

U.S. Customs and Border Protection



AGENCY INFORMATION COLLECTION ACTIVITIES: Crew's Effects Declaration

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

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information: 1651-0020.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Crew's Effects Declaration (CBP Form 1304). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 56213) on September 12, 2011, allowing for a 60-day comment period. One comment was received. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before December 16, 2011.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of

International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at (202) 325–0265.

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

Title: Crew’s Effects Declaration.

OMB Number: 1651–0020.

Form Number: CBP Form 1304.

Abstract: CBP Form 1304, *Crew’s Effects Declaration*, was developed through an agreement by the United Nations Intergovernmental Maritime Consultative Organization (IMCO) in conjunction with the United States and various other countries. This form is used as part of the entrance and clearance of vessels pursuant to the provisions of 19 CFR 4.7, 19 U.S.C. 1431 and 19 U.S.C. 1434. CBP Form 1304 is completed by the master of the arriving carrier to record and list the crew’s effects that are onboard the vessel. This form is accessible at http://forms.cbp.gov/pdf/CBP_Form_1304.pdf.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 9,000.

Estimated Number of Responses per Respondent: 22.9.

Estimated Number of Annual Responses: 206,100.

Estimated Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 206,100

Dated: November 10, 2011.

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

[Published in the Federal Register, November 16, 2011 (76 FR 71057)]



**PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED MODIFICATION OF TREATMENT RELATING
TO THE TARIFF CLASSIFICATION OF TOY MONEY**

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

ACTION: Notice of proposed modification of ruling letter and proposed modification of treatment relating to the classification of toy money.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) is proposing to modify a ruling letter relating to the tariff classification of toy money, featuring a redeemable coupon on the reverse side, under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP also proposes to modify any treatment previously accorded by it to substantially identical transactions. This notice does not alter the classification of the toy money clip in NY C89928. Comments are invited on the correctness of the intended actions.

DATES: Comments must be received on or before December 30, 2011.

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

FOR FURTHER INFORMATION CONTACT: Nerissa Hamilton-vom Baur, Tariff Classification and Marking Branch, at (202) 325-0104.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of toy money. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (“NY”) C89928, dated July 30, 1998 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP intends to modify any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substan-

tially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY C89928, CBP classified the toy money featuring a coupon on the reverse side under heading 4907, HTSUS, as stock, share or bond certificates and similar documents of title.

We have reviewed this ruling and determined that the classification decision set forth therein is partially incorrect. It is now our position that the toy money is properly classified under subheading 4911.99.80, HTSUS, which provides for: "Other printed matter, including printed pictures and photographs, other: other." This notice does not alter the classification of the toy money clip in NY C89928.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY C89928 and any other ruling not specifically identified, to reflect the proper classification of this merchandise according to the analysis contained in the proposed Headquarters Ruling Letter ("HQ") W968412 (Attachment B). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

EFFECT ON OTHER RULINGS:

NY C89928, dated July 30, 1998, is hereby modified with regards only to the play paper money

Dated: November 1, 2011

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

July 30, 1998

CLA-2-95:RR:NC:SP:225 C89928

CATEGORY: Classification

TARIFF NO.: 9503.90.0045; 4907.00.0000

MR. EDWARD N. JORDAN
EXPEDITORS INTERNATIONAL OF WA., INC.
601 NORTH NASH STREET
EL SEGUNDO, CA 90245

RE: The tariff classification of a toy and printed coupons from China

DEAR MR. JORDAN:

In your letter dated July 7, 1998, you requested a tariff classification ruling on behalf of your client Playworks, LLC.

A sample of the "Richie Rich Toy Money Clip With Play Money" was submitted to this office for our review. The item consists of a plastic imitation money clip and pretend paper money. The money clip measures 2" in length by 2" in width and 1/4" in depth. It is painted in gold on the front side and black on the back. Molded onto the front of the clip is the likeness of a cartoon character known as "Richie Rich." The back side will contain the molded impression of the country of origin.

The play paper money measures 5 3/4" by 2 3/4". On one side a picture of the "Richie Rich" cartoon character is printed along with value denominations to resemble real money. The reverse side features a valuable coupon which may be redeemed at a popular children's activity center.

You have stated in your letter that the money clip and paper money will be imported in polybags only to be repackaged here, upon importation, with a motion picture video. According to your letter, the items will be taken out of the polybags, the money will be inserted into the clip and shrink-wrapped onto the front of the video for sale to the ultimate purchaser.

You have suggested that the product is classifiable as a toy set under heading 9503.70.0000 and cite several rulings in support of your position.

A "set" classifiable in heading 9503 is defined as "two or more different types of articles (principally for amusement), put up in the same packing for retail sale without repacking. Simple accessories or objects of minor importance intended to facilitate the use of the articles may also be included." (Emphasis added)

Customs classifies merchandise in the condition in which it is imported. The described goods do not constitute a set for classification purposes as they are not imported packaged for retail sale. You have stated that the imitation money clip and paper goods will be repackaged in the U.S. Therefore, the articles are considered to be imported in bulk and are separately classifiable. We note that related merchandise covered by rulings NY 818610 and HQ 950700, to which you refer, consisted of components imported packaged together for retail sale.

The classification of merchandise under the HTS is governed by the General Rules of Interpretation (GRI'S). GRI 1 of the HTS, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes...".

The imitation money clip, by nature of its material construction, is designed purely for the amusement of children. It has little to no functional use

and will be marketed and used as a toy in pretending to simulate a grown-up. The item is classifiable according to GRI 1.

The paper money's use in pretend play is merely temporary at best. Admittedly, the play money is irrevocably lost upon redemption of the coupon on the reverse side of the paper. Therefore, we find the essential character of the paper money to be imparted by the coupon portion based on its ultimate intended use.

The applicable subheading for the toy money clip will be 9503.90.0045, Harmonized Tariff Schedule of the United States (HTS), which provides for other toys: other: other toys and models. The rate of duty will be free.

The applicable subheading for the paper goods will be 4907.00.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for: stock, share or bond certificates and similar documents of title. The rate of duty will be free.

Although both products will be marked with the country of origin at the time of importation, you have stated that they will be removed from their original polybags and combined with a video which will subsequently be shrink-wrapped for retail sale. Our concern arises in that your product may be repackaged in a manner which might conceal the original country of origin marking.

Please note that the marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. §1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

As provided in section 134.41(b), Customs Regulations (19 C.F.R. §134.41(b)), the country of origin marking is considered conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain. The retail product must be marked in a manner which does not conceal the country of origin of the imitation money clip or the paper goods. For further guidance on acceptable labelling of the retail package, you may consult with the local Import Specialist at the port of entry for the goods.

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 Alice J. Wong at 212-466-5538.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ W968412
OT:RR:CTF:TCM W968412 HvB
CATEGORY: Classification
TARIFF NO.: 4911.99.80

EDWARD N. JORDAN
EXPEDITORS INTERNATIONAL OF WA., INC.
601 NORTH NASH STREET
EL SEGUNDO, CA 90245

RE: Modification of New York Ruling Letter C89928, dated July 30, 1998;
Classification of Toy Money

DEAR MR. JORDAN:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) C89928, dated July 30, 1998, issued to you on behalf of your client, Playworks, LLC. In that ruling, CBP classified toy money, featuring a redeemable coupon on the reverse side, under subheading 4907.00.00 of the Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for, in part: “stock, share or bond certificates and similar documents of title.” We have reviewed the ruling and found this classification to be incorrect. This ruling does not alter the classification of the toy money clip in NY C89928.

FACTS:

In NY C89928 we described the merchandise as follows:

The play paper money measures 5 3/4” by 2 3/4”. On one side a picture of the “Richie Rich” cartoon character is printed along with value denominations to resemble real money. The reverse side features a valuable coupon which may be redeemed at a popular children’s activity center.

ISSUE:

Is the toy money classifiable under heading 4907, HTSUS, as “Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognized face value; stamp-impressed paper; banknotes; check forms; stock, share or bond certificates and similar documents of title” or under heading 4911, HTSUS, as “Other printed matter, including printed pictures and photographs”?

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 2011 HTSUS provisions under consideration are as follows:

4907 Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognized face value; stamp-impressed paper; banknotes; check forms; stock, share or bond certificates and similar documents of title

4911 Other printed matter, including printed pictures and photographs:

4911.99 Other:

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

The ENs to heading 4907, HTSUS, provide, in part:

* * *

The characteristic of the products of this heading is that on being issued (if necessary, after completion and validation) by the appropriate authority, they have a fiduciary value in excess of the intrinsic value.

* * *

(F) Stock, share, or bond certificate and similar documents of title. These are formal documents issued, or for issue, by public or private bodies conferring ownership of, or entitlement to, certain financial interests, goods or benefits named therein. Apart from the certificates mentioned, these documents include letters of credit, bills of lading, title deeds and dividend coupons. They usually require completion and validation.

* * *

Heading 4907, HTSUS, provides in part for “stock, share or bond certificates and similar documents of title.” In other words, heading 4907, HTSUS is intended for items that are describable as negotiable instruments, and as stated in EN 49.07, have a fiduciary value in excess of its intrinsic value.

Similarly, CBP has held, and as the EN for 49.07 provides, this heading contemplates printed products that act as formal documents which confer ownership or title. *See* **NY 184754**, dated August 5, 2002, and **HQ 962499**, dated February 16, 2000. Unlike items in this heading, the toy money is marketed to a certain age group and is not intended to have the value or transferability of stocks, bonds, or other commercial certificates. As such, we conclude that the toy money is not classifiable as a “stock, share or bond certificate and similar documents of title” of heading 4907, HTSUS.

CBP has consistently held that printed coupons are classifiable under subheading 4911.99, HTSUS. In rulings **NY 869412**, dated December 31, 1991, **NY 870276**, dated January 30, 1992, and **NY 881459**, dated December 30, 1992, CBP classified similar merchandise under subheading 4911.99. In **HQ W968266**, dated September 19, 2006, CBP held that a plastic gift card was classifiable under subheading 4911.99, and lacked any real value before

it was activated at a cash register. Similarly, the toy money does not hold value until it is redeemed at the cash register. As such, we find that the play money at issue is classified under heading 4911, in subheading 4911.99.80, HTSUS, as other printed matter, including printed pictures and photographs, other: other.

HOLDING:

By application of GRI 1, the subject toy money is classified in heading 4911, HTSUS, specifically in subheading 4911.99.80, which provides for: "Other printed matter, including printed pictures and photographs, other: other."

EFFECT ON OTHER RULINGS:

NY C89928, dated April January 20, 1999, is hereby modified with regards only to the play paper money.

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

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF ROOFTOP AIR
CONDITIONERS FOR RECREATIONAL VEHICLES**

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and proposed revocation of treatment relating to the classification of rooftop air conditioners for recreational vehicles.

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

DATES: Comments must be received on or before December 30, 2011.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Regulations and Rulings of the Office of International Trade, Attention: Commercial Trade and Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C.

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

FOR FURTHER INFORMATION CONTACT: John Rhea, Tariff Classification and Marking Branch: (202) 325–0035.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of rooftop air conditioners used primarily for recreational vehicles. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (“NY”) M87553, dated November 6, 2006 (Attachment “A”), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice

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

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

In the above mentioned ruling CBP determined that the rooftop air conditioning unit was classified under subheading 8415.82, HTSUS, as a self-contained air conditioning machine, incorporating a refrigerating unit. CBP now believes that the rooftop air conditioner units are properly classified in subheading 8415.20, HTSUS, as an air-conditioning machine of a kind used for persons, in a motor vehicle. Specifically, the rooftop air conditioners are classified under subheading 8415.20.00, HTSUS, which provides for: "Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated: parts thereof: of a kind used for persons, in motor vehicles."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY M87553 and any other ruling not specifically identified, to reflect the proper classification of the subject rooftop air conditioning units according to the analysis contained in proposed Headquarters Ruling Letters ("HQ") H008507, 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: November 1, 2011

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

NY M87553
November 16, 2006
CLA-2-84:RR:NC:1:102 M87553
CATEGORY: Classification
TARIFF NO.: 8415.82.0105

MR. GORDON C. ANDERSON
C.H. ROBINSON WORLDWIDE, INC.
MINNEAPOLIS INTERNATIONAL
14800 CHARLSON ROAD (SUITE 400)
EDEN PRAIRIE, MN 55347-5048

RE: The tariff classification of an air conditioner for a recreational travel trailer from China and Mexico

DEAR MR. ANDERSON:

In your letter dated October 16, 2006 you requested a tariff classification ruling on behalf your client Domestic Corporation.

The article in question is described as the “Model Brisk” air conditioner used primarily for recreational travel trailers. The units are designed for installation through an existing roof vent or through a ceiling utilizing wood framing materials. The units are self-contained and have cooling capacities that range from 11,000 to 15,000 BTU (3.22 to 4.39 kW/hour). Descriptive information was submitted.

In your request you suggest that the applicable classification for these air conditioning machines is under subheading 8415.10.30, Harmonized Tariff Schedule of the United States (HTSUS), which provides for self-contained window or wall type machines. However, for tariff purposes, these machines are not “window or wall type” machines because they are designed for permanent ceiling installation.

The applicable subheading for the subject air conditioner will be 8415.82.0105, HTSUS, which provides for other air conditioning machines, other than year-round units, incorporating a refrigeration unit, self contained, not exceeding 17.58 kW per hour. The rate of duty will be 2.2 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth T. Brock at 646-733-3009.

Sincerely,

ROBERT B. SWIERUPSKI
Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H008507
CLA-2 OT:RR:CTF:TCM H008507JER
CATEGORY: Classification
TARIFF NO.: 8415.20

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

RE: Request for Reconsideration of New York Ruling Letter M87553; Classification of the Brisk Air Rooftop Air Conditioner

DEAR MR. PETERSON:

This letter is in response to your request of March 9, 2007, for reconsideration of New York Ruling Letter (NY) M87553, dated November 6, 2006, classifying the subject “Brisk Roof Top Air Conditioner” under subheading 8415.82.01, of the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY M87553 and found it to be incorrect for the reasons set forth below.

FACTS:

NY M87553 described the subject merchandise as follows:

The article in question is described as the “Model Brisk” air conditioner used primarily for recreational travel trailers. The units are designed for installation through an existing roof vent or through a ceiling utilizing wood framing materials. The units are self-contained and have cooling capacities that range from 11,000 to 15,000 BTU (3.22 to 4.39 kW/hour). Descriptive information was submitted.



Exhibit B of the March 9, 2007 submission describes the subject merchandise as the: “DUO-THERM® BRISK AIR ROOFTOP AIR CONDITIONER.” Exhibit D of the submission describes the merchandise as the: “**Dometic DUO-THERM** Model 6003 Roof-Top Air Conditioner” and notes that: “This air conditioner is specifically designed for installation on the roof of a recreational vehicle (RV)...it is preferred that the air conditioner be installed on a relatively *flat and level* roof section measured with the RV parked on a level surface...an 8° slant on either side or front or back is acceptable.” The unit at issue is pictured above.

ISSUE:

Whether the “Brisk Roof Top Air Conditioner” is classifiable as a self-contained window or wall type in subheading 8415.10.30, HTSUS, or as an air conditioning machine of a kind used for persons, in a motor vehicle in

subheading 8415.20.00, HTSUS, or as an other than year-round unit, incorporating a refrigeration unit, self-contained type, in subheading 8415.82.01, 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 provides that 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 those subheadings at the same level are comparable.

The 2011 HTSUS provisions under consideration are as follows:

- 8415 Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated: parts thereof:
- 8415.10 Window or wall types, self-contained or “split-system”:
- 8415.10.30 Self-contained
 - * * *
- 8415.20.00 Of a kind used for persons, in motor vehicles
 - * * *

Other, except parts:

 - * * *
- 8415.82.01 Other, incorporating a refrigerating unit:
 - Self-contained machines and remote condenser type air conditioners other than year-round units...

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

EN 84.15 provides, in pertinent part, as follows:

Subheading Explanatory Notes.**Subheading 8415.10**

This subheading covers air conditioning machines of window or wall types, self-contained or “split-system”.

The self-contained type air conditioning air conditioners are in the form of single units encompassing all required elements and being self-contained.

The “split-system” type air conditioners are ductless and utilize a separate evaporator for each area to be air conditioned (e.g., each room).

* * *

Subheading 8415.20

This subheading covers equipment which is intended mainly for passenger motor vehicles of all kinds, but which may also be fitted in other kinds of motor vehicles, for air conditioning the cabs or compartments in which persons are accommodated.

There is no dispute that by application of GRI 1, the subject “Brisk Roof Top Air Conditioner” (hereinafter, Roof-Top Model) is classified in heading 8415, HTSUS, which provides for: “Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated.” At issue is classification at the six-digit level by application of GRI 6.

In your submission, you contend that the subject merchandise should be classified in subheading 8415.10, HTSUS, as a self-contained window or wall type air conditioning machine, or in the alternative, in subheading 8415.20, HTSUS, as an air conditioning machine of a kind used for persons, in a motor vehicle. Specifically, you assert that the use of the word “type” suggests that subheading 8415.10, HTSUS, is broad in scope and intended for goods to be classified according to their construction, styling and capabilities rather than a literal interpretation of the phrase “window or wall types.” In support of this position, you offer NY R02265, dated August 10, 2005, which classified a self-contained climate control unit in subheading 8415.10, HTSUS, despite the fact that it was mounted inside of a door (rather than in a window or wall).

EN 84.15 explains that subheading 8415.10, HTSUS, includes window or wall air conditioning machines, which are either self-contained or “split-system.” Self-contained window or wall type air conditioners are mounted into an opening in a window or wall, which are both vertical surfaces. The design of the drainage system for an A/C unit mounted vertically differs from those which are mounted horizontally. This design distinguishes window or wall type A/C units from the instant merchandise.¹

¹ In your March 9, 2007 submission on page 4, it explicitly states that “This air conditioner is specifically designed for installation on the roof of a recreational vehicle (RV).” The submission further describes the subject merchandise as a “Roof-Top Air Conditioner” which should be installed on a “flat and level roof section.” *Id.* at 1 and 4. Specifications in Exhibit D of your submission explain that an “8° slant on either side or front or back is acceptable for all units.” *id.* at 4.

While the subject Roof-Top Model is a self-contained A/C unit it is not designed to be mounted or installed in a vertical surface such as a window, wall or door. As such, we find that the subject Roof-Top Model is not classifiable in subheading 8415.10, HTSUS, as a window or wall type A/C unit.

Alternatively, you argue that the subject Roof-Top Model is classifiable in subheading 8415.20, HTSUS as an air-conditioning machine of a kind used for persons, in a motor vehicle. We agree. At the GRI 6 level, the subheadings of heading 8415, HTSUS, provide for “air-conditioning machines...of a kind used for persons in a motor vehicle.” CBP has previously classified AC units used in motor vehicles under subheading 8415.20, HTSUS. For instance, we classified a climate control system for vehicle truck cabs in subheading 8415.20, HTSUS. See NY M81991, dated April 26, 2006. In that ruling, the merchandise was designed to be integrated into and dependent upon the vehicle’s heating and ventilation system, thus making use of the vehicle’s air ducts, vents, automotive fans, radiator and power source. While the subject Roof-Top Model is an independent ventilation and cooling system, its independent design does not preclude it from classification under subheading 8415.20, HTSUS. As the ENs to subheading 8415.20, HTSUS, explain, “[t]his subheading covers equipment which...may also be fitted in other kinds of motor vehicles, for air conditioning the cabs or compartments in which persons are accommodated.” A recreational vehicle (RV) is a kind of motor vehicle for tariff classification purposes. As we noted in *Vehicles, Parts and Accessories Under the HTSUS*, Informed Compliance Publication (May 2009):

The term “vehicle” is derived from the Latin word “*vehiculum*.” It means a carriage or conveyance. The type of vehicles which go in Chapter 87 are, **for the most part**, those whose main function is to transport people or things from one place to another (three exceptions: tractors, special purpose motor vehicles and armored fighting vehicles).

In the instant case, the RV is used to transport and accommodate people. Moreover, the principal purpose of the subject merchandise is to provide air conditioning in a compartment of an RV in which persons are accommodated. Accordingly, we find that the terms of subheading 8415.20, HTSUS “air-conditioning machines...of a kind used for persons in a motor vehicle”, describes the subject merchandise.

HOLDING:

By application of GRI 1, the subject Brisk Roof Top Air Conditioner is classified in heading 8415, HTSUS. It is specifically classified at GRI 6 in subheading 8415.20.00, HTSUS, which provides for: “Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated: parts thereof: of a kind used for persons, in motor vehicles.” The 2011 column one, general rate of duty was 1.4% *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:

NY M87553, dated November 6, 2006, is hereby Revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**PROPOSED REVOCATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF BAKED CRÈME
BRULEE**

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

ACTION: Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to tariff classification of baked crème brulee.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke one ruling letter relating to the tariff classification of baked crème brulee 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 action.

DATES: Comments must be received on or before December 30, 2011.

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

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

SUPPLEMENTARY INFORMATION:**Background**

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of baked crème brulee imported by Sterling Foods, Inc. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter K86702 (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 K86702, CBP determined that baked cr me brulee was classified in subheading 1901.90.42, HTSUS, which provides for “Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included: Other: Other: Dairy products described in additional U.S. note 1 to chapter 4: Dairy preparations containing over 10 percent by weight of milk solids: Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY K86702 and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of baked cr me brulee in heading 1905, HTSUS, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H035563, set forth as Attachment B to this document, and HQ H015429, dated December 11, 2007 (Attachment C). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: November 1, 2011

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY K86702
June 9, 2004
CLA-2-19:RR:NC:2:228 K86702
CATEGORY: Classification
TARIFF NO.: 1901.90.4200; 1901.90.4300

MR. JOHN BORAH
STERLING FOODS, INC.
1766 FERN PLACE
LAKE OSWEGO, OR 97034

RE: The tariff classification of crème brulee from France

DEAR MR. BORAH:

In your letter undated letter, received by this office on June 3, 2004, you requested a tariff classification ruling.

A sample and ingredients breakdown accompanied your letter. The sample was examined and disposed of. The product is crème brulee, a custard-like dessert composed of approximately 37 percent cream, 17 percent water, 12 percent sugar, 12 percent skimmed milk, 9 percent egg yolk, 2 percent milk protein, 2 percent rice starch, and less than one percent each of xanthan gum, carrageenan, vanilla extract, and vanilla seeds. Two frozen crème brulees, each in a ceramic dish measuring approximately four inches in diameter and one inch deep, are packed for retail sale, with two sachets of brown sugar, in a cardboard box. Package instructions direct the user to sprinkle the brown sugar onto the frozen crème brulee, broil until golden brown, cool and serve.

The applicable subheading for the crème brulee, if imported in quantities that fall within the limits described in additional U.S. note 10 to chapter 4, will be 1901.90.4200, Harmonized Tariff Schedule of the United States (HTS), which provides for food preparations of goods of headings 0401 to 0404, not containing cocoa...other...dairy products described in additional U.S. note 1 to chapter 4...dairy preparations containing over 10 percent by weight of milk solids...described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions. The rate of duty will be 16 percent ad valorem. If the quantitative limits of additional U.S. note 10 to chapter 4 have been reached, the product will be classified in subheading 1901.90.4300, HTS, and dutiable at the rate of \$1.035 per kilogram plus 13.6 percent ad valorem. In addition, products classified in subheading 1901.90.4300, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.04.67 to 9904.04.74, 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 Stanley Hopard at 646-733-3029.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT B]

HQ H035563
CLA-2 OT:RR:CTF:TCM H035563 CKG
CATEGORY: Classification
TARIFF NO.: 1905.90.90

MR. JOHN BORAH
STERLING FOODS, INC.
1766 FERN PLACE
LAKE OSWEGO, OR 97034

RE: Reconsideration of NY K86702; classification of baked crème brulee

DEAR MR. BORAH,

This is in reference to New York Ruling Letter (NY) K86702, issued by the Customs and Border Protection (CBP) National Commodity Specialist Division on June 9, 2004, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of frozen crème brulee. We have reconsidered this decision, and for the reasons set forth below, have determined that classification of the crème brulee in heading 1901, HTSUS, is incorrect.

FACTS:

The merchandise at issue was described in NY K86702 as follows:

The product is crème brulee, a custard-like dessert composed of approximately 37 percent cream, 17 percent water, 12 percent sugar, 12 percent skimmed milk, 9 percent egg yolk, 2 percent milk protein, 2 percent rice starch, and less than one percent each of xanthan gum, carrageenan, vanilla extract, and vanilla seeds. Two frozen crème brulees, each in a ceramic dish measuring approximately four inches in diameter and one inch deep, are packed for retail sale, with two sachets of brown sugar, in a cardboard box. Package instructions direct the user to sprinkle the brown sugar onto the frozen crème brulee, broil until golden brown, cool and serve.

ISSUE:

Whether the crème brulee is classified as a “cream” product in heading 1901, HTSUS, or as “bakers’ wares” in heading 1905, 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 GRIs 2 through 6 may then be applied in order.

The HTSUS provisions at issue are as follows:

1901: Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:

1901.90: Other:

Other:

Dairy products described in additional U.S. note 1 to chapter 4:

Dairy preparations containing over 10 percent by weight of milk solids:

1901.90.43:

Other

* * * *

1905: Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:

1905.90: Other:

1905.90.90: Other . . .

* * * *

The classification of substantially similar merchandise was addressed in Headquarters Ruling Letter (HQ) H015429, dated December 11, 2007, which classified frozen crème brulees in heading 1905, HTSUS. The legal reasoning and analysis employed in HQ H015429 is incorporated by reference. HQ H015429 is attached to and made a part of this ruling letter.

HOLDING:

By application of GRI 1, the frozen crème brulees are classified in heading 1905, HTSUS, and are specifically provided for under subheading 1905.90.90, HTSUS, as: "Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa...: Other: Other." The 2011 column one, general rate of duty 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.usits.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY K86702, dated June 9, 2004, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT C]

HQ H015429

December 11, 2007

CLA-2 OT:RR:CTF:TCM H015429 IDL

CATEGORY: Classification

TARIFF NOS.: 1905.90.9090

HARVEY FOX, ESQ.

ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.

1200 SEVENTEENTH STREET, N.W.

FIFTH FLOOR WASHINGTON, DC 20036

Re: Classification of Crème Brulees

DEAR MR. FOX:

This is in response to your request for a ruling on behalf of your client, Prolainat SAS, dated July 9, 2007. You requested a binding ruling on the classification of a fully baked, frozen crème brulee dessert product under the Harmonized Tariff Schedule of the United States (HTSUS). Our ruling on this matter is set forth below.

FACTS:

The “Authentic French Crème Brulees” (“dessert”) are fully baked in France before importation into the United States. The dessert consists of a baked and caramelized vanilla cream in a ceramic dish. Prolainat produces the product for export to the United States, with two variations in ingredients, as follows:

Ingredients, in order of contents by weight: cream (over 10% by weight of milk solids), water, sugar, rehydrated skimmed milk, egg yolk, lactose and milk proteins, rice starch, xanthan gum (thickener), carrageenan (gelling agent), natural vanilla extract, and exhausted vanilla seeds.

Ingredients, in order of contents by weight: cream (over 10% by weight of milk solids), water, egg yolk, sugar, rehydrated skimmed milk, lactose and milk proteins, xanthan gum (thickener), carrageenan (gelling agent), natural vanilla extract, and exhausted vanilla seeds.

The fully-baked ingredients, after being poured into ceramic dishes, are subjected to a caramelizing process, and frozen. The ingredients in the ceramic dishes are then packaged, two per box, with two packets of brown sugar. The packages are to be sold to the customer in the two variations indicated above, in frozen form.

The serving instructions vary depending on the method the consumer chooses to caramelize the brown sugar (i.e., broiler or torch) on top of the ingredients in the ceramic dish.

ISSUE:

Whether the dessert is classified as a “cream” product in heading 1901, HTSUS, or as “bakers’ wares” in heading 1905, HTSUS?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or

Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. GRI 6 provides that “for legal purposes”, classification of goods in the subheading 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. GRI 6 thus incorporates GRIs 1 through 5 in classifying goods at the subheading level.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

1901 ...[F]ood preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:

...

1905 Bread, pastry, cakes, biscuits and other bakers’ wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:

...

The Food Lover’s Companion, a culinary reference source, defines “crème brûlée” as “a chilled, stirred custard that, just before serving, is sprinkled with brown or granulated sugar. The sugar topping is quickly caramelized under a broiler or with a salamander. Custards require slow cooking and gentle heat in order to prevent separation.” (See www.epicurious.com, which cites from the Food Lover’s Companion).

The Food Lover’s Companion defines “custard” as a “pudding-like dessert (made with a sweetened mixture of milk and eggs) that can either be baked or stirred on stovetop.” The Glossary for the Food Industries (Wilbur Gould, CTI Publications, 2nd edition, 1995), at page 56, defines “custard” as “a cooked or baked sweetened mixture of milk and eggs.” Similarly, the Glossary of Milling and Baking Terms (Samuel Manz, Pan-Tech International Publications, McAllen, Texas, 1993), at page 30, describes “custard” as “a sweetened mixture of eggs and milk that has been cooked over hot water.”

The dessert is a cream-based product. Heading 0401, HTSUS, provides for “milk and cream, not concentrated nor containing added sugar or other sweetening matter”. However, General EN to Chapter 4, as set forth in the following provision, in pertinent part, excludes the dairy-based dessert from classification under that chapter:

The Chapter also excludes, *inter alia*, the following:

(a) Food preparations based on dairy products (in particular, heading 19.01)....

EN 19.01 (EN 19.01, IV-1901–3) provides that “[t]he preparations of this heading may be distinguished from the products of headings 04.01 to 04.04 in that they contain, in addition to natural milk constituents, other ingredients not permitted in the products of those earlier headings.” Accordingly, although the dessert is cream-based, it is a food preparation that is excluded from Chapter 4, HTSUS.

Further, heading 1901, HTSUS, provides for “food preparations of goods of headings 0401 to 0404...not elsewhere specified or included”. [Emphasis added] Therefore, before considering heading 1901, HTSUS, as an appropriate heading, we must first determine whether the HTSUS provides for the dessert in any other heading.

Counsel argues that the baked dessert should be classified as a “bakers’ ware” in heading 1905. The term “bakers’ wares” is not defined in the HTSUS or ENs. As such, we presume the correct meaning to be the same as its common meaning understood in trade and commerce. See, *Schulstad USA, Inc., v. United States*, 26 C.I.T. 1347, 240 F. Supp. 2d 1335, 1351 (2002). Since the dictionary does not define the compound term “bakers’ wares”, we examine the definition of each word individually. The term “baker” is defined as “one that specializes in the making of breads, cakes, cookies, and pastries”. The term “wares” is defined as “manufactured articles...offered for sale”. See, *Webster’s Third New International Dictionary (Unabridged)* (1961). Accordingly, “bakers’ wares” can be understood to mean “manufactured articles offered for sale by one that specializes in the making of breads, cakes, cookies, and pastries”, such as those articles commonly sold in a bakery. Counsel has submitted evidence demonstrating that crème brulee is a common bakery product.

Further, citing *Schulstad*, which addressed the baking status of pastries as relevant in determining whether such goods could be classified in heading 1905, HTSUS, counsel argues that the baked dessert should be classified in heading 1905, HTSUS. Counsel also cites EN 19.05(A)(11), which provides for “Certain bakery products made without flour (e.g., meringues made of white of egg and sugar)”, and argues that the baked dessert is similar to meringue on the basis that they are both crustless and flourless.

We agree. We find that crème brulee is commonly sold in bakeries alongside breads, cakes, cookies, and pastries, and as such, is considered a bakery product. In addition, we find that “baking pans” designed for preparing crème brulee are commercially available. Further, as discussed above, crème brulee is a cream-based product, which can be baked or cooked on a stovetop. The baked crème brulees at issue are distinguishable from cooked crème brulees for classification purposes. See, *Schulstad*. Finally, the provisions of EN 19.05(A)(11) suggest that the dessert, as a baked, flourless bakery product, is classified in 1905, HTSUS. As such, we find that the dessert at issue is a “bakers’ ware” falling under the provisions of 1905, HTSUS, and precluded from classification in heading 1901, HTSUS, as discussed above.

Accordingly, the dessert is classified in heading 1905, HTSUS, and provided for under subheading 1905.90.9090, HTSUSA.

HOLDING:

By application of GRI 1, the “Authentic French Crème Brulees” are classified in heading 1905, HTSUS, and provided for under subheading

1905.90.9090, HTSUSA, as: “Bread, pastry, cakes, biscuits and other bakers’ wares, whether or not containing cocoa...: Other: ... Other... Other”. The column one, general rate of duty under subheading 1905.90.9090, HTSUSA, 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.usits.gov/tata/hts/.

Sincerely,

GAIL A. HAMILL,

Chief

Tariff Classification and Marking Branch

**PROPOSED REVOCATION OF RULING LETTERS AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF PORCELAIN TRAVEL
COFFEE CUPS**

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

ACTION: Notice of proposed revocation of two ruling letters and treatment relating to the tariff classification of “Eco Cup™” porcelain travel coffee cups.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) proposes to revoke two ruling letters relating to the tariff classification of the “Eco Cup™” porcelain travel coffee cups 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 December 30, 2011.

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

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this notice advises interested parties that CBP intends to revoke two ruling letters pertaining to the tariff classification of the “Eco Cup™” porcelain travel coffee cup. Although in this notice, CBP is specifically referring to the revocations of New York Ruling Letters (NY) N078995, dated October 14, 2009 (Attachment A), and NY N087912, dated January 5, 2010 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., 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 N078995 and N087912, CBP determined that the subject porcelain travel coffee cup was classified in subheading 6911.10.80, HTSUS, which provides for, in pertinent part: “[t]ableware and kitchenware, other household articles and toilet articles, of porcelain or china: tableware and kitchenware: other: other.” It is now CBP’s position that the porcelain travel coffee cup is properly classified in subheading 6911.10.41, HTSUS, which provides for, in pertinent part: “[t]ableware and kitchenware, other household articles and toilet articles, of porcelain or china: tableware and kitchenware: other: . . . tumblers . . .”

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY N078995 and N087912 and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the “Eco Cup™” porcelain travel coffee cup according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H111922, set forth as Attachment C 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: November 1, 2011

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N078995
October 14, 2009
CLA-2-69:OT:RR:NC:N4:428
CATEGORY: Classification
TARIFF NO.: 6911.10.8010

MS. AMY MORGAN
COSTCO WHOLESALE CORPORATION
999 LAKE DRIVE
ISSAQUAH, WA 98027

RE: The tariff classification of an Eco Coffee Cup from China.

DEAR MS. MORGAN:

In your letter dated October 5, 2009, you requested a tariff classification ruling.

The merchandise under consideration is identified as the “Eco Coffee Cup – set of 3”, referred to as T322026. The item consists of a set of three porcelain coffee cups that are designed to resemble traditional paper coffee cups. Each cup in the set measures 3.4” x 3.4” x 5.4” and is made with a double wall construction to provide insulation for hot liquids. The double-wall feature does not create a vacuum. Each cup holds 12 ounces of beverage and comes with a reusable silicone lid and grip sleeve. The cup does not have a handle. A photograph of the Eco Coffee Cup was submitted with your request.

The applicable subheading for the Eco Coffee Cup will be 6911.10.8010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Tableware and kitchenware: Other... Suitable for food or drink contact.” The rate of duty will be 20.8% 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/>.

Ceramic table/kitchenware may be subject to certain requirements under the regulations administered by the Food and Drug Administration (FDA). If you have any questions regarding these requirements, you may contact the FDA at: Food and Drug Administration, Division of Import Operations and Policy, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: 1-888-463-6332.

Certain ceramic table and kitchen articles may be subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the FDA. Information on the Bioterrorism Act can be obtained by calling the FDA at telephone number (301) 575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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 Sharon Chung at (646) 733-3028.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

N087912

January 5, 2010

CLA-2-69:OT:RR:NC:N4:428

CATEGORY: Classification

TARIFF NO.: 6911.10.8010

Ms. IRIS TANG
 SMART INNOVATIONS, INC.
 7930 DEERING AVENUE
 CANOGA PARK, CA 91304

RE: The tariff classification of an Eco Cup from China.

DEAR Ms. TANG:

In your letter dated December 9, 2009, you requested a tariff classification ruling.

The submitted sample, identified as “Eco Cup”, item no. #EC-7, is a reusable ceramic coffee cup made of porcelain. The cup, which is designed to resemble a traditional paper coffee cup, is made with a double wall construction to keep drinks warm. It holds approximately 12 ounces of beverage and comes with a silicone lid and sleeve. Including the lid and sleeve, the cup measures 5.75” in height x 3.50” in diameter, with a bottom diameter of 2.375”. The cup does not have a handle. It is dishwasher and microwave safe. Literature was also submitted with your request.

In your request you indicate that you believe the cup may be classified in subheading 6911.10.5800, Harmonized Tariff Schedule of the United States, which provides for “Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Other: Other: Other: Cups valued over \$29 per dozen; saucers valued over \$18.75 per dozen; soups, oatmeals and cereals valued over \$33 per dozen; plates not over 22.9 cm in maximum diameter and valued over \$31 per dozen; plates over 22.9 but not over 27.9 cm in maximum diameter and valued over \$41 per dozen; platters or chop dishes valued over \$143 per dozen; sugars valued over \$85 per dozen; creamers valued over \$75 per dozen; and beverage servers valued over \$180 per dozen”, dutiable at 6% ad valorem.

Although the Eco Cup is modeled after a paper coffee cup, it is not a traditional cup with a handle of a type used with a saucer. Therefore, subheading 6911.10.5800, HTSUS, does not apply.

The applicable subheading for the Eco Cup, item no. #EC-7, will be subheading 6911.10.8010, HTSUS, which provides for “Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other, Suitable for food or drink contact.” The rate of duty will be 20.8% 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/>.

Ceramic table/kitchenware may be subject to certain requirements under the regulations administered by the Food and Drug Administration (FDA). If you have any questions regarding these requirements, you may contact the FDA at: Food and Drug Administration, Division of Import Operations and Policy, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: 1-888-463-6332.

Certain ceramic table and kitchen articles may be subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the FDA. Information on the Bioterrorism Act can be obtained by calling the FDA at telephone number (301) 575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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 Sharon Chung at (646) 733-3028.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT C]

HQ H111922
 CLA-2 OT:RR:CTF:TCM H111922 EG
 CATEGORY: Classification
 TARIFF NO.: 6911.10.41

Ms. AMY MORGAN
 COSTCO WHOLESALE CORPORATION
 999 LAKE DRIVE
 ISSAQUAH, WA 98027

RE: Revocation of NY N078995 and NY N087912; Classification of Porcelain Travel Coffee Cup

DEAR Ms. MORGAN:

This is in reference to New York Ruling Letter (NY) N078995, dated October 14, 2009, issued to you concerning the tariff classification of the Eco Cup™ porcelain travel coffee cup under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) classified the subject article in subheading 6911.10.80, HTSUS, which provides for other tableware and kitchenware. We have reviewed NY N078995 and find it to be in error. For the reasons set forth below, we hereby revoke NY N078995 and one other ruling with substantially similar merchandise: NY N087912, dated January 5, 2010, which was issued to Smart Innovations, Inc.

FACTS:

The “Eco Cup™” was described in NY N078995 and NY N087912 as designed to resemble a traditional paper coffee cup. The cup is made of porcelain with a double wall construction to keep drinks warm. It holds approximately 12 ounces of beverage and comes with a silicone lid and sleeve. Including the lid and sleeve, the cup measures roughly 5.75” in height x 3.50” in diameter. The base of the cup is narrower than the top of the cup. The cup does not have a handle. It is dishwasher and microwave safe.

ISSUE:

Whether the subject merchandise is classified in subheading 6911.10.80, HTSUS, which provides for, in pertinent part, “[t]ableware and kitchenware, other household articles and toilet articles, of porcelain or china: tableware kitchenware: other: other . . .”, or in subheading 6911.10.41, HTSUS, which provides for “[t]ableware and kitchenware, other household articles and toilet articles, of porcelain or china: tableware and kitchenware: other: . . . tumblers . . .”?

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:

6911	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:
6911.10	Tableware and kitchenware:
	Other...
6911.10.41	Steins with permanently attached pewter lids, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, bonbon dishes, egg cups, spoons and spoon rests, oil and vinegar sets, tumblers and salt and pepper shaker sets
	* * *
6911.10.80	Other...
	* * * *

The Oxford English Dictionary defines a “tumbler” as “a drinking cup, originally having a rounded or pointed bottom, so that it could not be set down until emptied; often of silver or gold; now, a tapering cylindrical, or barrel-shaped, glass cup without a handle or foot, having a heavy flat bottom.” (See *www.oed.com*). Under GRI 1, the porcelain travel coffee cup is a tumbler because the cup has a tapering cylindrical shape. Therefore, the porcelain travel coffee cup is properly classified under subheading 6911.10.41, HTSUS which provides for porcelain tumblers.

The cup’s silicone lid and sleeve are also properly classified under subheading 6911.10.41, HTSUS. Additional U.S. Note (7) to Chapter 69, HTSUS states that “For the purposes of headings 6911, 6912 and 6913, those provisions which classify merchandise according to the value of each “article,” an article is a single tariff entity which may consist of more than one piece. For example, a vegetable dish and its cover, or a beverage pot and its lid, imported in the same shipment, constitute an article.” Thus, the silicone lid and sleeve form part of the article classified under subheading 6911.10.41, HTSUS.

HOLDING:

By application of GRI 1, the subject “Eco Cup™” porcelain travel coffee cup is classified in heading 6911, HTSUS, and is specifically provided for in subheading 6911.10.41, HTSUS, which provides for, in pertinent part: “[t]ableware and kitchenware, other household articles and toilet articles, of porcelain or china: tableware and kitchenware: other . . . tumblers . . .”. The general, column one 2011 rate of duty is 6.3 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 N078995, dated October 14, 2009, and NY N087912, dated January 5, 2010, are hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



GENERAL NOTICE

19 CFR PART 177

**PROPOSED REVOCATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF NICKEL BOLTS**

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

ACTION: Notice of proposed revocation of ruling letter and treatment concerning the tariff classification of nickel bolts.

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

DATES: Comments must be received on or before December 30, 2011.

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

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of nickel bolts. Although in this notice, CBP is specifically referring to the revocation of NY N058237, dated May 13, 1999 (Attachment A), this notice covers any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice

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

In NY N058237, CBP classified nickel bolts in heading 8414, HTSUS, specifically subheading 8414.90.41, HTSUS, which provides for other parts of other compressors. It is now CBP's position that the nickel bolts are properly classified in heading 7508, HTSUS, specifically under subheading 7508.90.50, HTSUS, which provides for "Other articles of nickel: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY N058237 and any other ruling not specifically identified, in order to reflect the proper analysis contained in proposed HQ H080821, set forth in 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: November 1, 2011

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N058237
May 13, 2009
CLA-2-84:OT:RR:E:NC:N1:102
CATEGORY: Classification
TARIFF NO.: 8414.90.4175

MS. DIANNE JONES
TEXAS AERO ENGINE SERVICES
2100 EAGLE PARKWAY
MAIL DROP 8307
FORT WORTH, TX 76177

RE: The tariff classification of a compressor part from the United Kingdom

DEAR MS. JONES:

In your letter dated April 21, 2009 you requested a tariff classification ruling. Descriptive information and technical drawings were submitted.

The article in question is identified as part number BLT5541 and described as an "odd shaped" bolt made of nickel. Based on the information made available, the specialized bolt is used to join components within the compressor shaft assembly of a turbine engine.

The applicable subheading for the subject bolt will be 8414.90.4175, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other parts of other compressors. The rate of duty is free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on 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 Kenneth T. Brock at (646) 733-3009.

Sincerely,

ROBERT B. SWIERUPSKI
Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H080821
 CLA-2 OT:RR:CTF:TCM H080821 DSR
 CATEGORY: Classification
 TARIFF NO.: 7508.90.50

MS. DIANNE JONES
 TEXAS AERO ENGINE SERVICES, LLC
 2100 EAGLE PARKWAY
 FORT WORTH, TX 76177

RE: Revocation of NY N058237, dated May 13, 2009; subheading 7508.90.50, HTSUS; tariff classification of a nickel bolt

DEAR MRS. JONES:

This letter is in reference to New York Ruling Letter (NY) N058237, issued to you on May 13, 2009, regarding the classification under the 2009 Harmonized Tariff Schedule of the United States (HTSUS) of a nickel bolt used to join components within the compressor shaft assembly of a turbine engine. The ruling classified the article under subheading 8414.90.41, HTSUS, which provides for “Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof: Parts: Of compressors: Other: Other.”

CBP has reviewed the tariff classification of the subject nickel bolt and has determined that the cited ruling is in error. Therefore, NY N058237 is revoked for the reasons set forth in this ruling.

FACTS:

The bolt in question is identified as part number BLT5541, and described as an “odd shaped” bolt made of nickel. Based upon the information made available, the specialized bolt is used to join components within the compressor shaft assembly of a turbine engine.

ISSUE:

Whether the nickel bolt in question is classified under heading 7318, HTSUS, as a bolt, or similar article, of iron or steel; under 7508, HTSUS, as an “other” article of nickel; or under heading 8414, HTSUS, as a part of a compressor.

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. In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS provisions under consideration in this case are as follows:

- 7318** Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel:

* * * *
- 7508** Other articles of nickel

* * * *
- 7508.90** Other:

* * * *
- 7508.90.50** Other.

* * * *
- 8414** Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof:

* * * *
- 8414.90** Parts:

Of compressors:

* * * *
- 8414.90.41** Other.

* * * *

Heading 8414, HTSUS, is found within Section XVI, HTSUS, and covers, *inter alia*, “air or other gas compressors ... and parts thereof.” General Note 2(a), Section XVI, HTSUS, states that, subject to General Note 1 of that section, parts that are goods included in any of the headings of Chapter 84 are to be classified in their respective headings. General Note 1(g) to Section XVI, HTSUS, states that Section XVI does not cover “parts of general use, as defined in Note 2 to Section XV, of base metal ...”

General Note 2(a) to Section XV, HTSUS, defines “parts of general use” as “articles of heading ... 7318 and *other similar articles of other base metals.*” (emphasis added).¹ Heading 7318, HTSUS, describes, in part, “screws, bolts, nuts ... and similar articles of iron or steel ...” Nickel is a base metal, and the subject bolt is composed of nickel. Thus, reading these Notes together, if we determine that the nickel bolt is a part of general use that is similar to bolts of iron or steel of heading 7318, HTSUS, the nickel bolt cannot be classified as “parts” under heading 8414, HTSUS.

Examples of base metal parts of general use classified under heading 7318, HTSUS, include bolts and nuts (including bolt ends), screw studs and other

¹ The expression “base metals” includes nickel. See General Note 3, Section XV, HTSUS.

screws for metal (whether or not threaded or tapped). See EN 73.18(A). A bolt is generally defined as a pin or a rod that is designed to hold things together or in place. *Hafele America Co., Ltd. v. United States*, 870 F. Supp. 352, 355–56 (Ct. Intl. Trade 1994); see also HQ 963662, dated October 25, 2000 (acoustical toggle bolts that acted as fasteners designed so that one end is secured in a surface leaving a protuberance to which something else is attached classified under heading 7318, HTSUS). In addition, in HQ 966789, dated June 21, 2004, CBP deliberated the classification of an oil bolt used in motor vehicles and motorcycles. The bolt was threaded at one end and had a hex-shaped head for applying torque. It was designed to allow the unimpeded flow of brake fluid between a brake hose assembly and a motor vehicle braking system. In spite of the characteristic that allowed the unimpeded flow of oil, CBP concluded that the oil bolt was used as a fastener, as opposed to functioning as a part with a discrete application that makes adjustments in motor vehicles and, thus, was classifiable as a screw of iron or steel under heading 7318, HTSUS. See also *Honda of America Mfg., Inc. v. United States*, 625 F. Supp. 2d 1324 (Ct. Intl. Trade 2009) (upholding HQ 966789).

The nickel bolt in question simply joins components within the compressor shaft assembly of a turbine engine and is similar in function to the iron or steel bolts that are covered by subheading 7318, HTSUS. It thus meets the definition of a “part of general use” as described by General Note 2(a) to Section XV, HTSUS. According to General Explanatory Note (C), Section XV, HTSUS:

[P]arts of general use (as defined in Note 2 to this section) presented separately are not considered as parts of articles, but are classified in the headings of this Section appropriate to them. This would apply, for example, in the case of bolts specialized for central heating radiators or springs specialized for motor cars. The bolts would be classified in heading 73.18 (as bolts) and not in heading 73.22 (as parts of central heating radiators). The springs would be classified in heading 73.20 (as springs) and not in heading 87.08 (as parts of motor vehicles).

Thus, a nickel bolt that is presented separately and is a “part of general use,” even if specialized for joining a compressor shaft assembly, would be classified in the heading of Section XV that is appropriate to the bolt, as opposed to a heading that covers “parts” of such an assembly. Reading the above General EN together with General Note 1(g) to Section XVI, HTSUS, which states that Section XVI does not cover “parts of general use, as defined in Note 2 to Section XV, of base metal ...,” we find that the nickel bolt is excluded from classification under heading 8414, HTSUS, which covers parts of air compressors. The bolt is also excluded from classification under heading 7318, HTSUS, because it is composed of nickel, rather than iron or steel.

Chapter 75, HTSUS, provides for nickel and articles comprised thereof. There is no specific provision within Chapter 75 that describes the subject bolt by name or use. However, a “basket” provision – heading 7508, HTSUS – provides for “Other articles of nickel.” See EN 73.18(B)(4) (stating that the group covers nickel bolts of the types described in the Explanatory Notes to heading 73.18). Reference to a “basket” provision of the tariff is proper only when no other provision describes the merchandise more specifically. See *Hafele, supra*, at 357. Thus, it is now the position of CBP that the nickel bolt

in NY N058237 is classified in heading 7508, HTSUS, specifically in sub-heading 7508.90.50, HTSUS, which provides for “Other articles of nickel: Other: Other.”

HOLDING:

By application of GRI 1, the subject merchandise identified as “Rolls-Royce, Trent engine part BLT5541” is classifiable under heading 7508, HTSUS. Specifically, it is classifiable under subheading 7508.90.50, HTSUS, which provides for “Other articles of nickel: Other: Other.” The column one, general rate of duty is 3%. 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 N058237, dated May 13, 2009, is hereby revoked.

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 DISTILLED ROSE AND
ORANGE BLOSSOM WATERS**

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying a ruling letter relating to the classification of articles identified as “Rose Water (Maward)” and “Orange Blossom Water (Mazaher)”. CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 44, No. 28, on July 7, 2010. No comments were received in response to this notice.

DATES: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 29, 2012.

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is modifying a ruling letter pertaining to the classification of distilled rose water and distilled orange blossom water. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) I83744, dated July 1, 2002 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

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

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

In NY I83744, CBP classified the subject merchandise under heading 3303, HTSUS, which provides for "Perfumes and toilet waters". We have reviewed NY I83744 and found it to be in error. CBP has determined that the subject merchandise is classified as "aqueous distillates ... of essential oils" in subheading 3301.90.5000, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY I83744, dated July 1, 2002. Furthermore, CBP is proposing to revoke or modify any other ruling not specifically identified, to reflect the proper classification of rose and orange blossom waters according to the analysis contained in the proposed Headquarters Ruling Letter (HQ) W967898, set forth as 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. Section 1625(c), this action will become effective 60 days after publication in the *Customs Bulletin*.

Dated: November 1, 2011

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ W967898

November 1, 2011

CLA-2 OT:RR:CTF:TCM W967898 ASM

CATEGORY: Classification

TARIFF NO.: 3301.90.5000

MR. MARTIN K. BEHR, III

FERRARA INTERNATIONAL LOGISTICS, INC.

460 HILLSIDE AVENUE

HILLSIDE, NJ 07205

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

DEAR MR. BEHR:

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

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. Section 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Publ. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification was published in the *Customs Bulletin*, Volume 44, No. 28, on July 7, 2010. No comments were received in response to this notice.

FACTS:

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

ISSUE:

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

LAW AND ANALYSIS:

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

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

- 3301** Essential oils (terpeneless or not), including concretes and absolutes; resinoids; extracted oleoresins; concentrates of essential oils in fats, in fixed oils, in waxes or the like, obtained by enfleurage or maceration; terpenic by-products of the deterpenation of essential oils; aqueous distillates and aqueous solutions of essential oils:
- 3301.90** Other:
- 3301.90.50** Other
- 3303** Perfumes and toilet waters:
- Not containing alcohol:
- 3303.00.10** Floral or flower waters

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

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

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

¹ The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

HOLDING:

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

EFFECT ON OTHER RULINGS:

This ruling modifies NY I83744, dated July 1, 2002. In accordance with 19 U.S.C. Section 1625(c), this action will become effective 60 days after publication in the *Customs Bulletin*.

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking three ruling letters relating to the tariff classification of automatic pet feeders 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. 26, on June 22, 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 January 29, 2012.

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this Notice advises interested parties that CBP is revoking three ruling letters pertaining to the tariff classification of automatic pet feeders. Although in this Notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) I80281, dated April 16, 2002, NY J83831, dated May 23, 2003 and NY K87024, dated July 1, 2004, 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 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 I80281, NY J83831 and NY K87024, in order to reflect the proper classification of the automatic pet feeders according to the analysis contained in Headquarters Ruling Letter (HQ) H113636, set forth as an attachment 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.

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

Dated: November 7, 2011

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H113636

November 7, 2011

CLA-2 OT:RR:CTF:TCM H113636 EG

CATEGORY: Classification

TARIFF NO.: 8509.80.50

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

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

DEAR MS. BUCKMAN:

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

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 June 22, 2011, in the *Customs Bulletin*, Volume 45, No. 26. CBP received no comments in response to this notice.

FACTS:

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

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

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

* * *

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

This heading covers a number of domestic appliances in which an electric motor is incorporated. The term “domestic appliances” in this heading means appliances normally used in the household. These appliances are identifiable, according to type, by one or more characteristic features such as overall dimensions, design, capacity, volume. The yardstick for judging these characteristics is that the appliances in question must not operate at a level in excess of household requirements.

* * *

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

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

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

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

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

HOLDING:

By application of GRI 1, the automatic pet feeders in NY I80281, NY J83831, NY and K87024 are classifiable under heading 8509, HTSUS. Specifically, they are classifiable under subheading 8509.80.50, HTSUS, which provides for “Electromechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 8508; parts thereof: other appliances: other...” The column one, general rate of duty is 4.2% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

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

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

Sincerely,

ALLYSON MATTANAH

For

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**MODIFICATION OF RULING LETTERS AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF THE ANTIBIOTIC DRUG
AZITHROMYCIN**

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises inter-

ested parties that Customs and Border Protection (CBP) is modifying two ruling letters relating to the tariff classification of the antibiotic drug Azithromycin 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. 35, on August 24, 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 January 29, 2012.

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 two ruling letters pertaining to the tariff classification of the antibiotic drug Azithromycin. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) C88143, dated July 13, 1998, and NY F86114 dated May 5, 2000,

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 C88143 and NY F86114, CBP determined that the drug Azithromycin was classified in the heading 2941, HTSUS, specifically subheading 2941.50.00, HTSUS, which provides for "Antibiotics: Erythromycin and its derivatives; salts thereof". It is now CBP's position that the drug Azithromycin is properly classified in heading 2941, HTSUS, specifically subheading 2941.90.50., HTSUS, which provides for: "Antibiotics: Other: Other: Other".

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY C88143 and NY F86114, and revoking or modifying any other ruling not specifically identified, to reflect the proper classification of Azithromycin according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H128140, 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: November 7, 2011

ALLYSON MATTANAH
For

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

HQ H128140

November 7, 2011

CLA-2 OT:RR:CTF:TCM H128140 AMM

CATEGORY: Classification

TARIFF NO.: 2941.90.50

MR. ALLA KUTSENKO
ICC CHEMICAL CORPORATION
460 PARK AVENUE
NEW YORK, NY 10022

RE: Modification of New York Ruling Letters C88143 and F86114; classification of antibiotic drug Azithromycin

DEAR MR. KUTSENKO,

This is in regard to New York Ruling Letter (NY) F86114, dated May 5, 2000, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of the antibiotic drug Azithromycin. In NY F86114, Customs and Border Protection (CBP) classified the Azithromycin under subheading 2941.50.00, HTSUS, as a derivative of Erythromycin. We have reconsidered this ruling and have determined that Azithromycin is provided for in subheading 2941.90.50, HTSUS, as an other antibiotic.

CBP also intends to revoke NY C88143, dated July 13, 1998, which classified Azithromycin under heading 2941, HTSUS, specifically in subheading 2941.50.00, HTSUS.

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 F86114 and NY C88143 was published on August 24, 2011, in Volume 45, Number 35, of the Customs Bulletin. CBP received no comments in response to this notice.

FACTS:

Azithromycin (CAS-83905-01-5) 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. Azithromycin differs chemically from Erythromycin in that a methyl-substituted nitrogen atom is incorporated into the lactone ring, thus making the lactone ring a 15-membered ring that does not contain the original Erythromycin skeleton.

ISSUE:

Is the antibiotic drug Azithromycin properly classified under subheading 2941.50.00, HTSUS, which provides for: "Antibiotics: Erythromycin and its derivatives; salts thereof", or under subheading 2941.90.50, HTSUS, as "Antibiotics: Other: Other: Other"?

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

There is no dispute that Azithromycin 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.

Azithromycin 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 Explanatory Notes for Heading 29.41, a derivative must “retain the essential characteristics of the parent compound, including its basic chemical structure.”

The basic chemical structure of Erythromycin contains a 14-member lactone ring. The chemical structure of Azithromycin is similar, but it contains a 15-member lactone ring instead. Additionally, the ketogroup attached to the carbon atom in the 10th position has been removed, and a methyl-substituted amine group has been added to the ring between the carbon atoms in the 10th and 11th position of the Erythromycin ring. The Azithromycin ring has 15 members, whereas the Erythromycin ring has 14 members. Azithromycin 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. In addition, the EN to subheading 2941.50 specifically excludes Azithromycin from classification as an Erythromycin derivative.

Azithromycin is not a derivative of Erythromycin, and cannot be classified under subheading 2941.50, HTSUS. It must be classified under subheading 2941.90, HTSUS, instead. The product then properly falls under subheading 2941.90.50, HTSUS, which provides for: “Antibiotics: Other: Other: Other.”

Our analysis also applies to NY C88143, dated July 13, 1998, which classified Azithromycin under heading 2941, HTSUS, specifically in subheading 2941.50.00, HTSUS, which provides for “Antibiotics: Erythromycin and its derivatives; ...”. As the Azithromycin of NY C88143 is substantially similar to the Azithromycin of NY F86114, we find that it is also properly classified by operation of GRI 1 under subheading 2941.90.50, HTSUS, which provides for “Antibiotics: Other: Other: Other”, based on all of the foregoing.

HOLDING:

By application of GRI 6, the antibiotic drug product Azithromycin is classified in subheading 2941.90.50, HTSUS, which provides for: “Antibiotics: Other: Other: Other.” The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

New York Ruling Letters C88143, dated July 13, 1998, and NY F86114 dated May 5, 2000, are hereby MODIFIED.

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

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**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF LIQUID DISPENSING SYSTEMS**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of liquid dispensing systems.

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 a ruling concerning the tariff classification of liquid dispensing systems under the Harmonized Tariff Schedule of the United States (“HTSUS”). Notice of the proposed revocation was published on September 14, 2011, in the *Customs Bulletin*, Volume 45. No. 38. No comments were received in response to the notice.

DATES: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 29, 2012.

FOR FURTHER INFORMATION CONTACT: Robert Shervette, Office of International Trade, Tariff Classification and Marking Branch, at (202) 325-0274

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”), become 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 on September 14, 2011, in the *Customs Bulletin*, Volume 45, No. 38, proposing to revoke a ruling letter pertaining to the tariff classification of four bench-top liquid dispensing systems, identified as the Equator GX1, Equator GX8, Equator HTS, and Equator HTS/2 systems. Although in the proposed notice, CBP was specifically referring to the revocation of New York Ruling Letter (“NY”) N035872, dated August 20, 2008, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

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

intends to revoke 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 of this notice.

In NY N035872, CBP classified four liquid dispensing systems under heading 8424, HTSUS, which provides for: "[m]echanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: other appliances: other." Upon our review of NY N035872, we have determined that the merchandise described in that ruling is properly classified under heading 8479, HTSUS, which provides for: "[m]achines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: other machines and mechanical appliances: other: other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N035872, and any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter ("HQ") H103965, 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.

Dated: November 7, 2011

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

H103965

November 7, 2011

CLA-2 OT:RR:CTF:TCM H103965 RES

CATEGORY: Classification

TARIFF NO.: 8479.89.9899

PATTI CORDO
DIRECTOR OF IMPORT
AMERICAN CARGO EXPRESS, INC.
435 DIVISION STREET
ELIZABETH, NJ 07201

RE: Revocation of NY N035872, dated August 20, 2008.

DEAR MS. CORDO:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York (“NY”) Ruling letter N035872, dated August, 20, 2008, regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of the Equator GX1, Equator GX8, Equator HTS, and Equator HTS/2 mechanical liquid dispensing systems from Ireland. The machines were classified as mechanical appliances for dispersing liquids under heading 8424, HTSUS. We have determined that NY N035872 was 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 action was published on September 14, 2011, in Volume 45, Number 38, of the *Customs Bulletin*. CBP did not receive any comments during the notice period.

FACTS:

In NY N035872, the products were described as follows:

The machines perform high speed, non-contact, low volume pipetting onto all well plate formats. The pipetting mechanism allows for the dispensation of volumes in the range of 50nl to 20ul.

The first item has been identified as the Equator GX1 system. This system uses a single-channel dispenser for the low to medium use lab. It can aspirate reagent from a single reservoir or plate and dispense the reagent across the reaction plate.

The second item has been identified as the Equator GX8 system. This system uses eight channels which allow for more flexibility. You state that each channel can aspirate and dispense reagents at a different volume.

The third item has been identified as the Equator HTS system. This system can dispense DMSO, aqueous buffers, protein solutions and cell and bead suspensions. In addition it can be configured with a number of reservoirs; these can include disposable troughs to stirred reservoirs for cells and beads.

The final item has been identified as the Equator HTS/2 system. This system is designed for automated and hand towed automated plate positions. Both plate positions are accessible to the robotic arms which en-

ables unattended operation. The two plate positions can be used as source and destination plate positions, or as dual destination plates using a separate on deck reagent reservoir.

ISSUE:

Whether the mechanical liquid dispensing machines are classifiable under heading 8479, HTSUS, as “machines and mechanical appliances having individual functions”, or under heading 8424, HTSUS, as “mechanical appliances for projecting, dispersing, or spraying liquids [.]”?

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 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 2 through 6 may be applied in order.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the Harmonized System at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The following HTSUS provisions are under consideration:

- | | |
|------------|--|
| 8424 | Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: |
| 8424.89 | Other appliances: |
| 8424.89.00 | 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 |

The functions performed under heading 8424—projecting, dispersing, or spraying liquids—are different than the function of dispensing a liquid. According to lexicographic authority, the definition of disperse is to spread or distribute widely from a fixed or constant source, to scatter, to distribute

more or less evenly throughout a medium.¹ The definition of dispense is to deal out in portions.² A machine that takes a pre-selected fixed volume from a larger reservoir of liquid and then transfers that smaller fixed volume to a different receiving receptacle, such as a vial tray, clearly performs the function of dispensing and not dispersing. Additionally, the functions that the bench-top liquid dispensing machines perform are not the same as any of the machines and tools listed in 8424, i.e. fire extinguishers, steam and sand blasting machines, irrigation sprayers, piston pump sprays, and spray guns, which project, spray, or disperse liquids or solids. In comparison to other rulings involving heading 8424, HTSUS, the Equator liquid dispensing systems do not perform the functions of projecting, dispersing or, spraying as other merchandise have performed these functions. See NY N087656, dated January 7, 2010 (dispensing a fragrance using a fan throughout a room); HQ W968211, dated February 6, 2007 (finding that a device that contains an aerosol can and presses on the can's button at specific intervals is spraying and dispersing a liquid); HQ 966611, dated January 7, 2007 (classifying a canister as part of a system that sprays a liquid on a windshield under heading 8424). In contrast, the Equator liquid dispensing systems take small quantities of liquid from a larger reservoir of liquid and dole/dispense the liquid into a smaller reservoir. Cf. NY N074200, dated September 4, 2009 (a container that uses a push-button pump to dispense a liquid from a reservoir to a sponge does not perform the functions of projecting, dispersing, or spraying a liquid); NY N052375, dated March 17, 2009 (a glue gun that expels a hot glue liquid performs the function of dispensing and not projecting, dispersing, or spraying).

Furthermore, CBP has consistently classified pipetting and other similar systems that aspirate and dispense liquids under heading 8479. See *Rainin Instrument C. Inc. v. United States*, 27 C.I.T. 1619 (2003) (classifying a hand operated pipetting apparatus under heading 8479). See also NY L80994, dated December 20, 2004 (classifying similar pipetting systems, the Equator TM NS 101 and Equator TM NS 808, manufactured by the same company, Deerac Fluidics under heading 8479); NY J87394, dated August 8, 2003 (classifying an electronic pipetting machine under heading 8479); and HQ 957301, dated January 18, 1995 (classifying a pipetting machine under heading 8479).

Therefore, because the function of dispensing is not covered by heading 8424 and because CBP has consistently classified similar liquid dispensing systems under heading 8479, the four Equator model liquid dispensing systems in NY N035872 are classified under subheading 8479.89.98, HTSUS, as “[m]achines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: [o]ther machines and mechanical appliances: [o]ther: [o]ther”

HOLDING:

Pursuant to GRI 1, the Equator model liquid dispensing systems at issue here are classified under the subheading 8479.89.9899, HTSUSA, as “[m]a-

¹ See <http://www.merriam-webster.com/dictionary/disperse> (last visited August 25, 2011).

² See <http://www.merriam-webster.com/dictionary/dispense> (last visited August 25, 2011).

chines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: [o]ther machines and mechanical appliances: [o]ther: [o]ther: [o]ther”. Articles classified under this subheading are subject to a general rate of duty of 2.5 percent *ad valorem*.

EFFECTS ON OTHER RULINGS:

NY N035872, dated August 20, 2008, is revoked.

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

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

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**MODIFICATION OF A RULING LETTER AND
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 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) is modifying 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 revokes any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 31, on July 27, 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 January 29, 2012.

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY 853529 in order to reflect the proper classification of the steel furniture lifter according to the analysis contained in Headquarters Ruling Letter (HQ) H161860, 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: November 3, 2011

ALLYSON MATTANAH

For

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H161860

November 3, 2011

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.

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 modification was published on July 27, 2011, in the *Customs Bulletin*, Volume 45, No. 31. CBP received no comments in response to this notice.

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.

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.

The HTSUS provisions at issue are as follows:

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

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.

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.

EFFECT ON OTHER RULINGS:

NY 853529, dated July 3, 1990, is hereby modified with respect to the classification of the steel furniture lifter.

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

Sincerely,

ALLYSON MATTANAH

For

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division