

U.S. Customs and Border Protection

[CBP Dec. 12-09]

TUNA—TARIFF-RATE QUOTA; THE TARIFF-RATE QUOTA FOR CALENDAR YEAR 2012 TUNA CLASSIFIABLE UNDER SUBHEADING 1604.14.22, HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTSUS); CORRECTION

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

ACTION: Announcement of the quota quantity of tuna in airtight containers for Calendar Year 2012; correction.

SUMMARY: U.S. Customs and Border Protection (CBP) published in the **Federal Register** of April 17, 2012, a document concerning tariff rates for tuna in airtight containers for Calendar Year 2012. Inadvertently, no CBP Decision Number was listed in the heading of that document. This document corrects the April 17, 2012 document to reflect that the CBP Decision Number is 12-09 as set forth above.

DATES: *Effective Dates:* This correction is effective May 1, 2012. The 2012 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1, through December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Ryan Olden, Regulations and Rulings, Office of International Trade, (202) 325-0009.

Correction

In notice document, FR Doc. 2012- 9131, beginning on page 22796 in the issue of Tuesday, April 17, 2012, make the following correction in the third column:

Insert “CBP Dec. 12-09” into the heading of the document between the agency name, “U.S. Customs and Border Protection,” and the title of the document, “Tuna—Tariff-Rate Quota; the Tariff-Rate Quota for Calendar Year 2012 Tuna Classifiable under Subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS).”

Dated: April 25, 2012.

HAROLD M. SINGER,
Director,
Regulations and Disclosure Law Division,
U.S. Customs and Border Protection.

[Published in the Federal Register, May 1, 2012 (77 FR 25732)]

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**ACCREDITATION AND APPROVAL OF SGS NORTH
AMERICA, INC., AS A COMMERCIAL GAUGER AND
LABORATORY**

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

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 2310 Highway 69 North, Nederland, TX 77627, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/linkhandler/cgov/trade/automated/
labs_scientific_svcscommercial_gaugers/gaulist.ctt/gaulist.pdf](http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcscommercial_gaugers/gaulist.ctt/gaulist.pdf)

DATES: The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on May 11, 2011. The next triennial inspection date will be scheduled for May 2014.

FOR FURTHER INFORMATION CONTACT: Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: April 18, 2012.

IRA S. REESE,
Executive Director.

[Published in the Federal Register, May 1, 2012 (77 FR 25728)]

**NOTICE OF CORRECTION OF REVOKED CUSTOMS
BROKER LICENSES**

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

ACTION: Reinstatement of Licenses.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and Title 19 of the Code of Federal Regulations at section 111.30(d), the following Customs broker licenses were inadvertently revoked without prejudice on November 18, 2011. See Notice of Revocation of Customs Broker License, dated November 18, 2011 (76 FR 71584). The below identified licenses are active.

Name	License	Port name
Aldo Neyra, Jr.....	17367	Los Angeles.
Samantha Woo.....	17389	New York.
Gloria S. Oh.....	04973	New York.
Kenneth Carlstedt.....	13049	New York.
Michael Bonvissuto.....	04793	New York.
John G. Duffield.....	05829	New York.
Michael Russell.....	22702	New York.
Anthony J. Raffin.....	24103	Detroit.
Jeremy Caudill.....	23068	St. Louis.
Susan K. Richards.....	10847	Philadelphia.
Catherine Finn.....	12339	New Orleans.

Dated: April 23, 2012.

RICHARD DiNUCCI,
*Deputy Assistant Commissioner,
Office of International Trade.*

[Published in the Federal Register, May 1, 2012 (77 FR 25729)]

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING CERTAIN AGILENT OSCILLOSCOPES

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of certain oscilloscopes. We were asked to consider five scenarios. Based upon the facts presented, CBP has concluded in the final determination that for each scenario the assembly and programming operations performed in Singapore substantially transform the components of the oscilloscopes. Therefore, the country of origin of the oscilloscopes for purposes of U.S. government procurement is Singapore.

DATES: The final determination was issued on April 23, 2012. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before May 31, 2012.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Valuation and Special Programs Branch: (202) 325–0034.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on April 23, 2012, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain series of Agilent oscilloscopes which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H203555, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that, based upon the assembly and programming operations in Singapore, the country of origin of the oscilloscopes for purposes of U.S. government procurement is Singapore.

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

Dated: April 23, 2012.

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

HQ H203555

April 23, 2012

MAR-2 OT:RR:CTF:VS H203555 HkP

CATEGORY: Origin

*MR KEITH MORGAN
AMERICAS GEOGRAPHIC TRADE MANAGER
AGILENT TECHNOLOGIES, INC.
8825 STANFORD BOULEVARD
SUITE 300
COLUMBIA, MD 21045*

RE: Government Procurement; Trade Agreements Act; Country of Origin of certain Oscilloscopes; Substantial Transformation

DEAR MR. MORGAN:

This is in response to your letter, dated January 30, 2012, requesting a final determination on behalf of Agilent Technologies, Inc. (“Agilent”), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (“CBP”) Regulations (19 C.F.R. Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of Agilent’s MSOX/DSOX200A and MSOX/DSOX3000A series oscilloscopes. As a U.S. importer, Agilent is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

Agilent imports the MSOX/DSOX200A and MSOX/DSOX3000A series oscilloscopes, which are used to measure voltage in a variety of research, design, production and evaluation applications, from Malaysia. The two model series include 28 different configurations with varying bandwidth and sampling rates. The oscilloscopes consist of the following components:

1. ACQ board printed circuit assembly (PCA) populated with transistors, diodes, capacitors, integrated circuits, and a 1GB flash memory to store product firmware and application software that is the oscilloscopes’ main controller. It is described as the “motherboard” of the oscilloscopes;

2. Keyboard PCA;

3. Main keypad;

4. Soft keypad;

5. Liquid Crystal Display (LCD);

6. LCD lens;

7. AC line filter PCA that acts as the power manager;

8. Power supply;

9. Fan;

10. Bucket assembly—a plastic component that forms part of the back cover of the oscilloscope;

11. Bezel;

12. Front and rear deck—sheet metal components that form the internal chassis; and

13. Cables, bolts, screws, washers and connectors. The components are manufactured in several countries, including China, Malaysia, and Taiwan.

The application software and firmware for the oscilloscopes are developed in the United States. Firmware development consists of requirements analysis, design, code writing, quality assurance testing, bug fixing, maintenance and support. According to Agilent's submission, more than half of the years (the number of which is unstated) taken to develop the oscilloscopes were invested in the development of firmware, and an additional two years are invested in continued firmware development and maintenance.

Agilent has asked us to consider five manufacturing scenarios. Regardless of the scenario, the following processes take place in Singapore where the components listed above are assembled into subassemblies (described below) which are then made into complete oscilloscopes. The rear deck subassembly, consisting of the fan, the AC Line Filter PCA, power supply, AC and DC cables, and wiring, is installed into the rear deck. The front deck subassembly, consisting of a display mount, the ACQ board PCA, brackets, and various types of cables (keyboard, display, display backlight, interboard supply), is installed into the front deck. The front bezel assembly, consisting of the bezel, keypad, keyboard, cables, and knobs, is fitted together. The front and rear deck subassemblies are fitted together and the interboard power cable on the front deck subassembly is connected to the AC line filter PCA on the rear deck subassembly. The power supply shield, power switch, and front panel connectors are installed and the bezel assembly is connected to the front and rear deck subassembly. The entire assembly is placed into a fixture that is fitted together with the bucket assembly. The oscilloscopes then go through three post-assembly tests to ensure proper functionality and a cosmetic inspection. They are then shipped to Malaysia where they undergo a final pre-shipment functional test and cosmetic inspection.

Scenario 1

The ACQ board for the front deck subassembly and the AC line filter PCA for the rear deck subassembly are manufactured in Malaysia and shipped to Singapore. U.S.-origin firmware and application software is downloaded onto the fully assembled oscilloscopes in Singapore.

Scenario 2

The ACQ board is assembled in Malaysia and shipped to Singapore where it is programmed with application software during the front deck subassembly process. The AC line filter PCA is also assembled in Malaysia and shipped to Singapore. U.S.-origin firmware is downloaded onto the fully assembled oscilloscopes in Singapore.

Scenario 3

The ACQ board and the AC line filter PCA are manufactured in Malaysia. The ACQ board is temporarily programmed with application software and tested in Malaysia. Before shipment to Singapore the software is deleted from the ACQ board. In Singapore, U.S.-origin firmware and application software is downloaded onto the fully assembled oscilloscopes.

Scenario 4

As in scenario three, the ACQ board is assembled, programmed and tested in Malaysia and its software is deleted before it is shipped to Singapore. U.S.-origin firmware and application software is downloaded onto the fully assembled oscilloscopes in Singapore. The AC line filter PCA is made in Singapore.

Scenario 5

The ACQ board is assembled in Malaysia and shipped to Singapore. The AC line filter PCA is manufactured in Singapore. U.S.-origin application software and firmware is downloaded onto the fully assembled oscilloscopes in Singapore.

ISSUE:

What is the country of origin of the oscilloscopes for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

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

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B): An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. *See also* 19 C.F.R. § 177.22(a).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item’s components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

In *Data General v. United States*, 4 Ct. Int’l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. The court noted that

programming alters the character of a PROM by changing the pattern of interconnections within the PROM. A distinct physical change is effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, may be discerned by electronic testing of the PROM. The essence of the article, its interconnections or stored memory, is established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device possessing a desired distinctive circuit pattern, is no less a “substantial transformation” than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

In *Texas Instruments v. United States*, 681 F.2d 778, 782 (CCPA 1982), the court observed that the substantial transformation issue is a “mixed question of technology and customs law.”

In C.S.D. 84–86, CBP stated: We are of the opinion that the rationale of the court in the *Data General* case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming. * * * [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

Accordingly, the programming of a device that changes or defines its use generally constitutes substantial transformation. *See also* Headquarters Ruling Letter (“HQ”) 558868, dated February 23, 1995 (programming of SecureID Card substantially transforms the card because it gives the card its character and use as part of a security system and the programming is a permanent change that cannot be undone); HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions that allow it to perform certain functions that prevent piracy of software constitute substantial transformation); and, HQ 733085, dated July 13, 1990; *but see* HQ 732870, dated March 19, 1990 (formatting a blank diskette does not constitute substantial transformation because it does not add value, does not involve complex or highly technical operations and did not create a new or different product); HQ 734518, dated June 28, 1993, (motherboards are not substantially transformed by the implanting of the central processing unit on the board because, whereas in *Data General* use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imports it).

Agilent believes that the country of origin of the oscilloscopes is Singapore because that is where the oscilloscopes were manufactured and programmed with the U.S.-origin firmware and software that cause the machines to function as oscilloscopes. According to the company, the firmware and software substantially transform the electronic assemblies into functioning oscilloscopes. In support of its position, Agilent cites HQ H090115 (Aug. 2, 2010) because it believes that the facts underlying that ruling are similar to the facts in the instant case. HQ H090115 concerned the country of origin of a product known as “Unified Communications Solution”, composed of sub-assemblies made in China installed at an end user’s premises in the United States over a one month period and run on U.S.-origin software known as “Communication Manager”. Communication Manager added functionality to

certain individual components and changed the functionality of other components. CBP found that there was a substantial transformation of the component parts in the United States, which was where the final assembly and installation of the hardware and the programming of the components with Communication Manager took place. We note that HQ H090115 is distinguishable from the instant case because in HQ H090115 manufacturing operations took place in only one country and programming took place in another. In this case, manufacturing occurs in both Malaysia and Singapore and programming may take place in either country.

A ruling more pertinent to the facts in this case is HQ H170315, dated July 28, 2011, which concerned the country of origin of satellite telephones and considered scenarios similar to those described in this ruling. In HQ H170315, CBP was asked to consider six scenarios involving the manufacture of PCBs in one country and the programming of the PCBs with second country software either in the first country or in a third country where the phones were assembled. In this case, PCAs are manufactured in Malaysia and programmed with U.S. software and firmware either in the Malaysia or in Singapore where the oscilloscopes are assembled.

Scenario 1

In this scenario, the ACQ board (the motherboard of the oscilloscopes) and the AC line filter PCA (the power controller) are assembled in Malaysia and shipped to Singapore. After importation into Singapore, the boards are assembled with subassemblies of Singaporean origin into oscilloscopes. U.S.-origin firmware and application software are then downloaded onto the fully assembled oscilloscopes, which are then subjected to a basic test. The oscilloscopes are shipped to Malaysia for complete testing.

In this scenario, a large number of parts are assembled in Malaysia to form the Malaysian-origin boards. Upon importation into Singapore, the boards are assembled with rear, front deck, and bezel subassemblies made in Singapore from components imported from China, Malaysia, and Taiwan. In addition, the completed oscilloscopes are programmed with U.S.-origin application software and firmware in Singapore. Accordingly, in this scenario, there are three countries under consideration where programming and/or assembly operations take place, the last of which is Singapore. No one country's operations dominate the manufacturing operations of the oscilloscopes. The boards assembled in Malaysia are important to the function of the oscilloscopes, as is the U.S. firmware and software used to program the oscilloscopes in Singapore. The assembly in Singapore completes the oscilloscopes. Therefore, we find that the last substantial transformation occurs in Singapore. *See Belcrest Linens, supra*; HQ H170315 (July 28, 2011), Scenario III. Consequently, we find that the country of origin of the oscilloscopes in this scenario is Singapore.

Scenario 2

In this scenario, as in Scenario 1, the ACQ board and the AC line filter PCA are assembled in Malaysia and shipped to Singapore. However, in this scenario, after importation into Singapore the ACQ board is programmed with U.S.-origin application software during the front deck subassembly process instead of after the oscilloscopes are completed. The boards are then assembled with subassemblies of Singaporean origin into oscilloscopes. U.S.-

origin firmware is downloaded onto the fully assembled oscilloscopes in Singapore. The oscilloscopes undergo a basic testing before being shipped to Malaysia for further testing.

As discussed under Scenario 1, the boards imported from Malaysia are products of Malaysia. Upon importation into Singapore, they are assembled with rear, front deck, and bezel subassemblies, which are made in Singapore, to form complete oscilloscopes, which are then programmed with U.S.-origin application software and firmware in Singapore. Accordingly, there are three countries under consideration where programming and/or assembly operations take place, the last of which is Singapore. In this scenario, no one country's operations dominate the manufacturing operations of the oscilloscopes. The boards assembled in Malaysia are important to the function of the oscilloscopes, as is the U.S. firmware and software used to program the oscilloscopes in Singapore. Further, the assembly in Singapore completes the oscilloscopes. Therefore, as in Scenario 1, we find that the last substantial transformation occurs in Singapore. *See Belcrest Linens, supra*; HQ H170315 (July 28, 2011), Scenarios IV and V. Consequently, we find that the country of origin of the oscilloscopes in this scenario is Singapore.

Scenario 3

As in previous scenarios, the ACQ board and the AC line filter PCA are manufactured in Malaysia. However, in this scenario, the ACQ board is temporarily programmed with application software and tested in Malaysia. Before shipment to Singapore, the software is deleted from the ACQ board so that the board is not programmed when imported into Singapore. U.S.-origin firmware and application software is downloaded onto the fully assembled oscilloscopes in Singapore.

We find this scenario to be essentially the same as Scenario 1 because in both scenarios the ACQ board is not programmed when imported into Singapore, and the facts are otherwise the same as those in Scenario 1. Accordingly, for the reasons explained for Scenario 1, we find that the country of origin of the oscilloscopes in this scenario is Singapore.

Scenario 4

As in Scenario 3, the ACQ board is assembled, programmed and tested in Malaysia and its software is deleted before it is shipped to Singapore. However, in this scenario, the AC line filter PCA is made in Singapore, not Malaysia. U.S.-origin firmware and application software is downloaded onto the fully assembled oscilloscopes in Singapore.

As in previous scenarios, there are three countries under consideration where programming and/or assembly operations take place, the last of which is Singapore. In this scenario, no one country's operations dominate the manufacturing operations of the oscilloscopes. The boards assembled in Malaysia and Singapore are important to the function of the oscilloscopes, as is the U.S. firmware and software used to program the oscilloscopes in Singapore. Further, the assembly operations in Singapore complete the oscilloscopes. Therefore, we find that the last substantial transformation occurs in Singapore. *See Belcrest Linens, supra*; HQ H170315 (July 28, 2011). Consequently, we find that the country of origin of the oscilloscopes in this scenario is Singapore.

Scenario 5

The ACQ board is assembled in Malaysia and shipped to Singapore. The AC line filter PCA is manufactured in Singapore. U.S.-origin application software and firmware is downloaded onto the fully assembled oscilloscopes in Singapore.

We find this scenario to be essentially the same as Scenario 4 because in both scenarios the ACQ board is not programmed when imported into Singapore, and the facts are otherwise the same as those in Scenario 4. Accordingly, for the reasons explained for Scenario 4, we find that the country of origin of the oscilloscopes in this scenario is Singapore.

HOLDING:

Based on the facts in this case, we find that for all scenarios the country where the last substantial transformation takes place is Singapore. The country of origin of the Agilent MSOX/DSOX200A and MSOX/DSOX3000A series oscilloscopes is Singapore for purposes of U.S. Government procurement.

Notice of this final determination will be given in the **Federal Register**, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

SANDRA L. BELL,

*Executive Director Regulations and Rulings
Office of International Trade*

[Published in the Federal Register, May 1, 2012 (77 FR 25729)]

**MODIFICATION OF A RULING LETTER AND
REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE CLASSIFICATION OF
CERTAIN GAS GENERATORS**

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

ACTION: Modification of a tariff classification ruling letter, revocation of a tariff classification ruling letter and revocation of any treatment relating to the classification of certain gas generators.

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, Headquarters Ruling Letter (HQ) 967102, dated September 27, 2004, and revoking another ruling letter, HQ 087981, dated December 21, 1990, relating to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS), of certain gas generators. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice proposing these actions and inviting comments on their correctness was published in the *Customs Bulletin*, Volume 45, Number 45, on November 2, 2011. One comment was received proposing an alternative classification provision.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 16, 2012.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Tariff Classification and Marking Branch, (202) 325–0046.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify HQ 967102, dated September 27, 2004, and revoke HQ 087981, dated December 21, 1990, relating to the tariff classification of certain gas generators under the HTSUS was published in the *Customs Bulletin*, Volume 45, Number 45, on November 2, 2011. One comment was received in response to the proposed action.

The commenter argued that HQ 967102 and HQ 087981 were incorrect, but also that the proposed rulings modifying and revoking, respectively, these rulings were also incorrect. The commenter proposed the proper classification of the subject gas generators is in heading 8405, HTSUS which provides for "Producer gas or water gas generators, with or without their purifiers; acetylene gas generators and similar water process gas generators, with or without their purifiers; parts thereof." The commenter's suggested classification is discussed in the final rulings attached to this notice.

Although in this notice, CBP is specifically referring to HQ 967102, dated September 27, 2004, and HQ 087981, dated December 21, 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should 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 have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions, or of a specific ruling not identified in this notice, may raise

issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying HQ 967102 and revoking HQ 087981, and the appropriate action for any other ruling not specifically identified on the same or substantially similar merchandise, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ W968276 (Attachment A) and H108255 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: April 11, 2012

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ W968276

April 11, 2012

OT:RR:CTF:VS W968276 CMR

CATEGORY: Classification

TARIFF NO.: 8411.82.8000

MR. JOHN PAJEK
KPMG LLP
SUITE 3300
COMMERCE COURT WEST
199 BAY STREET
TORONTO, ON M5L 1B2
CANADA

RE: Request for Reconsideration of Headquarters Ruling Letter (HQ) 967102; Classification of gas turbines; aero-derivative turbines

DEAR MR. PAJEK:

This is in response to your submission of May 10, 2006, on behalf of your client, Rolls Wood Group (Repair & Overhauls) Limited ("RWG"), requesting this office reconsider its decision in Headquarters Ruling Letter ("HQ") 967102, dated September 27, 2004. HQ 967102 revoked New York Ruling Letter ("NY") H81222, dated May 31, 2001, which classified the Rolls-Royce Industrial RB-211 gas generator and the Rolls-Royce Industrial Avon gas generator in subheading 8411.12.8000, Harmonized Tariff Schedule of the United States ("HTSUS"), as turbojets, other than aircraft turbines, of a thrust exceeding 25 kiloNewton ("kN"). In HQ 967102, Customs and Border Protection ("CBP") reclassified these gas generators in subheading 8411.82.8000, HTSUS, as other gas turbines, other than aircraft turbines, of a power exceeding 5000 kilowatts ("kW"). We note that the revocation of NY H81222 was pursuant to the procedures of 19 U.S.C. § 1625. Although opportunity was provided for submission of public comments, no comments were received. Your client argues the RB-211 and Avon industrial generators are turbojets of subheading 8411.12.8000, HTSUS, and requests we revoke our decision in HQ 967102.

We have reviewed HQ 967102 and believe it to be correct. However, we are modifying the analysis in HQ 967102 to expand upon the analysis which relied on a distinction between gas turbines designed to provide propulsion to aircraft and gas turbines designed or adapted for industrial use. In addition, we wish to address your recent arguments regarding the proper classification of this merchandise. It was not clear in HQ 967102 that the merchandise at issue was limited to the RB211 gas generator and the Avon gas generator. This decision clarifies the facts regarding the merchandise at issue, *i.e.*, that it consists of the gas generators without power turbines, and sets forth our reasoning for upholding the classification in HQ 967102.

In reaching our decision in this matter, we have taken into consideration your submission of May 10, 2006, your supplemental submission of June 2, 2010, your presentation and the discussion from the teleconference held with CBP personnel on June 29, 2010, and the supplemental information you submitted via email dated July 5, 2010. We regret our delay in responding to your request.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of HQ 967102 was published November 2, 2011, in the *Customs Bulletin*, Volume 45, Number 45. One comment was received and is discussed in the decision below.

FACTS:

The merchandise at issue consists of the Rolls-Royce Industrial RB-211 gas generator and the Rolls-Royce Industrial Avon gas generator. In NY H81222, these generators were referred to as aero-derivative turbojets, each having a thrust exceeding 25 kN. The description in the ruling indicates that the generators are designed for industrial use. The RB-211 generator is described as differing from the configuration for use in aircraft in that the bypass fan and fan turbines are removed. Thus, the RB-211 is a twin spool gas generator capable of producing thrust levels in the order of 97.8 kN.

The Avon generator is described as incorporating a seventeen stage, single spool compressor, eight individual combustion chambers, and a three stage turbine to drive the compressor. The ruling indicated that the typical thrust levels produced by the Avon gas generator are approximately 48.9 kN.

As to the operation of the Avon and RB-211 generators, the NY ruling stated:

The engine ingests a large volume of air through the front opening. The air is squeezed or compressed to many times atmospheric pressure by the lower pressure compressor. In the combustion chamber, fuel and air are mixed together and ignited. The resulting hot gases are expanded over the high pressure turbine. The high pressure turbine drives the low pressure compressor in the front end which causes more air to be ingested through the front opening. What remains is residual gas energy (thrust) either for expansion through a propulsive nozzle or through a separate free power turbine.

While NY H81222 described the goods at issue as turbojets and acknowledged that you identified them as gas generators, in HQ 967102, this office identified the goods at issue as gas turbines, originally designed as turbojets, but adapted for industrial use. In HQ 967102, the RB-211 was described as having had the bypass fan and fan turbines removed, resulting in “a twin spool generator capable of generating power between 25,200 kilowatts and 44,500 kilowatts, depending on what type of use the engine is put to.” The Avon was described as having been reconfigured and matched with the RT48 or RT56 power turbine. It was indicated that, depending upon the use it is put to, the Avon is capable of generating power between 14,672 kilowatts and 21,000 kilowatts. It was further indicated that these goods are used for a variety of power generation and mechanical drive applications and are incapable of providing motive power to aircraft due to their adapted designs.

In your request for reconsideration of HQ 967102, you sought to clarify the description of the merchandise at issue. You again identified the Avon and RB-211 as gas generators. While you did refer to them as turbojets and you seek classification of these goods as turbojets, they are most specifically identified as gas generators. You indicate in the submission that:

A turbo-jet consists of a compressor, a combustion system, and a turbine to drive the compressor. A gas generator is a turbo-jet engine adapted for

some use other than providing motive power for aircraft. There is fundamentally no difference between a turbo-jet and a gas generator. The difference in nomenclature lies in that the term turbo-jet is generally used in the aviation industry, whereas the term gas generator is used in other industries. A turbo-jet/gas generator does not have attached or integrated within it a mechanism to convert the exhaust gas energy into kinetic energy. **It simply produces hot exhaust gas**, which when expanded through a final nozzle, produces a thrust reaction at the mounting points. * * * [Emphasis added.]

You indicate that the imported gas generators are imported without free power turbines. Free power turbines are connected to either electric generators for production of electricity or to compressors for use in pumping oil or gas. The free power turbines used with the RB-211 and Avon gas generators are built separately on base frames designed to mount the gas generators. When the gas generators are shipped to RWG for servicing, the free power turbines are left in place on site. Therefore, the RB-211 and Avon gas generators that are imported by your client, RWG, are basically equipment for generating hot air.

In response to the notice of the proposed modification of HQ 967102, one comment was received. The commenter proposed classification of the gas generators in subheading 8405.10.00, HTSUS, as producer gas generators.

ISSUE:

Were the aeroderivative gas generators at issue, *i.e.*, the RB-211 and Avon gas generators, properly classified as other gas turbines of subheading 8411.82.8000, HTSUS, in HQ 967102; or should they be classified as turbojets of subheading 8411.12.8000, HTSUS; or, as producer gas generators of subheading 8405.10.00, HTSUS?

LAW AND ANALYSIS:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that “classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to [the remaining GRIs taken in order].”

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (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 tariff provisions at issue are subheadings of heading 8411 and provide as follows:

- 8411 Turbojets, turbopropellers and other gas turbines, and parts thereof:
Turbojets:
- 8411.11 Of a thrust not exceeding 25 kN:
* * *

8411.12	Of a thrust exceeding 25 kN:
	* * *
	Turbopropellers:
8411.21	Of a power not exceeding 1,100 kW:
	* * *
8411.22	Of a power exceeding 1,100 kW:
	* * *
	Other gas turbines:
8411.81	Of a power not exceeding 5,000 kW:
	* * *
8411.82	Of a power exceeding 5,000 kW:
	* * *

Heading 8411, HTSUS, covers three types of engines: Turbojets; Turbopropellers; and Other Gas Turbines. EN 84.11 parallels the heading listings for these three engine types and states in pertinent part as follows:

This heading covers **turbo-jets, turbo-propellers and other gas turbines.**

The turbines of this heading are, in general, internal combustion engines which do not usually require any external source of heat as does, for example, a steam turbine.

(A) TURBO-JETS

A turbo-jet consists of a compressor, a combustion system, a turbine and a nozzle, which is a convergent duct placed in the exhaust pipe. The hot pressurized gas exiting from the turbine is converted to a high velocity gas stream by the nozzle. The reaction of this gas stream acting on the engine provides the **motive force** which may be used to power aircraft. In its simplest form the compressor and turbine are accommodated on a single shaft. In more complex designs the compressor is made in two parts (a two spool compressor) in which the spool of each part is driven by its own turbine through concentric shafting. Another variation is to add a ducted fan usually at the inlet to the compressor and drive this either by a third turbine or connect it to the first compressor spool. The fan acts in the nature of a ducted propeller, most of its output bypassing the compressor and turbine and joining the exhaust jet to provide extra thrust. This version is sometimes called a “bypass fan jet.”

* * *

(B) TURBO-PROPELLERS

Such engines are similar to turbo-jets, but have a further turbine downstream of the compressor turbine, which is coupled to a conventional propeller such as is used on piston engined aircraft. This latter turbine is sometimes referred to as a “free turbine”, meaning that it is not mechanically coupled to the compressor and compressor turbine shaft. Thus most of the hot pressurised gas leaving the compressor turbine is converted into shaft power by the free turbine instead of being expanded

in a nozzle as is the case in turbo-jets. In some cases, the gases leaving the free turbine may be expanded in a nozzle to provide auxiliary jet power and assist the propeller.

(C) OTHER GAS TURBINES

This group includes industrial gas-turbine units which are either specifically designed for industrial use or adapt turbo-jets or turbo-propeller units for uses other than providing motive power for aircraft.

There are two types of cycles:

- (1) The simple cycle, in which air is ingested and compressed by the compressor, heated in the combustion system and passed through the turbine, finally exhausting to the atmosphere.
- (2) The regenerative cycle, in which air is ingested, compressed and passed through the air pipes of a regenerator. The air is pre-heated by the turbine exhaust and is then passed to the combustion system where it is further heated by the addition of fuel. The air/gas mixture passes through the turbine and is exhausted through the hot gas side of the regenerator and finally to the atmosphere.

There are two types of designs:

- (a) The single-shaft gas turbine unit, in which the compressor and turbine are built on a single shaft, the turbine providing power to rotate the compressor and to drive rotating machinery through a coupling. This type of drive is most effective for constant speed applications such as electrical power generation.
- (b) The two-shaft gas turbine unit, in which the compressor, combustion system and compressor turbine are accommodated in one unit generally called a gas generator, whilst a second turbine on a separate shaft receives the heated and pressurised gas from the exhaust of the gas generator. This second turbine known as the power turbine is coupled to a driven unit, such as a compressor or pump. Two-shaft gas turbines are normally applied where load demand variations require a range of power and rotational speed from the gas turbine

These gas turbines are used for marine craft and locomotives, for electrical power generation, and for mechanical drives in the oil and gas, pipeline and petrochemical industries.

This group also includes other gas turbines without a combustion chamber, comprising simply a stator and rotor and which use energy from gases provided by other machines or appliances (e.g., gas generators, diesel engines, free-piston generators) and compressed air or other compressed gas turbines.

The alternative classification suggested by the commenter is subheading 8405.10.00, HTSUS, which provides for:

- 8405 Producer gas or water gas generators, with or without their purifiers; acetylene gas generators and similar water process gas generators, with or without their purifiers; parts thereof:

8405.10.00 00 Producer gas or water gas generators, with or without their purifiers; acetylene gas generators and similar water process gas generators, with or without their purifiers . . .

EN 84.05 provides in pertinent part as follows:

This heading covers self-contained apparatus and plant for generating any kind of gas (e.g., producer gas, water gas and mixtures thereof, or acetylene) whatever the intended use of the gas produced (lighting, industrial heating, feeding gas engines, welding or cutting metals, chemical synthesis, etc.).

* * *

(A) PRODUCER GAS GENERATORS

These usually consist of a closed cylinder, generally fitted with a refractory lining or a water-cooled double wall enclosing a grate (either of fixed, shaking or revolving type), with provision for passing a current of air (or of air and steam) by suction or blowing. A thick bed of fuel is burned on the grate and the flow of air and steam is regulated so that combustion is incomplete. The decomposition of the water and the incomplete combustion of the fuel yield carbon monoxide and hydrogen. The resultant mixture of carbon monoxide, hydrogen and nitrogen (producer gas) is drawn off at the top of the apparatus.

In certain generators of the “reversed combustion” type, the air is blown from the top to the bottom and along the sides of the cylinder and the gas is collected at the bottom of the apparatus, below the grate. This allows for more complete combustion of tars, etc.

* * *

Both producer gas and water gas generators may be adapted for burning many kinds of solid fuel (e.g., coal, coke, charcoal, wood, vegetable or other waste).

* * *

Before addressing the arguments regarding classification of the gas generators in heading 8411, HTSUS, we will dispense with the commenter’s suggestion of classification in heading 8405, HTSUS, as producer gas generators.

The commenter suggests the gas generators at issue cannot be classified as gas turbines of heading 8411, HTSUS, because the EN for heading 84.11 states that “other gas turbines” includes “gas turbines without a combustion chamber comprising simply a stator and rotor and which use energy from gases provided by *other machines or appliances (e.g., gas generators . . .)*.” Commenter’s submission at page 5. The commenter infers that as the goods at issue are referred to as gas generators, they must be an other machine or appliance as noted in the EN. However, the commenter is assuming that all goods referred to as gas generators are the same, and, quite simply, they are not. The term “gas generator” may be used to describe a variety of appliances with different constructions and different fuel sources and outputs. For

instance, “gas generator” is defined in the *McGraw-Hill Dictionary of Scientific & Technical Terms*, 6th Edition (2003) as follows:

A device used to generate gases in the laboratory. (chemical engineering)

A chemical plant for producing gas from coal, for example, water gas. (mechanical engineering)

An apparatus that supplies a high-pressure gas flow to drive compressors, airscrews, and other machines.

The scope of the term “gas generators” in the EN for heading 84.11 is not clear. We are not convinced that it refers to the goods at issue herein that consist of the elements of a gas turbine as discussed in detail below.

With regard to heading 8405, HTSUS, “producer gas” is defined as:

A gas composed of carbon monoxide, hydrogen, and nitrogen, obtained by passing air and steam through incandescent coke, used as an industrial fuel, in certain gas engines, and in the manufacture of ammonia. At 1544, *Random House Unabridged Dictionary*, 2nd Edition (1993).

A combustible mixture of nitrogen, carbon monoxide, and hydrogen, generated by passing air with steam over burning coke or coal in a furnace and used as fuel. *The American Heritage Dictionary of the English Language*, 4th Edition (2000).

Gas made in a producer, consisting chiefly of carbon monoxide, hydrogen, and nitrogen, and having an average heating value of about 150 Btu. At 1810, *Webster’s Third New International Dictionary of the English Language Unabridged* (1993).

Based on the definitions of “producer gas” and the EN for heading 84.05, producer gas generators are designed to produce specific gases to be used as a fuel. The gas generators at issue are designed to blow hot air. The designs and purposes of producer gas generators and the gas generators at issue are clearly different and distinct. The gas generators at issue are not classifiable in heading 8405, HTSUS. *See also*, HQ 951195, dated June 15, 1992 and HQ 957651, dated March 20, 1995, in which we held that heading 8405, HTSUS, provides only for producer gas generators, water gas generators, acetylene gas generators, and similar water process gas generators.

In your submission of May 10, 2006, you argue that the RB-211 and Avon gas generators do not meet the descriptions of the two types of designs of “other gas turbines” set forth in the EN to heading 8411. We agree with you that neither the RB-211 nor Avon fall within the description of a single shaft gas turbine unit as described in the EN. With regard to the two-shaft gas turbine unit description in the EN, you stated: “As turbo-jet/gas generators, neither the RB-211 nor Avon has power turbines as an integral part of their design.” However, we believe that the RB-211 and the Avon gas generators fall within the description provided in the EN of one unit of the two-shaft gas turbine unit. The EN describes one unit of the two-shaft unit as being known as a gas generator and consisting of a compressor, combustion system and compressor turbine. The Avon gas generator consists of a compressor, combustion system and a compressor turbine. The RB-211 gas generator consists of intermediate pressure and high pressure compressors, each with its own turbine, and a combustion system. Therefore, the RB-211 and Avon gas

generators would appear to clearly meet the description of one unit of a two-shaft gas turbine unit as described in the EN.

The second unit of the two-shaft gas turbine design described by the EN is the power turbine. The EN explains that this power turbine is on a separate shaft and receives the heated and pressurized gas from the exhaust of the gas generator. This is exactly what occurs with the RB-211 and Avon gas generators. These gas generators are coupled or mounted with a separate power turbine that receives the hot air exhaust from the generators. On the Rolls-Royce web site, www.rolls-royce.com, Rolls-Royce provides a fact sheet and informational guide on the industrial RB-211 generating set. In the informational guide, the RB-211 is described as follows: "The two-shaft industrial RB211 delivers optimum power and fuel consumption through a geared, high speed power turbine allied to a four-pole, high efficiency alternator." With regard to power turbines, the fact sheet states: "The power turbines are rugged two or three stage units designed specifically to match the RB211 by Rolls-Royce." These statements in Rolls-Royce's self-produced materials lend support to our belief that the RB-211 gas generator is one unit of a two-shaft gas turbine unit as described by the EN. Whether or not the power turbine is mechanically coupled or the shaft of the power turbine is physically connected to the gas generators, although neither of the gas generators at issue are imported with power turbines, we believe both of the gas generators at issue fall within the description provided in the EN of one unit, *i.e.*, the gas generator, of two-unit gas turbines designed for industrial use.

You argue that the gas generators at issue are, and should be classified as, turbojets. All of the engines of heading 8411, HTSUS, are gas turbines. In considering whether the gas generators at issue are classifiable as a gas turbine, or more specifically as a turbojet, we need to more fully understand what a gas turbine is and its function. While the EN provide guidance, further clarification may be found from lexicographic sources. Tariff terms are to be construed according to their common meaning in the absence of contrary legislative intent and so it is proper to consult lexicographic and scientific authorities, dictionaries and other reliable sources in ascertaining the common meaning of a tariff term. *See Lyntec, Inc. v. United States*, 976 F.2d 693, 697 (1992).

"Gas turbine" is defined as follows:

An air-breathing internal-combustion engine composed of an air compressor, a combustion chamber, and a turbine wheel, used esp. for propulsion. *Webster's II New Riverside University Dictionary*, at 521 (Houghton Mifflin Company, 1984).

An internal-combustion engine consisting of an air compressor, combustion chamber, and turbine wheel that is turned by the expanding products of combustion. The four major types of gas turbine engines are the turboprop, turbojet, turbofan, and turboshaft. *See more at turbojet. The American Heritage® Science Dictionary* (Houghton Mifflin Company, 2002).

A combustion turbine that converts the energy of hot compresses (sic) gases, produced by burning fuel in compressed air, in to mechanical power. "*Glossary*" at www.power-technology.com.

(combustion turbine) A turbine that converts the energy of hot compressed gases (produced by burning fuel in compressed air) into mechanical power. Often fired by natural gas or fuel oil. *Glossary of Bioenergy Terms*, at <http://bioenergy.ornl.gov/faqs/glossary.html>.

In addition, from “*Introduction to Gas Turbines for Non-Engineers*”, by Lee S. Langston, University of Connecticut, and George Opdyke, Jr., Dykewood Enterprises (Published in the *Global Gas Turbine News*, Volume 37: 1997, No. 2), we find the following discussion quite informative:

A greater understanding of the gas turbine and its operation can be gained by considering its three major components (. . .): the compressor, the combustor and the turbine. The features and characteristics will be touched on here only briefly.

Compressors and Turbines: The compressor components are connected to the turbine by a shaft in order to allow the turbine to turn the compressor. A *single shaft* gas turbine (. . .) has only one shaft connecting the compressor and turbine components. A *twin spool* gas turbine (. . .) has two concentric shafts, a longer one connecting a low pressure compressor to a low pressure turbine (the low spool) which rotates inside a shorter, larger diameter shaft. The shorter, larger diameter shaft connects the high pressure turbine with the higher pressure compressor (the high spool) which rotates at higher speeds than the low spool. A *triple spool* engine would have a third, intermediate pressure compressor-turbine spool. [References to illustrative figures omitted.]

“Gas generator” is defined as:

The basic gas turbine engine consisting of the compressor, diffuser, combustor, and turbine-driven compressor. The gas generator, also called a core engine, is that part of a gas turbine engine that produces hot, high-velocity gases. The gas generator does not include the inlet duct, fan section, free power turbine, or tailpipe. *An Illustrated Dictionary of Aviation*, Edited by Bharat Kumar (McGraw-Hill Companies, Inc., 2005).

The definitions and the discussion from “*Introduction to Gas Turbines for Non-Engineers*”, cited above, clarify that a basic gas turbine consists of a compressor, combustion chamber and a turbine to power the compressor. The gas generators at issue consist of a compressor, combustion chamber and turbine to power the compressor. Specifically, the industrial RB-211 gas generator is a twin spool design and the industrial Avon gas generator is a single spool design. We find that this part of the two-shaft gas turbine in and of itself is a gas turbine, based on the foregoing descriptions and definitions. We conclude therefore, based on the cited sources, that the gas generators at issue are gas turbines. However, we still must determine if they are classifiable as turbojets as claimed, or as other gas turbines.

Heading 8411, HTSUS, is an *eo nomine* provision. It specifically names the goods classifiable therein, *i.e.*, turbojets, turbopropellers and other gas turbines. “HTSUS terms are construed according to their common and commercial meanings, which are presumed to be the same absent contrary legislative intent.” *Len Ron Manufacturing Co., Inc. v. United States*, 334 F.3d 1304,

1309 (Fed. Cir. 2003), citing *North American Processing Co. v. United States*, 236 F.3d 695, 698 (Fed. Cir. 2001). In addition, an *eo nomine* designation includes all forms of the named article. *Len Ron Manufacturing*, 334 F.3d 1304,1311, citing the Court of International Trade's decision under review therein. See *Nootka Packing Co. v. United States*, 22 C.C.P.A. 464, 470; T.D. 47464 (October 4, 1934) ("an *eo nomine* statutory designation of an article, without limitations or a shown contrary legislative intent, judicial decision, or administrative practice to the contrary, and without proof of commercial designation, will include all forms of said article."). See also, *The Pomeroy Collection, Ltd. v. United States*, 559 f. Supp. 2d 1374, 1396. In determining whether an article falls within an *eo nomine* provision, CBP may consider the use of the article. See *United States v. Quon Quon Company*, 46 C.C.P.A. 70, 73; C.A.D. 699 (1959) ("Of all things most likely to help in the determination of the identity of a manufactured article, beyond the appearance factors of size, shape, construction and the like, use is of paramount importance. To hold otherwise would logically require the trial court to rule out evidence of what things actually are every time the collector thinks an article, as he sees it, is specifically named in the tariff act.").

"Turbojet" is defined, in relevant part, as:

A jet engine having a turbine-driven compressor and developing thrust from the exhaust of hot gases. *Webster's II New Riverside University Dictionary*, at 1244 (Houghton Mifflin Company, 1984).

A turbine used as an engine, especially for an aircraft, **which provides a forward force for movement** from the gas it pushes out, or an aircraft driven by this type of engine. *Cambridge Advanced Learner's Dictionary*, Cambridge University Press, 2010). [Bold added.]

Jet engine in which a turbine-driven compressor draws in and compresses air, forcing it into a combustion chamber into which fuel is injected. Ignition causes the gases to expand and to rush first through the turbine and then through a nozzle at the rear. **Forward thrust** is generated as a reaction to the rearward momentum of the exhaust gases. * * * *Britannica Concise Encyclopedia*, (Encyclopaedia Britannica, Inc., 1994–2010).

A gas turbine power plant **used to propel aircraft**, where the thrust is derived within the turbo-machinery in the process of accelerating the air and products of combustion over an exhaust jet nozzle. * * * *McGraw-Hill Encyclopedia of Science and Technology*, (The McGraw-Hill Companies, Inc., 2005).

"Turbojet engine" is defined as:

A jet engine in which a turbine drives a compressor that supplies air to a burner and hot gases from the burner drive the turbine before being discharged rearward. *Merriam-Webster OnLine*.

In addition, the EN clearly describes turbojets as consisting of a compressor, a combustion system, a turbine and a nozzle.¹ The EN states with regard

¹ In your July 5, 2010, supplemental submission following the teleconference of June 29, 2010, you indicate that the Avon gas generator is shipped with a nozzle built in as part of

to “other gas turbines” that the group includes industrial gas turbine units which adapt turbojet or turbopropeller units for uses other than providing motive power for aircraft.

Your argument for classification of the subject gas generators as turbojets is based on the contention that turbojets produce thrust measured in kiloNewtons and other gas turbines produce power measured in kilowatts. You argue that at the time of importation these gas generators are only capable of providing thrust. However, you are moving beyond the language at issue in the tariff, *i.e.*, turbojets versus other gas turbines, to the next level of tariff language which is a division of the thrust or power generated by the classified good. We must first determine if the gas generators at issue are turbojets.

In HQ 967102, we stated “. . . it is the specific construction and use of the gas turbine that determines whether that model is classified as a “Turbojet,” “Turboprop” or “Other Gas Turbine.”” We still maintain that is the case. In the case of the aeroderivative gas generators, they are based upon aero engine designs, but have been adapted and changed so as to serve a different purpose than that of the aero engines. Aero engines are designed to provide thrust to create propulsion. While the aeroderivative gas generators, also known as aeroderivative gas turbines, may create thrust due to the hot exhaust gas produced by their operation, they are not intended or used to propel an object, such as an aircraft, forward. The aeroderivative gas generators are used to power a separate turbine to create mechanical or electrical power.

In your letter of June 15, 2009, to this office, you stated with regard to the use of the term aeroderivative:

This means that the goods at issue share common parts and design elements. This does not mean that a specific aircraft engine has been removed from service and adapted for use other than provided (sic) motive power for aircraft. This may have been the case many years ago, but the modern aero-derivatives are purpose built. They do share parts and core design with the aircraft engines. Certain functions related to the aero-derivative gas turbines are moved away from the engine such as the lube modules and as discussed, the by-pass is removed.

From the various definitions of turbojet cited herein and in consideration of the EN, we conclude that turbojets are commonly recognized as gas turbine engines intended to propel objects forward. Whereas, aeroderivative gas turbine engines have a completely different purpose and stream of commerce. The EN are clear in indicating that aeroderivative gas turbine engines used for electrical or mechanical power generation are within the scope of “other gas turbines.” While, as you indicate, aero engines and aeroderivative engines share some parts and design elements, it is our view that they are commercially distinct goods which are, by the language of the EN (which serve to guide in the interpretation of the tariff), classifiable in separate subheadings of heading 8411, HTSUS.

As the gas generators at issue do not meet the definition of turbojets and, as the gas generators are gas turbines and not parts of gas turbines, classification falls, pursuant to GRI 1, to “other gas turbines” of subheading the unit. You refer to this “nozzle” as a “converging annulus” and state that it follows the compressor turbine stage of the generator. You state that the converging annulus “creates a venturi effect by concentrating the hot gas energy from the engine.” Furthermore, you submit that the nozzle is not part of the turbojet, but is a separate component, “not shipped with the turbo jet but usually specific to an airframe design.”

8411.81, HTSUS, which provides for other gas turbines of a power not exceeding 5,000 kilowatts, or subheading 8411.82, HTSUS, which provides for other gas turbines of a power exceeding 5,000 kilowatts.

The gas generators produce mechanical energy from the combustion of the fuel and hot air gases. You explained in response to questions from CBP that: "With the goods at issue, the horsepower cannot be stated because the goods do not produce kinetic or linear energy." However, you went on to state that engineers can approximate the horsepower by substituting assumptions, the "first and biggest" being the presence of a turbine that is 100 percent efficient. You attached the formula used by engineers to convert the mass flow rate of air, *i.e.*, the exhaust, into power. Thus, the energy produced by the gas generators is measurable as horse power, albeit an approximation. Horse power may be converted to megawatts or kilowatts. Thus, even in the absence of a power turbine, it is possible to calculate the power output of the gas generators at issue in terms of kilowatts for purposes of classification.

HOLDING:

Based on the analysis above and pursuant to GRI 1, the Rolls-Royce RB211 gas generator and the Rolls-Royce Avon gas generator are classifiable in subheading 8411.82.8000, HTSUSA, which provides for: "Turbojets, turbo-propellers and other gas turbines, and parts thereof: Other gas turbines: Of a power exceeding 5,000 kW: Other." Goods classifiable in subheading 8411.82.8000, HTSUSA, are dutiable at the general column one rate of 2.5 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

HQ 967102, dated September 27, 2004, is hereby modified with regard to its analysis. We affirm the classification of the gas generators at issue in HQ 967102 for the reasons set forth in this decision. Pursuant to 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

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

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H108255

April 11, 2012

OT:RR:CTF:VS H108255 CMR

CATEGORY: Classification

TARIFF NO.: 8411.82.80

MANAGER, IMPORT COMPLIANCE
GENERAL ELECTRIC AIRCRAFT ENGINES
ONE NEUMANN WAY
CINCINNATI, OH 45215

RE: Reconsideration of Headquarters Ruling Letter 087981, dated December 21, 1990; Classification of gas generator to be coupled with a power turbine

DEAR SIR OR MADAM:

On December 21, 1990, the U.S. Customs Service, the predecessor agency of U.S. Customs and Border Protection, issued Headquarters Ruling Letter (HQ) 087981 to your company classifying the gas generator of a General Electric LM 5000 gas turbine engine as a part of a gas turbine in subheading 8411.99.90 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of reconsidering another ruling letter on similar merchandise, we have reviewed HQ 087981 and determined the classification of the gas generator at issue therein as a part was an error. Therefore, we are revoking HQ 087981 and reclassifying the subject gas generator in accordance with the analysis set forth below.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of HQ 967102 was published November 2, 2011, in the *Customs Bulletin*, Volume 45, Number 45. One comment was received and is discussed in the decision below.

FACTS:

The merchandise at issue in HQ 087981 was a gas generator for a General Electric LM 5000 gas turbine engine. The gas generator was described in the ruling as follows:

. . . . The gas generator consists of a low pressure compressor and turbine, a high pressure compressor and turbine, an annular combustor and an accessory drive gearbox. After importation, the gas generator is coupled to a power turbine to form a complete LM 5000 gas turbine engine.

The gas generator compresses air in a compressor and then heats the air in a combustor. In a complete LM 5000 turbine the gaseous emission is then passed from the gas generator through the power turbine. The power turbine then converts the aerodynamic energy into mechanical energy by turning a rotor which is coupled to a shaft. The accessory drive gearbox is used to control the lubrication, variable geometry controls and fuel system of the gas generator.

General Electric LM 5000 turbines are simple cycle turbines and are designed for marine and industrial applications. Complete LM 5000

turbines may, for example, be connected to a compressor for use in an oil platform/gas pumper industry application, or may be connected to an electrical generator for use in the power generating industry.

In HQ 087981, Customs determined that the gas generator at issue was classifiable as a “part” of a gas turbine based on a belief that the gas generator consisted only of the compressor and combustor components of a gas turbine and lacked the turbine component necessary for the unit to be considered a gas turbine. We believe this was due to confusion with regard to the role of the compressor turbine and a belief that a gas generator imported without the power turbine with which it will be coupled would not fall within the definition of a gas turbine.

In response to the notice of the proposed modification of HQ 967102, one comment was received. The commenter proposed classification of the gas generators in subheading 8405.10.00, HTSUS, as producer gas generators.

ISSUE:

Is the gas generator of the LM 5000 gas turbine properly classified as a part of a gas turbine (other than a part of a turbojet or turbopropeller) in subheading 8411.99.90, HTSUS, or is it classified as an “other gas turbine” of subheading 8411.82.80, HTSUS?

LAW AND ANALYSIS:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that “classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to [the remaining GRIs taken in order].”

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (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 tariff provisions at issue are subheadings of heading 8411 and provide as follows:

8411 Turbojets, turbopropellers and other gas turbines, and parts thereof:

Turbojets:

8411.11 Of a thrust not exceeding 25 kN:

* * *

8411.12 Of a thrust exceeding 25 kN:

* * *

Turbopropellers:

8411.21 Of a power not exceeding 1,100 kW:

* * *

8411.22 Of a power exceeding 1,100 kW:

* * *

	Other gas turbines:		
8411.81	Of a power not exceeding 5,000 kW:		
	*	*	*
8411.82	Of a power exceeding 5,000 kW:		
	*	*	*
	Parts:		
8411.91	Of turbojets or turbopropellers:		
	*	*	*
8411.99	Other:		
	*	*	*

Heading 8411, HTSUS, covers three types of engines: Turbojets, Turbopropellers, and Other Gas Turbines, and their parts. EN 84.11 parallels the heading listings for these three engine types and states in pertinent part as follows:

This heading covers **turbo-jets, turbo-propellers and other gas turbines.**

The turbines of this heading are, in general, internal combustion engines which do not usually require any external source of heat as does, for example, a steam turbine.

(D) TURBO-JETS

A turbo-jet consists of a compressor, a combustion system, a turbine and a nozzle, which is a convergent duct placed in the exhaust pipe. The hot pressurized gas exiting from the turbine is converted to a high velocity gas stream by the nozzle. The reaction of this gas stream acting on the engine provides the motive force which may be used to power aircraft. In its simplest form the compressor and turbine are accommodated on a single shaft. In more complex designs the compressor is made in two parts (a two spool compressor) in which the spool of each part is driven by its own turbine through concentric shafting. Another variation is to add a ducted fan usually at the inlet to the compressor and drive this either by a third turbine or connect it to the first compressor spool. The fan acts in the nature of a ducted propeller, most of its output bypassing the compressor and turbine and joining the exhaust jet to provide extra thrust. This version is sometimes called a "bypass fan jet."

* * *

(E) TURBO-PROPELLERS

Such engines are similar to turbo-jets, but have a further turbine downstream of the compressor turbine, which is coupled to a conventional propeller such as is used on piston engined aircraft. This latter turbine is sometimes referred to as a "free turbine", meaning that it is not mechanically coupled to the compressor and compressor turbine shaft. Thus most of the hot pressurised gas leaving the compressor turbine is converted into shaft power by the free turbine instead of being expanded

in a nozzle as is the case in turbo-jets. In some cases, the gases leaving the free turbine may be expanded in a nozzle to provide auxiliary jet power and assist the propeller.

(F) OTHER GAS TURBINES

This group includes industrial gas-turbine units which are either specifically designed for industrial use or adapt turbo-jets or turbo-propeller units for uses other than providing motive power for aircraft.

There are two types of cycles:

- (3) The simple cycle, in which air is ingested and compressed by the compressor, heated in the combustion system and passed through the turbine, finally exhausting to the atmosphere.
- (4) The regenerative cycle, in which air is ingested, compressed and passed through the air pipes of a regenerator. The air is pre-heated by the turbine exhaust and is then passed to the combustion system where it is further heated by the addition of fuel. The air/gas mixture passes through the turbine and is exhausted through the hot gas side of the regenerator and finally to the atmosphere.

There are two types of designs:

- (c) The single-shaft gas turbine unit, in which the compressor and turbine are built on a single shaft, the turbine providing power to rotate the compressor and to drive rotating machinery through a coupling. This type of drive is most effective for constant speed applications such as electrical power generation.
- (d) The two-shaft gas turbine unit, in which the compressor, combustion system and compressor turbine are accommodated in one unit generally called a gas generator, whilst a second turbine on a separate shaft receives the heated and pressurised gas from the exhaust of the gas generator. This second turbine known as the power turbine is coupled to a driven unit, such as a compressor or pump. Two-shaft gas turbines are normally applied where load demand variations require a range of power and rotational speed from the gas turbine

These gas turbines are used for marine craft and locomotives, for electrical power generation, and for mechanical drives in the oil and gas, pipeline and petrochemical industries.

This group also includes other gas turbines without a combustion chamber, comprising simply a stator and rotor and which use energy from gases provided by other machines or appliances (e.g., gas generators, diesel engines, free-piston generators) and compressed air or other compressed gas turbines.

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the engines and motors of this heading are also classified here (e.g., gas turbine rotors, combustion chambers and vents for jet engines, parts of turbo-jet

engines (stator rings, with or without blades, rotor discs or wheels, with or without fins, blades and fins), fuel feed regulators, fuel nozzles).

The alternative classification suggested by the commenter is subheading 8405.10.00, HTSUS, which provides for:

- 8405 Producer gas or water gas generators, with or without their purifiers; acetylene gas generators and similar water process gas generators, with or without their purifiers; parts thereof:
- 8405.10.00 00 Producer gas or water gas generators, with or without their purifiers; acetylene gas generators and similar water process gas generators, with or without their purifiers . . .

* * *

EN 84.05 provides in pertinent part as follows:

This heading covers self-contained apparatus and plant for generating any kind of gas (e.g., producer gas, water gas and mixtures thereof, or acetylene) whatever the intended use of the gas produced (lighting, industrial heating, feeding gas engines, welding or cutting metals, chemical synthesis, etc.).

* * *

(B) PRODUCER GAS GENERATORS

These usually consist of a closed cylinder, generally fitted with a refractory lining or a water-cooled double wall enclosing a grate (either of fixed, shaking or revolving type), with provision for passing a current of air (or of air and steam) by suction or blowing. A thick bed of fuel is burned on the grate and the flow of air and steam is regulated so that combustion is incomplete. The decomposition of the water and the incomplete combustion of the fuel yield carbon monoxide and hydrogen. The resultant mixture of carbon monoxide, hydrogen and nitrogen (producer gas) is drawn off at the top of the apparatus.

In certain generators of the “reversed combustion” type, the air is blown from the top to the bottom and along the sides of the cylinder and the gas is collected at the bottom of the apparatus, below the grate. This allows for more complete combustion of tars, etc.

* * *

Both producer gas and water gas generators may be adapted for burning many kinds of solid fuel (e.g., coal, coke, charcoal, wood, vegetable or other waste).

* * *

Before addressing the arguments regarding classification of the gas generators in heading 8411, HTSUS, we will dispense with the commenter’s suggestion of classification in heading 8405, HTSUS, as producer gas generators.

The commenter suggests the gas generators at issue cannot be classified as gas turbines of heading 8411, HTSUS, because the EN for heading 84.11 states that “other gas turbines” includes “gas turbines without a combustion chamber comprising simply a stator and rotor and which use energy from

gases provided by *other machines or appliances (e.g., gas generators . . .)*.” Commenter’s submission at page 5. The commenter infers that as the goods at issue are referred to as gas generators, they must be an other machine or appliance as noted in the EN. However, the commenter is assuming that all goods referred to as gas generators are the same, and, quite simply, they are not. The term “gas generator” may be used to describe a variety of appliances with different constructions and different fuel sources and outputs. For instance, “gas generator” is defined in the *McGraw-Hill Dictionary of Scientific & Technical Terms*, 6th Edition (2003) as follows:

A device used to generate gases in the laboratory. (chemical engineering)

A chemical plant for producing gas from coal, for example, water gas. (mechanical engineering)

An apparatus that supplies a high-pressure gas flow to drive compressors, airscrews, and other machines.

The scope of the term “gas generators” in the EN for heading 84.11 is not clear. We are not convinced that it refers to the goods at issue herein that consist of the elements of a gas turbine as discussed in detail below.

With regard to heading 8405, HTSUS, “producer gas” is defined as:

A gas composed of carbon monoxide, hydrogen, and nitrogen, obtained by passing air and steam through incandescent coke, used as an industrial fuel, in certain gas engines, and in the manufacture of ammonia. At 1544, *Random House Unabridged Dictionary*, 2nd Edition (1993).

A combustible mixture of nitrogen, carbon monoxide, and hydrogen, generated by passing air with steam over burning coke or coal in a furnace and used as fuel. *The American Heritage Dictionary of the English Language*, 4th Edition (2000).

Gas made in a producer, consisting chiefly of carbon monoxide, hydrogen, and nitrogen, and having an average heating value of about 150 Btu. At 1810, *Webster’s Third New International Dictionary of the English Language Unabridged* (1993).

Based on the definitions of “producer gas” and the EN for heading 84.05, producer gas generators are designed to produce specific gases to be used as a fuel. The gas generators at issue are designed to blow hot air. The designs and purposes of producer gas generators and the gas generators at issue are clearly different and distinct. The gas generators at issue are not classifiable in heading 8405, HTSUS. *See also*, HQ 951195, dated June 15, 1992 and HQ 957651, dated March 20, 1995, in which we held that heading 8405, HTSIS, provides only for producer gas generators, water gas generators, acetylene gas generators, and similar water process gas generators.

All of the engines of heading 8411, HTSUS, are gas turbines. In considering whether the gas generator at issue is classifiable as a gas turbine, or as a part of a gas turbine, we need to more fully understand what a gas turbine is and its function. While the EN provide guidance, further clarification may be found from lexicographic sources. Tariff terms are to be construed according to their common meaning in the absence of contrary legislative intent and

so it is proper to consult lexicographic and scientific authorities, dictionaries and other reliable sources in ascertaining the common meaning of a tariff term. See *Lyntec, Inc. v. United States*, 976 F.2d 693, 697 (1992).

“Gas turbine” is defined as follows:

An air-breathing internal-combustion engine composed of an air compressor, a combustion chamber, and a turbine wheel, used esp. for propulsion. *Webster's II New Riverside University Dictionary*, at 521 (Houghton Mifflin Company, 1984).

An internal-combustion engine consisting of an air compressor, combustion chamber, and turbine wheel that is turned by the expanding products of combustion. The four major types of gas turbine engines are the turboprop, turbojet, turbofan, and turboshaft. See more at *turbojet*. *The American Heritage® Science Dictionary* (Houghton Mifflin Company, 2002).

A combustion turbine that converts the energy of hot compressed gases, produced by burning fuel in compressed air, into mechanical power. “Glossary” at www.power-technology.com.

(combustion turbine) A turbine that converts the energy of hot compressed gases (produced by burning fuel in compressed air) into mechanical power. Often fired by natural gas or fuel oil. *Glossary of Bioenergy Terms*, at <http://bioenergy.ornl.gov/faqs/glossary.html>.

In addition, from “*Introduction to Gas Turbines for Non-Engineers*”, by Lee S. Langston, University of Connecticut, and George Opdyke, Jr., Dykewood Enterprises (Published in the *Global Gas Turbine News*, Volume 37: 1997, No. 2), we find the following discussion quite informative:

A greater understanding of the gas turbine and its operation can be gained by considering its three major components (. . .): the compressor, the combustor and the turbine. The features and characteristics will be touched on here only briefly.

Compressors and Turbines: The compressor components are connected to the turbine by a shaft in order to allow the turbine to turn the compressor. A *single shaft* gas turbine (. . .) has only one shaft connecting the compressor and turbine components. A *twin spool* gas turbine (. . .) has two concentric shafts, a longer one connecting a low pressure compressor to a low pressure turbine (the low spool) which rotates inside a shorter, larger diameter shaft. The shorter, larger diameter shaft connects the high pressure turbine with the higher pressure compressor (the high spool) which rotates at higher speeds than the low spool. A *triple spool* engine would have a third, intermediate pressure compressor-turbine spool. [References to illustrative figures omitted.]

“Gas generator” is defined as:

The basic gas turbine engine consisting of the compressor, diffuser, combustor, and turbine-driven compressor. The gas generator, also called a core engine, is that part of a gas turbine engine that produces hot, high-velocity gases. The gas generator does not include the inlet duct, fan

section, free power turbine, or tailpipe. *An Illustrated Dictionary of Aviation, E* dited by Bharat Kumar (McGraw-Hill Companies, Inc., 2005).

We believe a misunderstanding of the basic gas generator, the definition of gas turbines, and the turbine component in a basic gas generator led to the classification of the gas generator at issue in HQ 087981 as a part. The definitions and the discussion from “*Introduction to Gas Turbines for Non-Engineers*”, cited above, clarify that a basic gas turbine consists of a compressor, a combustion chamber and a turbine to power the compressor. The gas generator of the LM 5000 gas turbine consists of a compressor, a combustion chamber and a turbine to power the compressor. Therefore, it falls within the definition of a gas turbine. As the gas generator is not a turbojet or turbopropeller, it is classified as an “other gas turbine.”

In addition, we note that with regard to parts of gas turbines, the EN refer to components such as rotors, combustion chambers, vents, stator rings, rotor discs or wheels, fuel feed regulators and fuel nozzles. The gas generator at issue includes such parts, but is itself, not a part, but a gas turbine.

HOLDING:

The gas generator for a General Electric LM 5000 gas turbine engine imported without the power turbine with which it is to be coupled is classifiable as an other gas turbine of subheading 8411.82.80, HTSUS. Goods classifiable in this subheading are dutiable at the general column one rate of 2.5 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

NY 087981, dated December 21, 1990, is hereby revoked.

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

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

Sincerely,

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF RULING LETTERS AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF PERFORATING GUN
ASSEMBLIES**

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

ACTION: Notice of proposed revocation of three ruling letters and proposed revocation of treatment relating to the tariff classification of certain perforating gun assemblies.

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 three ruling letters relating to the tariff classification of certain perforating gun assemblies 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 proposed actions.

DATES: Comments must be received on or before June 15, 2012.

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 Street, N.W., 5th 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, Trade and Commercial Regulations Branch, at (202) 325–0118.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. §1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke three ruling letters pertaining to the tariff classification of certain perforating gun assemblies. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter(s) (“NY”) N012463, dated June 18, 2007, NY C83105 dated January 16, 1998, and NY C82398 dated December 22, 1997 (Attachments “A”, “B” and “C”), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N012463, CBP determined that a perforating gun assembly was classified under heading 9303, HTSUS, as a firearm or other

similar device which operated by an explosive charge. In NY C83105 and in NY C82398 CBP determined that a charge holder and a pre-drilled barrel (respectively), used to perforate oil wells, were classified in heading 9305, HTSUS, as parts of an article of heading 9303, HTSUS. CBP now believes that these devices are properly classified in heading 7326, HTSUS, as other articles of iron or steel.

Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to revoke NY N012463, NY C83105, NY C82398 and any other ruling not specifically identified, to reflect the proper classification of the perforating gun assemblies, charge holders and pre-drilled barrels according to the analysis contained in proposed Headquarters Ruling Letters (“HQ”) H053672, HQ H102845 and HQ H102847, set forth as Attachments “D”, “E” and “F” 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: April 19, 2012

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments:

[ATTACHMENT A]

N012463

June 18, 2007

CLA-2-93:RR:E:NC:2:224

CATEGORY: Classification

TARIFF NO.: 9303.90.8000

JOSE R. HERNANDEZ
HALLIBURTON ENERGY SERVICES INC.
2601 BELTLINE ROAD
CARROLLTON TX 75006

RE: The tariff classification of a perforating gun assembly.

DEAR MR. HERNANDEZ:

In your electronic ruling request dated June 7, 2007, you requested a tariff classification ruling.

The merchandise in question is identified as a "Shipping Assembly." It is an apparatus consisting of a tube-like device called a charge holder which is a specialized component of a perforating gun. The charge holder is basically a long tube, up to several feet in length, with holes cut out of it. The design of the tube and the placement of the holes are made to exact specifications. The charge holder tube will be fitted with directional, sealed, powdered charges, combined with the perforating gun, and placed in oil or gas wells where its detonation will blow or perforate holes in casings and rock strata.

The applicable subheading for the "Shipping Assembly," consisting of the perforating pipe or "gun," the charge holder tube and the alignment fixture, will be 9303.90.8000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other firearms and similar devices which operate by the firing of an explosive charge (for example, sporting shotguns and rifles, muzzle-loading firearms, Very pistols and other devices designed to project only signal flares, pistols and revolvers for firing blank ammunition, captive-bolt humane killers, line-throwing guns): Other: Other."

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

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

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

NY C83105

January 16, 1998

CLA-2-95:RR:NC:2:224 C83105

CATEGORY: Classification

TARIFF NO.: 9305.90.4000

JOYCE RAY

NORMAN G. JENSEN, INC.

P.O. Box 146

SWEETGRASS, MT 59484

RE: The tariff classification of a Tube Charge Holder from Canada.

DEAR Ms. RAY:

In your letter dated December 18, 1997, you requested a tariff classification ruling on behalf of Lasertech.

The imported article consists of a tube-like device called a charge holder which is a specialized component of a perforating gun. The charge holder is basically a long tube, up to 20 feet in length, with holes cut out of it. The design of the tube and the placement of the holes are made to exact specifications. The tube charge holder is fitted with directional, sealed, powdered charges and then combined with a perforating gun. The perforating gun is placed in an oil well and detonated, blowing holes in the casing and rock strata.

In Customs ruling C82398 dated December 22, 1997, we ruled on a steel gun barrel of the same class or kind as the instant charge holder. That gun barrel was used as a component of a perforating gun, a device fitted with shaped charges or bullets and lowered to the desired depth in a well and fired to create penetrating holes in underground casing, cement and formations. In C82398, we noted that the Explanatory Notes of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) state in paragraph 93.03 that "...[this heading] includes some devices which are not weapons but which operate by the firing of an explosive charge."

The Perforating Gun, in which the imported tube charge holder is a component, would be classified in subheading 9303.90.8000, HTSUSA, which provides for other firearms and similar devices which operate by the firing of an explosive charge. The applicable subheading for the actual imported component, the gun's tube charge holder, will be 9305.90.4000, HTSUSA, which provides for parts and accessories of articles of headings 9301 to 9304; Other; Of articles of heading 9303 other than shotguns or rifles. The duty rate will be 0.7 percent ad valorem.

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

A copy of this ruling letter or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Tom McKenna at (212)466-5475

Sincerely,

ROBERT SWIERUPSKI

*Director**National Commodity Specialist Division*

[ATTACHMENT C]

NY C82398

December 22, 1997

CLA-2-95:RR:NC:2:224 C82398

CATEGORY: Classification

TARIFF NO.: 9305.90.4000

MARY ANN COMSTOCK

W.Y. MOBERLY, INC.

Box 164

SWEETGRASS, MONTANA 59484

RE: The tariff classification of a perforating gun barrel from Canada.

DEAR Ms. COMSTOCK:

In your letter dated December 6, 1997, you requested a tariff classification ruling on behalf of MPB Technologies, Inc.

The merchandise consists of an imported steel gun barrel, pre-drilled and produced in different sizes, which is used as a specialized component in the manufacture of a perforating gun.

A perforating gun, known commercially as a Retrievable Tubing Gun, is defined as a device fitted with shaped charges or bullets that is lowered to the desired depth in a well and fired to create penetrating holes in underground casing, cement, and formations.

The Explanatory Notes (ENs) of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) state in paragraph 93.03 that "this heading includes all firearms not covered by heading 93.01 and 93.02; it includes some devices which are not weapons but which operate by the firing of an explosive charge."

The perforating gun, in which the imported steel gun barrel is a component, would be classified in subheading 9303.90.8000, HTSUSA, which provides for other firearms and similar devices which operate by the firing of an explosive charge. The applicable subheading for the gun barrel component part would then be 9305.90.4000, HTSUSA, which provides for "Parts and accessories of articles of headings 9301 to 9304: Other: Of articles of heading 9303 other than shotguns or rifles." The duty rate will be 0.7 percent ad valorem.

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

A copy of this ruling letter or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Tom McKenna at (212)466-5475

Sincerely,

ROBERT SWIERUPSKI

*Director**National Commodity Specialist Division*

[ATTACHMENT D]

HQ H053672
CLA-2 OT:RR:CTF:TCM H053672 JPJ
CATEGORY: Classification
TARIFF NO.: 7326.90.85

ROBERT T. GIVENS, Esq.
GIVENS & JOHNSTON, PLLC
950 ECHO LANE, SUITE 360
HOUSTON, TX 77024-2788

RE: Revocation of New York Ruling Letter N012463; Classification of a Perforating Gun Assembly

DEAR MR. GIVENS:

This letter is in response to your request of February 20, 2009, for reconsideration of New York Ruling Letter (NY) N012463, issued to your client, Halliburton Energy Services, Inc. (Halliburton), by U.S. Customs and Border Protection (CBP) on June 18, 2007. In NY N012463, CBP determined that the subject “Perforating Gun Assembly” was classified under heading 9303 of the Harmonized Tariff Schedule of the United States (HTSUS) as “Other firearms and similar devices which operate by the firing of an explosive charge.” We have reviewed NY N012463 and found it to be incorrect for the reasons set forth below. In reaching our decision we have taken into consideration your submission dated February 20, 2009, information obtained during a meeting held on October 29, 2009, between CBP, your office and Halliburton, and your supplemental submission dated November 23, 2009.

FACTS:

The subject merchandise, referred to as a perforating gun assembly (hereinafter “perforating gun”),¹ was described in NY N012463 as follows:

It is an apparatus consisting of a tube-like device called a charge holder which is a specialized component of a perforating gun. The charge holder is basically a long tube, up to several feet in length, with holes cut out of it. The design of the tube and the placement of the holes are made to exact specifications. The charge holder tube will be fitted with directional, sealed, powdered charges, combined with the perforating gun, and placed in oil or gas wells where its detonation will blow or perforate holes in casings and rock strata.

According to your submission perforating guns are used in connection with onshore oil well drilling and oil production. The subject perforating guns are said to be imported without any explosive charges, sensors, or the like, and are described as “single use” articles which are discarded after use. You have also stated that:

¹ According to your November 23, 2009 submission, Perforating tools generally consist of 1) a tube called the “carrier” which encases the charge holder, 2) a tube charge holder, consisting of a tube with holes cut into it at prescribed intervals (can circle around the tube, or be confined to one or more sides, depending on the direction of the desired perforation. The tube charge holder holds the sealed, shaped charges), 3) an electrically-operated or mechanical detonator, plus detonating cord, and various other small assembly components.

Without the explosives, the perforating tool provides a sealed atmospheric chamber that can withstand collapse pressure when an external pressure is applied, provides alignment for mating parts, has provisions for attaching additional members, and has strength to withstand tension, compression and torsion.

* * *

The explosive charges in question are shaped charges that focus the energy of the explosion in a specific direction. In many applications the charge holder orients these shaped charges so that they focus their energy laterally precisely into a spot on the wall of the well bore...

ISSUE:

Whether the subject perforating gun assembly is classified (1) under heading 7326, HTSUS, as an article of steel, or (2) under heading 8430, HTSUS, as an excavating, boring or extracting machine, or (3) under heading 8431, HTSUS, as a part of an excavating, boring or extracting machine, or (4) under heading 8479, HTSUS, as a machine having an individual function not elsewhere specified or included, or (5) under heading 9303, HTSUS, as a firearm or similar device which operates by the firing of an explosive charge.

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 are as follows:

7326	Other articles of iron or steel:
8430	Other moving, grading, leveling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snowplows and snowblowers:
8431	Parts suitable for use solely or principally with machines of headings 8425 to 8430:
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:
9303	Other firearms and similar devices which operate by the firing of an explosive charge (for example, sporting shot-guns and rifles, muzzle-loading firearms, Very pistols and other devices designed to project only signal flares, pistols and revolvers for firing blank ammunition, captive-bolt humane killers, line-throwing guns):

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 84.30 provides, in pertinent part, that:

(III) **EXTRACTING, CUTTING OR DRILLING MACHINERY**

This heading covers machinery, **other than** the self-propelled machines of **heading 84.29** and agricultural, horticultural or forestry machinery (**heading 84.32**), for “attacking” the earth’s crust (e.g., for cutting and breaking down rock, earth, coal, etc.; earth excavation, digging, drilling, etc.), or for preparing or compacting the terrain (e.g., scraping, levelling, grading, tamping or rolling). It also includes pile-drivers, pile-extractors, snow-ploughs, and snow-blowers.

EN 84.79 states, in relevant part, as follows:

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

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

For this purpose the following are regarded as having “individual functions”:

* * *

(B) Mechanical devices which cannot perform their function unless they are mounted on another machine or appliance, or are incorporated in a more complex entity, **provided** that this function:

* * *

- i. is distinct from that which is performed by the machine or appliance whereon they are to be mounted, or by the entity wherein they are to be incorporated, and
- ii. does not play an integral and inseparable part in the operation of such machine or entity.

EN 93.03 provides, in pertinent part, that:

This heading includes all firearms **not covered by headings 93.01 and 93.02** ; it includes some devices which are not weapons but which operate by the firing of an explosive charge.

* * *

In your request for reconsideration, you argue that the instant merchandise does not qualify as a firearm within the meaning of heading 9303, HTSUS, in part, because, it does not meet the definition of a “firearm.” You state that an “arm” is commonly defined as a weapon, specifically a firearm. In turn, a weapon is defined as “an instrument of attack or defense in combat, as a gun, missile or sword. *The American Heritage Dictionary of the English Language*, 3rd ed., (1992). You further contend that the instant perforating

gun is not a “similar device” within the meaning of heading 9303, HTSUS, because the subject perforating gun does not look or function like a firearm. You explain that the name “perforating gun” is a misnomer used within the oil and gas industry that does not describe the functionality of the merchandise. In your February submission, you noted that the subject perforating gun is used for “facilitating the production of oil...[and is] not designed to either fire a projectile or to resemble a firearm firing a projectile.”

In order to classify the subject merchandise under heading 9303, HTSUS, it must be a firearm or *ejusdem generis* (of the same class or kind) with those devices enumerated in the heading. The Court has held that “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Nissho-Iwai American Corp. v. United States* (Nissho), 10 Court of Int’l Trade 154, 157 (1986). The exemplars named in heading 9303, HTSUS, share several characteristics which include: multiple usage, operating by the firing of an explosive charge activated by an internal triggering mechanism which sends a projectile through a barrel, and being hand-held.

By contrast, the subject perforating device consists of one long tube with multiple perforations along its length from which multiple explosive charges exit in multiple directions. Further, it does not use an internal firing or triggering mechanism to fire a projectile from a barrel nor is it capable of re-use as are the articles of heading 9303, HTSUS. Moreover, the subject merchandise is used in connection with oil drilling and production rather than as a weapon. Therefore, under the canon of construction known as *ejusdem generis*, the subject perforation device can not be said to be similar in function, essential character or purpose to the enumerated examples of heading 9303, HTSUS. Accordingly, it is not described by the term “firearm.” Based on the foregoing, the subject perforating gun cannot be classified in heading 9303, HTSUS, because it is not described by the heading.

You assert that the subject merchandise is classifiable in heading 8430, HTSUS, as other moving, grading, leveling, scraping, excavating, tamping, or boring machinery. In the alternative, you assert classification under heading 8431, HTSUS, as parts suitable for use solely or principally with the machinery of heading 8430, HTSUS, or in heading 8479, HTSUS, as a machine or mechanical appliance having an individual function, not specified or included elsewhere in Chapter 84.

Machinery of heading 8430, HTSUS, by their own mechanical function, directly affects the scraping, leveling, boring, excavation or extraction of the earth, ores or minerals in question. The examples provided in EN 84.30 include: (A) coal or rock cutters, (B) Tunneling machinery, (C) Machines for boring drill holes in rock, coal, etc., (D) Well sinking or boring machines (F) Hydraulic wedges. The machinery of heading 8430, HTSUS, have in common the fact that they break the earth’s crust by physical impact, abrasion or percussion between the machine in question and the rock or earth to be broken. The instant merchandise does not function in the aforementioned manner. While the ultimate objective of the instant perforation device is to stimulate the flow of oil into the well hole, the subject perforating gun does not itself have direct contact with

the subsurface strata. Instead, it acts as a single use container or carrier into which explosive charges are inserted. We find that the subject perforating gun assembly does not perform a function which is described by the terms of heading 8430, HTSUS.

Further, the subject perforating gun is not designed to be a part of any of the machines of heading 8430, HTSUS and is therefore not classifiable in heading 8431, HTSUS, as a “part” of a machine of heading 8430, HTSUS. A part is either (1) an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article, or (2) dedicated solely for use with an article. [internal quotation marks omitted]. *ABB, Inc. v. United States*, 28 Ct of Int’l Trade 1444, 1452; 346 F. Supp. 2d 1357, 1364; 26 Int’l Trade Rep. (BNA) 2327 (2004), citing *Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774 (Fed. Cir. 1997).

Heading 8479, HTSUS, specifically provides for machines and mechanical appliances having individual functions not elsewhere specified or included. Accordingly, articles of heading 8479, HTSUS, must be a machine or mechanical appliance that has an individual mechanical function. A machine is a “device that amplifies or replaces human or animal effort to accomplish a physical task...the operating of a machine may involve the transformation of chemical, thermal, electrical or nuclear energy into mechanical energy, or vice versa. Britannica Concise Encyclopedia at www.britannica.com/. Further, EN 84.79 (B)(II) explains that individual functions refers to “[m]echanical devices which cannot perform their function unless they are mounted on another machine or appliance, or incorporated in a more complex entity, **provided** that this function:... (ii) does not play an integral and inseparable part in the operation of such machine, appliance or entity...”

According to the facts provided, the subject perforating gun acts as a charge holder for explosive charges which are later detonated to perforate the subsurface well hole. Despite its indirect contribution to the drilling and production of oil, the subject merchandise is simply a passive carrier of “shape charges.” It does not provide any mechanical advantage which facilitates the detonation of the charges nor does it, by its own operation, affect any mechanical outcome. Accordingly, we find that the instant merchandise is not a “machine” or a mechanical appliance within the meaning of heading 8479, HTSUS.

The subject merchandise is a hollow tube-like container which relies on a detonator and other articles in order to function. Therefore, because the subject article has no independent or individual functions or capabilities, we find that the subject perforating gun assembly is properly classified in heading 7326, HTSUS, as an article of steel.

HOLDING:

By application of GRI 1, the subject perforating gun assembly is classifiable under heading 7326, HTSUS. It is specifically classified in subheading 7326.90.85, HTSUS, which provides for: “Other articles of iron or steel: Other: Other.” The 2012 column one, general rate of duty is 2.9% *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 N012463, dated June 18, 2007, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Division

[ATTACHMENT E]

HQ H102845

CLA-2 OT:RR:CTF:TCM H102845 JPJ

CATEGORY: Classification

TARIFF NO.: 7326.90.85

MS. MARY ANN COMSTOCK
UPS BROKERS OF CHOICE
P.O. BOX 164
SWEETGRASS, MT 59484

RE: Revocation of New York Ruling Letter C82398; Classification of a Perforating Gun Barrel

DEAR MS. COMSTOCK:

On December 22, 1997, U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letter (“NY”) C82398 to you on behalf of MPB Technologies, Inc. (“MPB”), classifying a perforating gun barrel under heading 9305, of the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP has recently received additional information regarding perforating guns and parts thereof. Accordingly, we have reviewed NY C82398 and found it to be incorrect for the reasons set forth below.

FACTS:

The subject merchandise, referred to as a perforating gun barrel, was described in NY C82398 as follows:

The merchandise consists of an imported steel gun barrel, pre-drilled and produced in different sizes, which is used as a specialized component in the manufacture of a perforating gun.

A perforating gun, known commercially as a Retrievable Tubing Gun, is defined as a device fitted with shaped charges or bullets that is lowered to the desired depth in a well and fired to create penetrating holes in underground casing, cement, and formations.

According to our research, a perforating gun assembly is a single-use “device used to perforate oil and gas wells in preparation for production. Containing several shaped explosive charges, perforating guns are available in a range of sizes and configurations. The diameter of the gun used is typically determined by the presence of wellbore restrictions or limitations imposed by the surface equipment.”¹ Perforating guns are said to be lowered into the well hole to a desired depth and fired by the detonation of explosive charges which are set inside the tube charge holder. The charges are fired through the perforating holes thus perforating the oil well casing and rock strata in several directions.²

ISSUE:

Whether the subject perforating gun barrel is classified (1) under heading 7326, HTSUS, as an article of iron or steel, or (2) under heading 9303,

¹ *Perforating Gun*. www.glossary.oilfield.slb.com.

² See www.mtech.edu/research/grad/Perf.Presentation.ppt; see also, www.halliburton.com/stimgun.

HTSUS, as a firearm or similar device which operates by the firing of an explosive charge, or under heading 9305, HTSUS, as a part or accessory of articles of headings 9301 to 9304, HTSUS.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

7326	Other articles of iron or steel:
9303	Other firearms and similar devices which operate by the firing of an explosive charge (for example, sporting shot-guns and rifles, muzzle-loading firearms, Very pistols and other devices designed to project only signal flares, pistols and revolvers for firing blank ammunition, captive-bolt humane killers, line-throwing guns):
9305	Parts and accessories of headings 9301 to 9304:

* * *

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 93.03, HTSUS, provides in pertinent part, that:

This heading includes all firearms **not covered by headings 93.01 and 93.02**; it includes some devices which are not weapons but which operate by the firing of an explosive charge.

* * *

In order to classify the subject merchandise under heading 9303, HTSUS, it must be a firearm or *ejusdem generis*, (of the same class or kind) with those devices enumerated in the heading. The Court has held that, “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Nissho-Iwai American Corp. v. United States* (Nissho), 10 Court of Int’l Trade 154, 157 (1986). The exemplars named in heading 9303, HTSUS, share several characteristics which include: multiple usage, operating by the firing of an explosive charge activated by an internal triggering mechanism which sends a projectile through a barrel, and being hand-held.

A “firearm” is defined as “a weapon from which a shot is discharged.” *Merriam-Webster’s Collegiate Dictionary*, 10th ed., 437 (2001). It is also defined as being “a weapon, especially a pistol or rifle, capable of firing a

projectile and using an explosive charge as a propellant.” www.thefreedictionary.com/firearm. Further, a weapon is defined as “an instrument of attack or defense in combat, as a gun, missile or sword. *The American Heritage Dictionary of the English Language*, 3rd ed., 100, 222 (1992).

The subject perforating barrel (perforating device) consists of one long tube-like device with multiple perforations along its length from which multiple explosive charges exit in multiple directions. Further, the tube itself is not the explosive device. Therefore, under the canon of construction known as *ejusdem generis*, the subject perforating barrel can not be said to be similar in function, essential character or purpose to the enumerated examples of heading 9303, HTSUS. Moreover, the subject merchandise is used in connection with oil drilling and production rather than as a weapon. Accordingly, it is not described by the term “firearm.” Based on the foregoing, the subject perforating barrel cannot be classified in heading 9303, HTSUS, because it is not described by the heading.

A part is either (1) an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article, or (2) dedicated solely for use with an article. [internal quotation marks omitted]. *ABB, Inc. v. United States*, 28 Ct of Int’l Trade 1444, 1452; 346 F. Supp. 2d 1357, 1364; 26 Int’l Trade Rep. (BNA) 2327 (2004), citing *Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774 (Fed. Cir. 1997). Based on the aforementioned analysis and description of the subject merchandise, we find that the subject perforating barrel is not designed to be a part of any of the articles of heading 9303, HTSUS and is therefore not classifiable in heading 9305, HTSUS, as a “part” of a firearm or similar devices of heading 9303, HTSUS.

The subject merchandise is a hollow tube-like container which relies on a detonator and other articles in order to function. We find that the subject charge holder is properly classified in heading 7326, HTSUS, as an article of steel because it is not specifically provided for elsewhere in the HTSUS. See EN 73.26.

HOLDING:

By application of GRI 1, the subject perforating barrel is classifiable under heading 7326, HTSUS. It is specifically classified in subheading 7326.90.85, HTSUS, which provides for: “Other articles of iron or steel: Other: Other.” The 2012 column one, general rate of duty is 2.9% *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 C82398, dated December 22, 1997, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT F]

HQ H102847
CLA-2 OT:RR:CTF:TCM H102847 JPJ
CATEGORY: Classification
TARIFF NO.: 7326.90.85

Ms. JOYCE RAY
NORMAN G. JENSEN, INC.; UPS BROKERS OF CHOICE
P.O. BOX 164
SWEETGRASS, MT 59484

RE: Revocation of New York Ruling Letter C83105; Classification of a Tube Charge Holder

DEAR Ms. RAY:

On January 16, 1998, U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letter (“NY”) C83105 to you on behalf of Lasertech, classifying a tube charge holder under heading 9305 of the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP has recently received additional information regarding perforating guns assemblies. Accordingly, we have reviewed NY C83105 and found it to be incorrect for the reasons set forth below.

FACTS:

The subject merchandise, referred to as a “tube charge holder”, was described in NY C83105 as follows:

The imported article consists of a tube-like device called a charge holder which is a specialized component of a perforating gun. The charge holder is basically a long tube, up to 20 feet in length, with holes cut out of it. The design of the tube and the placement of the holes are made to exact specifications. The tube charge holder is fitted with directional, sealed, powdered charges and then combined with a perforating gun. The perforating gun is placed in an oil well and detonated, blowing holes in the casing and rock strata.

According to our research, a perforating gun assembly is a single-use device “used to *perforate* existing oil and gas wells in preparation for *production*. Containing several shaped explosive charges, perforating guns are available in a range of sizes and configurations. The diameter of the gun used is typically determined by the presence of wellbore restrictions or limitations imposed by the surface equipment.”¹ Perforating guns are lowered into the well hole to a desired depth and fired by the detonation of explosive charges which are set inside the tube charge holder. The charges are fired through the perforating holes thus perforating the oil well casing and rock strata in several directions.² The device at issue is not imported with a detonator.

¹ *Perforating Gun*. www.glossary.oilfield.slb.com.

² See www.mtech.edu/research/grad/Perf.Presentation.ppt; see also, www.halliburton.com/stimgun.

ISSUE:

Whether the subject tube charge holder is classified (1) under heading 7326, HTSUS, as an article of iron or steel, or (2) under heading 9303, HTSUS, as a firearm or similar device which operates by the firing of an explosive charge, or under heading 9305, HTSUS, as a part or accessory of articles of headings 9301 to 9304, HTSUS.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

- | | |
|------|---|
| 7326 | Other articles of iron or steel: |
| 9303 | Other firearms and similar devices which operate by the firing of an explosive charge (for example, sporting shot-guns and rifles, muzzle-loading firearms, Very pistols and other devices designed to project only signal flares, pistols and revolvers for firing blank ammunition, captive-bolt humane killers, line-throwing guns): |
| 9305 | Parts and accessories of headings 9301 to 9304: |

* * *

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 93.03, HTSUS, provides in pertinent part, that:

This heading includes all firearms **not covered by headings 93.01 and 93.02**; it includes some devices which are not weapons but which operate by the firing of an explosive charge.

* * *

In order to classify the subject merchandise under heading 9303, HTSUS, it must be a firearm or *ejusdem generis*, (of the same class or kind) with those devices enumerated in the heading. The Court has held that, “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Nissho-Iwai American Corp. v. United States* (Nissho), 10 Court of Int’l Trade 154, 157 (1986). The exemplars named in heading 9303, HTSUS, share several characteristics which include: multiple usage, operating by the firing

of an explosive charge activated by an internal triggering mechanism which sends a projectile through a barrel, and being hand-held.

A “firearm” is defined as “a weapon from which a shot is discharged.” *Merriam-Webster’s Collegiate Dictionary*, 10th ed., 437 (2001). It is also defined as being “a weapon, especially a pistol or rifle, capable of firing a projectile and using an explosive charge as a propellant.” www.thefreedictionary.com/firearm. Further, a weapon is defined as “an instrument of attack or defense in combat, as a gun, missile or sword. *The American Heritage Dictionary of the English Language*, 3rd ed., 100, 222 (1992).

The subject charge holder (perforating device) consists of one long tube-like device with multiple perforations along its length from which multiple explosive charges exit in multiple directions. Further, the tube itself is not the explosive device. Therefore, under the canon of construction known as *ejusdem generis*, the subject perforation device can not be said to be similar in function, essential character or purpose to the enumerated examples of heading 9303, HTSUS. Moreover, the subject merchandise is used in connection with oil drilling and production rather than as a weapon. Accordingly, it is not described by the term “firearm.” Based on the foregoing, the subject charge holder cannot be classified in heading 9303, HTSUS, because it is not described by the heading.

A part is either (1) an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article, or (2) dedicated solely for use with an article. [internal quotation marks omitted]. *ABB, Inc. v. United States*, 28 Ct of Int’l Trade 1444, 1452; 346 F. Supp. 2d 1357, 1364; 26 Int’l Trade Rep. (BNA) 2327 (2004), citing *Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774 (Fed. Cir. 1997). Based on the aforementioned analysis and description of the subject merchandise, we find that the subject charge holder is not designed to be a part of any of the articles of heading 9303, HTSUS and is therefore not classifiable in heading 9305, HTSUS, as a “part” of a firearm or similar devices of heading 9303, HTSUS.

The subject merchandise is a hollow tube-like container which relies on a detonator and other articles in order to function. We find that the subject charge holder is properly classified in heading 7326, HTSUS, as an article of steel because it is not specifically provided for elsewhere in the HTSUS. .

HOLDING:

By application of GRI 1, the subject charge holder used with perforating gun assemblies is classified under heading 7326, HTSUS. It is specifically classified in subheading 7326.90.85, HTSUS, which provides for: “Other articles of iron or steel: Other: Other.” The 2012 column one, general rate of duty is 2.9% *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 C83105, dated January 16, 1998, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**WITHDRAWAL OF MODIFICATION OF RULING LETTERS
AND WITHDRAWAL OF REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF ACETYL
L-CARNITINE HYDROCHLORIDE**

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

ACTION: Notice of withdrawal of proposed modification of one ruling letter and withdrawal of proposed revocation of treatment relating to the inclusion of acetyl l-carnitine hydrochloride in the Pharmaceutical Appendix of the Harmonized Tariff Schedule of the United States (HTSUS).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CBP”) is withdrawing its intent to modify one ruling letter concerning the inclusion of acetyl l-carnitine hydrochloride in the Pharmaceutical Appendix of the HTSUS. Similarly, CBP is withdrawing its intent to revoke any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation was published on October 5, 2011, in Volume 45, Number 41, of the Customs Bulletin. One comment was received in response to this notice, opposing the proposed revocation.

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

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, CBP published a notice in the October 5, 2011, Customs Bulletin, Volume 45, Number 41, proposing to modify New York Ruling Letter (NY) E82956, dated June 18, 1999, pertaining to the inclusion of acetyl l-carnitine hydrochloride in the pharmaceutical appendix of the HTSUS, and to revoke any treatment accorded to substantially identical merchandise. The tariff classification of the subject merchandise was not at issue in the modification. One comment was received in response to this notice.

In NY E82956, CBP classified the subject acetyl l-carnitine hydrochloride in subheading Subheading 2923.90.00, HTSUS, which provides for “Quaternary ammonium salts and hydroxides; lecithins and other phosphoaminolipids, whether or not chemically defined: Other.” The merchandise was granted duty-free treatment as per General Note 13, HTSUS, because CBP found that it was listed in the pharmaceutical appendix of the HTSUS.

In the proposed modification, CBP noted that Subheading 2923.90.00, HTSUS, where the subject merchandise was classified, had a “K” listed in the “special” subcolumn; therefore, General Note 13 was applicable. General Note 13 allows pharmaceutical products with this symbol, by whatever name known, to be entered free of duty, provided that the product is listed in the pharmaceutical appendix to the HTSUS. We then reasoned that the subject acetyl l-carnitine hydrochloride was not listed in the Pharmaceutical Appendix, because, while both carnitine and levocarnitine were listed in Table 1 of the Pharmaceutical Appendix and hydrochloride was listed in Table 2, no acetylated version of these compounds was listed.

The comment that CBP received opposed the proposed modification. The commenter agreed that acetyl is not listed in Table 2 of the Pharmaceutical Appendix, but argues that the subject acetyl-l-carnitine hydrochloride is listed in the Pharmaceutical Appendix because acetate is listed in Table 2. The commenter reasons that chemically, acetyl-l-carnitine hydrochloride is an acetate (i.e., the ester of an acetic acid) that is obtained by reacting l-carnitine with acetic acid or, as in this case, with acetyl chloride. The commenter argues that l-carnitine behaves as an alcohol in this reaction. The commenter further argues that acetyl-l-carnitine hydrochloride can

also be designated as l-carnitine acetate hydrochloride or levocarnitine acetate hydrochloride, and that as such, it should be given duty free treatment under the pharmaceutical appendix.

After reviewing the comment, it has come to our attention that the classification of l-carnitine compounds is the subject of litigation recently filed in the Court of International Trade, in the case *Sigma-Tau Health Science Inc. v. United States*, CIT No. 11-00093 (filed April 13, 2011).

As a result, CBP is hereby withdrawing its intent to modify NY E82956 and any other ruling not specifically identified. Additionally, CBP is withdrawing its intent to revoke any treatment previously accorded by CBP to substantially identical transactions.

Dated: April 25, 2012

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division



MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF AIR FRESHENERS

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

ACTION: Notice of modification of four ruling letters and revocation of one ruling letter and revocation of treatment relating to the tariff classification of air fresheners.

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 four rulings and revoking one ruling concerning the tariff classification of air fresheners under the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed modification and revocation was published on December 28, 2011, in the *Customs Bulletin*, Volume 46, Number 1. 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 July 16, 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 December 28, 2011, in the *Customs Bulletin*, Volume 46, Number 1, proposing to modify four ruling letters pertaining to the tariff classification of air fresheners. Although in the proposed notice, CBP is specifically referring to the revocation of New York Ruling Letter (“NY”) K89535, dated October 5, 2004, and to the modification of NY J88743, dated September 25, 2003, NY L82296, dated February 22, 2005, NY L83477, dated April 13, 2005, and NY L85641, dated July 13, 2005, 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 a substantially identical transaction 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 K89535 (scented card in animal figure), NY J88743 (Dog Car Air Freshener), NY L82296 (Hula Garfield air freshener article), and NY L83477 (Sea Turtle air freshener article), CBP classified air freshener articles under heading 9503, HTSUS, which provides for: "[o]ther toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof." In NY L85641 (human figure PVC clip hanger air freshener article), CBP classified an air freshener article under heading 9502, HTSUS, which provides for: "[d]olls representing only human beings and parts and accessories thereof." Upon our review of these five rulings, we have determined that the merchandise described in the rulings are properly classified under heading 3307, HTSUS, which provides for: "[p]re-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY K89535 and modifying NY J88743, NY L82296, NY L83477, and NY L85641, and revoking or modifying any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letters ("HQ") H045873, set forth as "Attachment A", HQ H045874, set forth as "Attachment B", HQ H108678, set forth as "Attachment C", HQ H108681, set forth as "Attachment D", and HQ H108682, set forth as "Attachment E" 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: April 25, 2012

IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

H045873

April 20, 2012

CLA-2 OT:RR:CTF:TCM H045873 RES**CATEGORY:** Classification**TARIFF NO.:** 3307.49.0000

Ms. VALERIE BEUMER
 SCARBROUGH INT'L., LTD.
 10841 AMBASSADOR DRIVE
 KANSAS CITY, MO 64153

RE: Revocation of NY K89535, dated October 5, 2004.

DEAR Ms. BEUMER:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York (“NY”) Ruling letter K89535, dated October 5, 2004, regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of an air freshener. The article in NY K89535 was classified as a toy under heading 9503, HTSUS. We have determined that NY K89535 was in error. Therefore, this ruling revokes K89535.

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 December 28, 2011, in Volume 46, Number 1, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

In NY K89535, the product was described as follows:

The subject merchandise is described as an air freshener that will hang from the rear view mirror in a car. This item . . . consists of a scented card inserted into a sewn fabric toy animal. The toy animal and scented card will be imported together with the entire piece placed on a backing card.

The toy animal air freshener was classified under heading 9503, HTSUS, as “[o]ther toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.”

ISSUE:

Whether the air freshener article at issue is classifiable under heading 3307, HTSUS, or under heading 9503, 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 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 inter-

national 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 2011 HTSUS provisions are under consideration:

- 3307 Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
- 9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scaled ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.

Note 3 to Chapter 33, HTSUS, provides in pertinent part:

Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put in packings of a kind sold by retail for such use.

(Emphasis in original).

The article at issue is composed of two parts: a scented card and a miniature toy animal. Analyzing the article first under GRI 1, there is no specific provision in the HTSUS that completely describes this product. Likewise, the article is not classifiable under GRI 2(a) or 2(b) because it is not in an unassembled or incomplete state, but is imported as a complete article and is a composite of parts which are classifiable under two or more headings. GRI 2(b) instructs that "[t]he classification of goods consisting of more than one material or substance shall be [determined] according to the principles of rule 3."

GRI 3(a) does not apply because there is no heading that provides a specific description that clearly identifies an article that is a composite of a scented card and a miniature toy animal. Thus, the article at issue is analyzed under GRI 3(b), because it is a composite good consisting of different components each of which, if imported separately, would be classifiable under different headings. According to GRI 3(b), "mixtures, composite goods consisting of different materials or made up of different components . . . shall be classified as if they consisted of the material or component which gives them their essential character" Thus, to determine under which heading to properly classify the entire toy animal air freshener, we must determine which component gives the article its essential character: the scented card or the miniature toy animal.

Although the GRI's do not provide a definition of "essential character," the EN (VIII) of GRI 3(b) provides guidance. According to this EN, the essential character may ". . . be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods." This is known as the "essential character test" and the application of this test requires a fact-intensive analysis. *Home Depot U.S.A., Inc. v. United States*, 491 F.3d 1334, 1337 (Fed. Cir. 2007). Many factors should be considered when determining the essential character of an article, including but not limited to those factors enumerated in EN

(VIII) to GRI 3(b). *Id.* Headquarters (“HQ”) ruling H061205, dated August 10, 2009, involved an essential character analysis of a tea infuser set. This ruling was a straight-line analysis of the factors listed in the EN (VIII) to GRI 3(b): (1) what component makes up the bulk of the set; (2) quantity of goods in the set; (3) weight of the components; (4) value of the components; and (5) role of the constituent material in relation to the use of the goods. This ruling also teaches that it is neither necessary for all the factors to favor one component over another in making a determination nor are all factors determinative in the analysis.

From both EN (VIII) of GRI 3(b), rulings, and caselaw, the pertinent factors used in analyzing which component gives a composite article the essential character include: (1) the bulk or amount each component contributes physically to the composite article; (2) weight of the components relative to the whole composite article; (3) the quantity of components; (4) value of the components; (5) role of the constituent material in relation to the use of the goods; and (6) nature of the components. Applying these factors, we can determine which component provides the essential character of the air freshener article at issue. As described previously, the air freshener is composed of a scented air freshener card and a miniature toy animal. The function of the complete article is to hang from a rear view mirror and scent the inside of an automobile. The analysis focuses on whether the scented card or the miniature toy animal imparts the essential character of the air freshener.

(1) & (2) *Bulk and Weight of the Components.* Based upon the description in NY K89535 of the physical sample provided, the miniature toy appears to comprise a larger part of the bulk and the weight of the composite article because the scented card is inserted into the miniature toy. Additionally, the miniature toy is the predominant physical part of the retail package. Thus, these factors weigh in favor of the miniature toy.

(3) *Quantity of Components.* This factor is not relevant in this case because each composite article for retail sale has one scented card paired with one miniature toy animal.

(4) *Value of the Components.* There is no break down of the individual costs of each component. Thus this factor is not helpful in determining essential character.

(5) *Roles of the Components.* The composite air freshener article has both a utilitarian function of providing scent and an apparent amusement function as a toy. However, we find that the primary function of the composite article is the scenting of an automobile because the main point of having an air freshener is to provide a scent that fills an enclosed space, such as a room or car. Although each component contributes separately to the two functions, the scented card provides the sole contribution to the primary function of the composite article. On its own without the inserted scented card the miniature toy animal does not have any scent and thus, cannot provide a scent that would fill an enclosed space. Moreover, when the article is out of the packaging in the open, the predominant feature is not the miniature toy animal but the smell of the scent it provides—one would notice the scent the article provides upon entering the interior of an automobile first before noticing the physical miniature toy.

In addition, the fact that the retail package of the article has the words “air freshener” in it gives a reasonable impression that the primary function of the article is an air freshener and not a toy that is meant to be played with. The name of a composite article can be persuasive indicia of essential character. *Home Depot U.S.A., Inc. v. United States*, 427 F. Supp. 2d 1278, 1294 (Ct. Int’l Trade 2007). The “air freshener” part of the package does not give any indication that this is referring to a toy. It is a reasonable assumption that a customer would perceive that the article is a scented air freshener that looks like a toy and not a toy that just happens to be able to scent the interior of a car. Thus, this factor weighs in favor of the scented card.

(6) *Nature of the Components.* Another factor in favor of the scented card is that the composite article is designed around the function of providing a scent. The complete article is designed to have a slit in the miniature toy animal where the scented card will be inserted and it comes with a looped string that has the function of hanging the complete article on the rear view mirror, where it is supposed to be placed so that it can passively scent the inside of an automobile interior. There is nothing to indicate that the miniature toy animal is to be handled and hence, played with. These custom design aspects demonstrate an emphasis on the scent providing functions of the air freshener. As to the miniature toy animal’s design in regard to its actual shape and colors, these features are what gives it an aesthetic functionality and are not additional design features that emphasize anything beyond its own appeal as providing something that reflects the aesthetics of personal taste. Thus, because the composite article is designed around the function of providing a scent for an enclosed area, this is a factor that weighs in favor of the scented card.

In summary, although the miniature toy animal component comprises the bulk and weight of the article, this is outweighed by the following factors: the fact that the article has features, such as the hanging string and slit for the scented card, that are specifically incorporated to facilitate the air freshener function; the fact that the article’s scent is the predominant noticeable feature of the article outside the packaging; and the fact that the article is marketed and sold as an air freshener and not simply as a toy. Upon consideration of the totality of these factors in favor of the scented card, CBP finds that the essential character of the miniature toy animal air freshener is imparted by its scented card.

Articles, such as the air freshener at issue here, which are infused with scented oils and principally used to perfume or deodorize a room and are packaged for retail sale, are pursuant to Note 3 to Chapter 33, HTSUS, *prima facie* classifiable under heading 3307, HTSUS. See NY 801980, dated September 20, 1994; NY N009558, dated May 1, 2007. See also HQ H105015, dated December 7, 2010 (noting that a room deodorizer under heading 3307, HTSUS, is a preparation that disperses chemical preparations into the air to mask or chemically remove odor molecules).

Therefore, the article in NY K89535 is to be classified under heading 3307, HTSUS.

HOLDING:

Pursuant to GRI 3(b), the air freshener article at issue is classified under heading 3307, specifically, subheading 3307.49.0000, HTSUSA, as “[p]re-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: [p]reparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites: [o]ther.” The general, column one, rate of duty is 6 percent *ad valorem*.

EFFECTS ON OTHER RULINGS:

NY K89535, dated October 5, 2004, 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*.

Sincerely,

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT B]

H045874

April 20, 2012

CLA-2 OT:RR:CTF:TCM H045874 RES**CATEGORY:** Classification**TARIFF NO.:** 3307.49.0000

MR. PETER D. ALBERDI
A.J. ARANGO, INC.
1516 E. 8 TH AVENUE
TAMPA, FLORIDA 33605

RE: Modification of NY J88743, dated September 25, 2003.

DEAR MR. ALBERDI:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York (“NY”) Ruling Letter J88743, dated September 25, 2003, regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of the Dog Car Air Freshener. We have determined that NY J88743 was in error as it pertains to the classification of the Dog Car Air Freshener. Accordingly, we are modifying NY J88743, to reflect the proper classification of the Dog Car Air Freshener.

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 December 28, 2011, in Volume 46, Number 1, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

In NY J88743, the merchandise at issue was described as follows:

The . . . Dog Car Air Freshener, is a full-bodied stuffed dog-shaped toy containing scented pellets. The dog, measuring approximately 4 inches in height by [2.5] inches across, has a suction cup attached for mounting on an automobile window.

ISSUE:

Is the Dog Car Air Freshener article at issue classifiable under heading 3307, HTSUS, or under heading 9503, 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 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 2011 HTSUS provisions are under consideration:

- 3307 Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
- 9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scaled ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:

Note 3 to Chapter 33, HTSUS, provides in pertinent part:

Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put in packings of a kind sold by retail for such use.

(Emphasis in original).

Although the term "toy" is not defined in the HTSUS, EN to heading 9503, HTSUS, provides that "this heading covers toys intended essentially for the amusement of persons." The case *U.S. v. Topps Chewing Gum, 58 CCPA 157, C.A.D. 1022 (1971)*, is illustrative in determining whether an article is intended for the amusement of the user. In *Topps*, various decorative buttons with humorous quotes were classified as toys of heading 9503. The court in *Topps* held that if the purpose of an object is to give the same kind of enjoyment as playthings give, its purpose is amusement. It is the quality of mind or emotion induced by the object which is controlling. Therefore, an article may be considered a toy if it is inherently or evidently amusing. See e.g., HQ 960136, dated July 24, 1997; HQ 959749, dated October 23, 1997; HQ 964834, dated May 23, 2002.

Where merchandise might have another purpose in addition to providing amusement, the primary purpose of the item must be its amusement value for it to be classified as a toy. In *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (Ct. Int'l Trade 2000), the court held that an object is a toy only if it is designed and used for amusement, diversion or play, rather than practicality. In *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 3 (1977), the Customs Court similarly held that "when amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement."

The *Minnetonka* court further concluded that heading 9503, HTSUS, is a "principal use" provision within the meaning of Additional U.S. Rule of Interpretation 1(a), HTSUS. Therefore, classification under the heading is controlled by the principal use of goods of that class or kind to which the imported goods belong in the United States at or immediately prior to the date of the importation.

In determining whether the principal use of a product is for amusement, and it is thereby classified as a toy, CBP considers a variety of factors, including: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels, class or kind of trade

in which the merchandise moves; (4) the environment of sale (i.e. accompanying accessories and the manner in which the merchandise is advertised and displayed); (5) usage, if any, in the same manner as merchandise which defines the class. *United States v. Carborundum Co.*, 536 F.2d 373, 377 (C.C.P.A. 1977).

The Dog Car Air Freshener's characteristics of being a plush stuffed dog are indicative that the aesthetic purpose of this product is for amusement. However, the fact that the article is filled with scented pellets demonstrates that the article also has the utilitarian function of providing scent to the interior of an automobile. In addition, the article has a suction cup fastened to it. This design feature facilitates the article's function as an air freshener by attaching it to a car window such that it can passively scent the air of an automobile interior. Moreover, the predominant characteristic of this article is its scent because the first thing an individual would notice after entering the interior of a car that has this article would be the scent that the article provides. Furthermore, the fact that the name of the article contains the words "car air freshener" and not "toy" highlights the article's primary function, which is that of providing a scent. Finally, the article is imported, packaged, and marketed as an air freshener and the article's manufacturer's primary business is that of making and exporting automobile air freshener products.

Thus, based on an analysis under the *Carborundum* factors, the principal use of the Dog Car Air Freshener is not for amusement but for the primary purpose of providing a scent that permeates throughout the interior of an automobile. Articles, such as the air freshener at issue here, which are infused with scented oils and principally used to perfume or deodorize a room and are packaged for retail sale, are pursuant to Note 3 to Chapter 33, HTSUS, prima facie classifiable under heading 3307, HTSUS. See NY 801980, dated September 20, 1994; NY N009558, dated May 1, 2007. See also HQ H105015, dated December 7, 2010 (noting that a room deodorizer under heading 3307, HTSUS, is a preparation that disperses chemical preparations into the air to mask or chemically remove odor molecules).

Therefore, the Dog Car Air Freshener is classified under heading 3307, HTSUS.

HOLDING:

Pursuant to GRI 1, the Dog Car Air Freshener article at issue is classified under heading 3307, specifically, subheading 3307.49.0000, HTSUSA, as "[p]re-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: [p]reparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites: [o]ther." The general, column one, rate of duty is 6 percent *ad valorem*.

EFFECTS ON OTHER RULINGS:

NY J88743, dated September 25, 2003, is modified.

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

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT C]

H108678

April 20, 2012

CLA-2 OT:RR:CTF:TCM H108678 RES**CATEGORY:** Classification**TARIFF NO.:** 3307.49.0000

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

RE: Modification of NY L82296, dated February 22, 2005.

DEAR MR. KAVANAUGH:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York (“NY”) Ruling letter L82296, dated February 22, 2005, regarding the classification of a “Hula Garfield” air freshener, under the Harmonized Tariff Schedule of the United States (“HTSUS”). The merchandise at issue herein was classified in NY L82286 as a toy under heading 9503, HTSUS. We have determined that NY L82296 was in error with respect to the classification of the “Hula Garfield” air freshener. Accordingly, we are modifying NY L82296, to reflect the proper classification of the “Hula Garfield” air freshener.

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 December 28, 2011, in Volume 46, Number 1, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

In NY L82296, the product at issue was described as a “Hula Garfield air freshener that functions as a source of amusement while it freshens the air.” This article was classified under heading 9503, HTSUS, as “[t]oys representing animals or non-human creatures . . . and parts and accessories thereof.” The air freshener has a string attached to it so that it may be hung on the rearview mirror of an automobile and it comes in packaging that is marked “not a toy” on the back of the packaging.

ISSUE:

Is the Hula Garfield air freshener at issue classifiable under heading 3307, HTSUS, or under heading 9503, 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 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 inter-

national 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 2011 HTSUS provisions are under consideration:

- 3307 Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
- 9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scaled ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.

Note 3 to Chapter 33, HTSUS, provides in pertinent part:

Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put in packings of a kind sold by retail for such use.

(Emphasis in original).

Although the term "toy" is not defined in the HTSUS, EN to heading 9503, HTSUS, provides that "this heading covers toys intended essentially for the amusement of persons." The case *U.S. v. Topps Chewing Gum*, 58 CCPA 157, C.A.D. 1022 (1971), is illustrative in determining whether an article is intended for the amusement of the user. In *Topps*, various decorative buttons with humorous quotes were classified as toys of heading 9503. The court in *Topps* held that if the purpose of an object is to give the same kind of enjoyment as playthings give, its purpose is amusement. It is the quality of mind or emotion induced by the object which is controlling. Therefore, an article may be considered a toy if it is inherently or evidently amusing. See e.g., HQ 960136, dated July 24, 1997; HQ 959749, dated October 23, 1997; HQ 964834, dated May 23, 2002.

Where merchandise might have another purpose in addition to providing amusement, the primary purpose of the item must be its amusement value for it to be classified as a toy. In *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (Ct. Int'l Trade 2000), the court held that an object is a toy only if it is designed and used for amusement, diversion or play, rather than practicality. In *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 3 (1977), the Customs Court similarly held that "when amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement."

The *Minnetonka* court further concluded that heading 9503, HTSUS, is a "principal use" provision within the meaning of Additional U.S. Rule of Interpretation 1(a), HTSUS. Therefore, classification under the heading is controlled by the principal use of goods of that class or kind to which the imported goods belong in the United States at or immediately prior to the date of the importation.

In determining whether the principal use of a product is for amusement, and it is thereby classified as a toy, CBP considers a variety of factors, including: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels, class or kind of trade in which the merchandise moves; (4) the environment of sale (i.e. accompanying accessories and the manner in which the merchandise is advertised and displayed); (5) usage, if any, in the same manner as merchandise which defines the class. *United States v. Carborundum Co.*, 536 F.2d 373, 377 (C.C.P.A. 1977).

The Hula Garfield air freshener's characteristic of being based on a comic strip character is indicative that this product has an amusement function. However, the fact that the article is scented demonstrates that the article also has the utilitarian function of providing scent to the interior of an automobile. In addition, the article has a string attached to it for the purpose of hanging the article on a car's rearview mirror. This design feature facilitates the article's function as an air freshener such that it can passively scent the air of an automobile interior. Moreover, the predominant characteristic of this article is its scent because the first thing an individual would notice after entering the interior of a car that has this article would be the scent that the article provides. Furthermore, the fact that the name of the article contains the words "air freshener" and not "toy" along with the notice on the back of the packaging that states "Important: Not a toy. Keep away from children" emphasizes that the article's primary function is that of providing a scent. Finally, the article is imported, packaged, and marketed as an air freshener and the article's manufacturer, Car-Freshener Corporation, is in the business of designing, manufacturing, importing, and exporting automobile air freshener products. The Car-Freshener Corporation does not make toys.

Thus, based on an analysis under the *Carborundum* factors, *the principal use of the Hula Garfield air freshener is not for amusement but for the primary purpose of providing a scent that permeates throughout the interior of an automobile. Articles, such as the air freshener at issue here, which are infused with scented oils and principally used to perfume or deodorize a room and are packaged for retail sale, are pursuant to Note 3 to Chapter 33, HTSUS, prima facie classifiable under heading 3307, HTSUS. See NY 801980, dated September 20, 1994; NY N009558, dated May 1, 2007. See also HQ H105015, dated December 7, 2010 (noting that a room deodorizer under heading 3307, HTSUS, is a preparation that disperses chemical preparations into the air to mask or chemically remove odor molecules).*

Therefore, the Hula Garfield air freshener is classified under heading 3307, HTSUS.

HOLDING:

Pursuant to GRI 1, the Hula Garfield air freshener article at issue is classified under heading 3307, specifically, subheading 3307.49.0000, HTSUSA, as "[p]re-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: [p]reparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites: [o]ther." The general, column one, rate of duty is 6 percent *ad valorem*.

EFFECTS ON OTHER RULINGS:

NY L82296, dated February 22, 2005, is modified.

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

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT D]

H108681

April 20, 2012

CLA-2 OT:RR:CTF:TCM H108681 RES**CATEGORY:** Classification**TARIFF NO.:** 3307.49.0000

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

RE: Modification of NY L83477, dated April 13, 2005.

DEAR MR. KAVANAUGH:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York (“NY”) Ruling letter L83477, dated April 13, 2005, regarding the classification of a “Sea Turtle” air freshener, under the Harmonized Tariff Schedule of the United States (“HTSUS”). The merchandise was classified in NY L83477 as a toy under heading 9503, HTSUS. We have determined that NY L83477 was in error with respect to the classification of the “Sea Turtle” air freshener. Accordingly, we are modifying NY L83477, to reflect the proper classification of the “Sea Turtle” air freshener.

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 December 28, 2011, in Volume 46, Number 1, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

In NY L83477, the article at issue was described as follows:

The Sea Turtle air freshener is composed of fragrance-impregnated plastic in the shape of a turtle. An elastic holder is strung through a loop in the center of the turtle shell . . . [h]ung on the rearview mirror of an automobile the . . . Sea Turtle [is] utilized as an air freshener and an auto decoration.

Additionally, the back of the packaging for the article is marked with the warning “not a toy.” This article was classified under heading 9503 HTSUS, as “[o]ther toys . . . parts and accessories thereof: [t]oys representing animals or non-human creatures . . . and parts and accessories thereof.”

ISSUE:

Is the Sea Turtle air freshener at issue classifiable under heading 3307, HTSUS, or under heading 9503, 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 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 2011 HTSUS provisions are under consideration:

- 3307 Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
- 9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scaled ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:

Note 3 to Chapter 33, HTSUS, provides in pertinent part:

Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put in packings of a kind sold by retail for such use.

(Emphasis in original).

Although the term "toy" is not defined in the HTSUS, EN to heading 9503, HTSUS, provides that "this heading covers toys intended essentially for the amusement of persons." The case *U.S. v. Topps Chewing Gum*, 58 CCPA 157, C.A.D. 1022 (1971), is illustrative in determining whether an article is intended for the amusement of the user. In *Topps*, various decorative buttons with humorous quotes were classified as toys of heading 9503. The court in *Topps* held that if the purpose of an object is to give the same kind of enjoyment as playthings give, its purpose is amusement. It is the quality of mind or emotion induced by the object which is controlling. Therefore, an article may be considered a toy if it is inherently or evidently amusing. See e.g., HQ 960136, dated July 24, 1997; HQ 959749, dated October 23, 1997; HQ 964834, dated May 23, 2002.

Where merchandise might have another purpose in addition to providing amusement, the primary purpose of the item must be its amusement value for it to be classified as a toy. In *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (Ct. Int'l Trade 2000), the court held that an object is a toy only if it is designed and used for amusement, diversion or play, rather than practicality. In *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 3 (1977), the Customs Court similarly held that "when amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement."

The *Minnetonka* court further concluded that heading 9503, HTSUS, is a "principal use" provision within the meaning of Additional U.S. Rule of Interpretation 1(a), HTSUS. Therefore, classification under the heading is

controlled by the principal use of goods of that class or kind to which the imported goods belong in the United States at or immediately prior to the date of the importation.

In determining whether the principal use of a product is for amusement, and it is thereby classified as a toy, CBP considers a variety of factors, including: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels, class or kind of trade in which the merchandise moves; (4) the environment of sale (i.e. accompanying accessories and the manner in which the merchandise is advertised and displayed); (5) usage, if any, in the same manner as merchandise which defines the class. *United States v. Carborundum Co.*, 536 F.2d 373, 377 (C.C.P.A. 1977).

The Sea Turtle air freshener's characteristic of having a comical appearance is indicative that this product has an amusement function. However, the fact that the article is scented demonstrates that the article also has the utilitarian function of providing scent to the interior of an automobile. In addition, the article has a string attached to it for the purpose of hanging the article on a car's rearview mirror. This design feature facilitates the article's function as an air freshener such that it can passively scent the air of an automobile interior. Moreover, the predominant characteristic of this article is its scent because the first thing an individual would notice after entering the interior of a car that has this article would be the scent that the article provides. Furthermore, the fact that the name of the article contains the words "air freshener" and not "toy" along with the notice on the back of the packaging that states "Important: Not a toy. Keep away from children" emphasizes that the article's primary function is that of providing a scent. Finally, the article is imported, packaged, and marketed as an air freshener and the article's manufacturer, Car-Freshener Corporation, is in the business of designing, manufacturing, importing, and exporting automobile air freshener products. The Car-Freshener Corporation does not make toys.

Thus, based on an analysis under the *Carborundum factors*, the principal use of the Sea Turtle air freshener is not for amusement but for the primary purpose of providing a scent that permeates throughout the interior of an automobile. Articles, such as the air freshener at issue here, which are infused with scented oils and principally used to perfume or deodorize a room and are packaged for retail sale, are pursuant to Note 3 to Chapter 33, HTSUS, prima facie classifiable under heading 3307, HTSUS. See NY 801980, dated September 20, 1994; NY N009558, dated May 1, 2007. See also HQ H105015, dated December 7, 2010 (noting that a room deodorizer under heading 3307, HTSUS, is a preparation that disperses chemical preparations into the air to mask or chemically remove odor molecules).

Therefore, the Sea Turtle air freshener is classified under subheading 3307, HTSUS.

HOLDING:

Pursuant to GRI 1, the Sea Turtle air freshener article at issue is classified under heading 3307, specifically, subheading 3307.49.0000, HTSUSA, as "[p]re-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers,

whether or not perfumed or having disinfectant properties: [p]reparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites: [o]ther.” The general, column one, rate of duty is 6 percent *ad valorem*.

EFFECTS ON OTHER RULINGS:

NY L83477, dated April 13, 2005, is modified.

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

Sincerely,

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT E]

H108682

April 20, 2012

CLA-2 OT:RR:CTF:TCM H108682 RES**CATEGORY:** Classification**TARIFF NO.:** 3307.49.0000

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

RE: Modification of NY L85641, dated July 13, 2005.

DEAR MR. KAVANAUGH:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York (“NY”) Ruling letter L85641, dated July 13, 2005, regarding the classification of a “human figure PVC clip hanger” air freshener, under the Harmonized Tariff Schedule of the United States (“HTSUS”). The merchandise was classified in NY L85641 as a doll, under heading 9502, HTSUS. We have determined that NY L85641 was in error with respect to the classification of the “human figure PVC clip hanger” air freshener. Accordingly, we are modifying NY L85641, to reflect the proper classification of the “human figure PVC clip hanger” air freshener.

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 December 28, 2011, in Volume 46, Number 1, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

In NY L85641, the article at issue, the human figure PVC clip hanger, was classified under subheading 9502.10.00, HTSUS, as “[d]olls representing only human beings and parts and accessories thereof: dolls, whether or not dressed: [o]ther.” The human figure PVC clip hanger is composed of plastic, has scent infused into it, and has a clip fastened to it so that it can be attached to some part of the inside of an automobile. Additionally, the back of the packaging for the article is marked with the warning “not a toy.”

ISSUE:

Is the human figure PVC clip hanger at issue classifiable under heading 3307, HTSUS, or under heading 9503, HTSUS?¹

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

¹ The goods of heading 9502, HTSUS, were incorporated into heading 9503, HTSUS, in the 2006 HTSUS revision. Therefore, for purposes of determining the appropriate classification of the article at issue, the analysis compares heading 3307, HTSUS, with heading 9503, HTSUS.

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 2011 HTSUS provisions are under consideration:

- 3307 Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
- 9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-scaled ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:

Note 3 to Chapter 33, HTSUS, provides in pertinent part:

Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put in packings of a kind sold by retail for such use.

(Emphasis in original).

Although the terms "toy" and "doll" are not defined in the HTSUS, EN to heading 9503, HTSUS, provides that "this heading covers toys [and dolls] intended essentially for the amusement of persons." The case *U.S. v. Topps Chewing Gum*, 58 CCPA 157, C.A.D. 1022 (1971), is illustrative in determining whether an article is intended for the amusement of the user. In *Topps*, various decorative buttons with humorous quotes were classified as toys of heading 9503. The court in *Topps* held that if the purpose of an object is to give the same kind of enjoyment as playthings give, its purpose is amusement. It is the quality of mind or emotion induced by the object which is controlling. Therefore, an article may be considered a toy if it is inherently or evidently amusing. *See e.g.*, HQ 960136, dated July 24, 1997; HQ 959749, dated October 23, 1997; HQ 964834, dated May 23, 2002.

Where merchandise might have another purpose in addition to providing amusement, the primary purpose of the item must be its amusement value for it to be classified as a toy. In *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (Ct. Int'l Trade 2000), the court held that an object is a toy only if it is designed and used for amusement, diversion or play, rather than practicality. In *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 3 (1977), the Customs Court similarly held that "when amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement."

The *Minnetonka* court further concluded that heading 9503, HTSUS, is a “principal use” provision within the meaning of Additional U.S. Rule of Interpretation 1(a), HTSUS. Therefore, classification under the heading is controlled by the principal use of goods of that class or kind to which the imported goods belong in the United States at or immediately prior to the date of the importation.

In determining whether the principal use of a product is for amusement, and it is thereby classified as a toy or doll, CBP considers a variety of factors, including: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels, class or kind of trade in which the merchandise moves; (4) the environment of sale (i.e. accompanying accessories and the manner in which the merchandise is advertised and displayed); (5) usage, if any, in the same manner as merchandise which defines the class. *United States v. Carborundum Co.*, 536 F.2d 373, 377 (C.C.P.A. 1977).

The human figure PVC clip hanger air freshener’s characteristic of resembling an action figure is indicative that this product has an amusement function. However, the fact that the article is scented demonstrates that the article also has the utilitarian function of providing scent to the interior of an automobile. In addition, the article has a clip attached to it for the purpose of fastening the article onto some part of a car’s interior, such as a vent, seat, or sun visor. This design feature facilitates the article’s function as an air freshener such that it can passively scent the air of an automobile interior. Moreover, the predominant characteristic of this article is its scent because the first thing an individual would notice after entering the interior of a car that has this article would be the scent that the article provides. Furthermore, the fact that the name of the article contains the words “air freshener” and not the words “doll” or “toy” along with the notice on the back of the packaging that states “Important: Not a toy. Keep away from children” emphasizes that the article’s primary function is that of providing a scent. Finally, the article is imported, packaged, and marketed as an air freshener and the article’s manufacturer, Car-Freshener Corporation, is in the business of designing, manufacturing, importing, and exporting automobile air freshener products. The Car-Freshener Corporation does not make dolls or toys.

Thus, based on an analysis under the *Carborundum* factors, the principal use of the human figure PVC clip hanger air freshener is not for amusement but for the primary purpose of providing a scent that permeates throughout the interior of an automobile. Articles, such as the air freshener at issue here, which are infused with scented oils and principally used to perfume or deodorize a room and are packaged for retail sale, are pursuant to Note 3 to Chapter 33, HTSUS, *prima facie* classifiable under heading 3307, HTSUS. See NY 801980, dated September 20, 1994; NY N009558, dated May 1, 2007. See also HQ H105015, dated December 7, 2010 (noting that a room deodorizer under heading 3307, HTSUS, is a preparation that disperses chemical preparations into the air to mask or chemically remove odor molecules).

Therefore, the human figure PVC clip hanger air freshener is classified as a deodorizer under heading 3307, HTSUS.

HOLDING:

Pursuant to GRI 1, the human figure PVC clip hanger air freshener article at issue is classified under heading 3307, specifically, subheading 3307.49.0000, HTSUSA, as “[p]re-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: [p]reparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites: [o]ther.” The general, column one, rate of duty is 6 percent *ad valorem*.

EFFECTS ON OTHER RULINGS:

NY L85641, dated July 13, 2005, is modified.

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

Sincerely,

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177

Revocation of Ruling Letters and Revocation of Treatment Relating to Classification of Jingle Bell Wreaths and Hanging Decorations

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

ACTION: Revocations of ruling letters and treatment relating to the classification of jingle bell wreaths and hanging decorations.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB is revoking two rulings concerning the classification of jingle bell wreaths and hanging decorations under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 45, on November 2, 2011. CBP received one comment in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 16, 2012.

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

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 45, on November 2, 2011. CBP received one comment in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., 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 have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY J85472 and NY L85378, CBP determined that different types of wreaths and hanging decorations made of jingle bells were classified in subheading 9505.10.25, HTSUS, which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Articles for Christmas festivities and parts and accessories thereof: Christmas ornaments: Other: Other." Since the issuance of these rulings, CBP has reviewed them and determined that that this classification was in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY J85472 and NY L85378, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H118439, 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), this ruling will become effective 60 days after the publication in the *Customs Bulletin*.

Dated: April 23, 2012

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H118439

April 23, 2012

CLA-2 OT:RR:CTF:TCM H118439 TNA

CATEGORY: Classification

TARIFF NO.: 8306.10.00

Ms. KHEM LALL,
FEDERATED MERCHANDISING GROUP
11 PENN PLAZA
NEW YORK, NY 10001
Ms. CHERYL SANTOS, CVS PHARMACY
ONE CVS DRIVE
WOONSOCKET, RI 02895

RE: Revocation of NY J85472 and NY L85374; Tariff Classification of metal jingle bell wreaths and hanging decorations

DEAR Ms. LALL:

This letter is regarding New York Ruling Letter (“NY”) J85472, dated June 10, 2003, and NY L85374, dated June 29, 2005, which pertain to the classification of jingle bell wreaths and hanging decorations under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed these rulings and have found them to be in error. For the reasons that follow, we hereby revoke NY J85475 and NY L85374.

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 J85472 and NY L85374 was published on November 2, 2011, in Volume 45, Number 45, of the *Customs Bulletin*. We received one comment in response to this notice, which is addressed in the ruling.

FACTS:

The merchandise at issue consists of four different items that are made out of metal jingle bells.

Item TN3056642, named “Bell Wreath,” consists of silver metal jingle bells in the shape of a wreath that measures approximately 13–3/4 inches in diameter. The silver bells are decorated with glitter. At the top of the wreath are three metal holly leaves and three metal holly berries that jingle, and a metal loop for hanging.

Item TN30872642, named “Christmas Tree Ornament,” is a hanging decoration comprised of purple metal jingle bells that measures approximately 3–3/4 inches in diameter. The item has a cord loop for hanging and is imported in various shades of purple, green, and silver.

Item TN30853642, named “Spiral Cone,” is a hanging decoration in the shape of a spiral with attached purple, silver and blue jingle bells. The item measures approximately 5–1/2 inches in length and has a cord loop for hanging.

Item number 191680 is a 10 metal jingle bell wreath. It contains 18 pieces of shiny red cross mouth bells and 12 pieces of shiny green round corner snowflake mouth bells. The bells are wire strung around a round metal piece covered with rubber tubing. The center top of the wreath is trimmed with green holly leaves, red berries and a gold ribbon bow all made of metal. A braided cord is attached to the top for the purpose of hanging the wreath.

In NY J85475 and NY L85374, the subject merchandise was classified in subheading 9505.10.25, HTSUS, which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Articles for Christmas festivities and parts and accessories thereof: Christmas ornaments: Other: Other.”

ISSUE:

Whether strings of jingle bells fashioned in the shape of a wreath and hanging decorations made of jingle bells should be classified under subheading 8306.10.00, HTSUS, as bells, gongs, and the like, under subheading 8306.29.00, HTSUS, as a base metal statuette or ornament, or under subheading 9505.10.25, HTSUS, as a festive article?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

8306	Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof:
8306.10.00	Bells, gongs and the like, and parts thereof... Statuettes and other ornaments, and parts thereof:
8306.29.00	Other...
* * *	* * * * *
9505	Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:
9505.10	Articles for Christmas festivities and parts and accessories thereof: Christmas ornaments: Other:
9505.10.25	Other...

Note 1(l) to Chapter 95, HTSUS, states, in pertinent part:

This chapter does not cover:...

(l) Bells, gongs or the like of heading 8306.

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 EN for heading 8306 states, in pertinent part, the following:

(A) BELLS, GONGS AND THE LIKE, NON-ELECTRIC

This group covers **non-electric** bells and gongs of base metal. It includes bells for places of religious worship, schools, public buildings, factories, ships, fire-engines, etc.; door bells; table bells; hand-bells; cattle or other animal bells; bells for bicycles, scooters or perambulators; bells for fishing tackle (without the addition of external clamps, clips or other mounting devices); door chimes, table gongs, etc.; decorated bells such as those for tourist souvenirs.

This heading also covers metallic parts such as clappers, handles and domes (including those suitable equally for electric or other types of bells). It also includes metallic buttons and turn-keys for non-electric table or door bells....

(B) STATUETTES AND OTHER ORNAMENTS

This group comprises a wide range of ornaments of base metal (whether or not incorporating subsidiary non-metallic parts) of a kind **designed essentially for decoration**, e.g., in homes, offices, assembly rooms, places of religious worship, gardens.

It should be noted that the group **does not include** articles of more specific headings of the Nomenclature, even if those articles are suited by their nature or finish as ornaments.

The group covers articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to contain or support other decorative articles or to add to their decorative effect, for example:

- (1) Busts, statuettes and other decorative figures; ornaments (including those forming parts of clock sets) for mantelpieces, shelves, etc. (animals, symbolic or allegorical figures, etc.); sporting or art trophies (cups, etc.); wall ornaments incorporating fittings for hanging (plaques, trays, plates, medallions **other than** those for personal adornment); artificial flowers, rosettes and similar ornamental goods of cast or forged metal (usually of wrought iron); knick-knacks for shelves or domestic display cabinets.
- (2) Articles for religious use such as reliquaries, chalices, ciboriums, monstrances or crucifixes.
- (3) Table-bowls, vases, pots, jardinières (including those of cloisonné enamel).

Note 1(l) to Chapter 95, HTSUS, states that “this chapter does not cover bells, gongs or the like of heading 8306.” The subject merchandise is primarily made up of bells that function as bells by chiming to alert the house’s occupant that someone is at the front door. The merchandise is therefore described by heading 8306, HTSUS, and it cannot be classified in heading 9505, HTSUS, pursuant to the exclusion of Note 1(l). As a result, the remaining competing classifications are at the six digit level. Under GRI 6, the issue is whether the bells are classified as such in subheading 8306.10, HTSUS, or as other ornaments in subheading 8306.29, HTSUS.

The subject merchandise consists of cords bearing non-electric jingle bells made out of base metal. GRI 3 states that “when goods are classifiable under

two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description.” The EN to GRI 3 further states that a “description by name is more specific than a description by class.” Under this rule of relative specificity, we look to the provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy and certainty. *Russ Berrie & Co. v. United States*, 381 F.3d 1334, 1338 (Fed. Cir. 2004), citing to *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998).

Subheading 8306.10.00, HTSUS, is the more specific subheading at issue because subheading 8306.29.00, HTSUS, includes a broader range of goods, statuettes and other ornaments, made of base metal. Part A of the EN to heading 8306, HTSUS, lists “decorated bells” as included in subheading 8306.10.00, HTSUS, whereas Part B to the EN, describing ornaments of subheading 8306.29.00, HTSUS, excludes articles of more specific headings, and, by GRI 6, subheadings. The subject merchandise consists almost exclusively of bells rather than merely incorporating bells. The wires that hold and support the bells, and the ribbons that embellish them, are secondary components to the bells themselves.

CBP has consistently classified articles of bells, including items of jingle bells, in subheading 8306.10.00, HTSUS. See HQ H055383, dated January 4, 2010 (classifying strings of jingle bells meant to be hung on a door under subheading 8306.10.00, HTSUS); HQ H064916, dated August 10, 2010 (classifying a Snowman Bell Wreath in subheading 8306.10.00, HTSUS); NY G85029, dated November 30, 2000 (classifying “Trim-a-Home Bell Ornaments” that consisted of jingle bells mounted on steel wire to form a wreath in subheading 8306.10.00, HTSUS); NY L86302, dated July 18, 2005; NY I83301, dated June 19, 2002; NY E86535, dated September 8, 1999; NY 810536, dated June 1, 1995; NY N022642, dated February 6, 2008; NY M80871, dated March 16, 2006; NY L84397, dated May 2, 2005; NY L82383, dated February 16, 2005. As a result, we find that the subject jingle bell wreaths are classified under subheading 8306.10.00, as “bells, gongs, and the like.”

CBP received one comment in response to the proposed revocation, which opposed reclassifying Item TN30872642, the “Christmas Tree Ornament,” and Item TN30853642, the “Spiral Cone.” The commenter argues that these items have the characteristics of Christmas tree ornaments, not door hangings or other decorations. Commenter further argues that in relying on Note 1 to Chapter 95, HTSUS, to exclude Items TN30872642 and TN30853642 from Chapter 95, HTSUS, CBP ignores the nature of Christmas tree ornaments by asserting that they cannot be composed of jingle bells. Commenter notes that Items TN30872642 and TN30853642 are of the type sold as Christmas tree ornaments and are not used in the manner of bells or gongs, and so they are not “like” bells or gongs. As a result, the commenter believes that Items TN30872642 and TN30853642 are outside the common understanding of “bells, gongs and the like, non-electric,” by virtue of being readily recognizable as Christmas ornaments.

In response, we note that articles made primarily of bells, including those made of jingle bells, are classified in heading 8306, HTSUS. See HQ H055383; HQ H064916. Articles are excluded from this heading if they merely incorporate bells. In the present case, Items TN30872642 and

TN30853642, like the merchandise at issue in HQ H055383 and HQ H064916, do not simply incorporate bells. To the contrary, the bells are the whole merchandise. The fact that they may be hung on a Christmas tree does not change their character. The language of heading 8306, HTSUS, “bells, gongs, and the like,” is expansive and encompasses this merchandise. The same language in the exclusion of Note 1 to Chapter 95, HTSUS, is similarly expansive and excludes the subject merchandise.

In disagreeing with the classification of the subject merchandise in heading 8306, HTSUS, the commenter also recommends that CBP reconsider NY N022642, dated February 6, 2008, wherein CBP classified a number of ornaments, some with bells, in heading 8306, HTSUS. The commenter argues that the jingle bells in the ornaments of NY N022642 were clearly ornamental. Commenter argues that as a result, classification in heading 8306, HTSUS, was contrary to the EN 83.06 exclusion of articles composed of bell components.

In response, we note that the one ornament of NY N022642 that had no bells on it was classified in subheading 8306.29.00, HTSUS, which provides for “statuettes and other ornaments, and parts thereof, other.” This provision does not require bells to be a part of the merchandise for classification therein. With respect to the other items classified in NY N022642, Style 88–4975 was made entirely of small jingle bells that formed the shape of the ornament. There, the bells were more than merely incidental. The remaining items, Style 88–5753 and Style 88–5755, contained jingle bells at their center. Style 88–5753 was shaped like a snowflake and Style 88–5755 was shaped like a cross. In NY N022642, CBP found that the bells were instrumental to the design of the ornaments, and that the ornaments were marketed and sold both for holidays and for every day use. As a result, we found that they were not clearly festive articles, and were therefore better described by the terms of heading 8306, HTSUS. In examining this ruling, we find its reasoning to be correct. Furthermore, its logic and classification support the classification of the subject metal jingle bell wreaths and hanging decorations in heading 8306, HTSUS.

HOLDING:

By application of GRI 1, the jingle bell wreaths are classified in heading 8306, HTSUS, which provides for “Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof.” By application of GRIs 3 and 6, they are specifically under subheading 8306.10.00, HTSUS, as “bells, gongs, and the like.” As such, the applicable duty rate is 5.8% *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 the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY J85472, dated June 10, 2003, and NY L85374, dated June 20, 2005, are REVOKED.

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

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON

Director,

Commercial and Trade Facilitation Division

19 CFR PART 177

Revocation of Two Ruling Letters and Revocation of Treatment Relating to Classification of Trunk/Cab Organizers

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

ACTION: Revocation of two ruling letters and treatment relating to the classification of trunk/cab organizers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB is revoking two ruling letters concerning the classification of trunk/cab organizers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB 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 July 16, 2012.

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

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), notice proposing to revoke NY K84392, dated March 25, 2004, and NY J86790, dated July 24, 2003, was published on August 24, 2011, in Volume 45, Number 35, of the *Customs Bulletin*. CBP received no comments in response to this notice. Although in this notice CBP is specifically referring to NY K84392 and NY J86790, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should 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 have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY K84392, NY J86790, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter ("HQ") H092277, 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: April 23, 2012

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H092277

April 23, 2012

CLA-2 OT:RR:CTF:TCM HQ H092277 TNA

CATEGORY: Classification

MS. ROSEMARY DUMOND
NEAR NORTH CUSTOMS BROKERS, INC.
20 ELLIOT AVENUE
BARRIE, ONTARIO L4N4V7

RE: Revocation of NY K84392 and NY J86790; Classification of a Trunk/Cab Organizer from China

DEAR MS. DUMOND:

This letter is in reference to New York Ruling Letter (“NY”) K84392, issued to you on behalf of P&P China Automotive on March 25, 2004, and NY J86790, issued to Pacific Century Customs Service on July 24, 2003 concerning the tariff classification of a Trunk/Cab Organizer. In those rulings, U.S. Customs and Border Protection (“CBP”) classified the Trunk/Cab Organizers under subheading 8708.29.50, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Parts and accessories of motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other...: Other.” We have reviewed NY K84392 and NY J86790 and found them to be in error. For the reasons set forth below, we hereby revoke NY K84392 and NY J86790.

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 K84392 and NY J86790 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:

The subject merchandise consists of five models of trunk organizers, model numbers 5083, 80210, 4205, and 5772; and Style Number TOH-4022-HA. Model numbers 5083, 80210, 4205, and 5772 are made to order and cut to size, and are imported to be shipped to companies such as General Motors, Ford, BMW, Volkswagen, and Dura Automotive. They are made of vinyl and felt and are shaped to fit into the trunk of a car. They contain interiors that have pouches sewn into them, but these pouches are not specifically shaped or fitted to carry any kind of tool. The merchandise contains straps and hook-and-eye closures, but does not have exterior handles of any kind. Overall, these organizers are designed to remain in the trunk of a vehicle.

Style Number TOH-4022-HA is made of microfiber and is an open top storage trunk insert for SUV’s, trucks, cars, mobile homes, etc. The item is used to store auto accessories and other items. There are three additional pockets for storage with flaps that are secured with hook-and-loop fasteners. The size is approximately 16”Lx11”Wx4”H when closed and can be expanded to 16”x23”x4”. There is no lid, closure or handles on the item. The item is not a container or a case. It is similar to an open box. While the submitted sample was made of microfiber, the merchandise can be made of other textile materials in the future.

In NY K84392, dated March 25, 2004, and NY J86790, dated July 24, 2003, CBP classified the Trunk/Cab Organizers under subheading 8708.29.50, HT-

SUS, as: “Parts and accessories of motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other...: Other.

ISSUE:

Whether trunk/cab organizers made of microfiber, felt and vinyl are classified in heading 4202, HTSUS, as containers, or under heading 8708, HTSUS, as parts or accessories of motor vehicles?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

4202	Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:
	Other:
4202.92	With outer surface of sheeting of plastic or of textile materials:
	Other:
4202.92.90	Other
*	*
*	*
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8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
	Other parts and accessories of bodies (including cabs):
8708.29	Other:
8708.29.50	Other

Additional U.S. Rule of Interpretation 1(c) states, in relevant part:

In the absence of special language or context which otherwise requires-
 (c) a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such a part or accessory;

Note 3 to Section XVII reads, in pertinent part:

3. References in Chapters 86 to 88 to “parts” or “accessories” do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those

Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While 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 (III)(C)(4) to Section XVII, HTSUS, states, in pertinent part:

(C) **Parts and accessories covered more specifically elsewhere in the Nomenclature.**

Parts and accessories, even if identifiable as for the articles of this Section, are **excluded** if they are covered more specifically by another heading elsewhere in the Nomenclature, e.g.:...

- (4) Tool bags of leather or of composition leather, of vulcanised fibre, etc. (**heading 42.02**).

The EN for heading 4202, HTSUS, states, in pertinent part:

This heading covers only the articles specifically named therein and similar containers.

These containers may be rigid or with a rigid foundation, or soft and without foundation.

Subject to Notes 1 and 2 to this Chapter, the articles covered by the first part of the heading may be of any material. The expression “similar containers” in the first part includes hat boxes, camera accessory cases, cartridge pouches, sheaths for hunting or camping knives, portable tool boxes or cases, specially shaped or internally fitted to contain particular tools with or without their accessories, etc.

The articles covered by the second part of the heading must, however, be only of the materials specified therein or must be wholly or mainly covered with such materials or with paper (the foundation may be of wood, metal, etc.). For this purpose the expression “of leather or of composition leather” includes, inter alia, patent leather, patent laminated leather and metallised leather. The expression “similar containers” in this second part includes note-cases, writing-cases, pen-cases, ticket-cases, needle-cases, key-cases, cigar-cases, pipe-cases, tool and jewellery rolls, shoe-cases, brush-cases, etc....

The heading does not cover:...

- (f) Tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (generally, heading 39.26 or 73.26).

The EN for heading 8708 states, in pertinent part:

This heading covers parts and accessories of the motor vehicles of headings 87.01 to 87.05, **provided** the parts and accessories fulfil **both** the following conditions:

- (i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles;

and (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).

In NY K84392 and NY J86790, CBP classified the subject merchandise under heading 8708, HTSUS, as other parts and accessories of motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs). In accordance with Additional U.S. Rule of Interpretation 1(c), and as illustrated by EN (III)(C)(4) to Section XVII, HTSUS, however, if the trunk organizer is classifiable in heading 4202, HTSUS, it cannot be classified in heading 8708, HTSUS.

Inasmuch as trunk organizers are not named in heading 4202, HTSUS, we must determine whether the subject trunk organizer is a similar container to those listed there. “In order to classify the subject goods as ‘similar’ under 4202, we must look to factors which would identify the merchandise as being *ejusdem generis* (of a similar kind) to those specified in the provision.” See HQ 964318, dated October 11, 2001. In *Totes, Inc. v. United States*, 69 F.3d 495 (Fed. Cir. 1995), affirming *Totes, Inc. v. United States*, 18 C.I.T. 919; 865 F. Supp. 867, 16 Int’l Trade Rep. (BNA) 2283; 1994 Ct. Intl. Trade LEXIS 180 (Ct. Int’l Trade 1994), the Federal Circuit stated that “as applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purpose that unite the articles enumerated *eo nomine* [by name] in order to be classified under the general terms.” *Totes*, 69 F.3d. 495, 498.

In *Totes*, the Federal Circuit affirmed the Court of International Trade’s finding that the rule of *ejusdem generis* requires only that the subject merchandise share “the essential characteristics” of the goods listed *eo nomine* in 4202, and that these characteristics were those of “organizing, storing, protecting, and carrying various items.” *Id.* In fact, the merchandise that was at issue in *Totes* was one style of the company’s trunk organizer. See *Totes, Inc. v. United States*, 18 C.I.T. 919; 865 F. Supp. 867, 16 Int’l Trade Rep. (BNA) 2283; 1994 Ct. Intl. Trade LEXIS 180 (Ct. Int’l Trade 1994). At trial, Plaintiff argued that the merchandise should be classified under heading 8708, HTSUS, as car accessories, or under heading 6307, HTUS, as “Other” made up articles of textiles. The court addressed these arguments and overruled them, affirming CBP’s classification of the merchandise under Heading 4202, HTSUS. *Id.* at 928. In doing so, the court noted that:

whether portability of the import is a primary or ancillary feature, is not legally controlling in its classification as ‘similar containers’ under Heading 4202. Thus, even assuming that the trunk organizer’s portability or design for carrying is ancillary to its storage purpose, the trunk organizers are nonetheless *ejusdem generis* with the exemplar containers in Heading 4202 - precisely the purpose of jewelry boxes that are used primarily to organize, store and protect articles, and only incidentally (if at all) to transport the contents. *Id.* at 926.

Prior CBP rulings have adhered to this standard, classifying products similar to the subject merchandise under heading 4202, HTSUS, regardless of whether the items have handles. See, e.g., HQ 963473, dated March 22, 2002 (“like the *Totes* organizers, the console organizer is not principally designed to be carried, but the fact that it is designed to fit on the floor

between the seats (with hook attachment strips to secure it in place) indicates that the container is suitable to effectively transport various items in a vehicle, while it organizes, stores, and protects them.”); NY L81831, dated January 11, 2005; NY L80488, dated November 8, 2004 (classifying a trunk organizer under subheading 4202.92.90, HTSUS); NY I87171, dated October 11, 2002 (classifying “Bed Baskets” organizer bags designed for use in the trunk of a car under subheading 4202.92.90, HTSUS); and HQ 086884, dated August 13, 1990 (classifying another model of Totes’ trunk organizers under subheading 4202.92.90, HTSUS.)

Furthermore, the fact that the subject merchandise does not possess handles for carrying does not exclude it from heading 4202, HTSUS. In HQ 956140, dated October 29, 1994, we stated that “to the extent that portability is a requirement, articles classifiable in heading 4202 need not be primarily designed for this purpose. Thus, the fact that the tool cases may primarily be used to store their contents does not remove them from the scope of the heading. Similarly, the fact that the cases may more easily be carried if a handle were present is not dispositive. Rather, to satisfy the portability requirement it is sufficient if, in terms of their design, it is reasonable and foreseeable that the articles may be used to transport their contents.... there is no absolute requirement that these containers possess handles (e.g. a spectacle case, which is enumerated in the first part of the heading, does not ordinarily possess handles).” See also HQ H064875, dated January 4, 2010.

In the present case, the subject merchandise is intended to be used to store various tools in the trunk of a car, both for the convenience of the owner and to keep these items from shifting during travel. There can be little doubt that the merchandise is “suitable to effectively transport various items in a vehicle, while it organizes, stores, and protects them.” See HQ 963473.

The subject merchandise is also distinguishable from NY L81789, dated January 14, 2005; and NY L81790, dated January 15, 2005. The items at issue in these rulings are referred to as “collapsible storage bins/baskets.” As such, they are not substantially similar to the instant merchandise. They are not designed for use in the trunk of a car. They contain no pockets or means of protection for the items placed inside them. They contain no lid or closure, and, though, they incorporate a single handle, it could not be used to transport the contents of the bin. As a result, they could not be used to transport, organize, or protect items that are kept in them. The subject merchandise, by contrast, contains internal pouches that can be used to organize various items, and closures to protect the items. Furthermore, the subject merchandise was created for transporting items inside a vehicle. As a result, CBP finds that the subject merchandise meets the *Totes* standard of *ejusdem generis* with the merchandise listed in heading 4202, HTSUS, and can be classified under that heading. Furthermore, the items in NY L81789 and NY L81790 were designed to be collapsible or foldable when not in use, whereas the subject merchandise is more substantial. Thus, in accordance with the terms of Additional U.S. Rule of Interpretation 1(c) and the relevant ENs, because the trunk organizer is classifiable in heading 4202, HTSUS, it cannot be classified in heading 8708, HTSUS.

Hence, CBP finds that the subject trunk/cab organizers are classified under subheading 4202.92.90, HTSUS, which provides for “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular

cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other.”

HOLDING:

Under the authority of GRI 1, the subject trunk/cab organizers are provided for in subheading 4202.92.90, HTSUS, which provides for “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other.” The general, column one, duty rate is 17.6% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY K84392, dated March 25, 2004, and NY J86790, dated July 24, 2003, are REVOKED.

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

Sincerely,

IEVA K. O'ROURKE

For

Myles B. Harmon,

Director

Commercial and Trade Facilitation Division

**WITHDRAWAL OF PROPOSED REVOCATION OF ONE
RULING LETTER AND WITHDRAWAL OF PROPOSED
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A PLASTIC RECORDER
MUSICAL INSTRUMENT**

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

ACTION: Notice of withdrawal of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of a plastic recorder musical instrument.

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 withdrawing its proposed revocation of New York Ruling Letter (“NY”) N012485, dated June 18, 2007, concerning the tariff classification of a plastic recorder musical instrument under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed action was published on November 2, 2011, in the *Customs Bulletin* Vol. 45, No. 45. Two comments were received in response to this notice, both opposing the proposed revocation.

FOR FURTHER INFORMATION CONTACT: Laurance Frierson, Tariff Classification and Marking Branch, (202) 325–0371.

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.

After consideration of comments received on behalf of Ja-Ru, Inc. and Toy Investments, Inc. regarding CBP's notice of proposed action, CBP is hereby withdrawing its proposal to revoke NY N012485. Specifically, the comments provide CBP with additional factual details and clarifications concerning the physical characteristics of the merchandise, the channels of trade in which the merchandise is sold, and the environment of sale accompanying the merchandise. In light of this information, CBP has determined that NY N012485 is correct and that the plastic recorder is properly classified in subheading 9503.00.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduce-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof."

Dated: April 23, 2012

IEVA K. O'ROURKE
For
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

GENERAL NOTICE

19 CFR PART 177

**NOTICE OF MODIFICATION OF ONE RULING LETTER
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A CERTAIN LIGHTING
FIXTURE**

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

ACTION: Notice of modification of ruling letter and revocation of treatment concerning the tariff classification of a certain lighting fixture.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementa-

tion Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying a ruling letter relating to the tariff classification of a certain lighting fixture under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed modification was published on January 4, 2012, in the Customs Bulletin, Vol. 46, No. 2. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 16, 2012.

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, a notice was published in the Customs Bulletin, Vol. 46, No. 2, on January 4, 2012, proposing to modify New York Ruling Letter (NY) N032539, dated July 18, 2009, pertaining to the tariff classification of a lighting fixture. No com-

ments were received in response to the notice. As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. 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 comment period.

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

In NY N032539, CBP classified an article identified as the "Wing Reflector with lamp-holder" in heading 9405, HTSUS, specifically in subheading 9405.10.8020, HTSUSA, which provides for as "Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included ...: Chandeliers and other electric ceiling or wall lighting fittings ...: Other: Other." It is now CBP's position that the article is classified in subheading 9405.10.6020, HTSUSA, which provides for "Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included ...: Chandeliers and other electric ceiling or wall lighting fittings ...: Of base metal: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N032539 and any other ruling not specifically identified, in order to reflect the proper analysis contained in proposed Headquarters Ruling (HQ) H089796 (Attachment A). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 23, 2012

IEVA K. O'ROURKE
For
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H089796

April 23, 2012**CLA-2 OT:RR:CTF:TCM H089796 DSR****CATEGORY:** Classification**TARIFF NO.:** 9405.10.6020

MR. LARRY HART
HART WORLDWIDE LOGISTICS
2360 NW 66TH AVE., SUITE 207
MIAMI, FL 33122

RE: Modification of NY N032539, dated July 18, 2009; Tariff classification of lighting parts

DEAR MR. HART:

This is in reference to New York Ruling Letter (NY) N032539, issued to you on July 18, 2009, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of lighting parts from China. The ruling classified four light reflectors and one light fixture. The articles are identified as the Cherry Reflector, Cherry Cooler Reflector, Wing Reflector, Dutch Reflector, and the Dutch Cooler. The Wing Reflector will be imported in two models – one with a lamp-holder and one designed for use with a corded lamp holder that is sold separately.

The Wing Reflector with lamp-holder, which is at issue here, was classified in subheading 9405.10.8020, HTSUSA, which provides for “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; ...and parts thereof not elsewhere specified or included: Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares: Other: Household.”

U.S. Customs and Border Protection (CBP) has reviewed the tariff classification of the Wing Reflector with lamp-holder and has determined that the cited ruling is in error. Therefore, NY N032539 is modified for the reasons set forth in this ruling.

Notice of the proposed action was published in the *Customs Bulletin*, Vol. 46, No. 2, on January 4, 2012. No comments were received in response to the notice.

FACTS:

The Wing Reflector with lamp-holder is designed for use in commercial greenhouses. It is comprised of a rectangular sheet of highly polished lightweight aluminum with a series of bends forming a half cylinder shaped reflector, which incorporates a lamp-holder. A steel hanging plate with sturdy hangers allows it to be suspended from the ceiling. It was determined that article possessed the essential character of a light fixture and was classified in subheading 9405.10.8020, HTSUSA, as an electric ceiling or wall lighting fitting of other than of base metal, of a class or kind for household use.

ISSUE:

Whether the Wing Reflector with lamp-holder is classified under subheading 9405.10.6020, HTSUSA, as an electric ceiling or wall lighting fitting of base metal other than brass, for other than household use; or under subhead-

ing 9405.10.8020, HTSUSA, as an electric ceiling or wall lighting fitting of other than base metal, of a class or kind for household use.

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 relevant HTSUS provisions under consideration state the following:

- 9405** Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included;
- 9405.10** Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares:
* * *
- Of base metal:
- 9405.10.60** Other:
* * *
- 9405.10.80** Other.
* * * *

There is no question that the Wing Reflector with lamp-holder is a lamp or lighting fitting not elsewhere specified or included and is thus described *eo nomine* by heading 9405, HTSUS. Accordingly, this matter is governed by GRI 6, which states the following:

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.

Subheading 9405.10, HTSUS, provides for electric ceiling or wall light fittings of base metal and the subject article is composed of aluminum and steel, both of which are base metals as defined Note 3, Section XV, HTSUS.¹ The Wing Reflector with lamp-holder is thus provided for *eo nomine* by subheading 9405.10, HTSUS.

The Wing Reflector with lamp-holder is composed of base metals other than brass and is designed for use in commercial greenhouses. Therefore, the

¹ Note 3, Section XVI, HTSUS, states that “[u]nless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

applicable subheading for the article will be 9405.10.6020, HTSUSA, which provides for electric ceiling or wall lighting fittings of base metal other than brass, for other than household use. *See also* NY N086057, dated December 11, 2009.

HOLDING:

By application of GRIs 1 and 6, the subject merchandise identified as the “Wing Reflector with lamp-holder” is classifiable under heading 9405, HTSUSA. Specifically, it is classifiable under subheading 9405.10.6020, HTSUSA, which provides for “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included; Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares: Of base metal: Other: Other.” The column one, general rate of duty is 7.6 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N032539, dated July 18, 2009, is hereby modified with respect to the classification of the Wing Reflector with lamp-holder.

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

Sincerely,

IEVA K. O’ROURKE

For

Myles B. Harmon,

Director

Commercial and Trade Facilitation Division

**MODIFICATION OF RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE NAFTA ELIGIBILITY
AND COUNTRY OF ORIGIN OF THE PRODUCT “COCO
PEAT”**

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

ACTION: Notice of modification of ruling letter and revocation of treatment relating to the NAFTA eligibility and country of origin of the product “CoCo Peat”.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying one ruling letter relating to the NAFTA eligibility and country of origin of the product “CoCo Peat”. 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. 46, No. 2, on January 4, 2012. 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 July 16, 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 one ruling letter pertaining to the NAFTA eligibility and country of origin of the product “CoCo Peat”. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N054636, dated March 19, 2009, 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 N054636, CBP determined that the product known as “CoCo Peat” was classified in heading 1404, HTSUS, specifically under subheading 1404.90.90, HTSUS, which provides for “Vegetable products not elsewhere specified or included: Other: Other: Other”. Furthermore, CBP determined that the subject merchandise was not NAFTA originating, and that its country of origin was Sri Lanka. It is now CBP’s position that the subject merchandise is “waste and scrap” within the meaning of both GN 12(n)(ix)(B), HTSUS, and 19 C.F.R. §102.11(g)(9)(ii), that Canada is its country of origin under 19 C.F.R. §102.11(a)(i), and that it is eligible for NAFTA preferential treatment under GN 12(a)(i), HTSUS.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N054636, and revoking or modifying any other ruling not specifically identified,

in order to reflect the proper NAFTA eligibility determination and country of origin of the product “CoCo Peat,” according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H061739, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP hereby revokes 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: April 23, 2012

IEVA K. O’ROURKE
For
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H061739

April 23, 2012

CLA-2 OT:RR:CTF:TCM H061739 AMM**CATEGORY:** Classification**TARIFF NO.:** 1404.90.90

MR. STEPHEN LEAHY
LAW OFFICE OF STEPHEN LEAHY
175 DERBY ST., SUITE 9
HINGHAM, MA 02043

RE: Modification of New York Ruling Letter N054636; Classification of CoCo Peat; NAFTA Eligibility and Country of Origin of CoCo Peat

DEAR MR. LEAHY,

This is in response to your letter, dated May 14, 2009, in which you requested a reconsideration of New York Ruling Letter (NY) N054636, dated March 19, 2009, which was issued to your client, Envirotex Products, Inc. (Envirotex), for the classification, North American Free Trade Agreement (NAFTA) eligibility, and country of origin determination of the product identified as “CoCo Peat,” under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, Customs and Border Protection (CBP) classified the CoCo Peat under heading 1404, HTSUS, which provides for “Vegetable products not elsewhere specified or included”. Furthermore, CBP determined that the product was not eligible for NAFTA preferential treatment, and that the country of origin was Sri Lanka. We have reviewed NY N054636 and found it to be incorrect with respect to the NAFTA eligibility determination and country of origin. For the reasons set forth below, we are modifying that ruling.

Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of treatment relating to the NAFTA eligibility and country of origin of CoCo Peat was published on January 4, 2012, in the Customs Bulletin, Volume 46, Number 2. No comments were received in connection with this proposal.

FACTS:

The merchandise in question, identified as “CoCo Peat,” is comprised of used coconut shell coir pith. “Coir” is the outside layer of husk that surrounds the outside shell of the coconut. “Coir pith” is the cork-like substance between the fibers. It has been widely recognized as a superior growing medium for tomatoes, roses, and other crops.

The coir pith is originally imported into Canada from Sri Lanka in plastic bags, where it is used for the hydroponic growing of vegetables in Canada. You state that the coir pith degrades (converts to smaller granules) during the single season crop cycle, such that poor performance would be expected if the grow bag was used for more than one season. You further state that, after one season of use, the coir pith is no longer suitable for use in the hydroponic growing of vegetables, and is normally discarded by the greenhouses.

As a service to the growers, Envirotex collects the used coir pith directly from the greenhouses and ships it to their Canadian facility. At this location, the used coir pith is transformed into the product identified as CoCo Peat.

The used coir pith is subjected to a process which removes the plastic growing bags, other bits of plastic, and plant residue. It is then run through a number of screens to break the product down to a fine medium. The CoCo Peat is then imported to the United States, where it is sold to The Scott Company. It is blended with other raw materials such as peat moss and compost, and used as an ingredient in the The Scott Company's "Miracle Gro® Potting Soil Mix" product.

In NY N054636, CBP classified the CoCo Peat under heading 1404, HTSUS, specifically under subheading 1404.90.90, HTSUS, which provides for "Vegetable products not elsewhere specified or included: Other: Other: Other". CBP also determined that the CoCo Peat did not qualify for NAFTA preferential treatment, because it did not meet the requirements of GN 12(b) and GN 12(t)/14. Finally, CBP found, in accordance with 19 C.F.R. §134.1(b), that the country of origin for the CoCo Peat was Sri Lanka, because there was no change in classification or substantial transformation.

ISSUE:

- (i) What is the correct classification of "CoCo Peat" product under the HTSUS?
- (ii) Is "CoCo Peat" eligible for NAFTA preferential treatment?
- (iii) What is the country of origin of "CoCo Peat"?

LAW AND ANALYSIS:

I. Classification

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

The 2012 HTSUS provision at issue is as follows:

1404	Vegetable products not elsewhere specified or included:
1404.90	Other:
1404.90.90	Other

In NY N054636, CBP classified the instant merchandise under heading 1404, HTSUS, specifically under subheading 1404.90.90, HTSUS, which provides for "Vegetable products not elsewhere specified or included: Other: Other". You do not dispute this classification.

CBP notes that this ruling is consistent with NY G87468, dated March 1, 2001, and NY 814194, dated September 18, 1995, both of which classified bricks of coir pith under heading 1404, HTSUS.

II. NAFTA Eligibility

General Note (GN) 12, HTSUS, incorporates Article 401 of the North American Free Trade Agreement (NAFTA) into the HTSUS. GN 12(a)(i), HTSUS, provides, in pertinent part, that:

Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Canada under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), and goods enumerated in subdivision (u) of this note, when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “CA” in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act.

Accordingly, the Coco Peat product will be eligible for the “Special” “CA” rate of duty provided: (1) it is deemed to be NAFTA originating under the provisions of GN 12(b), HTSUS; and, (2) it qualifies to be marked as a product of Canada under the NAFTA Marking Rules that are set forth in Part 102 of the Code of Federal Regulations (19 C.F.R. §102).

In order to determine whether the Coco Peat is NAFTA-originating, we must consult GN 12(b), HTSUS, which provides, in pertinent part, as follows:

For the purposes of this note, goods imported into the Customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if—

- (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

* * *

You argue in your submission, dated May 14, 2009, that the instant product is a “good wholly obtained or produced entirely in the territory of Canada” under GN 12(b)(i), HTSUS. Specifically, you argue that the instant product consists of “waste and scrap derived from ... used goods collected in the territory of one or more of the NAFTA parties, provided such goods are fit only for the recovery of raw materials.” See GN 12(n)(ix)(B), HTSUS. In the alternative, you argue that the instant product should be considered a product of Canada due to the Theory of Divestiture, even if the terms of GN 12(b), HTSUS, are not met.

A. “Waste or Scrap”

GN 12(n), HTSUS, states, in pertinent part:

As used in [GN 12(b)(i)], the phrase “goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States” means—

* * *

- (ix) waste and scrap derived from—

* * *

- (B) used goods collected in the territory of one or more of the NAFTA parties, provided such goods are fit only for the recovery of raw materials;

* * *

If the instant merchandise meets the terms of GN 12(n)(ix)(B), HTSUS, it may be considered a good wholly obtained or produced entirely in Canada in accordance with GN 12(b)(i), HTSUS.

In HQ H044166, dated January 23, 2009, CBP considered the importation of certain defective parts from Mexico. Sony Electronics, Inc. (Sony) operated a repair facility in Mexico, to which they would send damaged or defective electronics equipment for repair. The repaired equipment would then be shipped back to the original consumer, and any damaged or broken parts removed from that equipment would be discarded. Several states enacted laws that required Sony to ship the damaged or broken parts back to the original consumer, instead of discarding them. CBP considered whether these damaged or broken parts would be considered “waste or scrap” under GN 12(n)(ix)(B), HTSUS. CBP found that, in this situation, the defective parts removed by Sony could not be used in any rebuilding or remanufacturing operation. Furthermore, CBP found that the parts were damaged beyond repair, and were only being returned to comply with state requirements. Therefore, CBP concluded that the parts could not be used for their original purposes, and were considered NAFTA originating under GN 12(n)(ix)(B), HTSUS, as waste or scrap.

In HQ 558823, dated February 6, 1995, CBP considered the importation of certain rebuilt air brake system assemblies. Allied Signal exported used vehicle air brake systems (such as compressors, filters, and valves) to Mexico, where they were disassembled, cleaned, inspected, and tested. The reusable parts were repaired if necessary, but unusable parts were scrapped. CBP considered whether these reusable and repaired parts would be considered “waste or scrap” under GN 12(n)(ix)(B), HTSUS. CBP found that, because the air brake system parts could be repaired and used for their original purpose, they were not fit only for the recovery of their raw materials. Therefore, the rebuilt air brake system assemblies under consideration were not considered NAFTA originating under GN 12(n)(ix)(B), HTSUS, as waste or scrap.

The original purpose of the coir pith, when it is imported from Sri Lanka to Canada, is for growing hydroponic vegetables. Specifically, it is packaged in plastic bags and used in hydroponic greenhouse operations. Over the course of one growing season, the coir pith deteriorates to the point that poor performance would be expected if it were used for a second season. This coir pith is typically discarded to landfills, as its useful life has ended. It is CBP’s position that the used coir pith constitutes used goods collected within the territory of a NAFTA party, and that the used coir pith is fit only for the recovery of its raw materials.

However, Envirotex recycles the used coir pith. They collect it from the growers in Canada, filter the plastic bag material, and remove impurities such as roots left behind at the end of the growing season. Once the used coir pith has been cleaned and filtered, it is further broken down to finer sized granules. By this process, Envirotex creates the instant merchandise, CoCo Peat. This product is sold to The Scott Company, as an ingredient for the “Miracle Gro® Potting Soil Mix” product. The CoCo peat is derived from the used coir pith, and it cannot be used for growing hydroponic vegetables. Therefore, it is now CBP’s position that CoCo Peat is “waste and scrap” within the meaning of GN 12(n)(ix)(B), HTSUS, and that it is a NAFTA originating good under GN 12(b)(i), HTSUS.

B. Theory of Divestiture

You argue that the instant product should be considered a product of Canada due to the Theory of Divestiture, even if the terms of GN 12(b), HTSUS, are not met. The Theory of Divestiture has, in the past, been applied to NAFTA country of origin determinations. *See, e.g.*, HQ 562597, dated March 7, 2003; HQ H561642, dated January 9, 2002. However, because CBP has found the instant product meets the terms of GN 12(b)(i), HTSUS, it is not necessary to consider whether the Theory of Divestiture applies.

III. Country of Origin

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. §1304), requires 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 manner as to indicate to the ultimate purchaser the English name of the country of origin of the article. The regulations implementing the requirements and exceptions to 19 U.S.C. §1304 are set forth in Part 134, CBP Regulations (19 C.F.R. Part 134).

Section 134.1(b), CBP Regulations (19 C.F.R. §134.1(b)), defines “country of origin” as:

The country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within this part ...

Part 102, CBP Regulations (19 C.F.R. Part 102), sets forth the NAFTA Marking Rules. Section 102.11 provides a required hierarchy for determining the country of origin of a good for marking purposes. Applied in sequential order, the required hierarchy establishes that the country of origin of a good is the country in which:

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

See 19 C.F.R. §102.11(a)(1) to (a)(3).

In NY N054636, CBP determined that the country of origin of the used coir pith was Sri Lanka. You argue instead that the used coir pith is a good wholly obtained or produced in Canada under 19 C.F.R. §102.11(a)(1). In your request for reconsideration, dated May 14, 2009, you first argue that the goods are “waste and scrap” under 19 C.F.R. §102.1(g)(9)(ii). You also argue that the used coir pith has become disassociated with Sri Lanka through the Theory of Divestiture.

A. *Waste or Scrap*

Section 102.1(g)(9)(ii) states, in pertinent part: “(g) ... A good ‘wholly obtained or produced’ in a country means: ... (9) Waste and scrap derived from: ... (ii) Used goods collected in that country provided such goods are fit only for the recovery of raw materials; ...”.

The language cited above is nearly identical to that of GN 12(n)(ix)(B). Thus, for the reasons discussed above in regard to that argument, CBP finds that the used coir pith constitutes used goods collected within Canada, that CoCo peat is derived from used coir pith, and CoCo Peat cannot be used for growing hydroponic vegetables. Therefore, it is now CBP’s position that CoCo Peat is “waste and scrap” within the meaning of 19 C.F.R. §102.1(g)(9)(ii), and that it may be marked as a product of Canada under 19 C.F.R. §102.11(a)(i).

B. *Theory of Divestiture*

In the alternative, you argue that the used coir pith has become disassociated with Sri Lanka through the Theory of Divestiture. However, because CBP has found the instant product may be marked as a product of Canada under 19 C.F.R. §102.11(a)(i), it is not necessary to consider whether the Theory of Divestiture applies.

IV. *Conclusion*

The instant CoCo Peat product is a NAFTA originating good under the provisions of GN 12(b), HTSUS, and it qualifies to be marked as a product of Canada under the NAFTA Marking Rules set forth in 19 C.F.R. §102. Therefore, it is eligible for the “Special” “CA” rate of duty.

These goods may be subject to regulations or restrictions administered by the U.S. Department of Agriculture, Animal and Plant Health Division, and Agricultural Marketing Service. You may contact these agencies at:

U.S. Department of Agriculture
APHIS Plant Protection and Quarantine Permit Unit
4700 River Road, Unit 136
Riverdale Park, MD 20737–1236
Telephone: (877) 770–5990

Marketing Order Administration Branch
Fruit and Vegetable Programs, Agricultural Marketing Service
U.S. Department of Agriculture
4700 River Road, Unit 155, Suite 5D03
Riverdale Park, MD 20737–1227
Telephone: (301) 734–5246
FAX: (301) 734–5275

HOLDING:

The instant CoCo Peat product is classified under heading 1404, HTSUS, specifically under subheading 1404.90.90, HTSUS, which provides for “Vegetable products not elsewhere specified or included: Other: Other”. The general, column one rate of duty is free.

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

The instant CoCo Peat product is a NAFTA originating good under the provisions of GN 12(b), HTSUS, and it qualifies to be marked as a product of Canada under the NAFTA Marking Rules set forth in 19 C.F.R. §102. Therefore, it is eligible for the “Special” “CA” rate of duty.

EFFECT ON OTHER RULINGS:

New York Ruling Letter N054636 is hereby MODIFIED in accordance with the above analysis. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

IEVA K. O’ROURKE

For

Myles B. Harmon,

Director

Commercial and Trade Facilitation Division

**REVOCAION OF RULING LETTER AND REVOCAION OF
TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF THE “TRENDY TEE” CRAFT KIT**

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to tariff classification of the “Trendy Tee” craft kit.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking New York Ruling Letter (NY) K87306, dated June 28, 2004, relating to the tariff classification of the “Trendy Tee” craft kit 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. 46, No. 1, on December 28, 2011. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 16, 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 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. 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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), notice proposing to revoke NY K87306 was published on December 28, 2011, in Vol. 46, No. 1, of the *Customs Bulletin*. No comments were received in response to this notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY K87306, CBP determined that the "Trendy Tee" craft kit was classified as an "Other" toy in subheading 9503.70.00, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY K87306 and revoking or modifying any other ruling not specifically identified, in order to reflect the proper classification of the "Trendy Tee" craft kit as an "Other" machine in subheading 8479.89.98, HTSUS, according to the analysis contained in Headquarters Ruling Letter (HQ) W968017, 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.

Dated: April 23, 2012

IEVA K. O'ROURKE
For
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

Attachment

HQ W968017

April 23, 2012

CLA-2 OT:RR:CTF:TCM **W968017 ASM****CATEGORY:** Classification**TARIFF NO.:** 8479.89.98

MR. JOSEPH R. HOFFACKER
BARTHCO TRADE CONSULTANTS, INC.
7575 HOLSTEIN AVENUE
PHILADELPHIA, PA 19153

RE: Revocation of NY K87306; Tariff Classification of the “Trendy Tee” Craft Kit

DEAR MR. HOFFACKER:

This is in reference to New York Ruling Letter (NY) K87306, dated June 28, 2004, issued to you on behalf of Trendy Tee, concerning the tariff classification of a craft kit 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 “Other” toys in subheading 9503.70.00, HTSUS. We have reviewed NY K87306 and found it to be in error. For the reasons set forth below, we hereby revoke NY K87306.

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, Pub. L. 103–182 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY K87306, as described below, was published on December 28, 2011, in Vol. 46, No. 1, of the *Customs Bulletin*. No comments were received in response to the notice.

FACTS:

In NY K87306, the subject merchandise, identified as “Trendy Tee” (item number 89009), was described as a toy craft kit consisting of a stud tool, a plastic workstation, metal studs, plastic rhinestones, chalk, cardboard stencil pattern cards, and a sheet of instructions packaged inside an illustrated cardboard box. According to the description contained in NY K87306, the articles are used to decorate t-shirts by placing a paper stencil pattern card on the front of a t-shirt and then rubbing chalk over the holes (a t-shirt is not included in the kit). The user follows the decorative chalk pattern by attaching rhinestones and studs with the stud setting tool included in the kit. The box is marked as appropriate for children of 8 years of age and older.

ISSUE:

Whether the subject craft kit is classified as an “Other” toy in heading 9503, HTSUS, or as an “Other” machine and mechanical appliance in heading 8479, 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. When by application of GRI 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, they must be classified in accordance with GRI 3. GRI 3(b) states that “Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.”

The following HTSUS provisions are under consideration in classifying the craft kit:

- | | |
|------|--|
| 8479 | Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:
Other machines and mechanical appliances: |
| 9503 | Tricycles, scooters, pedal cars and similar wheeled toys; dolls'carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof ... ¹ |

Note 4 to Chapter 95, HTSUS, states the following:

Subject to the provisions of Note 1 above, heading 9503 applies, *inter alia*, to articles of this heading combined with one or more items, which cannot be considered as sets under the terms of General Interpretative Rule 3(b), and which, if presented separately, would be classified in other headings, provided the articles are put up together for retail sale and the combinations have the essential character of toys.

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

The EN to GRI 3(b) states:

- (VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.
- (VIII) The factor which determines the essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

The General EN for Chapter 95 states that the “chapter covers toys of all kinds whether designed for the amusement of children or adults.”

The “Trendy Tee” craft kit consists of a manually operated plastic stud tool, a plastic desk, chalk, stencil pattern cards, and plastic rhinestone gems

¹ In 2004, heading 9503, HTSUS provided as follows: “Other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: ...”.

which are all packaged together with instructions in a cardboard box for retail sale at the time of importation. If the components of the craft kit were classified separately, the plastic stud tool would be classified in heading 8479, HTSUS, which provides for “Machines and mechanical appliances having individual functions, . . .” (See HQ 967824, dated December 6, 2005). The plastic desk would be classified in heading 3926, HTSUS, which provides for “Other articles of plastics”. The chalk is classifiable in heading 9609, HTSUS, which provides for “. . . drawing charcoals, writing or drawing chalks and tailors’ chalks”. The cardboard stencils are classifiable in heading 4823, HTSUS, which provides for “. . . other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers” (See HQ 966198, dated July 21, 2003 and HQ 959189, dated September 25, 1996). The plastic rhinestone gems are classifiable in heading 3926, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914”. None of the items on their own are classifiable in heading 9503 as toys. Hence, note 4 to Chapter 95 does not apply to this merchandise and it cannot be classified at GRI 1.

Instead, the merchandise consists of articles of different headings, packaged for retail sale, for use in the specific activity of decorating an article of clothing. Hence, the merchandise must be classified as a set under GRI 3(b) as to its essential character.

There have been several court decisions on “essential character” for purposes of classification under GRI 3(b). See, *Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1337–1338 (Ct. Int’l Trade 2005); and *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278, 1295–1356 (Ct. Int’l Trade 2006), aff’d 491 F.3d 1334 (Fed. Cir. 2007). “[E]ssential character is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Home Depot USA, Inc. v. United States*, at 1293 quoting *A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971). In particular in *Home Depot*, the court stated “[a]n essential character inquiry requires a fact intensive analysis.” 427 F. Supp. 2d 1278, 1284 (Ct. Int’l Trade 2006).

The plastic desk and fastening machine, i.e., “stud tool”, are the bulkiest components in the set. The rhinestones number the greatest quantity, but the stud tool is the heaviest. While we have no information on the value of each article, the stud tool is the most complex and likely has the greatest value in the set. As for the role of the constituent material and the nature of the components in relation to the use of the goods, the craft kit is designed to affix decorative studs and/or rhinestones to a t-shirt. Thus, the plastic fastening machine, i.e., “stud tool”, is the most important component in the set because the plastic tool allows the user to permanently attach decorative elements to an article of clothing. Therefore, the stud tool provides the essential character to the set.

The issue thus becomes, whether the stud tool is, in fact, a toy of heading 9503, HTSUS. The U.S. Court of International Trade (CIT) construes heading 9503, HTSUS, as a “principal use” provision, insofar as it pertains to “toys.” See *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (CIT 2000). Thus, to be a toy, the “character of amusement involved [is] that

derived from an item which is essentially a plaything.” *Wilson’s Customs Clearance, Inc. v. United States*, 59 Cust. Ct. 36, C.D. 3061 (1967). It has been CBP’s position that the amusement requirement means that toys should be designed and used principally for amusement. For articles that are both amusing and functional, we look to *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28 (1977), in which the court stated that “when amusement and utility become locked in controversy, the question becomes one of determining whether amusement is incidental to the utilitarian purpose, or whether the utility purpose is incidental to the amusement.”

For articles governed by principal use, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that, in the absence of special language or context which otherwise requires, such use “is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.”

In *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), the court provides the following factors, which are indicative but not conclusive, to determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use.

Here, the physical characteristics and actual use of the stud-setting tool are as a tool with a primary purpose to decorate articles of clothing with rhinestones. The ultimate purchaser expects to use the tool to that end with a degree of skill, care, and patience that is more typically exemplified in older children (ages 8 years old and up) and involves activity that is not necessarily amusing. The item is marketed as part of a craft set for older children to decorate their clothing. The foregoing application of the *Carborundum* criteria indicates that the stud tool is not a good of a kind designed for amusement. Accordingly, any amusement derived from the tool is incidental to its utilitarian purpose of decorating clothing. See HQ 967824, dated December 6, 2005 (“Girlfitti”® “Style Setter” craft kit which consisted of a manually operated plastic fastening machine, plastic rhinestone gems with metal backings, a fabric belt, simple cardboard stencils, and a pencil, packaged together for retail sale classified pursuant to GRI 3(b) in heading 8479 HTSUS, as an other machines or mechanical appliance).

In view of the foregoing, we find that the subject “Trendy Tee” craft kit is properly classified as a set pursuant to a GRI 3(b) analysis. We further find that the “stud tool” provides the essential character to the set and is utilitarian rather than amusing. Therefore, the subject merchandise is classified as an “Other” machine and mechanical appliance in heading 8479, HTSUS.

HOLDING:

The subject merchandise, identified as the “Trendy Tee” craft kit (item number 89009) is correctly classified in subheading 8479.89.98, HTSUS, which provides for “Machines and mechanical appliances having individual

functions, not specified or included elsewhere in the chapter; parts thereof: Other machines and mechanical appliances: Other: Other, Other". This provision is dutiable at 2.5 percent *ad valorem* under the general column one rate of duty. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov.

NY K87306, dated June 28, 2004, is hereby revoked consistent with the foregoing analysis. In accordance with 19 U.S.C. Section 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

EFFECT ON OTHER RULINGS:

Sincerely,

IEVA K. O'ROURKE

For

Myles B. Harmon,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE**19 CFR PART 177****PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
CLASSIFICATION OF THE SCT LIVEWIRE FLASH DEVICE**

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

ACTION: Notice of proposed revocation of a ruling letter and revocation of treatment relating to the classification of the SCT Livewire flash device.

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

DATES: Comments must be received on or before June 15, 2012.

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

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

SUPPLEMENTARY INFORMATION:**Background**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke one ruling letter pertaining to the classification of the SCT Livewire flash device. Although in this notice CBP is specifically referring to Headquarters Ruling Letter (HQ) H097095, dated August 2, 2010 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

In HQ H097095, CBP ruled that the subject merchandise was classified in subheading 9031.80.80, HTSUS, which provides for “Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof: Other instruments, appliances and machines: Other.” Upon review, it is now our position that the SCT Livewire Flash Device is classified in subheading 8517.62.00, HTSUS, which provides for: “Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528: Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke HQ H097095 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H126020. (*see* Attachment “B” to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: April 10, 2012

IEVA K. O’ROURKE
For
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT A]

HQ H097095

August 2, 2010

CLA-2 OT:RR:CTF:TCM H097095 GC**CATEGORY:** Classification**TARIFF NO.:** 9031.80.80

PAUL S. ANDERSON, Esq.
 SONNENBERG AND ANDERSON
 ATTORNEYS AND COUNSELORS AT LAW
 125 SOUTH WHACKER DRIVE, SUITE 1825
 CHICAGO, ILLINOIS 60606

RE: Tariff classification of the SCT Livewire flash device

DEAR MR. ANDERSON:

This is in response to your request submitted on February 18, 2010, on behalf of your client SCT, LLC (SCT) for a binding ruling on the classification of the Livewire flash device (also known as a “tuner”) under the Harmonized Tariff Schedule of the United States (HTSUS). In preparation of this ruling, consideration was given to the phone conference with you on June 17, 2010 and your second written submission, dated June 30, 2010.

FACTS:

The instant flash tuner is designed to work with Powertrain Control Modules (PCM)¹ to help the user diagnose potential problems, adjust certain performance settings, and record performance data. It features 128MB of total memory, internal PCB assembly, LCD display, indicator lights, and directional buttons housed in plastic housing with a push/scroll jog wheel. The product is fitted with a USB plug and other connectors that allow it to be mounted in a Ford vehicle.

For tuning purposes, the user may use one of the three pre-loaded performance “tunes”, which adjust the vehicle’s parameters to increase horsepower or torque, or the pre-loaded fuel economy “tune”, which adjusts the vehicle’s parameters to maximize fuel efficiency. The user may also download custom “tunes” onto the Livewire flash device through an authorized SCT dealer or from the SCT website. When the flash tuner uploads the selected “tune” onto the PCM, it backs up the factory settings, thus allowing the user restore the PCM to its original configuration whenever desired.

The flash tuner also reads and stores performance data from the PCM. This allows the user to keep track of the vehicle performance metrics such as horsepower, torque, RPM, quarter-mile elapsed time, and zero-to-sixty time. For diagnostic purposes, the flash tuner is capable of reading, resetting and clearing diagnostic trouble codes that emanate from the PCM. The codes correspond with electronic components throughout the motor vehicle and

¹ The PCM, also referred to as the Engine Control Unit (ECU) or Engine Control Module (ECM), is the computer responsible for monitoring and coordinating a variety of parameters necessary for a motor vehicle engine to function. These parameters depend on the motor vehicle containing the PCM and include valve timing, air/fuel mixture, fuel pump operation, differential, etc. The PCM also stores trouble codes to help in the diagnosis of problems potentially involving these parameters.

provide the user with clues as to what may be causing problems with the motor vehicle as he/she communicates with the vehicle manufacturer's service department.

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 are as follows:

- | | |
|------|--|
| 8517 | Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof. |
| | * * * |
| 9031 | Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof. |

Initially, you argue that the Livewire flash tuner is properly classifiable as an automatic data processing (ADP) machine of heading 8471, HTSUS. During our phone conference and in your second written submission, you concurred with our position that the merchandise does not meet the terms of heading 8471, HTSUS, as it is not freely programmed in accordance with the requirements of the user as required by Note 5(A)(ii) to Chapter 84, HTSUS. However, in your second written submission, you argue that the merchandise is classified under heading 8517, HTSUS, as other apparatus for the transmission of other data for communication in a wired or wireless network.

In so doing, you cite to three rulings that pertain to merchandise that involve the transmission of data within motor vehicles. In New York Ruling Letter (NY) N094136, dated February 25, 2010, CBP classified the "Key 2 Safe Driving Activator" in heading 8517, HTSUS. It is stated in the ruling that the product did not perform a diagnostic function, but received data from an OBD-II port in the vehicle and then transmitted that data to a cell phone within the vehicle via Bluetooth. In NY N043829, dated December 5, 2008, the "Smart Handle Assembly" was classified under heading 8517, HTSUS. The product functioned as door handle to a vehicle by means of the user pressing the frequency operated button (FOB), which relayed information to the electronic control unit in the vehicle. Lastly, you cite to Headquarters Ruling Letter (HQ) W967550, dated January 28, 2008. In that ruling, the N93 electrical routing device was also classified under heading 8517, HTSUS. The device was for the transmission of data between various control area networks for testing, measuring and control applications between systems and the vehicle.

Note 1(m) to Section XVI, HTSUS, excludes "articles of Chapter 90" from classification in Section XVI. Accordingly, if the instant Livewire flash tuner

is *prima facie* classifiable under heading 9031, HTSUS, it is excluded from classification in heading 8517, HTSUS.

Heading 9031, HTSUS, provides for measuring or checking instruments, appliances and machines not specified or included elsewhere in chapter 90, HTSUS. CBP has consistently held that diagnostic devices used for retrieving trouble codes from the vehicle PCM are provided for in heading 9031, HTSUS. See NY F81576, dated February 2, 2000, NY R05134, dated November 20, 2006, and NY N019301, dated November 28, 2007. Like the instant Livewire flash tuner, all of the devices in the preceding rulings provide the user with the trouble codes necessary to diagnose potential problems emanating from the vehicle's powertrain. They can also reset these trouble codes. The "Modic III" mobile diagnostic computer, subject to NY F81576, is also capable of storing and conveying historical performance-related data. It analyzes data from the vehicle PCM and compares it to factory-established norms of each vehicle parameter. The device is updated to include norms for new models of vehicles by downloading these norms by CD-ROM from the factory. In the event that a particular vehicle performed outside of the factory-established norms, the "Modic III" alerts mechanics to the discrepancy and suggest adjustments to the motor vehicle to bring it within the appropriate range.

The instant Livewire differs from the above-described diagnostic tools in the sense that in addition to the data gathering and reading functions described above, it is capable of storing and transferring different PCM "tunes" or programs, which would adjust the factory-established PCM settings for a given motor vehicle. In ascertaining whether the merchandise meets the terms of heading 9031, HTSUS, we note that Harmonized Commodity Description and Coding System Explanatory Note (EN)² 90.31(I), which describes the scope of the phrase "Measuring or checking instruments, appliances and machines", states, in pertinent part:

These include:

* * *

- (4) **Apparatus for testing and regulating vehicle motors**, for checking all parts of the ignition system (coils, sparking plugs, condensers, batteries, etc.), for ascertaining the best carburetor setting (by analyzing exhaust gases), or for measuring the compression in the cylinders. (Emphasis in original).

Like the aforementioned diagnostic devices and computers, the Livewire is designed to provide the user with information contained in the vehicle PCM with respect to trouble codes and performance metrics. That the instant merchandise allows the user to make specific changes to the PCM in order to regulate the vehicle motor according to his or her performance preferences does not exclude the merchandise from the scope of heading 9031, HTSUS. On the contrary, "regulating vehicle motors" is a specifically included function of merchandise classified in the heading, as indicated by EN 90.31(I)(4).

² The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

Insofar as the Livewire flash tuner meets the terms of heading 9031, HTSUS, it is excluded from classification under heading 8517, HTSUS, by Note 1(m) to Chapter Section XVI, HTSUS. Hence, NY N094137, NY N043829, and HQ W967550 are inapplicable to the present case as classification in Chapter 90, HTSUS, was not at issue.

HOLDING:

By application of GRI 1 and Note 1(m) to Section XVI, HTSUS, the instant Livewire flash tuner is classified under heading 9031, HTSUS. It is specifically provided for under 9031.80.80, which provides for: “[m]easuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof: Other instruments, appliances and machines: Other....” The column one, general rate of duty is 1.7 percent *ad valorem*.

Duty rates 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/tata/hts.

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

Sincerely,

IEVA K. O’ROURKE,

Chief

Tariff Classification and Marking Branch

[ATTACHMENT B]

HQ H126020

CLA-2 OT:RR:CTF:TCM H126020 TNA

CATEGORY: Classification

TARIFF NO.: 8517.62.00

PAUL S. ANDERSON, ESQ.
SONNENBERG & ANDERSON
125 SOUTH WACKER DROVE
SUITE 1825
CHICAGO, IL 60606

RE: Revocation of HQ H097095; Classification of the SCT Livewire flash device/tuner

DEAR MR. ANDERSON:

This is in response to your request for reconsideration, dated September 23, 2010, made on behalf of SCT, LLC (“SCT”), of Headquarters Ruling Letter (“HQ”) H097095, dated August 2, 2010, which classifies SCT’s Livewire flash device under the Harmonized Tariff Schedule of the United States (“HTSUS”). We have reviewed this ruling and found it to be in error. For the reasons that follow, we are hereby proposing to revoke HQ H097095. In coming to this conclusion, we have taken into account arguments presented to members of my staff at a meeting in our office on May 26, 2011, and in a supplemental submission dated June 10, 2011.

FACTS:

The subject merchandise, SCT’s “Livewire,” (hereinafter “the Livewire”) is a handheld device designed to program the powertrain control module (PCM) of a Ford automobile.¹ It features 128MB of total memory, an internal printed circuit board assembly (“PCBA”), an LCD display with a push/scroll jog wheel, indicator lights, and directional buttons. The product is fitted with a USB plug, which enables connection to an automobile. It retails for approximately \$509-\$569.

The Livewire is used to download (i.e., “flash”) “tunes” onto the vehicle’s PCM. These tunes are essentially the rules that the PCM follows in its onboard activities of regulating and controlling the vehicle’s engine and transmission. The user may use one of 20 pre-loaded performance tunes, which adjust the vehicle’s parameters to increase horsepower or torque, or the pre-loaded fuel economy tune, which adjusts the vehicle’s parameters to maximize fuel efficiency. The user may also download custom tunes onto the Livewire through an authorized SCT dealer or from the SCT website; these custom tunes are developed specifically for a customer’s vehicle and performance objectives. The Livewire both downloads (i.e., “flashes”) the tune data to the PCM and uploads data received back from the PCM, some of which appears in a digital readout format on its screen. When the Livewire uploads the selected tune onto the PCM, it saves the factory settings, thus allowing

¹ The PCM, also referred to as the Engine Control Unit (ECU) or Engine Control Module (ECM), is the computer responsible for monitoring and coordinating a variety of parameters necessary for a motor vehicle engine to function. These parameters depend on the motor vehicle containing the PCM and include valve timing, air/fuel mixture, fuel pump operation, differential, etc. The PCM also stores trouble codes to help in the diagnosis of problems potentially involving these parameters.

the user to restore the PCM to its original configuration whenever desired. Thus, the Livewire functions via active transmission of data, rather than simply reading information.

The Livewire also reads and stores performance data from the PCM. This data-logging function allows the user to monitor the vehicle performance metrics such as horsepower, torque, RPM, quarter-mile elapsed time, and zero-to-sixty time. It can also store and convey historical performance-related data, as well as analyze data from the vehicle PCM and compare it to factory-established norms of each vehicle parameter.

The Livewire is also capable of reading, resetting and clearing diagnostic trouble codes that emanate from the PCM. The codes correspond with electronic components throughout the motor vehicle and provide the user with clues as to what may be causing problems with the motor vehicle as the user communicates with the vehicle manufacturer's service department. These functions are accomplished by way of the code reader and data recorder/monitor that are incorporated into the Livewire.

In HQ H097095, dated August 2, 2010, CBP classified the subject merchandise under subheading 9031.80.80, HTSUS, as: "...checking instruments, appliances and machines, not specified or included elsewhere in [Chapter 90]...: Other instruments, appliances and machines: Other...." In requesting reconsideration, counsel argues that the Livewire is classified in subheading 8517.62.00, HTSUS, as "other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; ...: Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus." In the alternative, counsel advocates for classification in subheading 8517.69.00, HTSUS, as "...other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; ...: Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Other."

ISSUE:

Whether the Livewire flash device is classified in heading 8517, HTSUS, as "[O]ther apparatus for the transmission or reception of voice, images or other data... other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528," or under heading 9031, HTSUS, as "Measuring or checking... machines, not specified or included elsewhere in [Chapter 90]"?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified

solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

- | | |
|------|--|
| 8517 | Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof: |
| 9031 | Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof: |

Legal Note 1(m) to Section XVI, HTSUS, which includes heading 8517, HTSUS, states, in pertinent part, the following:

1. This section does not cover:...

(m) Articles of chapter 90

Legal Note 3 to Section XVI, HTSUS, states, in pertinent part, the following:

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

Legal Note 3 to Chapter 90, HTSUS, states in pertinent part, the following:

The provisions of notes 3 and 4 to section XVI apply also to this chapter.

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

The EN to heading 8517, HTSUS, states, in pertinent part, the following:

This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric current or optical wave flowing in a wired network or by electro-magnetic waves in a wireless network. The signal may be analogue or digital. The networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radio-telegraphy, local and wide area networks.

The EN to heading 9031, HTSUS, states, in pertinent part, the following:

(I) MEASURING OR CHECKING INSTRUMENTS,
APPLIANCES AND MACHINES
(A)

These include:...

(4) **Apparatus for testing and regulating vehicle motors**, for checking all parts of the ignition system (coils, sparking plugs, condensers, batteries,

etc.), for ascertaining the best carburettor setting (by analysing exhaust gases), or for measuring the compression in the cylinders.

In your request for reconsideration, you argue that the Livewire is described by the terms of heading 8517, HTSUS, which provides in part for "...other apparatus for the transmission or reception of voice, images or other data, ...other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528..." by way of GRI 1, Note 1(m) to Section XVI, HTSUS, and Note 3 to Section XVI, HTSUS. You argue that the Livewire's "tune" capacity, in addition to its data logging, diagnostic, and scan tool functions, makes Note 3 applicable, and that, because the "tune" function constitutes the Livewire's principal function, it should be classified in heading 8517, HTSUS.

Note 1(m) to Section XVI directs our analysis to heading 9031, HTSUS, before we can examine the merits of classification under heading 8517, HTSUS. If the subject merchandise is classified in heading 9031, HTSUS, it is excluded from chapter 85, HTSUS, pursuant to Note 1(m). As a result, we first examine whether the Livewire is classified in heading 9031, HTSUS, as a "checking instrument, appliance [or] machine, not specified or included elsewhere in [Chapter 90]." We note that whereas heading 9031, HTSUS, provides for "measuring or checking instruments," there is no dispute that the Livewire is not a measuring device. As a result, we focus on determining whether it can be considered a "checking" device.

The term "checking" of heading 9031, HTSUS, is not defined in the HTSUS or in the ENs. In *United States v. Corning Glass Works*, 66 CCPA 25, 27 (1978), however, the court examined the classification of machines used to inspect drug-containing ampuls for foreign matter in the drug solution, and for defects in the ampuls. See *United States v. Corning Glass Works*, 66 CCPA 25, 26 (1978) ("*Corning Glass Works*"). In deciding whether the merchandise was a checking device, the court examined dictionaries to define the term "check." *Id.* at 27. The court defined "check" as "to inspect and ascertain the condition of, especially in order to determine that the condition is satisfactory; ... investigate and insure accuracy, authenticity, reliability, safety, or satisfactory performance of ...; to investigate and make sure about conditions or circumstances...." *Id.* at 27. Applying that definition, the court found that the provision for "checking instruments" clearly and unambiguously encompassed machines that carried out steps in a process for inspecting ampuls to determine whether they conformed to an imperfection-free standard. *Id.* at 27.² Since then, CBP has adopted a correspondingly broad definition of the term "checking." We have consistently ruled that machines which carry out steps in the process of checking are classifiable under that provision, even if they do not actually perform the checking operation itself. See HQ 089391, dated February 6, 1992; HQ 953382, dated April 15, 1993; and HQ H009364, dated November 23, 2009.

Despite its breadth, we agree with SCT that this definition of "checking" does not encompass all of the Livewire's functions. It is clear that the Livewire is capable of ascertaining the PCM's current conditions, and that

² We note that *Corning Glass Works*' definition of checking has been carried over to the HTSUS. See *Phototronics, Inc. v. United States*, 659 F.Supp. 2d. 1317, 1323-1324 (Ct. Int'l. Trade 2009).

this is a checking function; however, it is not the Livewire's only function. The Livewire also flashes tunes that change the way the vehicle's engine works. The tunes function by way of data transfer rather than simply the reading of information. This tune transmission is not a "checking" function because it does not inspect or ascertain the condition of the PCM; nor does it investigate and insure accuracy, authenticity, reliability, safety, or satisfactory performance of the PCM. See *Corning Glass Works*, 66 CCPA 25. The Livewire also does not "carry out steps" in a larger checking process. As a result, it is not completely described by the terms of heading 9031, HTSUS, as a checking device. Thus, we examine other headings.

Note 3 to Section XVI, of which heading 8517, HTSUS, is a part, states that:

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

Note 3 to Chapter 90, HTSUS, states that:

The provisions of notes 3 and 4 to section XVI apply also to this chapter.

The subject Livewire is a machine designed to perform multiple functions described in Section XVI, HTSUS, and Chapter 90, HTSUS, such as data transmission (heading 8517, HTSUS); data storage (heading 8471, HTSUS); data reading and recording (heading 8471, HTSUS); and checking (heading 9031, HTSUS). As per Note 3 to Chapter 90, HTSUS, Note 3 to Section XVI, HTSUS, also applies to Chapter 90, HTSUS. As a result, the Livewire, which is a machine designed to perform multiple complementary functions, is classified according to its principal function.

In our view, the flashing of the Livewire's tunes constitutes its principal function. The Livewire is advertised primarily as a tuner, while its data-monitoring and other capabilities are advertised as incidental to the tuning capacity. SCT's website describes the good as a "programmer" and highlights its tuning capacity, as follows:

[the Livewire] comes pre-loaded with dyno proven tune files that increase horsepower and torque! Programming your vehicle with one of SCT's pre-loaded performance or fuel economy tune files is as easy as 1-2-3...With a huge backlit display, the SCT SF3 Power Flash makes it easy to read the Built-In Data Logging or Real Time Monitored Vehicle Data, view popular sensor data such as EGT, Air / Fuel Ratio or any other 0-5 Volt source!

Consumer reviews also show that consumers purchase the Livewire primarily for the tunes, so as to be able to improve such aspects as fuel mileage and other vehicle functions: "it improved my fuel mileage in my diesel and I like the power gain," one consumer writes. See, e.g., <http://www.autoanything.com/performancechips/61A3576A0A0.aspx>.

At the same time, code readers and data recorders, which are the tools through which the Livewire performs its data storage and diagnostic capabilities, can be purchased separately for far less than the \$509-\$569 for which the Livewire retails. A consumer is therefore unlikely to purchase the Livewire solely for its data storage or diagnostic capabilities. As a result, we

find that these functions are secondary to the Livewire's capacity to flash the tunes, and the tunes constitute the Livewire's principal function.

Heading 8517, HTSUS, provides for "...other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528." The tunes function by way of data transfer because they transfer data between the PCM and the Livewire. As a result, we find that the principal function of the Livewire is described by heading 8517, HTSUS.

HQ H097095 relied on prior CBP rulings to classify the Livewire in heading 9031, HTSUS. For example, the Modic III diagnostic computer at issue in NY F81576, dated February 2, 2000, was classified in heading 9031, HTSUS, because it was a diagnostic device used for retrieving trouble codes from the vehicle PCM. While the Modic II performed many functions, its main function was to diagnose faults using its parameter checking function. This is in contrast to the Livewire, whose main function is its tuning function, a function that is described by heading 8517, HTSUS.

HQ H097095 also relied on NY R05134, dated November 20, 2006, and NY N019301, dated November 28, 2007. NY R05134 classified an on-board diagnostics code reader that read its vehicles' trouble codes and displayed them on an LCD screen. The user manual contained a list of the trouble codes the code reader displayed. NY N01930 classified the Porty EVO III, a device which collects and stores the diagnostic data received from the automobile's diagnostic equipment, thereby acting as an interface between the automobile and diagnostic equipment. Thus, the only function of the merchandise in these rulings was to receive, collect, store and display data on the way the vehicle functioned, data that allowed the user to ascertain whether the vehicle was functioning properly. By contrast, the Livewire, while it performs these functions, is used mainly to change a vehicle's performance via a separate mechanism (i.e., the tunes), irrespective of how well the vehicle may be functioning.

Lastly, we acknowledge that the ENs to heading 9031, HTSUS, states that the heading covers measuring or checking devices that test and regulate vehicle motors, such as those for checking all parts of the ignition system. See EN 90.31. Because the subject Livewire's tunes are used to change many aspects of a car's functioning, they can be seen as a regulatory function. However, the terms of the heading themselves are of a higher importance than the ENs, and the term "checking," as it is defined by the court in *Corning Glass Works*, does not encompass all of the Livewire's functions. As such, the Livewire is not completely described by heading 9031, HTSUS. As a result, as per Note 3 to Section XVI, HTSUS, and Note 3 to Chapter 90, HTSUS, we find that the subject Livewire is classified in heading 8517, HTSUS, as an "...other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528."

HOLDING:

Under the authority of GRI 1, Legal Note 3 to Section XVI, and Legal Note 3 to Chapter 90, HTSUS, the Livewire Flash Device is provided for in heading 8517, HTSUS. Specifically, it is classified under subheading 8517.62.00, HTSUS, as “Telephone sets, including telephones for cellular networks or for other wireless networks; Other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528: Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus.” The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

HQ H097095, dated August 2, 2010, is REVOKED.

Sincerely,

Myles B. Harmon,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE**19 CFR PART 177****REVOCAION OF A RULING LETTER AND REVOCAION
OF TREATMENT RELATING TO CLASSIFICATION OF
HOMEOPATHIC REMEDIES**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the classification of homeopathic remedies.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB is revoking a ruling concerning the classification of homeopathic remedies under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 41, on October 5, 2011. CBP received two comments in support of this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 16, 2012.

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

SUPPLEMENTARY INFORMATION:**Background**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking a ruling pertaining to the classification of homeopathic remedies. Although in this notice CBP is specifically referring to Headquarters Ruling Letter (HQ) H086082, dated October 15, 2010, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during this notice period.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ H086082 in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter H145541, 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), this ruling will become effective 60 days after the publication in the *Customs Bulletin*.

Dated: April 4, 2012

IEVA K. O'ROURKE
For
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H145541

April 4, 2012

CLA-2 OT:RR:CTF:TCM H145541 TNA**CATEGORY:** Classification**TARIFF NO.:** 3004.90.91

MR. MICHAEL TOMENGA, ESQ.
NEVILLE PETERSON, LLP
1400 16TH STREET, N.W., SUITE 350
WASHINGTON, D.C. 20036

RE: Request for Reconsideration of HQ H086082; Tariff Classification of Homeopathic Remedies

DEAR MR. TOMENGA:

This is in response to your request for reconsideration, dated January 24, 2011, made on behalf of Nelsons Bach USA, Ltd. (“Nelsons Bach”), of Headquarters Ruling Letter (“HQ”) H086082, dated October 15, 2010, which pertains to the classification of homeopathic remedies under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed HQ H086082 and found it to be in error. For the reasons set forth below, we hereby revoke HQ H086082.

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 in the *Customs Bulletin*, Vol. 45, No. 41, on October 5, 2011. CBP received two comments in support of this notice.

FACTS:

The subject merchandise consists of Nelsons Bach’s homeopathic remedies. These remedies come in a variety of forms and are used to treat a variety of ailments. Some are in the form of alcohol-based homeopathic essences that are packaged in 20 milliliter bottles and contain 27% alcohol and 70% water. Some are labeled for the treatments of such ailments as stress, lack of focus, courage, presence of mind; others “bring courage and calm to face things that frighten or worry, also aids the shy and timid”; “restore energy when you are mentally weary, procrastinate, and doubt your ability to face the task ahead.” Other remedies are in the form of lozenges, and still others are in the form of small pills. All have similar labels describing what ailments they relieve.¹

In HQ H086082, CBP classified entries of the homeopathic remedies in liquid form in subheading 2208.90.80, which provides for “undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.: Other: Other: Other.” The “Rescue Remedy for Pets” was classified under subheading 3824.90.92, HTSUS, which provides for: “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other.” The entries that were in tablet or lozenge form were classified under subheading

¹ We note that you requested reconsideration of all of Nelsons Bach’s products, including some that differ from the merchandise at issue in HQ H086082. In response, we note that we can only reconsider the classification of the merchandise at issue in HQ H086082. We cannot expand this reconsideration to include other merchandise as well.

2106.90.99, HTSUS, which provides for: “food preparations not elsewhere specified or included: other: other: other: other: other: other: other.”

ISSUE:

Whether homeopathic remedies that have the indicia of use as a drug are classified under heading 3004, HTSUS?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

2106	Food preparations not elsewhere specified or included:
2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages:
3004	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale:
3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

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

The EN to heading 21.06 states, in pertinent part, the following:

Provided that they are not covered by any other heading of the Nomenclature, this heading covers:

- (A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.

The EN to heading 22.08 states, in pertinent part, the following:

Provided that **their alcoholic strength by volume is less than 80 % vol**, the heading also covers undenatured spirits (ethyl alcohol and neutral spirits) which, contrary to those at (A), (B) and (C) above, are characterised by the absence of secondary constituents giving a flavour or aroma. These spirits remain in the heading whether intended for human consumption or for industrial purposes.

The EN to heading 30.04 states, in pertinent part, the following:

This heading covers medicaments consisting of mixed or unmixed products, **provided they are**:

(a) Put up **in measured doses** or in forms such as tablets, ampoules (for example, re-distilled water, in ampoules of 1.25 to 10 cm³, for use either for the direct treatment of certain diseases, e.g., alcoholism, diabetic coma or as a solvent for the preparation of injectible medicinal solutions), capsules, cachets, drops or pastilles, medicaments in the form of transdermal administration systems, or small quantities of powder, ready for taking as single doses for therapeutic or prophylactic use...

(b) **In packings for retail sale for therapeutic or prophylactic use.** This refers to products (for example, sodium bicarbonate and tamarind powder) which, because of their packing and, in particular, the presence of appropriate indications (statement of disease or condition for which they are to be used, method of use or application, statement of dose, etc.) are clearly intended for sale directly to users (private persons, hospitals, etc.) without repacking, for the above purposes.

These indications (in any language) may be given by label, literature or otherwise. However, the mere indication of pharmaceutical or other degree of purity is not alone sufficient to justify classification in this heading.

The EN to heading 38.24 states, in pertinent part, the following:

(B) CHEMICAL PRODUCTS AND CHEMICAL OR OTHER PREPARATIONS

With only three exceptions (see paragraphs (7), (19) and (32) below), this heading **does not apply** to separate chemically defined elements or compounds.

The **chemical products** classified here are therefore products whose composition is not chemically defined, whether they are obtained as by-products of the manufacture of other substances (this applies, for example, to naphthenic acids) or prepared directly.

The **chemical or other preparations** are either mixtures (of which emulsions and dispersions are special forms) or occasionally solutions. Aqueous solutions of the chemical products of **Chapter 28** or **29** remain classified within those Chapters, but solutions of these products in solvents other than water are, apart from a few exceptions, excluded therefrom and accordingly fall to be treated as preparations of this heading.

The preparations classified here may be either wholly or partly of chemical products (this is generally the case) or wholly of natural constituents (see, for example, paragraph (24) below).

However, the heading **does not cover** mixtures of chemicals with foodstuffs or other substances with nutritive value, of a kind used in the preparation of certain human foodstuffs either as ingredients or to improve some of their characteristics (e.g., improvers for pastry, biscuits, cakes and other bakers' wares), provided that such mixtures or substances are valued for their nutritional content itself. These products generally fall in **heading 21.06**. (See also the General Explanatory Note to Chapter 38.)

Additional U.S. Rule 1 states, in pertinent part, that:

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

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

In HQ H086082, we classified the subject homeopathic remedies in lozenge and pill form in subheading 2106.90.99, HTSUS; the remedies in liquid form that had 27% alcohol in subheading 2208.90.80, HTSUS; and the Rescue Remedy for Pets in subheading 3824.90.40, HTSUS. You argue, however, that these classifications are contrary to CBP's published precedent. You argue that homeopathic remedies are classified as medicaments in heading 3004, HTSUS. In support of this argument, you assert that HQ 967075, dated December 6, 2004, and HQ 967363, dated December 6, 2004, specifically revoked prior rulings to set forth the standard by which homeopathic remedies are to be classified under the HTSUS.

In HQ 967075 and HQ 967363, we reasoned that headings 2106 and 3004, HTSUS, are principal use provisions. The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import. *Group Italglass U.S.A., Inc. v. United States*, 17 C.I.T. 1177, 839 F. Supp. 866, 867 (1993). "Principal use" is defined as the use "which exceeds any other single use." *Minnetonka Brands v. United States*, 24 C.I.T. 645; 110 F. Supp. 2d 1020; 2000 Ct. Intl. Trade LEXIS 87; Slip Op. 2000-86. "The fact that the merchandise may have numerous significant uses does not prevent... classification of] the merchandise according to the principal use of the class or kind to which the merchandise belongs." *Lenox Coll. v. United States*, 20 C.I.T. 194; 18 Int'l Trade Rep. (BNA) 1181; 1996 Ct. Intl. Trade LEXIS 38; SLIP OP. 96-30 (Ct. Int'l Trade 1996).

When applying a "principal use" provision, CBP must ascertain the class or kind of goods which are involved and decide whether the subject merchandise is a member of that class. See Additional US Rule of Interpretation 1 to the HTSUS. In determining the class or kind of goods, the Court examines factors which may include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. See *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377, cert. denied, 429 U.S. 979, 50 L. Ed. 2d 587, 97 S. Ct. 490 (1976); see also *Lenox Coll.*, 20 C.I.T. 194; *E. M. Chemicals v. United States*, 20 C.I.T. 382, 923 F. Supp. 202 (Ct. Intl. Trade 1996). Therefore, the determinative issue in HQ 967075 and HQ 967363, as well as in the present case, is whether the subject homeopathic products, which are regulated as drugs under the FFDCA, belong to the class or kind of good that is principally prepared for therapeutic or prophylactic use or whether they belong to the class or kind of good that is principally used as a dietary supplement.

Medicaments principally prepared for therapeutic or prophylactic use in the U.S. are packaged for oral, parenteral, or dermatological administration. The ultimate purchaser expects that the substance will cure their condition or reduce its symptoms. They are regulated by the FDA as a drug and typically sold in pharmacies, over the counter or by prescription only or administered by health care personnel in hospitals or clinics. They are also used according to a strict dosage schedule usually with a time limit on the recommended use. By contrast, food supplements encompass a much more expansive group of items. They need only be prepared for human consumption. As such, they are simply packaged for oral ingestion as a capsule, tablet, powder or liquid. They are put up in packaging with indications that they maintain general health or well-being, and are often used daily without a strict dosage schedule or time limit recommended.

The internet web page of the Homeopathic Pharmacopeia of the United States (HPUS) states, in pertinent part, the following:

Homeopathy is the art and science of healing the sick by using substances capable of causing the same symptoms, syndromes and conditions when administered to healthy people. . . . Any substance may be considered a homeopathic medicine if it has known 'homeopathic provings' and/or known effects which mimic the symptoms, syndromes or conditions which it is administered to treat, and is manufactured according to the specifications of the Homeopathic Pharmacopoeia of the United States.

See <http://www.hpus.com/whatishomeopathy.php>.

One of the principal concepts of homeopathy is the "Law of Infinitesimals." This principal holds that the smaller the dose of the substance, the more powerful will be its healing effects. For example, the starting substance is first mixed in alcohol to obtain a tincture. One drop of the tincture is mixed with 99 drops of alcohol (to achieve a ratio of 1:100) and the mixture is strongly shaken. This shaking process is known as succussion. This bottle is labeled as "1C" or "2X." One drop of this 1C is then mixed with 100 drops of alcohol and the process is repeated to make 2C. By the time 3C (6X) is reached, the dilution is 1 part in 1 million.

Whereas prior CBP rulings once held that the relevant standard in classifying homeopathic products was the ability to detect the presence of the active ingredient, HQ 967075 and HQ 967363 specifically overruled that approach to find that homeopathic products are medicaments within the meaning of heading 3004, HTSUS. Such products must comply with the standards listed in the HPUS. Furthermore, these products must be packaged with statements of the specific diseases, ailments or their symptoms for which the product is to be used, the concentration of active substance or substances contained therein, the recommended dosage and the mode of application. They are also marketed and sold in relation to a disease, condition, or ailment which they purport to treat. If the condition is a very serious one, e.g. cancer, they are sold only by prescription. As a result, HQ 967075 and HQ 967363 found that in the context of homeopathic products, the outcome of the principal use test described above should not be based on the degree of dilution of the active ingredient in the homeopathic product.

This reasoning also applies to the homeopathic products at issue in the present case, which are similar to the ones at issue in HQ 967075 and HQ 967363. They contain specific dosage instructions, including how to ingest the product and how often. Each remedy also contains statements regarding

the ailments or symptoms they treat, and the concentration of active substances the product contains. They are also sold in relation to the ailment they are purported to treat. Therefore, the subject homeopathic products, which contain an active ingredient or ingredients officially included in the HPUS, and are packaged with statements of the specific diseases, ailments or their symptoms for which the product is to be used, the concentration of active substance or substances contained therein, the recommended dosage and the mode of application, are classified in subheading 3004.90.91, HTSUS, which provides for “Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: Other: Other: Other.”

HOLDING:

Under the authority of GRI 1, Nelson’s Bach’s homeopathic remedies containing the necessary indicia of therapeutic or prophylactic use are classified in heading 3004, HTSUS. Specifically, they are classified under subheading 3004.90.91, HTSUS, which provides for: “Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: Other: Other: Other.” The column one general rate of duty is Free.

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

EFFECT ON OTHER RULINGS:

HQ H086082, dated October 15, 2010, is REVOKED.

Sincerely,

IEVA K. O’ROURKE

For

Myles B. Harmon,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE**19 CFR PART 177****REVOCAION OF A RULING LETTER AND
MODIFICATION OF A RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO
CLASSIFICATION OF THERMAL OXIDIZERS**

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

ACTION: Notice of revocation of a ruling letter and modification of a ruling letter relating to the tariff classification of thermal oxidizers.

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 letter and modifying a ruling letter concerning the classification of thermal oxidizers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation and modification was published on November 16, 2011, in Volume 45, Number 47, of the *Customs Bulletin*. No comments were received in response to the notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from a warehouse for consumption on or after July 16, 2012.

FOR FURTHER INFORMATION CONTACT: Beth Jenior, 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 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 45, No. 47, on November 16, 2011, proposing to revoke New York Ruling Letter (NY) K88616, dated October 18, 2004, and to modify NY J84466, dated May 23, 2003, and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to the notice.

As stated in the proposed notice, this revocation and modification will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the notice period.

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

In NY K88616 and NY J84466, CBP ruled that thermal oxidizers were classified in subheading 8417.80.00, HTSUS, which provides, in pertinent part, for: "Industrial or laboratory furnaces and ovens, including incinerators ...: Other ...". The referenced rulings are incorrect because the thermal oxidizers are also purifiers and are properly classified under subheading 8421.39.80, HTSUS, which provides, in pertinent part, for "[F]iltering or purifying machinery and appa-

ratus, for liquids or gases, parts thereof: Filtering or purifying machinery and apparatus for gases: Other: Other ...”

CBP, pursuant to 19 U.S.C. §1625(c)(1), is revoking NY K88616 and modifying NY J84466, and any other ruling not specifically identified, to reflect the proper classification of the merchandise according to the analysis set forth in Headquarters Ruling Letter (HQ) H118895, set forth as an attachment to this document. Additionally, pursuant to section 625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 9, 2012

IEVA K. O’ROURKE

For

Myles B. Harmon,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H118895

April 9, 2012

CLA-2 OT:RR:CTF:TCM H118895 EGJ

CATEGORY: Classification

TARIFF NO.: 8421.39.80

MR. KEITH LANDRY
KUEHNE & NAGEL
235 SOUTHFIELD PARKWAY
FOREST PARK, GA 30297

RE: Revocation of NY K88616 and Modification of NY J84466; Classification of a Thermal Oxidizer

DEAR MR. LANDRY:

This is in reference to New York Ruling Letter (NY) K88616, dated October 18, 2004, and NY J84466, dated May 23, 2003, concerning the tariff classification of thermal oxidizers under the Harmonized Tariff Schedule of the United States (HTSUS). In those rulings, U.S. Customs and Border Protection (CBP) classified the subject articles in heading 8417, HTSUS, which provides for industrial or laboratory furnaces and ovens. We have reviewed NY K88616 and find it to be in error. For the reasons set forth below, we hereby revoke NY K88616 and modify NY J84466.

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 November 16, 2011, in the *Customs Bulletin*, Volume 45, No. 47. CBP received no comments in response to this notice.

FACTS:

In NY K88616, CBP described the product as follows:

The Clean Enclosed Burner (hereinafter CEB) will be used chiefly for burning waste gases and hydrocarbon fumes. This is a smokeless system and has almost no heat radiation and no outwardly visible flame. It is said to be a new alternative to conventional flare systems currently in use at refineries and industrial processing facilities. The system exceeds a combustion efficiency of 99.99%. It is a modular system so that additional units can be added side by side at any time. The units are generally delivered to the desired location on a flatbed truck.

The product literature states that CEB employs a premixed surface combustion system. Surface combustion is a burning technique in which premixed gas and air burns on a permeable medium. The mixture will be ignited above the burner surface. Combustion will take place in the combustion chamber by providing short blue flames. The burner is made from woven metal fibers. The fiber mat consists of several layers of metal fibers made of a special alloy capable of withstanding temperatures up to 1300 degrees C. Heat is released in convection form. The flame is shielded and directed upward by insulated walls.

A typical CEB system consists of the following parts: steel structure, stainless steel diffuser, stainless steel pre-mix chamber, burner deck equipped with permeable medium, gas piping, centrifugal fan, air supply

control, flue gas temperature monitoring, pilot system with automatic electric ignition, valves, flame arrestor, emission measuring ports and a stack 6' high.

In NY J84466, CBP describes the product at issue as follows:

The Guardian active oxidation scrubbers are point-of-use emission abatement devices that thermally oxidize and decompose process gases. There are two main processes involved: first, waste gases are forced through a wall of flame as the gases are drawn into a combustion area; second, clean air is pumped through the machine's oxidizer which provides oxygen for combustion and dynamically positions the flame and cools the exhaust gas stream. You indicate that the Guardian cannot properly operate if both these functions do not exist. You also state that the Guardian possesses a control which determines the amount of clean airflow that is introduced into the process.

Both devices are thermal oxidizers. Thermal oxidizers are machines which treat waste gases to destroy pollutants known as VOCs (volatile organic compounds).¹ Thermal oxidation is a combustion process because the compounds are burned through exposure to high temperatures.² To being the thermal oxidation process, a stream of air laden with VOCs enters the thermal oxidizer's premix chamber. In the premix chamber, oxygen is added and mixed into the air stream. The VOC laden air stream mixed with oxygen is then pushed through a mesh of metal fibers.

This mesh of metal fibers is a permeable medium. After the air stream flows through the mesh, it is ignited by an electrical spark. The air stream burns just above the mesh. The mesh is designed to withstand temperatures of up to 1100 degrees Celsius. The resulting flame is shielded and directed upward by insulated walls.

As a result of the heat, a chemical reaction occurs whereby the VOCs react with the oxygen and are converted into water and carbon dioxide. The resulting output is 99.99% free from VOCs. On its website, Bekaert advertises the CEB for applications such as waste water treatment, landfill biogas, oil drilling and gas drilling.

ISSUE:

Are the thermal oxidizers classified under heading 8417, HTSUS, as furnaces or under heading 8421, HTSUS, as purifiers?

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 David A. Lewandowski, *Design of Thermal Oxidation Systems for Volatile Organic Compounds* 1 (CRC Press 2000).

² *Id.*

The HTSUS provisions at issue are as follows:

8417	Industrial or laboratory furnaces and ovens, including incinerators, nonelectric, and parts thereof ...
	* * *
8421	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof ...
	* * *

Section XVI, Note 3, which covers Chapter 84, HTSUS, states the following:

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

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 (VI) to Section XVI states, in pertinent part, that:

Where it is not possible to determine the principal function, and where, as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretative Rule 3 (c); such is the case, for example, in respect of multi-function machines potentially classifiable in several of the headings 84.25 to 84.30, in several of the headings 84.58 to 84.63 or in several of the headings 84.69 to 84.72.

* * *

EN 84.17 states, in pertinent part, that:

This heading covers non-electrical industrial or laboratory furnaces and ovens, designed for the production of heat in chambers at high or fairly high temperatures by the combustion of fuel (either directly in the chamber or in separate combustion chambers) ...

The heading includes:

...

(13) Incinerators and similar apparatus specially designed for the burning of waste, etc. ...

* * *

EN 84.21(II) states in pertinent part, that:

(B) **Filtering or purifying machinery, etc., for gases**

These gas filters and purifiers are used to separate solid or liquid particles from gases, either to recover products of value (e.g., coal dust, metallic particles, etc., recovered from furnace flue gases), or to eliminate harmful materials (e.g., dust extraction, removal of tar, etc., from gases or smoke fumes, removal of oil from steam engine vapors).

* * *

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

In *Webster’s New World Dictionary*, the term “furnace” is defined as “1. an enclosed chamber or structure in which heat is produced, as by burning fuel, for warming a building, reducing ores and metals, etc. 2. any extremely hot place.”³ Further, EN 84.17 states that the heading covers machines “designed for the production of heat in chambers at high or fairly high temperatures.” EN 84.17(13) states that the heading covers “incinerators and similar apparatus specially designed for the burning of waste.” The merchandise uses a heated chamber to burn up waste gases. Thus, it could be classified as a furnace of heading 8417, HTSUS.

In *Noss Co. v. United States*, 588 F. Supp. 1408, 1412 (Ct. Int’l Trade 1984), the court provided several dictionary definitions of the term “purify.” One of the definitions was “to remove unwanted constituents from a substance.” *Id.* citing *The McGraw-Hill Dictionary of Scientific and Technical Terms* (2d ed. 1978). Although the court applied this definition to a tariff term in the Tariff Schedule of the United States (predecessor to the HTSUS), the Court of Appeals for the Federal Circuit (CAFC) has applied the same definition of the term “purify” under the HTSUS. *Franklin v. United States*, 289 F.3d 753, 758 (Fed. Cir. 2002) (*Franklin*) (applied this definition to coral sand packets which kill bacteria and neutralize chlorine in glasses of drinking water). In addition, EN 84.21(II)(B) states that the heading covers machines which “are used to separate solid or liquid particles from gases, either to recover products of value (e.g., coal dust, metallic particles, etc., recovered from furnace flue gases), or to eliminate harmful materials (e.g., dust extraction, removal of tar, etc., from gases or smoke fumes, removal of oil from steam engine vapors).”

Now we must apply these definitions of “purify” to the instant merchandise. The merchandise satisfies the *Franklin* definition of a purifier because it removes unwanted constituents (VOCs) from a substance (the air stream). The merchandise also satisfies the definition of a purifier in the ENs because it eliminates harmful materials (VOCs) through combustion. Therefore, the merchandise could also be classified as a purifier.

The instant machine, through the method of combustion, performs two functions: incineration of the VOCs, and purification of the gas input. Thus, the thermal oxidizers at issue are “designed for the purpose of performing two or more complementary or alternative functions” (Section XVI, Note 3), and

³ *Webster’s New World Dictionary* 547 (3d. College Ed. 1988).

are therefore multi-function machines. Hence, we must identify the principal function in order to determine how the merchandise is classified. Here, the functions are intertwined. The incinerator simultaneously heats and purifies. Heating the VOC laden air stream purifies the air stream and removes the VOCs. While the heating is the principal action, purification is the desired result. Companies order these thermal oxidizers for their ability to purify waste gas. Since the two functions are so tightly linked, we cannot identify one principal function for the machine.

The ENs to section XVI, paragraph VI pertaining to multi-function machines and composite machines, instruct that where it is not possible to determine the principal function, as provided in note 3, it is necessary to apply GRI 3(c). GRI 3(c) provides that “[w]hen goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.”

Heading 8421, HTSUS, appears later in numerical order. Hence, the merchandise shall be classified as a purifier under heading 8421, HTSUS. This result is consistent with that of NY R05112, classifying a thermal oxidizer in heading 8421, HTSUS.

HOLDING:

By application of GRI 1, Section note 3 to Section XVI and GRI 3(c), the merchandise is classified under heading 8421, HTSUS. Specifically, it is classified under subheading 8421.39.80, HTSUS, which provides, in pertinent part, for “[F]iltering or purifying machinery and apparatus, for liquids or gases, parts thereof: Filtering or purifying machinery and apparatus for gases: Other: Other ...” The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY K88616, dated October 18, 2004, is hereby revoked.

NY J84466, dated May 23, 2003, is hereby modified with regard to the Guardian Gas Protective System (Models GS-4 and GS-8).

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

Sincerely,

IEVA K. O’ROURKE

For

Myles B. Harmon,

Director

Commercial and Trade Facilitation Division

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF A MEN'S VEST**

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 a men's vest.

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 a men's vest under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed modification was published on December 28, 2011, in the Customs Bulletin, Volume 46, No. 1. One comment was received in response to the notice.

DATES: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 16, 2012.

FOR FURTHER INFORMATION CONTACT: Robert Shervette, Office of International Trade Regulations and Rulings, 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 December 28, 2011, in the Customs Bulletin, Volume 46, No. 1, proposing to revoke one ruling letter pertaining to the tariff classification of a men's vest. Although in the proposed notice, CBP is specifically referring to the revocation of New York Ruling Letter ("NY") N084077, dated April 12, 2010, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 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 transaction 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 N084077, CBP classified a men's vest under heading 6110, HTSUS, which provides for: "[s]weaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted." Upon our review of NY N084077, we have determined that the merchandise described in that ruling is properly classified under heading 6211, HTSUS, which provides for: "[t]rack suits, ski-suits and swimwear; other garments."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N084077, and revoking or modifying any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter ("HQ") H136897, 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: April 9, 2012

IEVA K. O'ROURKE

For

Myles B. Harmon,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H136897

April 9, 2012

CLA-2 OT: RR: CTF: TCM H136897 RES**CATEGORY:** Classification**TARIFF NO.:** 6211.33.0054

TED MURPHY

BAKER & MCKENZIE LLP

815 CONNECTICUT AVENUE, NW

WASHINGTON, DC 20006-4078

RE: Reconsideration of New York Ruling N084077, dated April 12, 2010; classification of a men's vest from China.

DEAR MR. MURPHY:

This is in response to your letter dated November 23, 2010, on behalf of Williamson-Dickie Manufacturing Company ("Williamson-Dickie") for reconsideration of New York Ruling Letter ("NY") N084077 issued on April 12, 2010, regarding the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of a men's vest. The merchandise in NY N084077 was classified under heading 6110, HTSUS. We have determined that NY N084077 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 December 28, 2012, in Volume 46, Number 1, of the *Customs Bulletin*. CBP received one comment requesting clarification of the action. The comment is addressed in the analysis section.

FACTS:

The subject vest, identified as "lot TE 424", is composed of three layers of bonded fabric. The outer layer is a woven fabric that is 92% polyester and 8% spandex. The middle layer is composed of thermoplastic polyurethane and the inner layer is a knit fabric that is 100% polyester. The vest is sleeveless, has one zippered pocket over the left side of the chest, two waist-level pockets without zippers. A zipper closure runs from the bottom to the top of the front of the vest. There are also two elastic draw cords at the base of the vest with cord locks that allow a user to tighten or loosen the vest at waist level.

ISSUE:

Whether the men's vest at issue is classified under heading 6110, HTSUS, as a vest that is knitted or crocheted or under heading 6211, HTSUS, as an "other garment of man-made fibers"?

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 HTSUS headings under consideration in this case are as follows:

- 6110 Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted:
* * *
- 6211 Track suits, ski-suits and swimwear; other garments:

The commenter asked that CBP clarify whether CBP is changing its interpretation of Chapter 60, Note 1(c) and to clarify the basis of the ruling here.¹ CBP is not altering its interpretation of Chapter 60, Note 1(c).

In NY N084077, the ruling based its decision to apply Chapter 60, Note 1(c) on the premise that the inner layer of fabric was a knit pile. However, that was a mistake of fact because CBP's Laboratory and Scientific Services determined that the inner layer was instead a knit fabric with a brushed pile-like effect.

CBP's position on the issue of whether a fabric that is brushed to give a pile effect is considered a pile fabric for classification purposes has been addressed in numerous rulings. *See, e.g.*, HQ 951374, dated October 30, 1992; HQ 952803, dated January 28, 1993; HQ 952804, dated January 28, 1993; HQ 953942, dated May 7, 1993 (revoking HQ 952803); HQ 953941, dated May 7, 1993 (revoking HQ 952804); HQ 952921, dated May 7, 1993; HQ 952924, dated May 7, 1993; HQ 960250, dated September 18, 1997; HQ 960548, dated September 18, 1997; HQ 959801, dated November 7, 1997; and HQ 960783, dated June 3, 1998. In the earlier rulings, CBP stated:

[I]f during the weaving or knitting of a fabric, yarns are caused to project from the surface(s) (i.e., the base material) of that fabric creating a "pile" appearance, that fabric will be considered a pile fabric for the purposes of the HTSUSA, even if those yarns are subsequently subjected to a brushing process. However, if fabric is woven or knit without projecting yarns which create a "pile" surface or surfaces, and that "pile" appearance is later produced by a brushing, teasing, or similar process, then the fabric is not considered to be a pile fabric for the purposes of the HTSUSA.

See HQ 951374, HQ 952803, HQ 952804, HQ 953942, HQ 953941, HQ 952921 and HQ 952924, *supra*.

[CBP] has issued a number of rulings discussing a variety of fabrics which have set forth a precedence that the future state of the fabric is not determinative of its classification. In the analysis portion of these rulings it has been consistently stated that [CBP] will examine the process involved in the production of the fabric and the appearance of the fabric as

¹ Chapter 60, Note 1(c) provides in pertinent part that Chapter 60 does not cover "[k]nitted or crocheted fabrics, impregnated, coated, covered or laminated, of chapter 59. However, knitted or crocheted pile fabrics, impregnated, coated, covered or laminated, remain classified in heading 6001."

the governing factors in ascertaining whether that fabric is classifiable as a pile fabric. In essence, the knitting process of the fabric must result in raised loops or floats which protrude from the surface of the base fabric.

See HQ 960548, HQ 960250, HQ 959801 and HQ 960783, *supra*. It is CBP's position that fabrics which have raised loops or floats created during the knitting process are classified as pile while the brushing of a fabric to create a "pile-like" effect that does not exhibit a pile construction at the time it leaves the knitting machine does not create a pile surface for classification purposes. Thus, Chapter 60, Note 1(c) does not apply here.

A composite article governed by GRI 3(b) is classified according to the material that gives the article its essential character. An article of apparel that consists of multiple layers of fabric is classified based on the material of the outer layer, subject to any exceptions in the legal notes that direct otherwise or in instances where an article of apparel has parts or accessories which materially contribute to the article's character or usefulness and impart the essential character. See Headquarters Ruling "HQ" 084262, dated June 21, 1989, and HQ 086504, dated December 27, 1990.

In the case of the subject merchandise, classification is based on the outer layer of fabric because there are no other parts or accessories that materially contribute to the vests' character or usefulness to an extent to impart the essential character over the outer layer of fabric. The outer layer of fabric is an artificial woven fabric with a composition that is 92% polyester and 8% spandex. A textile garment that is a men's vest with an outer layer of woven fabric is classifiable in Chapter 62, HTSUS, as an article of apparel not knitted or crocheted, and specifically under heading 6211, HTSUS. As both polyester and spandex are both man-made fibers, the instant vest is specifically provided for under subheading 6211.33.00, HTSUS, as "[t]rack suits, ski-suits and swimwear; other garments: [o]ther garments, men's or boys': [o]f man-made fibers."

HOLDING:

By application of GRI 3(b), the men's vest, lot # TE 424, is classified under subheading 6211.33.0054, HTSUSA, as "[t]rack suits, ski-suits and swimwear; other garments: [o]ther garments, men's or boys': [o]f man-made fibers: [v]ests: [o]ther." Articles classified under this subheading are subject to a column one rate of duty of 16 percent, *ad valorem*, and the visa category is 659.

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 World Wide Web at www.usitc.gov/tata/hts/.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, we suggest your client check the *Textile Status Report for Absolute Quotas* at www.cbp.gov close to the time of shipment to obtain the most current information available.

EFFECTS ON OTHER RULINGS:

The classification of the men's vest merchandise in NY N084077, dated April 12, 2010, 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*.

Sincerely,

IEVA K. O'ROURKE

For

Myles B. Harmon,

Director

Commercial and Trade Facilitation Division

HQ H136897

CLA-2 OT: RR: CTF: TCM H136897 RES

CATEGORY: Classification

TARIFF NO.: 6211.33.0054

TED MURPHY

BAKER & MCKENZIE LLP

815 CONNECTICUT AVENUE, NW

WASHINGTON, DC 20006-4078

RE: Reconsideration of New York Ruling N084077, dated April 12, 2010; classification of a men's vest from China.

DEAR MR. MURPHY:

This is in response to your letter dated November 23, 2010, on behalf of Williamson-Dickie Manufacturing Company ("Williamson-Dickie") for reconsideration of New York Ruling Letter ("NY") N084077 issued on April 12, 2010, regarding the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of a men's vest. The merchandise in NY N084077 was classified under heading 6110, HTSUS. We have determined that NY N084077 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 December 28, 2012, in Volume 46, Number 1, of the *Customs Bulletin*. CBP received one comment requesting clarification of the action. The comment is addressed in the analysis section.

FACTS:

The subject vest, identified as "lot TE 424", is composed of three layers of bonded fabric. The outer layer is a woven fabric that is 92% polyester and 8% spandex. The middle layer is composed of thermoplastic polyurethane and the inner layer is a knit fabric that is 100% polyester. The vest is sleeveless, has one zippered pocket over the left side of the chest, two waist-level pockets without zippers. A zipper closure runs from the bottom to the top of the front of the vest. There are also two elastic draw cords at the base of the vest with cord locks that allow a user to tighten or loosen the vest at waist level.

ISSUE:

Whether the men's vest at issue is classified under heading 6110, HTSUS, as a vest that is knitted or crocheted or under heading 6211, HTSUS, as an "other garment of man-made fibers"?

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 gener-

ally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

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

- 6110 Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted:
* * *
- 6211 Track suits, ski-suits and swimwear; other garments:

The commenter asked that CBP clarify whether CBP is changing its interpretation of Chapter 60, Note 1(c) and to clarify the basis of the ruling here.¹ CBP is not altering its interpretation of Chapter 60, Note 1(c).

In NY N084077, the ruling based its decision to apply Chapter 60, Note 1(c) on the premise that the inner layer of fabric was a knit pile. However, that was a mistake of fact because CBP's Laboratory and Scientific Services determined that the inner layer was instead a knit fabric with a brushed pile-like effect.

CBP's position on the issue of whether a fabric that is brushed to give a pile effect is considered a pile fabric for classification purposes has been addressed in numerous rulings. *See, e.g.*, HQ 951374, dated October 30, 1992; HQ 952803, dated January 28, 1993; HQ 952804, dated January 28, 1993; HQ 953942, dated May 7, 1993 (revoking HQ 952803); HQ 953941, dated May 7, 1993 (revoking HQ 952804); HQ 952921, dated May 7, 1993; HQ 952924, dated May 7, 1993; HQ 960250, dated September 18, 1997; HQ 960548, dated September 18, 1997; HQ 959801, dated November 7, 1997; and HQ 960783, dated June 3, 1998. In the earlier rulings, CBP stated:

[I]f during the weaving or knitting of a fabric, yarns are caused to project from the surface(s) (i.e., the base material) of that fabric creating a "pile" appearance, that fabric will be considered a pile fabric for the purposes of the HTSUSA, even if those yarns are subsequently subjected to a brushing process. However, if fabric is woven or knit without projecting yarns which create a "pile" surface or surfaces, and that "pile" appearance is later produced by a brushing, teasing, or similar process, then the fabric is not considered to be a pile fabric for the purposes of the HTSUSA.

See HQ 951374, HQ 952803, HQ 952804, HQ 953942, HQ 953941, HQ 952921 and HQ 952924, *supra*.

[CBP] has issued a number of rulings discussing a variety of fabrics which have set forth a precedence that the future state of the fabric is not determinative of its classification. In the analysis portion of these rulings it has been consistently stated that [CBP] will examine the process involved in the production of the fabric and the appearance of the fabric as the governing factors in ascertaining whether that fabric is classifiable as a pile fabric. In essence, the knitting process of the fabric must result in raised loops or floats which protrude from the surface of the base fabric.

¹ Chapter 60, Note 1(c) provides in pertinent part that Chapter 60 does not cover "[k]nitted or crocheted fabrics, impregnated, coated, covered or laminated, of chapter 59. However, knitted or crocheted pile fabrics, impregnated, coated, covered or laminated, remain classified in heading 6001."

See HQ 960548, HQ 960250, HQ 959801 and HQ 960783, *supra*. It is CBP's position that fabrics which have raised loops or floats created during the knitting process are classified as pile while the brushing of a fabric to create a "pile-like" effect that does not exhibit a pile construction at the time it leaves the knitting machine does not create a pile surface for classification purposes. Thus, Chapter 60, Note 1(c) does not apply here.

A composite article governed by GRI 3(b) is classified according to the material that gives the article its essential character. An article of apparel that consists of multiple layers of fabric is classified based on the material of the outer layer, subject to any exceptions in the legal notes that direct otherwise or in instances where an article of apparel has parts or accessories which materially contribute to the article's character or usefulness and impart the essential character. See Headquarters Ruling "HQ" 084262, dated June 21, 1989, and HQ 086504, dated December 27, 1990.

In the case of the subject merchandise, classification is based on the outer layer of fabric because there are no other parts or accessories that materially contribute to the vests' character or usefulness to an extent to impart the essential character over the outer layer of fabric. The outer layer of fabric is an artificial woven fabric with a composition that is 92% polyester and 8% spandex. A textile garment that is a men's vest with an outer layer of woven fabric is classifiable in Chapter 62, HTSUS, as an article of apparel not knitted or crocheted, and specifically under heading 6211, HTSUS. As both polyester and spandex are both man-made fibers, the instant vest is specifically provided for under subheading 6211.33.00, HTSUS, as "[t]rack suits, ski-suits and swimwear; other garments: [o]ther garments, men's or boys': [o]f man-made fibers."

HOLDING:

By application of GRI 3(b), the men's vest, lot # TE 424, is classified under subheading 6211.33.0054, HTSUSA, as "[t]rack suits, ski-suits and swimwear; other garments: [o]ther garments, men's or boys': [o]f man-made fibers: [v]ests: [o]ther." Articles classified under this subheading are subject to a column one rate of duty of 16 percent, *ad valorem*, and the visa category is 659.

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 World Wide Web at www.usitc.gov/tata/hts/.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, we suggest your client check the *Textile Status Report for Absolute Quotas* at www.cbp.gov close to the time of shipment to obtain the most current information available.

EFFECTS ON OTHER RULINGS:

The classification of the men's vest merchandise in NY N084077, dated April 12, 2010, 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*.

Sincerely,
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

**MODIFICATION OF RULING LETTERS HQ 228508 & HQ
H046995 RELATING TO ANALYSIS OF MANUFACTURE IN
CBP BONDED WAREHOUSES**

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

ACTION: Notice of modification of two ruling letters relating to the analysis of manufacture in the context of bonded warehouses.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying HQ 228508, dated, September 9, 1999, and HQ H046995, dated, February 2, 2009, relating to manufacturing in CBP bonded warehouses. Similarly, CBP is modifying any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* Vol. 46, No. 5, on January 25, 2012. One comment was received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 16, 2012.

FOR FURTHER INFORMATION CONTACT: Tina Termei, Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade: (202) 325–0324.

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by Section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 46, No. 5, on January 25, 2012, proposing to modify HQ 228508, dated September 9, 1999, and HQ H046995, dated February 2, 2009, relating to whether proposed operations were considered a manufacture for purposes of bonded warehouse. One comment was received in response to this notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the subject of this notice should have advised CBP during the comment period.

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

In HQ 228508, dated September 9, 1999, and HQ H046995, dated February 2, 2009, CBP used the "substantial transformation" analysis of *Ferrostaal Metals Corp. v. United States*, 11 C.I.T. 470 (1987), in determining whether an action would constitute 'manufacture' for purposes of 19 U.S.C. § 1562, the provision on permissible manipulation in CBP bonded warehouses. However, in 1992 the Court of International Trade held in *Tropicana Products, Inc. v. United States* that, the "substantial transformation" test was inapplicable for 19 U.S.C. § 1562 determinations of 'manufacture' and instead a "low threshold" may be used. 789 F. Supp. 1154, 1158 (1992). Based on our recent review of HQ 228508 and HQ H046995, we have concluded

that the use of the ‘substantial transformation’ analysis in the context of §1562 is incorrect. However, the modification to HQ 228508 and HQ H046995 does not change their holding.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying HQ 228508 and HQ H046995, in order to reflect the proper analysis as contained in HQ H140895 (Attachment A) and HQ H141855 (Attachment B). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is modifying any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice.

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

Dated: April 25, 2012

Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT A]

HQ H140895

April 25, 2012

WAR-3-01-RR:CTF:EPD: H140895 TT

CATEGORY: Bonded Warehouse

PORT DIRECTOR OF CUSTOMS
ATTN: EUGENIO GARZA, JR.
P.O. Box 3130
LAREDO, TX 78044

RE: Modification of HQ 228508; Request for Internal Advice concerning manufacture or manipulation of merchandise in a bonded warehouse; 19 U.S.C. §1562; broccoli.

DEAR SIR:

This letter is in reference to Headquarters Ruling HQ 228508, dated September 9, 1999, concerning the permissibility of mixing totes of broccoli florets and stalks in a Customs and Border Protection (“CBP”) bonded warehouse. In that ruling, CBP found the action to be a manufacture and thus, impermissible in the CBP bonded warehouse. We have reviewed HQ 228508 and found some of the analysis to be incorrectly applied. However, the error in analysis does not change the holding. For the reasons set forth below, we hereby modify HQ 228508 to reflect the proper analysis.

Pursuant to Section 625©(1), Tariff Act of 1930 (19 U.S.C. § 1625©(1)), as amended by Section 623 of Title VI, notice proposing to modify HQ 228508 and HQ H046995 was published on January 25, 2012, in Volume 46, Number 5, of the *Customs Bulletin*. CBP received one comment in response to that notice supporting the modification of that ruling.

FACTS:

In HQ 228508, we described the facts as follows. On January 22, 1999, the Port of Laredo, Texas submitted a request for internal advice to the Entry Procedures and Carriers Branch. This request was later forwarded to the Duty and Refund Determination Branch on June 30, 1999. You have requested advice concerning a proposed operation in a bonded warehouse.

The proposed operation is sought by Sun Harvest Foods, Inc. (“SHF”). SHF purchases and sells frozen vegetables, in particular, frozen broccoli. Frozen broccoli is generally packaged for import in large plastic sacks called “totes.” The totes generally contain broccoli cut in the following forms: florets, stalks, and mixed florets and stalks. The top portion of the broccoli, the floret, is preferred by consumers and hence, it is the more expensive portion of the vegetable. In contrast, the bottom portion of the broccoli, the stalk, is the least expensive portion of the vegetable. SHF has submitted invoices showing the cost, per pound, of florets, stalks, and a 40–60% mixture of florets and stalks.

According to SHF’s invoices, one pound of mixed broccoli composed of 40% floret and 60% stalk costs approximately half as much as a pound of only florets, and twice as much as a pound of only stalks. The precooked and frozen broccoli has been classified under the Harmonized Tariff Schedule of the United States (“HTSUS”) 0710.80.97.24. SHF proposes to take totes of

florets and totes of stalks in a Customs and Border Protection (“CBP”) bonded warehouse and blend them together to create totes of mixed florets and stalks.

ISSUE:

Whether the proposed operation of mixing totes of broccoli florets and broccoli stalks in a bonded warehouse is a permissible manipulation under 19 U.S.C. §1562.

LAW AND ANALYSIS:

Whether SHF may mix its imported broccoli florets and stalks in a bonded warehouse is contingent on whether the mixing is a permissible manipulation under 19 U.S.C. § 1562. If this process constitutes a manufacture, it is not permitted in a bonded warehouse under Section 1562.

The statute, in 19 U.S.C. §1562 provides that, imported “merchandise may [with customs permission and supervision] be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose” “Manufacture” for purposes of 19 U.S.C. § 1562 does not require a substantial transformation, instead “a low threshold of ‘transformation’” satisfies the meaning of ‘manufactured’ for bonded warehouses purposes. *Tropicana Products, Inc. v. U.S.*, 16 C.I.T. 155, 160 (1992). In *Tropicana*, the Court of International Trade (“CIT”) looked at the meaning of “manufacture” in 19 U.S.C. § 1562 and distinguished it from the meaning of “manufacture” when used in the context of drawback, classification, and a country of origin analysis. *Id.* (“the criterion of whether goods have been ‘manufactured’ serves different purposes under different statutes, particularly § 1562 on the one hand and statutes concerned with country-of-origin marking, Generalized System of Preferences and drawback on the other. . .”). The CIT determined that:

To interpret “manufacturing” – an expressly prohibited manipulation under § 1562 – as requiring a high threshold of transformation (*viz.*, a substantial transformation as stringently required in country of origin and drawback cases), would negate the evident legislative intent of the statute to permit only very minor or rudimentary manipulations in bonded warehouses – akin to the exemplars (cleaning, sorting and re-packing).

Id. At 160. Therefore, the analysis to determine whether a procedure constitutes a “manufacture” for purposes of 19 U.S.C. § 1562 is a “low threshold.” *Id.*

In *Tropicana*, the CIT held that the process of diluting concentrated orange juice by adding water to be a manufacture for purposes of 19 U.S.C. § 1562. 16 C.I.T. at 162. SHF argues that its bonded warehouse operations will not result in a ‘substantial transformation’ of the imported merchandise and therefore, it will not constitute a “manufacture” in its bonded warehouse. However, SHF’s proposed operations of mixing totes of florets and stalks creates a new product, at a vastly different price, and thus, constitutes a manufacture.

SHF's proposed procedure involves mixing totes of broccoli florets and stalks. The broccoli florets and stalks will be blended together to create totes composed of 40% florets and 60% stalks. There are three main steps to SHF's proposed process: 1) the opening of the tote containers; 2) the blending of the florets and stalks; and 3) the repackaging of the blended mixture. Although, the broccoli remains broccoli, the nature of the merchandise has significantly changed. The broccoli florets are no longer solely broccoli florets. The broccoli stalks are no longer solely broccoli stalks. The blend is now known in the industry and in the marketplace as "broccoli cuts." This new name given to this product demonstrates that there is a significant difference between totes of solely stalks or florets.

Additionally, the price of this new merchandise, broccoli cuts, is considerably different than the price of totes of stalks or totes of florets. This new product is priced twice as much as a stalks-only tote and half as much as a florets-only tote. This substantial difference in price for broccoli cuts, indicates there is a new product and that it is recognized as such, by not only the broccoli industry, but also, the public. The blended broccoli cuts have taken on a new name and price.

In *Tropicana*, where the blending of orange juice concentrates to achieve a desired Brix to acid ratios changed the fundamental character of the imported unblended concentrate, the CIT concluded that the blending operation was not a permitted manipulation. The CIT "analyzed the exemplars in the statute" and "blending" was not one of the permissible listed terms. The Court also held that, *Tropicana's* blending "was not. . . analogous to. . . [§ 1562's language of] 'cleaned, sorted, repacked,' and that therefore, it was "not within the scope of [§ 1562's] 'otherwise changed in condition.'" *Tropicana*, 161 C.I.T. at 162. *Tropicana's* analysis is applicable to this case.

The process of blending and diluting the orange juice concentrate in *Tropicana* was highly sophisticated and calibrated. While in the present case, the blending process is not as intricate, we must consider the sophistication of the process in question in relation to the sophistication of the merchandise itself. The manufacture and sale of orange juice concentrate is a highly complex trade. Broccoli, however, is fundamentally more basic. When dealing with a basic product such as broccoli, with only three forms (florets, stalks, and a broccoli cuts), the distinctiveness of each form is reflected by a substantial variance in the price. Thus, the process of transforming broccoli into a different form need not be complex and intricate to be deemed a manufacture.

According to the blending description provided by SHF, it appears that the broccoli will change substantially. The blending of the more expensive florets with the less expensive stalks, in a 40%-60% mix, produces a new product at a new price. This mixing is not performed for a decorative purpose. It appears to be performed for a marketing and a profit-building purpose. Further, on average, a tote of florets costs two hundred percent more than a tote of stalks. A mix of florets and stalks costs nearly 100% more than a tote of stalks, but nearly half as much as a tote of florets. This demonstrates that both SHF and consumers perceive a difference in these products, whether it is totes of florets, stalks, or cuts. Thus, we find that the operation described above would result in a manufacture of the subject merchandise and is therefore, not permitted under 19 U.S.C. §1562.

HOLDING:

The blending of broccoli florets and stalks described above is considered to be a manufacture under 19 U.S.C. § 1562, for the purposes of admitting the subject merchandise to a CBP bonded warehouse.

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, HQ 228508, dated September 9, 1999, is hereby MODIFIED.

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

Sincerely,
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H141855

April 25, 2012

DRA-4-OT:RR:CTF:ER H141855 TT

CATEGORY: Bonded warehouse entry

JAMES C. ALBERDI, PRESIDENT
A.J. ARANGO, INC.
1516 E. 8th AVENUE
TAMPA, FLORIDA 33605

RE: Modification of HQ H046995; Class 8 Bonded Warehouse

DEAR MR. ALBERDI:

This letter is in reference to Headquarters Ruling H046995, dated February 2, 2009, concerning the permissibility of adding salt to wine, to create cooking wine, in a Customs and Border Protection (“CBP”) Class 8 bonded warehouse. In that ruling, CBP found the action to be a manufacture and thus, impermissible in a CBP Class 8 bonded warehouse. We have reviewed HQ H046995 and found some of the analysis to be incorrectly applied. However, the error in analysis does not change the holding. For the reasons set forth below, we hereby modify HQ H046995 to reflect the proper analysis.

Pursuant to Section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by Section 623 of Title VI, notice proposing to modify HQ 228508 and HQ H046995 was published on January 25, 2012, in Volume 46, Number 5, of the *Customs Bulletin*. CBP received one comment in response to that notice supporting the modification of that ruling.

FACTS:

In HQ H046995, we described the facts as follows. Vigo proposes to import drinking wine in 1000 liter plastic totes and to add salt to the wine to transform it into cooking wine. Upon the addition of the salt, the wine will contain greater than 1.5 grams of salt per 100 milliliters of wine. This would then make the wine unfit for consumption as a beverage.

Information submitted on January 6, 2009 by email, stated that the value of the drinking wine prior to the addition of the salt is \$810.00 per 1000 liter tote. The value of the salt added per 1000 liter tote is \$4.25.

The drinking wine is to be imported in 1000 liter plastic totes featuring large screw top openings. The necessary salt would be added to each tote transforming the wine into “cooking wine.” The totes would then be labeled as “cooking wine” and a CBP entry would be made under the appropriate classification for cooking wine. The product would then be moved to Vigo’s warehouse for further packaging.

ISSUE:

Whether the proposed operation of adding and mixing salt to wine to create cooking wine is permissible manipulation for purposes of CBP bonded warehouses under title 19 U.S.C. § 1562.

LAW AND ANALYSIS:

Whether Vigo may add and mix salt to its drinking wine in a CBP bonded warehouse is contingent upon whether the adding and mixing of salt to wine

is a permissible manipulation under title 19 U.S.C. § 1562. If the process of adding and mixing constitutes a manufacture, it is not permitted in a CBP bonded warehouse under 19 U.S.C. §1562.

19 U.S.C. §1562 provides that imported “merchandise may [with Customs permission and supervision] be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose. . . .” “Manufacture” for purposes of 19 U.S.C. § 1562 does not require a substantial transformation, instead “a low threshold of ‘transformation’ satisfies the meaning of ‘manufactured’ for bonded warehouses purposes. *Tropicana Products, Inc. v. U.S.*, 16 C.I.T. 155, 160 (1992). In *Tropicana*, the Court of International Trade (“CIT”) looked at the meaning of “manufacture” in 19 U.S.C. § 1562 and distinguished it from the meaning of “manufacture” when used in the context of drawback, classification, and a country of origin analysis. *Id.* (“the criterion of whether goods have been ‘manufactured’ serves different purposes under different statutes, particularly § 1562 on the one hand and statutes concerned with country-of-origin marking, Generalized System of Preferences and drawback on the other. . .”). The CIT determined that:

To interpret “manufacturing” – an expressly prohibited manipulation under § 1562 – as requiring a high threshold of transformation (*viz.*, a substantial transformation as stringently required in country of origin and drawback cases), would negate the evident legislative intent of the statute to permit only very minor or rudimentary manipulations in bonded warehouses – akin to the exemplars (cleaning, sorting and re-packing).

Id. at 160. Therefore, the analysis to determine whether a procedure constitutes a “manufacture” for purposes of 19 U.S.C. § 1562 is a “low threshold.” *Id.*

In *Tropicana*, the CIT held that the process of diluting concentrated orange juice by blending in water to be a manufacture for purposes of 19 U.S.C. § 1562. 16 C.I.T. at 162. The CIT “analyzed the exemplars in the statute” and “blending” was not one of the permissible listed terms. The Court also held that *Tropicana*’s blending “was not. . . analogous to. . . [§ 1562’s language of] ‘cleaned, sorted, repacked,’ and that therefore, it was “not within the scope of [§ 1562’s] ‘otherwise changed in condition.” *Tropicana*, 161 C.I.T. at 162. *Tropicana*’s analysis is applicable to this case as pouring and mixing in salt into drinking wine is not cleaning, sorting or repacking as contemplated by the exemplars.

In HQ 228508 (September 9, 1999), modified in HQ H140895, we held that the mixing of imported broccoli florets and stalks in a CBP bonded warehouse would be considered a manufacture, not a mere manipulation, and thus, impermissible under 19 U.S.C. § 1562. In HQ 228508, the proposed operation involved blending totes of broccoli florets and broccoli stalks. The broccoli florets and stalks were to be blended on a 40/60 percent basis, and then placed in totes containing the blend, for export. There were essentially three steps to the process: 1) the opening of the tote containers; 2) the blending of the florets and the stalks; and 3) the repackaging of the blended mixture. In finding that the mixing of the florets and stalks was a manufacture, we

reasoned that although, the broccoli remained broccoli, the nature of the merchandise had changed. The broccoli florets were no longer solely broccoli florets. The broccoli stalks were no longer solely broccoli stalks. After processing, the blend became known in the industry and in the marketplace as “broccoli cuts.” Additionally, the price of the new merchandise became significantly different as well. The new totes of broccoli cuts costs twice as much as totes carrying only stalks and half as much as totes carrying only florets. This substantial difference in price for broccoli cuts indicated that there was a new product, and that it was recognized as such by both the broccoli industry and the public. The broccoli cuts had taken on a new name and price.

In the case of the broccoli, the merchandise changed significantly in its condition. The mixing of the more expensive florets with the less expensive stalks, in a 40–60 percent mix, produced a new product at a new price. The mixing was performed for marketing and profit-related purposes. As evidenced by the price differential, both the company and consumers perceive a difference in the new product of broccoli cuts and hence, they attach to it a different value. Accordingly, in HQ 228508 we found this processing to be the kind of change in condition 19 U.S.C. § 1562 considered to be a manufacture and not a mere manipulation.

Likewise in the instant case, we find that the addition and mixing of salt to the drinking wine is the kind of change in condition that would be considered a manufacture and not a mere manipulation pursuant to 19 U.S.C. § 1562. Although, the only change to the wine is the addition of salt, it dramatically changes the wine from a beverage to a cooking ingredient. Once the salt is added to the wine, it is no longer fit for drinking and it becomes a cooking wine. While the value of the product does not change significantly, the purpose and marketing of the product changes completely. Therefore, the process of adding salt to the wine is impermissible manufacture pursuant to 19 U.S.C. § 1562.

HOLDING:

Based on the above determinations, we conclude that the addition of approximately 1.5 grams of salt per 100 milliliters of wine to transform drinking wine to cooking wine constitutes a manufacture and therefore, Vigo’s proposed operations go beyond the permissible operations allowed by 19 U.S.C. § 1562.

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, HQ H046995, dated February 2, 2009, is 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,
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

AGENCY INFORMATION COLLECTION ACTIVITIES: BONDED WAREHOUSE PROPRIETOR'S SUBMISSION

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

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

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: Bonded Warehouse Proprietor's Submission (CBP Form 300). 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 information collection was previously published in the **Federal Register** (77 FR 6814) on February 9, 2012, allowing for a 60-day comment period. 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 June 1, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this 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 U.S. 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 affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Bonded Warehouse Proprietor's Submission.

OMB Number: 1651-0033.

Form Number: CBP Form 300.

Abstract: CBP Form 300, *The Bonded Warehouse Proprietor's Submission*, is filed annually by each warehouse proprietor. The information on CBP Form 300 is used by CBP to evaluate warehouse activity for the year. This form must be filed within 45 days of the end of his business year, pursuant to the provisions of the Tariff Act of 1930, as amended, 19 U.S.C. 66, 1311, 1555, 1556, 1557, 1623 and 19 CFR 19.12(5). The information collected on this form helps CBP determine all bonded merchandise that was entered, released, and manipulated in the warehouse. CBP Form 300 is accessible at http://forms.cbp.gov/pdf/CBP_Form_300.pdf.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Form 300.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 1,800.

Estimated Number of Total Annual Responses: 1,800.

Estimated Time per Response: 25 hours.

Estimated Total Annual Burden Hours: 45,000.

Dated: April 26, 2012.

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

