box and gear braking system. The inner basket holds the salad which can spin both clockwise and counter-clockwise, which facilitates the drying of the wet salad. The dryer has a 5 gallon capacity and can accommodate 5-6 heads of lettuce.

ISSUE:

Whether plastic salad spinners that use centrifugal force to remove water from salad greens should be classified in heading 3924, HTSUS, as articles of plastic; under heading 8421, HTSUS, as other types of centrifuges; or under heading 8479, HTSUS, as other types of machines or mechanical appliances?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

3924	Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:
3924.10	Tableware and kitchenware:
3924.10.40	Other
	* * * * *
8421	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof:
	Centrifuges, including centrifugal dryers:
8421.19.00	Other
	* * * * *
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof
	Other machines and mechanical appliances:
8479.89	Other
8479.89.98	Other

Note 2 to Chapter 39, HTSUS, states, in pertinent part, the following:

This chapter does not cover: ...

(s) Articles of section XVI (machines and mechanical or electrical appliances)

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

The EN to heading 3924, HTSUS, provides, in pertinent part:

This heading covers the following articles of plastics:

(A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes and trays of all kinds, coffee-pots, teapots, sugar bowls, beer mugs, cups, sauce-boats, fruit bowls, cruets, salt cellars, mustard pots, egg-cups, teapot stands, table mats, knife rests, serviette rings, knives, forks and spoons.

(B) Kitchenware such as basins, jelly moulds, kitchen jugs, storage jars, bins and boxes (tea caddies, bread bins, etc.), funnels, ladles, kitchen-type capacity measures and rolling-pins.

(C) Other household articles such as ash trays, hot water bottles, match-box holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).

(D) Hygienic and toilet articles (whether for domestic or non-domestic use) such as toilet sets (ewers, bowls, etc.), sanitary pails, bed pans, urinals, chamber-pots, spittoons, douche cans, eye baths; teats for baby bottles (nursing nipples) and finger-stalls; soap dishes, towel rails, toothbrush holders, toilet paper holders, towel hooks and similar articles for bathrooms, toilets or kitchens, not intended for permanent installation in or on walls. However, such articles intended for permanent installation in or on walls or other parts of buildings (e.g., by screws, nails, bolts or adhesives) are **excluded** (heading 39.25).

The EN to heading 8421, HTSUS, provides, in pertinent part:

This heading covers:

Machines which, by the use of centrifugal force, completely or partly separate substances according to their different specific gravities, or which remove the moisture from wet substances....

(I) CENTRIFUGES, INCLUDING CENTRIFUGAL DRYERS

Most of these machines consist essentially of a perforated plate, drum, basket or bowl, etc., revolving at great speed in a stationary collector, usually cylindrical, against the walls of which the expelled materials are projected by centrifugal force. In some types the substances of different specific gravities are collected at different levels by means of a series of inverted separator cones. In other types the solid ingredients are retained in the perforated revolving drum, basket, etc., and the liquid ingredients expelled. Machines of this latter type may also be used to force liquids to penetrate thoroughly into materials (e.g., in dyeing or cleaning).

The EN to heading 8479, HTSUS, provides, in pertinent part:

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

- (a) Is not excluded from this Chapter by the operation of any Section or Chapter Note.
- and (b) Is not covered more specifically by a heading in any other Chapter of the Nomenclature.
- and (c) Cannot be classified in any other particular heading of this Chapter since:
 - (i) No other heading covers it by reference to its method of functioning, description or type.
 - and (ii) No other heading covers it by reference to its use or to the industry in which it is employed.
 - or (iii) It could fall equally well into two (or more) other such headings (general purpose machines).

NY N047346 and NY N061380 classified the salad spinners in heading 8479, HTSUS, the text of which requires that merchandise classified there

cannot be classified elsewhere in the chapter. Therefore, we examine other headings to determine whether the subject merchandise is classified elsewhere in chapter 84, HTSUS.

The subject salad spinners use centrifugal force to whisk water away from salad greens. Heading 8421 covers centrifuges, and includes centrifuges that remove the moisture from wet substances. *See* EN 84.21. It consists of a basket that revolves at great speed in a stationary cylindrical collector. The solid ingredients- i.e., the salad greens- are retained and the moisture is removed by centrifugal force. *See* EN 84.21. As such, the subject merchandise is described by the terms of heading 8421, HTSUS, and can be classified there *eo nomine*. The heading text does not limit the heading to industrial items. While the EN notes “great speed” is required, there is no indication that such speed could not be obtained manually. *See* EN 84.21.

Insofar as the subject merchandise is classified in Section XVI, HTSUS, and specifically in heading 8421, HTSUS, it cannot be classified in heading 3924, HTSUS, in accordance with Note 3 to Chapter 39, HTSUS.

HOLDING:

Under the authority of GRI 1, the salad spinners are classified in heading 8421, HTSUS, and specifically in subheading 8421.19.00, HTSUS, which provides for “Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: Centrifuges, including centrifugal dryers: Other.” The 2010 column one general rate of duty is 1.3% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N047346, dated January 14, 2009, and NY N061380, dated June 15, 2009, are REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177

Proposed Modification of Ruling Letters and Proposed Revocation of Treatment Relating to the Classification of Wader Tops

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

ACTION: Notice of proposed modification of two ruling letters and revocation of treatment relating to the classification of wader tops (NY N019254, dated November 9, 2007, and NY N109175, dated June 22, 2010).

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

DATES: Comments must be received on or before August 26, 2011.

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

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

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to modify a ruling pertaining to the classification of wader tops. Although in this notice CBP is specifically referring to New York Ruling Letters (NY) N109175, dated April June 22, 2010 (Attachment A), and N019254, dated November 9, 2007 (Attachment B) this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP 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 his agents for importations of merchandise subsequent to this notice.

In NY N109175 and NY N019254, CBP classified wader tops that are imported without boots and are attached to the boots after importation in subheading 6406.99.15, HTSUS, as leg warmers. We

now believe that the subject merchandise classified as parts of footwear in subheading 6406.10.90, HTSUS, as parts of footwear. We note that many of CBP's prior rulings cited here and in the attached proposed HQ ruling refer to their merchandise simply as "waders," no matter whether the merchandise was imported as complete waders with the boot attached, imported without the boots attached, or imported with stocking feet. In the present case, however, we have called the subject merchandise "wader tops" to clarify that they are not imported with boots attached.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N109175, NY N019254, and any other ruling not specifically identified, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H122349. (*see* Attachment "C" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: June 28, 2011

RICHARD MOJICA
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

N109175

June 22, 2010

CLA-2-64:OT:RR:NC:N4:447

CATEGORY: Classification

TARIFF NO.: 6401.92.9060, 6405.20.90,
6405.90.9000, 6406.99.1540

MS. MOY CHU
 PACIFIC EAGLE USA
 9707 EL POCHE STREET
 S. EL MONTE, CA 91733

RE: The tariff classification of footwear from Taiwan and China

DEAR MS. CHU:

In your letter dated June 1, 2010 you requested a tariff classification ruling on four footwear items.

The submitted sample identified as item "CC933LA-800G," is an above-the-ankle/below-the-knee waterproof rubber boot with an outer sole and upper of rubber or plastics and a Thinsulate® lining.

The applicable subheading for item "CC933LA-800G" will be 6401.92.9060, Harmonized Tariff Schedule of the United States, (HTSUS), which provides for waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: other footwear: covering the ankle but not covering the knee: other: other: other. The rate of duty will be 37.5% ad valorem.

The submitted sample identified as item "0601DPGBTM," is a three-layered fishing wader complete with boots attached. The chest-high waders are described by you as having an outer layer of 100% polyester, a polyurethane coated laminate in the center and a polyester knit mesh inner lining. The boots are composed of polyvinyl chloride (PVC) with outer soles of felt textile materials.

The applicable subheading for item "0601DPGBTM" will be 6405.20.90, HTSUS, which provides for other footwear: with uppers of textile materials: other: other. The rate of duty will be 12.5% ad valorem.

The submitted sample identified as style "Hodgman EVA," is an above-the-ankle/below-the-knee waterproof boot with an outer sole composed of felt textile materials and an upper of ethylene-vinyl acetate (EVA) rubber or plastics.

The applicable subheading for style "Hodgman EVA" will be 6405.90.9000, HTSUS, which provides for other footwear: other: other. The rate of duty will be 12.5% ad valorem.

The submitted sample identified as item "FFSTCH400MX," is a three-layered fishing wader consisting of an outer layer of 100% polyester with camouflage print, a polyester knit mesh inner lining and a polyurethane (PU) coated laminate "sandwiched" in between. You state in your letter that item CC933LA-800G, previously identified in this ruling as a waterproof rubber boot, will be bonded to this fishing wader at your Los Angeles office after importation.

The applicable subheading for item "FFSTCH400MX" will be 6406.99.1540, HTSUS, which provides for parts of footwear: removable in-

soles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: other: of textile materials; of man made fibers: other. The rate of duty will be 14.9% ad valorem.

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

Item "FFSTCH400MX" falls within textile category 659. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

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

A copy of 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 Stacey Kalkines at (646) 733-3042.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

N019254

November 9, 2007

CLA-2-61:OT:RR:NC:TA:357

CATEGORY: Classification

TARIFF NO.: 6113.00.9044; 6406.99.1540;
5903.20.2000; 6307.90.9889; 5806.10.2400

MS. MAY CHU
PECA CORPORATION
9707 EL POCHE ST.
S. EL MONTE, CA 91733

RE: The tariff classification of men's waders and components from Taiwan and China. Correction to Ruling Number N016612

DEAR MS. CHU:

This replaces Ruling Number N016612, dated September 14, 2007, which contained a clerical error. Styles 83292 and 83293U showed an incorrect statistical suffix. A complete corrected ruling follows.

In your letter dated August 28, 2007, you requested a classification ruling. You submitted six samples which are being returned to you. Future requests should be limited to no more than five samples of related merchandise.

The first item, style 5HIP800MAX4U, "men's hipper," is the upper part of a hip boot, consisting of a three-layer laminated fabric leg portion with reinforcement in the knee, a finished hem at the top and a buckled strap at the top. It has a label indicating a shoe or boot size. The fabric, which has a camouflage print design on the outer surface, is made from two flat knit nylon fabrics with a layer of expanded neoprene in the center. It will be finished upon importation by attaching a rubber boot.

The second item, style 83292, is a men's waist high stocking foot wader made from a three-layer laminated fabric comprised of two flat knit nylon fabrics with a layer of expanded neoprene in the center. These trousers have an integral belt at the waist, reinforcement at the knee and unsized pod-shaped foot coverings at the bottom, designed to be worn under boots.

The third item, style 83293U, is identical in construction and features to style 83292 except that it lacks bottoms. Although you indicated that this item will be completed upon importation by adding boot bottoms, in its imported condition it will be considered trousers.

The fourth item, style 07020BELT, is a back support belt with a foam core and a textile covering with a hook and loop adjustment strap.

The fifth item is heat transfer seam tape made of "PU" (polyurethane) coated nylon fabric.

The sixth item is hook and loop fastener fabric tape made of nylon which will be imported on 60-yard rolls.

The applicable subheading for style 5HIP800MAX4U will be 6406.99.1540, Harmonized Tariff Schedule of the United States (HTSUS), which provides for parts of footwear: removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: other: of textile materials; of man-made fibers: other. The duty rate will be 14.9 percent ad valorem.

The applicable subheading for styles 83292 and 83293U will be 6113.00.9044, Harmonized Tariff Schedule of the United States (HTSUS),

which provides for other men's or boys' trousers, breeches and shorts, other than of cotton, made up of fabrics of heading 5903, 5906 or 5907. The duty rate will be 7.1 percent ad valorem.

The applicable subheading for style 07020BELT will be 6307.90.9889, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other made up textile articles, other. The duty rate will be 7 percent ad valorem.

The applicable subheading for the heat transfer seam tape will be 5903.20.2000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other textile fabrics impregnated, coated, covered or laminated with plastics, with polyurethane, of man-made fibers, over 70 percent by weight of rubber or plastics. The duty rate will be Free.

The applicable subheading for the hook and loop fastener tape will be 5806.10.2400, Harmonized Tariff Schedule of the United States (HTSUS), which provides for woven pile fabrics ... and chenille fabrics, of man-made fibers: fastener fabric tapes. The duty rate will be 7 percent ad valorem.

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

Style 5HIP800MAX4U falls within textile category 659; styles 83292 and 83293U fall within textile category 647; the hook and loop fastener tape falls within category 229. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cb-p.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

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

A copy of 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 William Raftery at 646-733-3047.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

HQ H122349

CLA-2 OT:RR:CTF:TCM H122349 TNA

CATEGORY: Classification

TARIFF NO.: 6406.10.90

Ms. MOY CHU
PACIFIC EAGLE USA
9707 EL POCHE STREET
S. EL MONTE, CA 91733

Re: Modification of NY N019254 and NY N109175; Classification of wader tops

DEAR Ms. CHU:

This is in response to your request, dated June 25, 2010, filed on behalf of Pacific Eagle Corporation, USA (“Pacific Eagle”) for reconsideration of New York Ruling Letter (“NY”) N109175, dated June 22, 2010, as it pertains to the classification of a “fishing wader top” (i.e., a one-piece water-proof garment used for wading imported without its corresponding boots)¹ under the Harmonized Tariff Schedule of the United States (HTSUS). In addition, we have reconsidered NY N019254, dated November 9, 2007, which concerns a similar wader top and was also issued to Pacific Eagle, and found both rulings to be partly in error. For the reasons that follow, we hereby modify NY N109175 and NY N019254.

FACTS:

The subject merchandise consists of two types of fishing wader tops imported by Pacific Eagle, namely: Style FFSTCH400MX and Style 5HIP800MAX4U.² Style FFSTCH400MX, which we addressed in NY N109175, is chest-high and has an outer layer of 100% polyester with camouflage print, a polyester knit mesh inner lining, and a polyurethane (PU) coated laminate in between. It is imported without its corresponding waterproof boots, which are attached to the wader top after importation.

Style 5HIP800MAX4U, which we addressed in NY N019254, is a “men’s hipper” (a hip-high wader top). It consists of a three-layer laminated fabric leg portion with reinforcement in the knee, a finished hem at the top and a buckled strap at the top. It has a label indicating a shoe or boot size. The fabric, which has a camouflage print design on the outer surface, is made from two flat knit nylon fabrics with a layer of expanded neoprene in the center. It is imported without its corresponding waterproof boots, which are attached to the wader top after importation.

In NY N109175 and NY N019254, CBP classified the wader tops at issue in subheading 6406.99.15, HTSUS, as “Parts of footwear (including uppers

¹ We note that many of the rulings cited in herein refer to their merchandise simply as “waders,” whether it was imported as complete waders with the boot attached, imported without the boots attached, or imported with stocking feet. In the present case, however, we have called the subject merchandise “wader tops” to clarify that they are not imported with boots attached. This is in line with prior CBP rulings. See HQ 085057, dated October 12, 1989.

² Both NY N109175 and NY N019254 classified a number of items. However, only the classification of Style FFSTCH400MX and Style 5HIP800MAX4U is at issue here.

whether or not attached to soles other than outer soles)... Other: Of other materials: Of textile materials: Leg Warmers.”

ISSUE:

Whether the subject wader tops are classified in heading 6210, HTSUS, as garments, or in heading 6406, HTSUS, as parts of footwear?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to the GRIs.

The HTSUS subheadings under consideration are the following:

6210	Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907:
6210.40	Other men's or boys' garments: Of man-made fibers:
6210.40.50	Other
6406	Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof:
6406.10	Uppers and parts thereof, other than stiffeners: Other: Other: Other:
6406.10.90	Other
	Other:
6406.99	Of other materials:
6406.99.15	Of textile materials

In your request for reconsideration, you submit that Style 5HIP800MAX4U and Style 0701DPPSF are similar to the Style 0701DPPSF, which we classified in NY L82802, dated March 24, 2005, under heading 6210 (subheading 6210.40.50), HTSUS, as a garment. However, Style 0701DPPSF can be distinguished from the subject merchandise in that it was a “stocking foot wader” – i.e., a one-piece garment with a neoprene stocking foot at the bottom of each trouser leg. The stockings were glued to the garment at the ankles. Typically, the user wears a pair of boots over stocking-foot waders, like Style 0701DPPSF. In contrast, the styles at issue are incomplete articles that are meant to be attached to boots after importation, not worn under them. As we explain below, CBP has consistently distinguished between stocking-foot waders; boot waders (imported with boots attached); and wader “tops” like the ones at issue.

In *Nomura (America) Corp. v. United States*, the U.S. Court of Customs and Patent Appeals considered the classification of chest-high boot waders. See *Nomura (America) Corp. v. United States*, 58 C.C.P.A. 82; 435 F.2d 1319; 1971 CCPA LEXIS 444; C.A.D. 1007. At the trial level, the U.S. Customs Court had examined the dictionary definitions of the terms “shoes,” “boots,” “footwear,” and “wader,” and defined “wader” as “high waterproof boots; hip boots,” or “high waterproof rubber boots for wading.” *Nomura (America) Corp. v. United States*, 62 Cust. Ct. 524, 527. Accordingly, the Customs Court held that the wader was classified as a boot, under the tariff heading that encompassed “boots, shoes or other footwear, composed primarily of India rubber.” *Id.* at 532. This analysis was affirmed by the appellate court, and later cases have followed the same analysis. See *Nomura (America)*, 58 C.C.P.A. 82, 85; *Academy Broadway Corp. v. United States*, 9 C.I.T. 55; 1985 Ct. Intl. Trade LEXIS 1619.

CBP rulings have also consistently adhered to this analysis. As a result, boot waders have been classified as footwear of headings 6401 through 6405, HTSUS. See HQ 086887, dated June 12, 1990; HQ 960756, dated June 29, 1999. Wader tops have been classified in heading 6406, HTSUS, as parts of footwear. See HQ 085057, dated October 12, 1989; NY C84222, dated March 4, 1998. Stocking-foot waders have been classified either in heading 6113, HTSUS, or heading 6210, HTSUS, depending on their constituent materials. See, e.g., NY L89514, dated January 18, 2006; NY C84222; NY L82659, dated March 17, 2005; NY H82045, dated June 13, 2001.

Heading 6406, HTSUS, provides, in pertinent part, for “parts of footwear (including uppers whether or not attached to soles other than outer soles).” The courts have considered the nature of “parts” under the HTSUS and two distinct though not inconsistent tests have resulted. See *Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, (“Bauerhin”) 110 F.3d 774. The first, articulated in *United States v. Willoughby Camera Stores*, (“Willoughby Camera”) 21 C.C.P.A. 322 (1933) requires a determination of whether the imported item is “an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” *Bauerhin*, 110 F.3d at 778 (quoting *Willoughby Camera*, 21 C.C.P.A. 322 at 324). The second, set forth in *United States v. Pompeo*, (“Pompeo”) 43 C.C.P.A. 9 (1955), states that “an imported item dedicated solely for use with another article is a ‘part’ of that article within the meaning of the HTSUS.” *Id.* at 779 (citing *Pompeo*, 43 C.C.P.A. 9 at 13). Under either line of cases, an imported item is not a part if it is “a separate and distinct commercial entity.” *Id.*

Style FFSTCH400MX and Style 5HIP800MAX4U are designed exclusively for attachment to waterproof boots. Once attached, they become boot waders. As such, they are “dedicated solely for use” with the boots. Moreover, the subject wader tops are not a separate and distinct commercial entity. They would not reasonably be worn without the boots, as overalls for example, because they are designed to be large enough to fit over a user’s clothes. Thus, under the *Pompeo* test, they are classified in heading 6406, HTSUS, as a “part of footwear.”

We now turn to the six-digit HTSUS classification. Subheading 6406.10, HTSUS, provides for “uppers and parts thereof.” The General EN to Chapter 64, paragraph D, explains that a footwear’s upper is “the part of the shoe or boot above the sole.” There is no limit to the shape or size of the upper. Thus, the subject chest wader tops are part of the uppers of the rubber boots to which they are attached. As a result, Style FFSTCH400MX and Style 5HIP800MAX4U are classified in subheading 6406.10.90, HTSUS, as “Parts of footwear (including uppers whether or not attached to soles other than outer soles)... Uppers and parts thereof, other than stiffeners: Other: Other: Other: Other.” This is consistent with prior CBP rulings. *See, e.g.*, HQ 085057; NY C84222.

HOLDING:

Under the authority of GRI 1, Style FFSTCH400MX and Style 5HIP800MAX4U are provided for in heading 6406, HTSUS. More specifically, they are classified under subheading 6406.10.90, HTSUS, which provides for: “Parts of footwear (including uppers whether or not attached to soles other than outer soles)... Uppers and parts thereof, other than stiffeners: Other: Other: Other: Other.” The general, column one duty rate is 4.5% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N019254, dated November 9, 2007, and NY N109175, dated June 22, 2010, are MODIFIED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**MODIFICATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A CRYOSTAT WINDOW
MADE OF SYNTHETIC DIAMOND**

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

ACTION: Modification of a ruling letter and revocation of treatment relating to the tariff classification of a Cryostat Window made from synthetic diamond.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying a ruling letter relating to the tariff classification of a Cryostat Window made of synthetic diamond under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 20, on May 11, 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 September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Aaron Marx, Tariff Classification and Marking Branch: (202) 325–0195.

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 modifying a ruling letter pertaining to the tariff classification of a Cryostat Window made of synthetic diamond. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N097693, dated April 13, 2010, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

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

In NY N097693, CBP determined that the Cryostat Window made of synthetic diamond was classified in subheading 7116.20.40, HTSUS, which provides for: "Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Other".

It is now CBP's position that the Cryostat Window is properly classified in subheading 7116.20.50, HTSUS, which provides for: "Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Other".

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N097693, in order to reflect the proper classification of the Cryostat Window made of synthetic diamond according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H128136, set forth an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 29, 2011

ALLYSON MATTANAH

For

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H128136

June 29, 2011

CLA-2 OT:RR:CTF:TCM H128136 AMM**CATEGORY:** Classification**TARIFF NO.:** 9002.90.95, 9001.90.50, 7116.20.50,
9013.90.90

MS. MARIAN E. LADNER
LADNER & ASSOCIATES PC
2000 SMITH STREET
HOUSTON, TX 77002

RE: Modification of New York Ruling Letter N097693; classification of certain synthetic diamond products

DEAR Ms. LADNER,

This letter is in response to your request, by letter dated August 30, 2010, to reconsider the classification, under the Harmonized Tariff Schedule of the United States (HTSUS) of five optical components in New York Ruling Letter (NY) N097693, issued to you by Customs and Border Protection (CBP) on April 13, 2010. We have reconsidered that ruling and found the classification of the Cryostat Window to be incorrect. Our analysis of the classification of four products at issue is set forth below.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY J80608 and NY M84902 was published on May 11, 2011, in Volume 45, Number 20, of the Customs Bulletin. CBP received no comments in response to this notice.

FACTS:

In NY N097693, CBP classified 5 synthetic diamond products: a **CO2 Beam Splitter**, classified under subheading 9002.90.95, HTSUS, which provides for: “Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked; ...: Other: Other: Other”, an **IR Prism Accessory**, classified under subheading 9001.90.50, HTSUS, which provides for: “...; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked: Other: Prisms”, a **Cryostat Window**, classified under subheading 7116.20.40, HTSUS, which provides for: “Articles of ... precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Other”, a **Laser Window**, classified under subheading 9013.90.90, HTSUS, which provides for: “...; lasers, other than laser diodes; ...; parts and accessories thereof: Parts and accessories: Other”, and a **Laser Heat Sink Window**, whose classification is not in dispute. All the products contain synthetic diamonds used in the electronic industry but are otherwise unrelated in their use.

The **CO2 Beam Splitter**, Part Number 155-104-0084, is made of E6’s Diafilm OP synthetic diamond. It is flat and oval shaped. According to the importer’s documents, it is used to split a laser beam in a laser spike anneal system, allowing the use of one lower power beam to perform the anneal function. A laser spike anneal system is used to reduce line width and

structures on a computer chip in order to increase performance. The importer states that the CO₂ beam splitter has an optical effect, in that it splits a beam of light. It is imported in a metal mounting which is composed of oxygen/halogen free copper and gold plating.

The **IR Prism Accessory**, Part Number 155-104-0569, is made of E6's IIIa Optical synthetic diamond. It has a non-standard prism shape, in that the base of the prism is a circle with a diameter of 2.5mm, and it rises to a rectangular top measuring 2.5mm by 0.8mm. Its height is 1.1mm. It is used as part of an infrared spectrometer, which uses the properties of infrared light to identify materials. Specifically, the IR Prism Accessory is used as an attenuated total reflection crystal in the measurement of changes that occur in a total internal reflected beam when it comes in contact with a sample material. It is not mounted in any frame when it is imported.

The **Cryostat Window**, Part Number 155-104-0934, is made of E6's Diafilm OP synthetic diamond. It is a disc with a diameter of 13mm. The surface has a 1% grade, making it nearly flat. It is used in a Cryostat, an instrument used to perform chemical and physical experiments at extremely low temperatures. The Cryostat Window acts as a shield between the inside and outside of the Cryostat. The Cryostat Window allows light to pass through it, but does not perform any optical or lensing effect.

The **Laser Window**, Part Number 155-104-0964, is made of E6's Diafilm OP synthetic diamond. It is a nearly flat rectangular plate, measuring 29.44mm long by 12mm wide. It is used in a CO₂ industrial laser, which is used to cut, weld, and surface treat a variety of materials. It is located in the laser cavity itself. The physical properties of the synthetic diamond prevent an effect known as "thermal lensing," which deteriorates the quality of the laser beam. The Laser Window allows light to pass through it, but does not perform any optical or lensing effect.

ISSUE:

- I. What is the proper classification for the CO₂ Beam Splitter under the HTSUS?
- II. What is the proper classification for the IR Prism Accessory under the HTSUS?
- III. What is the proper classification for the Cryostat Window under the HTSUS?
- IV. What is the proper classification for the Laser Window under the HTSUS?

LAW AND ANALYSIS:

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

The 2011 HTSUS provisions under consideration are as follows:

- 7116 Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed):
 Of precious or semiprecious stones (natural, synthetic or reconstructed):
 Other:
 Of semiprecious stones (except rock crystal):
 7116.20.40 Other
 7116.20.50 Other
-
- 8486 Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; machines and apparatus specified in Note 9 (C) to this chapter; parts and accessories:
 8486.90.00 Parts and accessories
-
- 9001 Optical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked:
 9001.90 Other:
 9001.90.50 Prisms
-
- 9002 Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked; parts and accessories thereof:
 9002.90 Other:
 Other:
 9002.90.95 Other
-
- 9013 Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this chapter; parts and accessories thereof:
 9013.90 Parts and accessories:
 9013.90.90 Other
-
- 9027 Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes; parts and accessories thereof:
 9027.90 Microtomes; parts and accessories:

Parts and accessories:

Other:

Of optical instruments and apparatus:

9027.90.64

Of instruments and apparatus of subheading 9027.20, 9027.30, 9027.50 or 9027.80

Note 3(l) to Chapter 71, HTSUS, states, in pertinent part: "This chapter does not cover: ... (l) Articles of chapter 90, 91 or 92 (scientific instruments, clocks and watches, musical instruments)".

Note 1 to Section XVI, HTSUS (which covers both chapters 84 and 85), provides, in pertinent part:

This section does not cover:

* * *

(f) Precious or semiprecious stones (natural, synthetic or reconstructed) of headings 7102 to 7104, or articles wholly of such stones of heading 7116, except unmounted worked sapphires and diamonds for styli (heading 8522); ...

* * *

(m) Articles of chapter 90; ...

* * *

Note 2 to Chapter 90, HTSUS states, in pertinent part:

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

* * *

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

(b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind;

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to heading 90.01(D) states:

Optical elements of any material other than glass, whether or not optically worked, not permanently mounted (e.g., elements of quartz (other

than fused quartz), fluorspar, plastics or metal; optical elements in the form of cultured crystals of magnesium oxide or of the halides of the alkali or the alkaline-earth metals). Optical elements are manufactured in such a way that they produce a required optical effect. An optical element does more than merely allow light (visible, ultraviolet or infrared) to pass through it, rather the passage of light must be altered in some way, for example, by being reflected, attenuated, filtered, diffracted, collimated, etc.

The EN to heading 90.02 provides, in pertinent part:

...this heading covers the articles referred to in Items (B), (C) and (D) of the Explanatory Note to heading 90.01 when in a permanent mounting (viz., fitted in a support or frame, etc.) suitable for fitting to an apparatus or instrument. The articles of the heading are mainly designed to be incorporated with other parts to form a specific instrument or part of an instrument ...

If any of the products can be described by the terms of a heading in Chapter 90, they are excluded from classification in heading 8486, HTSUS, by virtue of Note 1(m) to Section XVI, HTSUS, and excluded from classification in Chapter 71, HTSUS, by virtue of Note 3(l) to Chapter 71, HTSUS. Furthermore, a product described by the terms of a heading in Chapter 90, HTSUS, cannot be classified as a part of another good in another heading, by virtue of Note 2(a) to Chapter 90, HTSUS. Therefore, consideration under Chapter 90, HTSUS, must be conducted first, where applicable.

I. CO2 Beam Splitter

There are three separate headings under which the CO2 Beam Splitter has been considered. In the Resubmission of Binding Ruling Request, dated December 17, 2009, the importer proposed classification under heading 8486, HTSUS, which provides for: “Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; ...; parts and accessories”. In NY N097693, dated April 13, 2010, CBP classified the CO2 Beam Splitter under heading 9002, HTSUS, which provides for: “Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked; ...”. Finally, in the Request for Reconsideration of Binding Ruling for Classification – N097693, dated August 30, 2010, the importer argued for classification under heading 7116, HTSUS, which provides for: “Articles of ... precious or semiprecious stones (natural, synthetic or reconstructed)”.

The CO2 Beam Splitter is a flat, oval shaped synthetic diamond, imported in a metal mounting composed of oxygen/halogen free copper and gold plating. It is used to split a laser beam in a laser spike anneal system, allowing the use of one lower power beam to perform the anneal function. Heading 9002, HTSUS, includes “other optical elements”. According to EN 90.01(D), “[a]n optical element does more than merely allow light (visible, ultraviolet or infrared) to pass through it, rather the passage of light must be altered in some way ...”. The CO2 Beam Splitter alters the laser beam passing through it by splitting it into two different beams. Therefore, it meets the definition of “optical element” contained in EN 90.01(D). Furthermore, EN 90.02 states that the heading covers “the articles referred to in Items (B), (C) and (D) of

the Explanatory Note to heading 90.01 when in a permanent mounting (viz., fitted in a support or frame, etc.) suitable for fitting to an apparatus or instrument.” The copper/gold mounting is permanently attached to the synthetic diamond, and is suitable to fit a laser spike anneal device. Therefore, the CO2 Beam Splitter is properly classified under heading 9002, HTSUS, specifically under subheading 9002.90.95, HTSUS, which provides for: “Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked; parts and accessories thereof. Other: Other: Other”.

Because the CO2 Beam Splitter may be properly classified under heading 9002, HTSUS, is excluded from heading 8486, HTSUS, by Note 1(m) to Section XVI, HTSUS, and is excluded from heading 7116, HTSUS, by Note 3(l) to Chapter 71, HTSUS.

II. IR Prism Accessory

In NY N097693, CBP classified the IR Prism Accessory under heading 9001, HTSUS, which provides for “...; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked”. In the Request for Reconsideration of Binding Ruling for Classification – N097693, the importer argued for classification under heading 9027, HTSUS, which provides for “Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); ...; parts and accessories thereof”.

The IR Prism Accessory is made entirely of synthetic diamond, imported in an unmounted state. It is used as an attenuated total reflection crystal in an infrared spectrometer. When an infrared beam is directed into it at a certain angle, the internal reflection creates an evanescent wave that extends beyond the IR Prism Accessory surface and into the sample of material to be identified. Because the instant merchandise alters a beam of light by converting the infrared beam into an evanescent wave, it meets the definition of “optical element” contained in EN 90.01(D). Therefore, the IR Prism Accessory is properly classified under heading 9001, HTSUS, specifically under subheading 9001.90.50, HTSUS, which provides for: “...; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked: Other: Prisms”.

The importer argues that the IR Prism Accessory is a “part” of an infrared spectrometer, and should therefore be classified under heading 9027, HTSUS, by virtue of Note 2(b) to Chapter 90, HTSUS. However, as discussed above, the IR Prism Accessory is a good included in a heading of Chapter 90, HTSUS, namely heading 9001, HTSUS. Therefore, Note 2(a) to Chapter 90, HTSUS, directs that the IR Prism Accessory should be classified under heading 9001, HTSUS, notwithstanding whether it is a “part” of an infrared spectrometer.

III. Cryostat Window

In NY N097693, CBP classified the Cryostat Window under subheading 7116.20.40, HTSUS, which provides for: “Articles of ... precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semipre-

cius stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Other”. In the Request for Reconsideration of Binding Ruling for Classification – N097693, the importer argued that the Cryostat Window should be classified under subheading 7116.20.50, HTSUS, which provides for: “Articles of ... precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Other”.

CBP does not dispute that the Cryostat Windows are “Articles of ... precious or semiprecious stones (natural, synthetic or reconstructed)” under heading 7116, HTSUS. Rather, the dispute is the proper 8-digit national tariff rate. As a result, GRI 6 applies.

GRI 6 states:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

The issue then becomes whether synthetic diamond is a semiprecious stone or a precious stone. CBP has consistently classified articles comprised solely of synthetic diamond under subheading 7116.20.50, HTSUS, as precious stones. See NY C83488, dated January 29, 1998; Headquarters Ruling Letter (HQ) 958293, dated April 23, 1996; NY 883022, dated February 26, 1993; and HQ 952587, date January 26, 1993. Therefore, the Cryostat Window should also be classified as a precious stone, rather than a semiprecious stone. The Cryostat Window is properly classified under subheading 7116.20.50, HTSUS, which provides for “Articles of ... precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Other.”

IV. *Laser Window*

In NY N097693, CBP classified the Laser Window under heading 9013, HTSUS, which provides for: “...; lasers, other than laser diodes; ...; parts and accessories thereof”. In the Request for Reconsideration of Binding Ruling for Classification – N097693, the importer argued that the Laser Window should be classified under heading 7116, HTSUS, which provides for “Articles of ... precious or semiprecious stones (natural, synthetic or reconstructed)”.

In *Bauerhin Techs. Ltd. P'ship. v. United States*, 110 F. 3d 774 (Fed. Cir. 1997), the court identified two distinct lines of cases defining the word “part.” Consistent with *United States v. Willoughby Camera Stores, Inc.*, 21 C.C.P.A. 322, 324 (1933), one line of cases holds that a part of an article is an “integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” The other line of cases evolved from *United States v. Pompeo*, 43 C.C.P.A. 9, 14 (1955), which held that a device may be a part of an article even though its use is optional and the article will function without it, if the device is dedicated for use upon the article, and, once installed, the article will not operate without it. Under either line of cases, an imported item is not a part if it is “a separate and

distinct commercial entity.” *ABB, Inc. v. United States*, 28 Ct. Int’l Trade 1444, 1452–53 (2004); *Bauerhin*, 100 F. 3d at 1452–32.

The Laser Window is used in a Trumpf CO2 industrial laser, which is used to cut, weld, and surface treat a variety of materials. It is located in the laser cavity itself. These lasers generate a large amount of heat. Materials traditionally used for laser windows are not capable of handling this heat, as they are vulnerable to an effect known as “thermal lensing”, which deteriorates the quality of the beam. The physical properties of the synthetic diamond prevent “thermal lensing”. The Laser Window allows light to pass through it, but does not perform any optical or lensing effect. The Laser Window meets the *Willoughby* definition of a “part”, in that it is a component part without which the CO2 industrial laser could not function. If the Laser Window was not in place, the gas inside would escape, rendering the laser inoperable. Therefore, the Laser Window is properly classified as a “part” of a laser under heading 9013, HTSUS, specifically under subheading 9013.90.90, which provides for: “...; lasers, other than laser diodes; ...; parts and accessories thereof: Parts and accessories: Other”.

Because the Laser Window may be properly classified under heading 9013, HTSUS, in accordance with Note 2(b) to Chapter 90, HTSUS, it is excluded from heading 7116, HTSUS, by Note 3(l) to Chapter 71, HTSUS.

HOLDING:

By application of GRI 1, the CO2 Beam Splitter, Part Number 155–104–0084, is classified in heading 9002, HTSUS, specifically under subheading 9002.90.95, which provides for “Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked; parts and accessories thereof: Other: Other: Other”. The general, column one rate of duty is 3% *ad valorem*.

By application of GRI 1, the IR Prism Accessory, Part Number 155–104–0560, is classified in heading 9001, HTSUS, specifically under subheading 9001.90.50, which provides for “Optical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked: Other: Prisms”. The general, column one rate of duty is 2.8% *ad valorem*.

By application of GRI 6, the Cryostat Window, Part Number 155–104–0934, is classified in heading 7116, HTSUS, specifically under subheading 7116.20.50, which provides for “Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Other”. The general, column one rate of duty is free.

By application of GRI 1, the Laser Window, Part Number 155–104–0964, is classified in heading 9013, HTSUS, specifically under subheading 9013.90.90, which provides for “Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this chapter; parts and accessories thereof: Parts and accessories: Other”. The general, column one rate of duty is 4.5% *ad valorem*.

Duty rates are provided for your convenience and are subject to change.

EFFECT ON OTHER RULINGS:

New York Ruling Letter N097693, dated April 13, 2010, which classified the Cryostat Window under subheading 7116.20.40, HTSUS, is hereby MODIFIED in accordance with the above holding.

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

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



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

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

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning July 1, 2011, the interest rates for overpayments will be 3 percent for corporations and 4 percent for non-corporations, and the interest rate for underpayments will be 4 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

EFFECTIVE DATE: July 1, 2011

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

SUPPLEMENTARY INFORMATION:

Background

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

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

In Revenue Ruling 2011-12, the IRS determined the rates of interest for the calendar quarter beginning July 1, 2011, and ending on September 30, 2011. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). These interest rates are subject to change for the calendar quarter beginning October 1, 2011, and ending December 31, 2011.

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

<i>Beginning Date</i>	<i>Ending Date</i>	<i>Underpayments (percent)</i>	<i>Overpayments (percent)</i>	<i>Corporate Overpayments (Eff. 1-1-99) (percent)</i>
070174	063075	6	6	.....
070175	013176	9	9	.....
020176	013178	7	7	.....
020178	013180	6	6	.....
020180	013182	12	12	.....

<i>Beginning Date</i>	<i>Ending Date</i>	<i>Underpayments (percent)</i>	<i>Overpayments (percent)</i>	<i>Corporate Overpayments (Eff. 1-1-99) (percent)</i>
020182	123182	20	20	.....
010183	063083	16	16	.....
070183	123184	11	11	.....
010185	063085	13	13	.....
070185	123185	11	11	.....
010186	063086	10	10	.....
070186	123186	9	9	.....
010187	093087	9	8	.....
100187	123187	10	9	.....
010188	033188	11	10	.....
040188	093088	10	9	.....
100188	033189	11	10	.....
040189	093089	12	11	.....
100189	033191	11	10	.....
040191	123191	10	9	.....
010192	033192	9	8	.....
040192	093092	8	7	.....
100192	063094	7	6	.....
070194	093094	8	7	.....
100194	033195	9	8	.....
040195	063095	10	9	.....
070195	033196	9	8	.....
040196	063096	8	7	.....
070196	033198	9	8	.....
040198	123198	8	7	.....
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6

<i>Beginning Date</i>	<i>Ending Date</i>	<i>Underpayments (percent)</i>	<i>Overpayments (percent)</i>	<i>Corporate Overpayments (Eff. 1-1-99) (percent)</i>
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3

Dated: July 5, 2011.

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

[Published in the Federal Register, July 13, 2011 (76 FR 41283)]