

U.S. Customs and Border Protection



REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF A CERTAIN WETTED SPHERICAL ALUMINUM POWDER PRODUCT

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

ACTION: Notice of revocation of ruling letter and revocation of treatment relating to the classification of a certain wetted spherical aluminum powder product.

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 one ruling letter relating to the classification of a certain wetted spherical aluminum powder product. 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. 47, No. 10, on February 27, 2013. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 30, 2013.

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

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this notice advises interested parties that CBP is revoking one ruling letter pertaining to the classification of a certain wetted spherical aluminum powder product. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N117455, dated October 5, 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.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

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

In NY N117455, CBP determined that the wetted spherical aluminum powder product at issue was classified in heading 3824, HTSUS, specifically 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”. It is now CBP’s position that the subject merchandise is properly classified under heading 7603, HTSUS, specifically under subheading 7603.10.00, HTSUS, which provides for: “Aluminum powders and flakes: Powders of a non-lamellar structure”.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N117455, and revoking any other ruling not specifically identified, in order to reflect the proper classification of the nacelle according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H161855, set forth as an Attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 17, 2013

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H161855

June 17, 2013

CLA-2 OT:RR:CTF:TCM H161855 AMM**CATEGORY:** Classification**TARIFF NO.:** 7603.10.00

MR. RITCHIE THOMAS
 SQUIRE, SANDERS & DEMPSEY, LLP
 1201 PENNSYLVANIA AVE., NW, SUITE 500
 WASHINGTON, DC 20004

RE: Revocation of New York Ruling Letter N117455; classification of wetted aluminum powder

DEAR MR. THOMAS,

This is in response to your request for reconsideration, dated April 15, 2011, made on behalf of your client, Ferro Corporation, of New York Ruling Letter (NY) N117455, dated October 5, 2010, which pertains to the classification of wetted aluminum powder, under the Harmonized Tariff Schedule of the United States (HTSUS). In reaching our decision, we have also taken into consideration your original submission, dated August 2, 2010, and a sample provided for testing. We have reviewed NY N117455 and found it to be incorrect. Accordingly, for the reasons set forth below, we are revoking 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 tariff classification of wetted aluminum powder was published on February 27, 2013, in the Customs Bulletin, Volume 47, Number 10. No comments were received in connection to this proposal.

FACTS:

In NY 117455, CBP described the merchandise as follows:

The product, described as a wetted spherical aluminum powder, consists of aluminum powder and a solvent. As indicated in your ruling request, the product can be used in paints as a metallic pigment, utilized in rocket fuel and in electronics.

* * *

The subject merchandise is a formulated ingredient to be further processed to create a conductive paste in the manufacture of photovoltaic solar panels. The aluminum powder mixture, in the condition as imported, is a chemical mixture of a metallic powder and a nonaromatic organic compound.

* * *

The sample is a lumpy gray powder composed of over 80% aluminum, other base metals, and a non-aromatic organic solvent used as a wetting agent. CBP Laboratory Report No. NY20111397, dated September 19, 2011, states that at least ninety (90) percent or more by weight of the instant product passed through a sieve having a mesh aperture of 1mm. A photo of the sample is provided below:

**ISSUE:**

What is the proper classification of the wetted aluminum powder under the HTSUS?

LAW AND ANALYSIS:

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

The 2013 HTSUS provisions under consideration are:

3212 Pigments (including metallic powders and flakes) dispersed in non-aqueous media, in liquid or paste form, of a kind used in the manufacture of paints (including enamels); stamping foils; dyes and other coloring matter put up in forms or packings for retail sale:

3212.90.00 Other

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:

3824.90 Other:

Other:

Other:

under the General Rules of Interpretation) containing two or more base metals are to be treated as articles of the base metal predominating by weight over each of the other metals. For this purpose:

* * *

Note 8 to Section XV, HTSUS, states, in pertinent part:

In this section, the following expressions have the meanings hereby assigned to them:

* * *

(b) *Powders*

Products of which 90 percent or more by weight passes through a sieve having a mesh aperture of 1 mm.

* * *

Note 8 to Chapter 85, HTSUS, states, in pertinent part: “For the purposes of headings 8541 and 8542: ... For the classification of the articles defined in this note, headings 8541 and 8542 shall take precedence over any other heading in the Nomenclature ...”.

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

EN 32.12 states, in pertinent part:

(A) PIGMENTS (INCLUDING METALLIC POWDERS AND FLAKES) DISPERSED IN NON-AQUEOUS MEDIA, IN LIQUID OR PASTE FORM OF A KIND USED IN THE MANUFACTURE OF PAINTS (INCLUDING ENAMELS)

These are concentrated dispersions of pigments (including aluminium or other metal powders and flakes) in a non-aqueous medium (e.g., drying oils, white spirit, gum, wood or sulphate turpentine or varnish), in liquid or paste form, of a kind used in the manufacture of paints or enamels.

* * *

EN 38.24 states, in pertinent part:

This heading includes:

* * *

(B) CHEMICAL PRODUCTS AND CHEMICAL OR OTHER PREPARATIONS

* * *

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 General EN to Section XV states, in pertinent part:

(B) ARTICLES OF BASE METALS

In accordance with Section Note 7, base metal articles containing two or more base metals are classified as articles of that metal which predominates by weight over each of the other metals, except where the headings otherwise require (e.g., copper-headed iron or steel nails are classified in heading 74.15 even if the copper is not the major constituent). The same rule applies to articles made partly of non-metals, provided that, under the General Interpretative Rules, the base metal gives them their essential character.

* * *

EN 76.03 states, in pertinent part:

This heading covers aluminium powders as defined in Note 8 (b) to Section XV and aluminium flakes. In general these products correspond to those of copper and the Explanatory Note to heading 74.06 therefore applies, *mutatis mutandis*, to this heading. Aluminium powders and flakes are, however, also used in pyrotechnics, as heat generators (e.g., in the thermit process), to protect other metals from corrosion (e.g., calorising, metallic cementation), in rocket propellants and in the preparation of special cements.

The heading does not cover:

(a) Powders or flakes, prepared as colours, paints or the like (e.g., made up with other colouring matter or put up as suspensions, dispersions or pastes with a binder or solvent) (Chapter 32).

* * *

EN 76.16 states, in pertinent part: “This heading covers all articles of aluminum other than those covered by the preceding headings of this Chapter, or by Note 1 to Section XV, or articles specified or included in Chapter 82 or 83, or more specifically covered elsewhere in the Nomenclature.”

In your original ruling request, dated August 2, 2010, you argued that the instant product may be properly classified under heading 3212, HTSUS, which provides for “Pigments ...”. You also argued for classification under heading 8541, HTSUS, which provides for “[P]hotovoltaic cells ...; parts thereof”, and under heading 3824, HTSUS, specifically under subheading 3824.90.70, HTSUS, which provides for “[C]hemical products and preparations of the chemical or allied industries ... not elsewhere specified or included: Other: Other: [O]ther materials for printed circuit boards ...”. In NY N117455, CBP classified the instant product under heading 3824, HTSUS, specifically under heading 3824.90.92, HTSUS, which provides for “[C]hemical products and preparations of the chemical or allied industries ... not elsewhere specified or included: Other: Other: Other: Other: Other”. In your request for reconsideration, dated April 15, 2011, you argued that the instant product is properly classified under heading 7616, HTSUS, which provides for “Other articles of aluminum”. CBP has also considered whether the articles are properly classified under heading 7603, HTSUS, as “Aluminum powders and flakes”.

Heading 8541, HTSUS, takes precedence over all other headings under consideration. See Note 8 to Chapter 85, HTSUS. Inasmuch as articles of heading 3212, HTSUS, are excluded from Section XV, HTSUS, we consider it before headings of Section XV, HTSUS, namely those in Chapter 76, HTSUS. See Note 1(a) to Section XV, HTSUS; EN(a) to heading 76.03. Heading 7603,

HTSUS will be considered next, followed by heading 7616, HTSUS. See EN 76.16. Finally, we will consider heading 3824, HTSUS, if the instant merchandise is not elsewhere specified or included.

You assert that the instant product is used as an ingredient for a conductive paste used in the manufacture of photovoltaic solar panels, and therefore a “part thereof” under heading 8541, HTSUS. Even assuming (without admitting) that conductive paste is a part of a solar panel, the instant product is not a paste in its condition as imported and cannot be used for this application. It must first be mixed with other substances to create the conductive paste. Thus, classification in heading 8541, HTSUS, as “[P]hoto-sensitive semiconductor devices ...; parts thereof”, is not possible.

As for heading 3212, HTSUS, the product is not “dispersed in nonaqueous media, in liquid or paste form” as required by the text of the heading. The instant product is described in CBP lab report NY20111397 as a “moist gray baby powder” or a “lumpy gray powder.” The photo of the sample clearly shows that the product is not a liquid or a paste. Therefore, it is not properly classified under heading 3212, HTSUS, and Note 1(a) to Section XV, HTSUS does not operate to exclude the product from Chapter 76, HTSUS.

In HQ 968287, dated September 26, 2006,¹ CBP considered the classification of an alloy steel powder. The powder consisted 85–90% base metals (neodymium, boron, iron, cobalt, and carbon), and 10–15% of a phenolic resin identified as polyphenylene sulfide. In this ruling, CBP modified a previous ruling, HQ 961028, dated November 13, 1998, which had revoked NY A88776, dated November 18, 1996. CBP had previously classified the alloy steel powder under heading 7205, HTSUS, by operation of Note 5(b) to Section XV, HTSUS. See HQ 961028. However, in HQ 968287, CBP noted that this Note was inapplicable to the alloy steel powder, because it only applies to “An alloy composed of base metals of this section and of *elements* not falling within this section ...” (emphasis added). See Note 5(b) to Section XV, HTSUS. The alloy steel powder contained 10–15% polyphenylene sulfide, which is not an element.

Instead, CBP found that Note 7 to Section XV, HTSUS, applied to the product. See HQ 968287. According to this note, “articles of base metal ... containing two or more base metals are to be treated as articles of the base metal predominating by weight over each of the other metals[.]” See Note 7 to Section XV, HTSUS. According to the EN, “The same rule applies to articles made partly of non-metals, provided that, under the [GRIs], the base metal gives them their essential character.” See General EN(B) to Section XV. Because steel was found to predominate by weight over all the other ingredients, CBP found that the product was a “steel alloy,” containing sufficient boron and cobalt to be considered an “other alloy steel” as defined in Note 1(f) to Chapter 72, HTSUS. Furthermore, CBP affirmed the earlier finding that the product was classified as a powder, as it met the test described in Note 8(b) to Section XV, HTSUS. See HQ 968287; HQ 961028.

The instant product is similar to the product under consideration in HQ 968287. The instant product consists almost entirely of aluminum powder, but contains small quantities of other metals and an organic solvent used as a wetting agent. Because it contains an organic solvent, which is not an

¹ This ruling was published in the Customs Bulletin, Vol. 40, No. 42, on October 11, 2006.

“element,” Note 5(b) to Section XV, HTSUS, does not apply. *See* HQ 968287. Instead, it is a composite article, composed of aluminum, other base metals, and the organic solvent.

According to Note 7 to Section XV, HTSUS, and EN(B) to Section XV, products containing base metals and non-metals are to be treated as articles of the base metal which predominates by weight. *See* HQ 968287. Because the instant product consists of more than 80% aluminum, it is to be classified as an alloy of aluminum, as the aluminum gives the product its essential character. *See* Note 7 to Section XV, HTSUS.

Heading 7603, HTSUS, provides for aluminum powders. Reference to “aluminum” in heading 7603, HTSUS, specifically includes alloys of aluminum. *See* Note 6 to Section XV, HTSUS. According to CBP lab report NY20111397, the product meets the definition of “powder” contained in Note 8(b) to Chapter 76, HTSUS. Therefore, the instant product is properly classified under heading 7603, HTSUS, by operation of GRI 1 and Notes 3, 7, and 8(a) to Section XV, HTSUS.

Furthermore, the above-identified lab report indicates that the aluminum powder has spherical structure. Therefore, the instant product is specifically classified in subheading 7603.10.00, HTSUS, which provides for “Aluminum powders and flakes: Powders of a non-lamellar structure”. The fact that it contains a non-metal ingredient does not exclude it from classification as a powder. *See* HQ 968287.

Because the instant product is classified under heading 7603, HTSUS, by operation of GRI 1, it cannot also be properly classified under heading 7616, HTSUS. *See* EN to 76.16. Likewise, the product cannot be classified under heading 3824, HTSUS, which only provides for “chemical products and preparations of the chemical or allied industries ... not elsewhere specified or included”.

HOLDING:

By application of GRI 1 and Notes 3, 7, and 8(a) to Section XV, HTSUS, the wetted aluminum powder is classified under heading 7603, HTSUS, specifically under subheading 7603.10.00, HTSUS, which provides for: “Aluminum powders and flakes: Powders of a non-lamellar structure”. The general, column one rate of duty is 5% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

New York Ruling Letter N117455, dated October 5, 2010, is hereby RE-VOKED. 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

CUSTOMS AND BORDER PROTECTION**GENERAL NOTICE****19 CFR PART 177****PROPOSED MODIFICATION OF RULING LETTER AND
PROPOSED MODIFICATION OF TREATMENT RELATING
TO CLASSIFICATION OF A PLASTIC BUSHING WITH A
LIP**

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

ACTION: Notice of proposed modification of one ruling letter and revocation of treatment relating to the classification of a plastic bushing with a lip.

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 CBP proposes to modify one ruling concerning the classification of a plastic bushing with a lip under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before August 30, 2013.

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, 90 K Street, N.E., 10th Floor, Washington, D.C. 20229–1179. Comments submitted may be inspected at 799 9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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

SUPPLEMENTARY INFORMATION:**Background**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to modify a ruling pertaining to the classification of a plastic bushing with a lip. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N041816, dated November 13, 2008 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing 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 sub-

stantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY N041816, CBP ruled that the subject merchandise was classified in subheading 3926.90.99, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other." This ruling is incorrect because the subject plastic bushing performs the same function in a steering assembly for a water-jet propulsion system as does the bronze bushing that NY N041816 classified. As such, it should be classified the same way as the bronze bushing, in subheading 8483.30.80, HTSUS, which provides for "Transmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints); parts thereof: Bearing housings; plain shaft bearings: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N041816, 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 H230059. (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: July 2, 2013

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

N041816

November 13, 2008

CLA-2-84:OT:RR:NC:1:102

CATEGORY: Classification

TARIFF NO.: 3926.90.9980, 8483.30.8090

MR. JON R. WEINER
ROLLS-ROYCE NORTH AMERICA
2001 S. TIBBS AVENUE: SPEED CODE S31D
INDIANAPOLIS, IN 46241

RE: The tariff classification of bushings from Finland, Sweden and Norway

DEAR MR. WEINER:

In your letter dated October 9, 2008 you requested a tariff classification ruling.

The items you plan to import are described as bushings. These bushings are used in marine propulsion systems. Descriptive literature, photographs and representative samples were submitted.

Part number FFJ 10106911 is a plastic bushing with a lip that allows the steering arms to move laterally along the vertical axis of the bolt. This bushing measures approximately one inch in length and two inches in diameter. You indicate that the lip of the bushing acts as a spacer between the components of the steering gear.

Part number KAP F024369 is a bronze bushing without a lip. This bushing is approximately two inches long with a diameter of two inches. It is used in the couplings of the hydraulic cylinders and on the reversing bucket.

Part number KAP F024385 is a bronze bushing with a lip. The bushing is a part of lifting arm mechanism of the reversing bucket. It may also be used on the steering gear mechanism of some waterjets in place of plastic bushings.

The applicable subheading for the plastic bushing will be 3926.90.9980, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics, other. The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for the bronze bushings will be 8483.30.8090, HTSUS, which provides for other plain shaft bearings without housing. The rate of duty will be 4.5 percent ad valorem.

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

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

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

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H230059

CLA-2: OT:RR:CTF:TCM H230059 TNA**CATEGORY: Classification****TARIFF NO.: 8483.30.80**

MR. JON R. WEINER
CUSTOMS COMPLIANCE SPECIALIST
ROLLS ROYCE NORTH AMERICA
2001 S. TIBBS AVENUE
SPEED CODE S36
INDIANAPOLIS, IN 46241

RE: Modification of NY N041816; Classification of a plastic bushing with a lip

DEAR MR. WEINER:

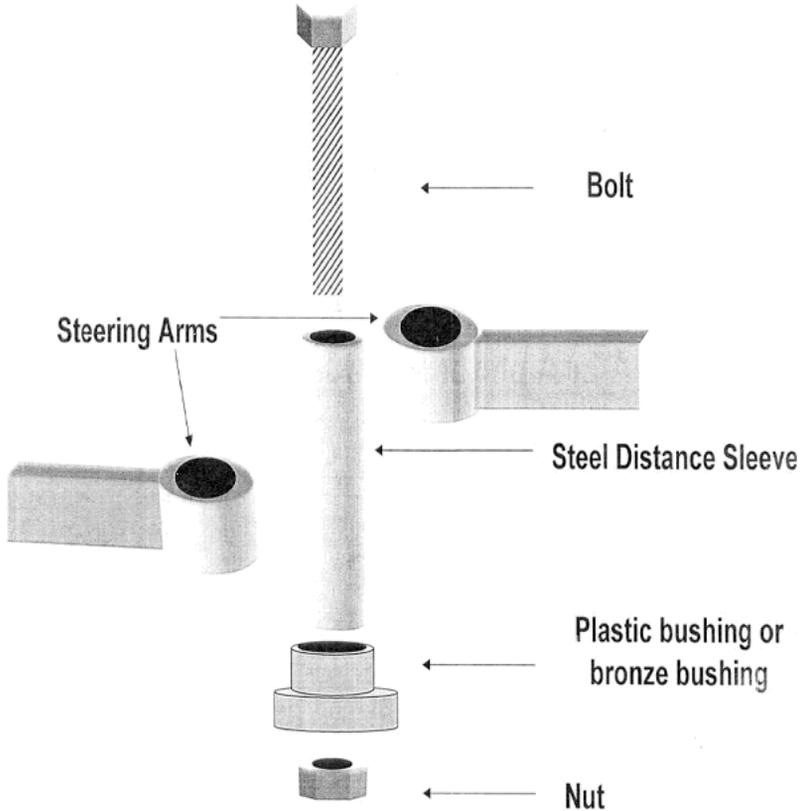
This is in response to your request, dated May 30, 2012, filed on behalf of Rolls Royce, North America (“Rolls Royce”) for reconsideration of New York Ruling Letter (“NY”) N041816, dated November 13, 2008, as it pertains to the classification of a plastic bushing with a lip under the Harmonized Tariff Schedule of the United States (HTSUS). We have found this ruling to be partly in error. For the reasons that follow, we hereby modify NY N041816.

FACTS:

The subject merchandise consists of a plastic bushing with a lip or flange that is used in a steering assembly for a marine water-jet propulsion system. The principal function of this component is to provide a smooth interface between the moving surface of the water-jet’s steering arms and the fixed surface of the distance sleeve. It consists of a base and a top that has a circular opening. When fitted together with the rest of the steering assembly, a steel distance sleeve is inserted into the bushing, and a nut is affixed to the bottom of the bushing. Steering arms fit around the distance sleeve and are fixed on top by a bolt. When finished, the steering assembly functions by way of the steering arms rotating on the outer surface of the bushing and on the axis formed by the bolt, nut, bushings and distance sleeve.

The subject bushing provides a smooth sliding surface between the moving components to mediate against the friction inherent in the rotation of the steering arms. Even the flanged surface of the bushing serves to mediate against friction, allowing the flat surfaces of the steering arms to move with respect to each other and with respect to the flat surfaces of the fixing bolt assembly.

The following is a picture of the components of the steering assembly:



ISSUE:

Whether a plastic bushing that is used in a marine water jet propulsion system is classified in heading 3926, HTSUS, as an “Other article of plastics,” or in heading 8483, HTSUS, as “Transmission shafts (including camshafts and crankshafts) and cranks”?

LAW AND ANALYSIS:

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

The HTSUS headings at issue are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
8483	Transmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints); parts thereof:

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System at the international level. CBP believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The EN to heading 3926, HTSUS, states, in pertinent part:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14.

The EN to heading 8483, HTSUS, states, in pertinent part, that:

(B) BEARING HOUSINGS AND PLAIN SHAFT BEARINGS

... On the other hand plain shaft bearings are classified in this heading even if they are presented without housings. They consist of rings of anti-friction metal or other material (e.g., sintered metal or plastics). They may be in one piece or in several pieces clamped together, and form a smooth bearing in which a shaft or axle turns.

NY N041816 classified two different components of the steering gear of a marine water-jet propulsion system: a bronze bushing, classified in heading 8483, HTSUS, as a plain shaft bearing, and a plastic bushing, classified in heading 3926, HTSUS, as an article of plastic. You state that both bushings function the same way and should both be classified as shaft bearings of heading 8483, HTSUS.

In NY N041816, we stated that the bronze bushing was “a part of lifting arm mechanism of the reversing bucket. It may also be used on the steering gear mechanism of some water-jets in place of plastic bushings.” This supports Rolls’ Royce’s contention that the two types of bushings perform the same functions.

The plastic bushing works to alleviate friction in the steering assembly. It also forms a smooth bearing on which the steering arms turn. Thus, in the functioning of the steering assembly as described above, the subject plastic bushing serves as both a radial and an axial bearing, the form and function of which are both described by heading 8483, HTSUS. *See* EN 84.83. Furthermore, in NY N041816, CBP ruled that the bronze bushing may take the place of the plastic bushing on the steering gear mechanism of some water jets. Therefore, both the plastic and the bronze bushing should be classified in the same provision of the HTSUS. As such, the plastic bushing is classified in heading 8483, HTSUS. This conclusion is consistent with prior CBP rulings. *See, e.g.*, NY N051335, dated February 26, 2009; NY E82314, dated June 10, 1999; NY E89673, dated November 22, 1999.

Lastly, we note that heading 3926, HTSUS, where NY N041816 classified the subject merchandise, is a residual heading. Merchandise is only classified there when it is not described elsewhere in the nomenclature. See EN 39.26. Because we have found the subject bushing to be classified in heading 8483, HTSUS, it is precluded from classification in heading 3926, HTUS.

HOLDING:

Under the authority of GRI 1, the subject plastic bushing is provided for in heading 8483, HTSUS. Specifically, it is classified in subheading 8483.30.80, HTSUS, which provides for “Transmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints); parts thereof: Bearing housings; plain shaft bearings: Other.” The column one, general rate of duty is 4.5%.

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 N041816, dated November 13, 2008, is modified with respect to the classification of the plastic bushing with a lip. The classification of the other items described therein remains unchanged.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

CUSTOMS AND BORDER PROTECTION

GENERAL NOTICE

19 CFR PART 177

REVOCAION OF RULING LETTERS AND REVOCAION OF TREATMENT RELATING TO CLASSIFICATION OF MP3 PLAYER DOCKING STATIONS WITH BUILT-IN RADIOS

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

ACTION: Notice of revocation of fourteen ruling letters and treatment relating to the classification of MP3 docking stations with built-in radios.

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 CBP is revoking fourteen rulings concerning the classification of MP3 player docking stations with built-in radios under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is also revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 47, No. 3, on January 9, 2013. Three comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 30, 2013.

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 com-

pliance 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), a notice was published in the Customs Bulletin, Volume 47, No. 3, on January 9, 2013, proposing to revoke New York Ruling Letter (NY) R02550; NY R03835; NY M84663; NY N010738; NY N015651; NY N024500; NY N047842; NY N092825; NY N092831; NY N092834; NY N021097; NY M86676; NY R04615; and NY N007861, and any treatment accorded to substantially identical transactions. Three comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this issue 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 issue 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 R02550; NY R03835; NY M84663; NY N010738; NY N015651; NY N024500; NY N047842; NY N092825; NY N092831; NY N092834; NY N021097; NY

M86676; NY R04615; NY N007861, 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”) H216719. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 2, 2013

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H216719

July 1, 2013

CLA-2 OT:RR:CTF:TCM HQ H216719 TNA**CATEGORY:** Classification**TARIFF NO.:** 8527.19.10; 8527.19.50;
8527.92.10; 8527.92.50

Ms. AASHA B. DESLOGE
BEST BUY CORPORATE CAMPUS
7601 PENN AVENUE
SOUTH RICHFIELD, MN 55423

RE: Revocation of NY R02550; Classification of docking stations with built-in radios for MP3 players

DEAR Ms. DESLOGE:

This letter is in reference to New York Ruling Letter (“NY”) R02550, issued to Best Buy on September 15, 2005, concerning the tariff classification of a docking station with an AM/FM digital radio designed for an MP3 player. There, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 8527.31.60, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy: Combined with sound recording or reproducing apparatus: Other: Other ... Other.”¹

This letter also concerns NY R03835, dated May 4, 2006, NY M84663, dated July 12, 2006, NY N010738, dated May 18, 2007, NY N015651, dated August 31, 2007, NY N024500, dated March 19, 2008, NY N047842, dated January 9, 2009, NY N092825, dated February 17, 2010, NY N092831, dated February 17, 2010, NY N092834, dated February 17, 2010, NY N021097, dated January 16, 2008, NY M86676, dated September 20, 2006, NY R04615, dated August 17, 2006, and NY N007861, dated March 20, 2007. These rulings classified similar merchandise either in subheading 8527.31.60, HTSUS (the predecessor to current subheading 8527.91.60, HTSUS), the current subheading 8527.91.60, HTSUS, or in subheading 8527.13.60, HTSUS, which provides for “Reception apparatus for radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Radiobroadcast receivers capable of operating without an external source of power: Other apparatus combined with sound recording or reproducing apparatus: Other: Other.”

We have reviewed these rulings and found them to be in error. For the reasons set forth below, we hereby revoke NY R02550, NY R03835, NY M84663, NY N010738, NY N015651, NY N024500, NY N047842, NY N092825, NY N092831, NY N092834, NY N021097, NY M86676, NY R04615, and NY N007861.

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 R02550, NY R03835, NY M84663, NY N010738, NY N015651, NY N024500, NY

¹ We note that subheading 8527.31.60, HTSUS, which appeared in the 2005 tariff schedule, is now subheading 8527.91.60 of the 2012 HTSUS. As a result, we will consider subheading 8527.91.60, HTSUS, in this ruling.

N047842, NY N092825, NY N092831, NY N092834, NY N021097, NY M86676, NY R04615, and NY N007861 was published in the Customs Bulletin, Vol. 47, No. 3, on January 9, 2013. Three comments were received in response to this notice. These comments are discussed below.

FACTS:

The subject merchandise consists of clock radios with either AM/FM capability or simply FM capability. They incorporate a digital clock with an alarm and a docking station for an iPod music player or other MP3 player, all in the same housing. Users can play music from an MP3 player, either through MP3 players specifically designed for the docking station, or through a patch cord for MP3 players not designed for the docking station. The radio receiver also acts as a battery charger for the iPod or other MP3 player. Some models of the subject merchandise incorporate speakers; others do not. As imported, the subject merchandise does not contain either an MP3 player or an iPod.

In addition, the radios of the docking stations of NY R03835, NY N010738, NY N024500, NY N047842, NY N092825, NY N092831, NY N092834, NY N021097, NY R02550, and NY N007861 are incapable of operating without an external source of power. We note that the facts of NY R02550 differ from those provided in that ruling and in the proposed ruling. Because of the subject iH5's backup battery, the proposed revocation classified the iH5 as being capable of operating without an external source of power. The commenter acknowledges that the merchandise has a battery backup feature, but claims that this feature is only capable of being used to operate the clock and the clock's alarm temporarily in the event of a power outage. The commenter also claims that the backup battery cannot operate the radio, and that it cannot charge or power a connected MP3 player in the event of a power outage. In support of this argument, the commenter submitted the product's user manual, which contained the iH5's specifications. Furthermore, CBP's own research confirms this. See <http://www.macworld.com/article/1046579/ihomeih5.html> ("the iH5 runs off AC power via the included AC adapter, but two AA batteries (included) keep the clock and alarm working in the event of a power failure.") As a result, we find that the iH5 AM/FM radio is incapable of operating without an external source of power. The docking stations of NY M84663, NY M86676, and NY R04615 are either battery-operated or contain back-up batteries.

Furthermore, the YSP-4000, a speaker bar with a built-in FM tuner that was described in NY N015651, is incapable of operating without an external source of power and does not contain a clock. In addition, whereas NY N01561 and the proposed version of this ruling originally described the YSP-4000 as housing a docking station for an MP3 player, the importer has submitted specifications during the comment period showing that this product does not contain the docking station in the same housing as the speaker. To the contrary, the YSP-4000 can be plugged to a docking station that consumers can order separately; because the YSP-4000 is compatible with an MP3 player docking station, it is capable of projecting the music played by the MP3 player through its speakers.

Lastly, NY N021097 classified item number A017JA00162, which requires an external source of power and contains a telephone featuring a 16 digit caller ID/number Liquid Crystal Display (LCD) Screen, a 50 incoming call memory, 3 one-touch dialing memory, 10 two-touch dialing memory, a dual-

caller ID system, a ringer and volume control, and a mute, flash, and redial function. Thus, in addition to a radio and iPod charging function, this item also allows a user to make and receive telephone calls.

ISSUE:

Whether the subject docking stations with built-in radios for MP3 players contain sound recording or reproducing apparatus?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

8527	Reception apparatus for radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:
	Radiobroadcast receivers capable of operating without an external source of power:
8527.13	Other apparatus combined with sound recording or reproducing apparatus:
	Other:
8527.13.60	Other:
* * *	
8527.19	Other:
8527.19.10	Valued not over \$40 each, incorporating a clock or clock-timer, not in combination with any other article, and not designed for motor vehicle installation
8527.19.50	Other
* * *	
	Other:
8527.91	Combined with sound recording or reproducing apparatus:
	Other:
8527.91.60	Other:
* * *	
8527.92	Not combined with sound recording or reproducing apparatus but combined with a clock:
8527.92.10	Valued not over \$40 each
8527.92.50	Other

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 Harmonized System and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The EN to heading 85.27 provides, in pertinent part:

The sound radio-broadcasting apparatus falling in this heading must be for the reception of signals by means of electro-magnetic waves transmitted through the ether without any line connection.

This group includes:

- (1) Domestic radio receivers of all kinds (table models, consoles, receivers for mounting in furniture, walls, etc., portable models, receivers, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock)....
- (5) Stereo systems (hi-fi systems) containing a radio receiver, put up in sets for retail sale, consisting of modular units in their own separate housing, e.g., in combination with a CD player, a cassette recorder, an amplifier with equaliser, loudspeakers, etc. The radio receiver gives the system its essential character.

In beginning our analysis, we note that that it is not in dispute that the subject merchandise is described by the terms of heading 8527, HTSUS.² Thus, the issue is at the 6-digit heading level, and focuses on the question of whether the subject docking stations with radios contain sound recording or reproducing devices.

We note that although the term “sound recording or reproducing device” is not defined in EN 85.27, it is described in EN 85.19. In light of the fact that sound recording or reproducing apparatus of heading 8519, HTSUS, may be incorporated into products of heading 8527, HTSUS, we find EN 85.19 to be instructive in this particular matter. EN 85.19 provides, in pertinent part, that:

Generally, sound is recorded onto or reproduced from an internal storage device or media (e.g., magnetic tape, optical media, semiconductor media or other media of heading 85.23).

Sound recording apparatus modify a recording medium so that **sound reproducing apparatus** can subsequently reproduce the original sound-wave (speech, music, etc.). This includes recording based on the receipt of a sound-wave or by other methods, e.g., by recording data sound files, downloaded from an Internet page or a compact disc by an automatic data processing machine, onto the internal memory (e.g., flash memory)

² Although the classification of the subject merchandise is not in dispute at the heading level, we note that heading 8527, HTSUS, does not fully describe the subject merchandise because it does not describe the docking stations’ charging function. Nonetheless, the subject merchandise is classified in heading 8527, HTSUS, at GRI 1 via Note 3 to Section XVI, HTSUS, which provides that composite machines are classified by their principal function. In the present case, the principal function of the subject docking stations is the radio, not the charging function. Consistent with EN 85.27, CBP has long held that the radio receiver in similar merchandise imparts the essential character. *See, e.g., NY L84968*, dated May 23, 2005; *NY N209467*, dated March 20, 2012; among others.

of a digital audio device (e.g., MP3 player). Devices which record sound as digital code generally are not capable of reproducing sound unless they incorporate a means for converting the recording from digital code to an analogue signal....

(IV) OTHER APPARATUS USING MAGNETIC, OPTICAL OR SEMI-CONDUCTOR MEDIA

The apparatus of this group may be portable. They may also be equipped with, or designed to be attached to acoustic devices (loudspeakers, ear-phones, headphones) and an amplifier...

(C) Apparatus using semiconductor media

This group includes apparatus which use semiconductor (e.g., solid-state non-volatile) media. Sound is recorded as digital code converted from amplified currents of variable intensity (analogue signal) on the recording medium. Sound is reproduced by reading such medium. The semiconductor media may be permanently installed in the apparatus or may be in the form of removable solid-state non-volatile storage media. Examples include flash memory audio players (e.g., certain MP3 players) which are portable battery operated apparatus consisting essentially of a housing incorporating a flash memory (internal or removable), a microprocessor, an electronic system including an audio-frequency amplifier, an LCD screen and control buttons. The microprocessor is programmed to use MP3 or similar file formats. The apparatus can be connected to an automatic data processing machine for downloading MP3 or similar files.

Thus, the ENs describe a “sound-recording or reproducing device” as including one that functions by way of semiconductor media. Sound that is recorded onto such a medium is done so as digital code converted from analogue signal on the recording medium, and sound that is reproduced is done so by reading such medium. The fact that the ENs allow for semiconductor media to be either permanently installed in the apparatus or in the form of removable solid-state non-volatile storage media means that sound can be recorded onto an internal file or a removable solid state non-volatile media, such as a USB flash memory apparatus. In order for a device to be a sound-reproducing device, it must be able to read the recorded file, either from an internal memory or from a removable solid state non-volatile media, such as a USB flash memory apparatus. *See* EN 85.19.

This description is in accordance with definitions of dictionaries and other lexicographic sources. For example, the Oxford English Dictionary defines “record” as “of a machine, instrument or device: to set down (a message, reading, etc.) in some permanent form.” *See* www.oed.com. The Oxford English Dictionary defines “reproduce” as “To relay (sound originating elsewhere) or replay (sound recorded on another occasion) by electrical or mechanical means.... To produce again in the form of a copy.” *See* www.oed.com. In addition, the McGraw-Hill Encyclopedia of Science and Technology defines “sound recording” as “the technique of entering sound, especially music, on a storage medium for playback at a subsequent time.” *See* McGraw-Hill Concise Encyclopedia of Science and Technology, 6th Ed., 2009 at 2197. This encyclopedia defines “sound-reproducing systems,” in pertinent part, as:

Systems that attempt to reconstruct some or all of the audible dimensions of an acoustic event that occurred elsewhere. A sound-reproducing system includes the functions of capturing sounds with microphones, manipulating those sounds using elaborate electronic mixing consoles and signal processors, and then storing the sounds for reproduction at later times and different places.

Id. at 2197.

In the present case, each model of the subject merchandise consists of a radio and docking station in the same housing. The docking stations allow the user to play music from an iPod or other MP3 player. The music, which is recorded on the MP3 player, is directed to the speakers for broadcasting. In the models of the subject merchandise which do not contain speakers, the docking station can be plugged into a set of speakers, thereby also acting as a conduit between the music player and the speakers. In neither instance does the docking station actually record or reproduce the music passing through it because it does not convert the code form of the music from digital to analogue; nor does it read the music from a media device. To the contrary, it is the iPod or other MP3 player that acts as a sound recording or reproducing device, because it converts the music from digital to analogue format and can read the music from the internal media on which the music is recorded. The docking station would not be able to play the music again at a later time if the MP3 player were removed. As a result, the subject docking stations with built-in radios cannot be said to be sound recording or reproducing apparatus. As such, they cannot be classified in subheading 8527.91, HTSUS.

In its submission stating its disagreement with the scope of the term “sound-recording or reproducing” as set forth in the proposed ruling, a commenter notes that heading 8527, HTSUS, provides for “Reception apparatus for radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock.” Citing the McGraw-Hill Encyclopedia of Science and Technology’s definition of “sound-reproducing system,” which CBP noted above as part of a list of numerous lexicographic sources, the commenter argues that CBP failed to distinguish between a “sound-reproducing system,” which the McGraw-Hill Encyclopedia defines, and a “sound-reproducing apparatus,” which is what is required by heading 8527, HTSUS. The commenter argues that a “system” is made up of an interacting or interdependent group of items, whereas an “apparatus” is a single instrument or appliance. However, in noting that the instant docking stations cannot play music without an MP3 player, we are merely illustrating the docks’ role as a conduit for the music signal as opposed to a device that would be independently considered a product of heading 8527, HTSUS. This does not stand for the proposition that devices of heading 8527, HTSUS, must both record and reproduce sound, which was the concern of the commenter. The question of whether specific merchandise fits CBP’s definition of a “sound-recording or reproducing apparatus” will be made on a case-by-case basis, based on the characteristics of the specific merchandise.

In the present case, certain models of the subject merchandise are either battery-operated or contain a back-up battery. As such, they are capable of operating without an external power source. Thus, these models are described by the terms of subheading 8527.19, HTSUS, which provides for “Reception apparatus for radiobroadcasting, whether or not combined, in the

same housing, with sound recording or reproducing apparatus or a clock: Radiobroadcast receivers capable of operating without an external source of power: Other.” At the 8-digit level, this subheading contains breakouts for merchandise based on its value on entry. As a result, if the subject merchandise is valued at less than \$40, incorporates a clock or clock timer, is not in combination with any other article, and is not designed for motor vehicle installation, it is classified in subheading 8527.19.10, HTSUS; otherwise, it is classified in subheading 8527.19.50, HTSUS.

Other models of the subject merchandise are incapable of operating without an external power source. As such, they are precluded from classification in subheading 8527.19, HTSUS. Subheading 8527.92, HTSUS, provides for “Reception apparatus for radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Other: Not combined with sound recording or reproducing apparatus but combined with a clock.” The subject merchandise is described by the terms of this subheading. At the 8-digit level, this subheading contains breakouts for merchandise based on its value on entry. As a result, if the subject merchandise is valued at less than \$40, it is classified in subheading 8527.92.10, HTSUS; if it is valued at over \$40, it is classified in subheading 8527.90.50, HTSUS.

Lastly, NY N021097 classified item number A017JA00162, a docking station that is distinguishable from the rest of the models at issue because it contains a telephone and multiple functions unique to the telephone. In that sense, it is similar to the merchandise at issue in HQ 086939, dated August 9, 1990, where CBP classified a combination telephone/clock/radio. There, CBP considered this device to be a composite machine of Note 3 to Section XVI, HTSUS. Unable to determine the principal function, CBP used GRI 3(c) to classify the combination telephone, clock, and radio in heading 8527, HTSUS. Similarly, in the present case, a consumer is likely to purchase this type of docking station as much for the telephone as for its charging function and speakers. Otherwise, a consumer could easily buy any one of the myriad docking stations without a telephone. As a result, we use GRI 3(c) to classify item number A017JA00162 in subheading 8527.92, HTSUS. If it is valued at less than \$40, it is classified in subheading 8527.92.10, HTSUS; if it is valued at over \$40, it is classified in subheading 8527.90.50, HTSUS.

HOLDING:

Under the authority of GRI 1 via Note 3 to Section XVI, HTSUS, and GRI 6, the subject iPod docking stations are classified in heading 8527. Models of the subject merchandise that are capable of operating without an external source of power (i.e., the merchandise of NY M84663, NY M86676, and NY R04615), are classified in one of two subheadings based on whether they are valued not over \$40, incorporate a clock or auto-timer, are not in combination with any other articles, and are not designed for motor vehicle installation. If they meet all of the elements, they are classified in subheading 8527.19.10, HTSUS, which provides for “Reception apparatus for radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Radiobroadcast receivers capable of operating without an external source of power: Other: Valued not over \$40 each, incorporating a clock or clock-timer, not in combination with any other article, and not designed for motor vehicle installation.” The 2012 column one general rate of duty is free.

Models of the subject merchandise that are valued over \$40 or do not meet any one of the other criteria are classified in subheading 8527.19.50, HTSUS, which provides for “Reception apparatus for radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Radiobroadcast receivers capable of operating without an external source of power: Other: Other.” The 2012 column one general rate of duty is 3% *ad valorem*.

Models of the subject merchandise that are incapable of operating without an external source of power and include a clock (i.e., the merchandise of NY R03835, NY N010738, NY N015651, NY N024500, NY N047842, NY N092825, NY N092831, NY N092834, and NY N007861) are classified in subheading 8527.92, HTSUS. At the eight-digit level, they are classified in two different subheadings, depending on the value of the merchandise at the time of entry. If they are valued at less than \$40, they are classified in subheading 8527.92.10, HTSUS, which provides for “Reception apparatus for radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Other: Not combined with sound recording or reproducing apparatus but combined with a clock: Valued not over \$40 each.” The 2012 column one general rate of duty is free. If they are valued at over \$40, they are classified in subheading 8527.92.50, HTSUS, which provides for “Reception apparatus for radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Other: Not combined with sound recording or reproducing apparatus but combined with a clock: Other.” The 2012 column one general rate of duty is 3% *ad valorem*.

At GRI 3(c), item number A017JA00162 (the subject of NY N021097) is classified in subheading 8527.92, HTSUS. If it is valued at less than \$40, it is classified in subheading 8527.92.10, HTSUS. The 2012 column one general rate of duty is free. If it is valued at over \$40, it is classified in subheading 8527.90.50, HTSUS. The 2012 column one general rate of duty is 3% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY R02550, dated September 15, 2005, NY R03835, dated May 4, 2006, NY M84663, dated July 12, 2006, NY N010738, dated May 18, 2007, NY N015651, dated August 31, 2007, NY N024500, dated March 19, 2008, NY N047842, dated January 9, 2009, NY N092825, dated February 17, 2010, NY N092831, dated February 17, 2010, NY N092834, dated February 17, 2010, NY N021097, dated January 16, 2008, NY M86676, dated September 20, 2006, NY R04615, dated August 17, 2006, and NY N007861, dated March 20, 2007 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,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

