

U.S. Customs and Border Protection



GENERAL NOTICE

19 CFR PART 177

NOTICE OF REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A 3D STARTER PACK KIT FOR A 3D OR 3D-READY DLP TELEVISION

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

ACTION: Notice of revocation of a ruling letter and treatment concerning the tariff classification of a 3D Starter Pack Kit for a 3D or 3D-Ready DLP Television.

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 relating to the tariff classification of a 3D Starter Pack Kit for a 3D or 3D-Ready DLP Television 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 revocation was published on June 26, 2013, in the Customs Bulletin, Vol. 47, No. 27. 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EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 17, 2014.

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. 47, No. 27, on June 26, 2013, proposing to revoke New York Ruling Letter (NY) N123038, dated October 5, 2010, pertaining to the tariff classification of an article of insulating materials. No comments 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 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 action.

In NY N123038, CBP classified a 3D Starter Pack Kit in heading 9013, HTSUS, specifically subheading 9013.80.90, HTSUS, which provides for “Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this chapter; parts and accessories thereof: Other devices, appliances and instruments: Other.” It is now CBP’s position that the article is properly classified in subheading 9004.90.00, HTSUS, which provides for “Spectacles, goggles and the like, corrective, protective or other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N123038 and any other ruling not specifically identified, in order to reflect the proper analysis contained in Headquarters Ruling (HQ) H234514 (Attachment). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: September 25, 2013

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H234514

September 25, 2013

CLA-2 OT:RR:CTF:TCM H234514 DSR

CATEGORY: Classification

TARIFF NO.: 9004.90.00

MR. W.J. POLKINHORN
BILL POLKINHORN, INC.
2401 PORTICO BLVD.
P.O. BOX 712
CALEXICO, CALIFORNIA 92231

RE: Revocation of NY N123038; tariff classification of a 3D Starter Pack Kit for a 3D or 3D-Ready DLP Television from Mexico

DEAR MR. POLKINHORN:

This letter is in reference to New York Ruling Letter (NY) N123038 issued to you on October 5, 2010, regarding the tariff classification under the 2010 Harmonized Tariff Schedule of the United States (HTSUS) of a 3-dimensional (“3D”) Starter Pack Kit for a 3D or 3D-Ready DLP Television from Mexico. The ruling classified the article under subheading 9013.80.90, HTSUS, which provides for “Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this chapter; parts and accessories thereof: Other devices, appliances and instruments: Other.”

We have reviewed the tariff classification of the article and have determined that the cited ruling is in error. 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 Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on June 26, 2013, in the *Customs Bulletin*, Vol. 47, No. 27. No comments were received in response to the notice. Therefore, NY N123038 is revoked for the reasons set forth in this ruling.

FACTS:

In NY N123038, we stated that the kit, identified as the “3DC-1000,” is designed to aid the viewer of a television to achieve a 3D viewing experience. The kit contains two pairs of 3D active LCD shutter glasses, a 3D signal adapter, an infrared (IR) emitter, a Blu-Ray showcase disc, a 3D adapter remote control and one HDMI cable. These items will be imported into the United States packaged in a carton for retail sale.

The 3D active shutter glasses (hereinafter referred to as “3D shutter glasses”) are powered by a lithium battery. Their lenses are LCD shutter lenses made of two pieces of glass with liquid crystal material between the pieces of glass. The liquid crystal material becomes dark when voltage is applied.

The 3D signal adapter is connected to the television receiver by means of the HDMI cable via a 3D Blu-Ray player. The 3D signal adapter converts several different formats of incoming 3D signals to a checkerboard 3D format signal output and transfers it to the IR emitter. The IR emitter sends infrared light infrared light synchronization signals to the infrared light sensor in the

3D shutter glasses. The sensor in the glasses converts these signals into electrical synchronization signals that travel through the electrical control circuits of the glasses. It is these signals that initiate the blocking state (closed) or the viewing state (open) of the liquid crystal material in the glasses. The signal allows the glasses to alternatively darken over one eye and then the other eye in synchronization with the refresh rate of the television screen. The lenses open and close up to 60 times per second or 4080 times per minute. The result of this rapid action is that the viewer perceives the television images as 3-dimensional.

ISSUE:

Whether the article in question is classified under subheading 9004.90.00, HTSUS, as other spectacles, or 9013.80.90, HTSUS, as other optical appliances and instruments.

LAW AND ANALYSIS:

The following HTSUS provisions are under consideration:

9004	Spectacles, goggles and the like, corrective, protective or other: * * *
9004.90.00	Other. * * * *
9013	Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this chapter; parts and accessories thereof: * * *
9013.80	Other devices, appliances and instruments: * * *
9013.80.90	Other. * * * *

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 based on GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's 2 through 6 may then be applied in order.

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

The main components of the 3D Starter Pack Kit are the 3D signal adapter and the 3D shutter glasses. The 3D signal adapter is described by heading 8525, HTSUS. The 3D shutter glasses are possibly covered by either heading 9004, or heading 9013, HTSUS. Heading 9013, HTSUS, covers, in relevant

part “[l]iquid crystal devices not constituting articles provided for more specifically in other headings.” Therefore, before we can consider the applicability of heading 9013, we must consider whether the 3D shutter glasses can instead be classified in heading 9004, HTSUS.

Heading 9004, HTSUS, provides broadly for “[s]pectacles, goggles and the like, corrective, protective or other.” EN 90.04 provides an example of a group of such “other” spectacles, i.e., “spectacles for viewing stereoscopic (three-dimensional) pictures,” and later refines the example by citing to “polarizing spectacles fitted with lenses of plastics for viewing three-dimensional films (whether or not with a paperboard frame).” As a rule, the ENs cannot restrict or limit the scope of the legal texts to which they correspond. Instead, the ENs provide a commentary on the scope of the legal text of each heading. EN 90.04 provides an example of one form of spectacles (polarized, with plastic lenses) that are used to view three-dimensional images and does not use limiting language to do so. Indeed, the purpose of the polarized spectacles with plastic lenses is the same as the purpose of the instant 3D shutter glasses, which is to create the illusion of three-dimensional images by restricting the light that reaches each eye while viewing stereoscopic films. The manner in which the 3D shutter glasses achieve that purpose does not exclude it from heading 9004, HTSUS. Thus, it is now the position of CBP that the proper heading for the shutter glasses is 9004, HTSUS, which provides for other spectacles.

Because no single heading of the HTSUS completely describes the 3D Starter Pack Kit and, as noted above, its components are *prima facie* classifiable in two or more headings, classification must fall to GRI 3. GRI 3 provides, in pertinent part:

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

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

The Explanatory Notes to GRI 3(b) state the following

- (X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:
 - (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
 - (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
 - (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards) ...

The 3D Starter Pack Kit meets the above requirements, and is a “set” for purposes of GRI 3(b). In its discussion of the essential character of composite goods, EN (VIII) to GRI 3(b) states:

The factor which determines 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.

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 (C.I.T. 2005); and *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278, 1295–1356 (C.I.T. 2006), *aff’d.* by 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.”) (quoting *A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971)). In particular, the court stated “[a]n essential character inquiry requires a fact intensive analysis.” *Id.* at 1284. Here, we are unable to determine whether the 3D signal adapter or the 3D shutter glasses provide the essential character of the set. The 3D adapter and the 3D shutter glasses are comparable in value based upon the cost breakdown of the items in the kit. Also, the 3D adapter and the 3D shutter glasses play equally essential roles in achieving the intended function of the 3D Starter Pack Kit. Without the glasses, a viewer cannot view the 3D image as intended, regardless of the presence and functionality of the adapter. Without the adapter, source 3D video is not converted to a format that displays on a television and no signal is provided to the IR emitter (and ultimately to the 3D glasses) that would allow a viewer to view 3D video as intended.

Per GRI 3(c), when a good cannot be classified by reference to GRIs 3(a) or 3(b), it is classified under the heading that occurs last in numerical order among those meriting equal consideration. Here, the 3D signal adapter is classifiable in heading 8525, HTSUS, and the 3D shutter glasses are classifiable in heading 9004, HTSUS. Therefore heading 9004 prevails, and the

applicable subheading for the 3D Starter Pack Kit is 9004.90.00, HTSUS, which provides for other spectacles.

HOLDING:

By application of GRI 1 and GRI 3(c), the 3D Starter Pack Kit is classified in heading 9004, HTSUS. Specifically, it is covered by subheading 9004.90.00, HTSUS, which provides for “Spectacles, goggles and the like, corrective, protective or other: Other.” The column one, general rate of duty is 2.5% *ad valorem*. Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N123038, dated December 13, 2010, is hereby revoked.

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

Sincerely,

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



GENERAL NOTICE

19 CFR PART 177

**PROPOSED REVOCATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF AMALFI LANTERNS FROM
INDIA**

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

ACTION: Notice of proposed revocation of ruling letter and treatment concerning the tariff classification of Amalfi Lanterns from India.

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 modify one ruling letter relating to the tariff classification of decorative glass and metal articles from India 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 January 17, 2014.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Office of International Trade, Attention: Trade and Commercial Regulations Branch, 90 K Street, 10th Floor, N.E., Washington, D.C. 20229–1177. Submitted comments may be inspected at U.S. Customs and Border Protection, 90 K Street, 10th Floor, N.E., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification and GSP eligibility of Amalfi Lanterns. Although in this notice, CBP is specifically referring to the revocation of NY N084615, dated December 11, 2009 (Attachment A), this notice covers any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N084615, CBP determined the GSP eligibility of Amalfi Lanterns from India and classified them in heading 7013, HTSUS, specifically subheading 7013.99.90, HTSUS, as "Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): Other glassware: Other: Other: Other: Valued over \$3 each: Other: Valued over \$5 each." It is now CBP's position that the articles are classified in heading 9405, HTSUS, specifically under subheading 9405.50.40, HTSUS, as "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: Non-electrical lamps and lighting fittings: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY N084615, and any other ruling not specifically identified, in order to reflect the proper analysis contained in proposed HQ H097728 set forth as Attachment B to this document. Additionally, pursuant to 19

U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: November 22, 2013

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N084615

December 11, 2009

CLA-2-70:OT:RR:NC:N4:426

CATEGORY: Classification

TARIFF NO.: 7013.99.9000

MR. JOEL McCLURE
 RESTORATION HARDWARE 15 KOCH ROAD
 SUITE J
 CORTE MADERA, CALIFORNIA 94925

RE: The tariff classification of decorative glass articles from India

DEAR MR. McCLURE:

In your letter dated November 9, 2009, you requested a tariff classification ruling regarding decorative glass articles referred to as "Amalfi lanterns." The styles of this merchandise include Mini, 3103-0062; Small, 3103-0108; Medium, 3103-0273; Large, 3103-0275 and Extra-Large, 3103-0277.

Samples were submitted with your ruling request. The largest sample was broken in transit. The others will be returned to you in accordance with your request.

Each of these products has the form of a glass box with a metal frame. Each has a handle which would allow the item to be hung from a projection.

According to the information submitted with your ruling request, the sizes of these articles are as follows: 6.5 inches high, 10.75 inches high, 15.25 inches high, 19.75 inches high and 24.5 inches high. In addition, the submitted information indicates that the unit value of each of these products is over five dollars.

In your letter you state your opinion that these articles should be regarded as candle holders and should be classified as non-electrical lamps or lighting fittings in heading 9405, Harmonized Tariff Schedule of the United States (HTSUS). However, these products are general purpose decorative glass articles capable of holding a wide variety of items. They do not have clear design features for stabilizing burning candles. In addition, according to the information submitted with your ruling request, these articles failed testing requirements for use as candle accessories according to ASTM standards F2417 and F2601. Therefore, the provision for non-electrical lamps and lighting fittings in heading 9405 is not applicable to the "Amalfi" products.

The applicable subheading for the "Amalfi lanterns" will be 7013.99.9000, HTSUS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes...other glassware: other: other: valued over three dollars each: other: valued over five dollars each. The rate of duty will be 7.2 percent ad valorem.

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

In your letter you inquired about the applicability of the Generalized System of Preferences (GSP) to this merchandise. Subheading 7013.99.9000 is not one of the HTSUS provisions subject to the GSP. Therefore, the GSP does not apply to these products.

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 Jacob Bunin at 646-733-3027.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H097728
CLA-2 OT:RR:CTF:TCM H097728 DSR
CATEGORY: Classification
TARIFF NO.: 9405.50.40

MARK K. NEVILLE, JR., ESQ.
INTERNATIONAL TRADE COUNSELLORS
80 MIDLAND STREET
BRIDGEPORT, CT 06605

RE: Revocation of NY N084615, dated December 11, 2009; classification of Amalfi Lanterns from India

DEAR MR. NEVILLE:

This is in response to your letter, dated March 11, 2010, requesting reconsideration of New York Ruling Letter (NY) N084615, dated December 11, 2009. NY N084615 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of decorative glass articles referred to as “Amalfi Lanterns.” We have reviewed NY N084615 and find it to be incorrect. Therefore, this ruling revokes NY N084615.

FACTS:

According to the information submitted, each of the articles has the form of a glass box with a metal frame. Each has a handle that would allow the articles to be hung from a projection. The articles may also be placed upon flat surfaces. The sizes of the articles are as follows: 6.5 inches high, 10.75 inches high, 15.25 inches high, 19.75 inches high and 24.5 inches high. In addition, the submitted information indicates that the unit value of each of these products is over five dollars. The requestor, Restoration Hardware, Inc. (“Restoration”), asserts that the articles are designed, intended, and marketed for use as lanterns that hold appropriately sized candles.

In NY N084615, CBP classified the articles in subheading 7013.99.90, HTSUS, and described the articles as “general purpose decorative glass articles capable of holding a wide variety of items” and that “do not have clear design features for stabilizing burning candles.” In addition, we noted that, according to the information submitted with the ruling request, the articles failed testing requirements for use as candle accessories according to ASTM standards F2417 and F2601. Restoration asserts that the articles are instead classifiable under subheading 9405.50.40, HTSUS, as non-electrical lamps, not elsewhere or specified or included, or, in the alternative, under subheading 7326.90.85, HTSUS, as other articles of iron or steel.

ISSUE:

Whether the Amalfi Lanterns are classified in subheading 7013.99.90, HTSUS, which provides for other glassware valued over five dollars each; in subheading 9405.50, HTSUS, as non-electrical lamps, not elsewhere specified or included; in subheading 7326.90, HTSUS, as other articles of iron or steel; or subheading 8306.29, HTSUS, as statuettes and other ornaments of base metal?

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

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

7013 Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)

* * *

Other glassware:

* * *

7013.99 Other:

* * *

Other:

* * *

Other:

Valued over \$3 each:

* * *

Other:

* * *

7013.99.90 Valued over \$5 each.

7326 Other articles of iron or steel:

* * *

7326.90 Other:

* * *

Other:

* * *

Other:

* * *

7326.90.85 Other:

* * * *

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:

* * *

Statuettes and other ornaments, and parts thereof:

* * *

8306.29.00 Other.

* * * *

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:

* * * *

9405.50 Non-electrical lamps and lighting fittings:

* * *

Other:

* * *

9405.50.40 Other.

* * * *

Restoration makes two assertions regarding the procedural aspects of the issuance of NY N084615. First, Restoration asserts that CBP has created an established and uniform practice (“EUP”) with regard to the classification of the subject articles under subheading 9405.50, HTSUS, and, by implication, that CBP has failed to comply with the requirements of 19 U.S.C. §1315(d), which concerns the effective date of administrative rulings resulting in higher rates. Alternatively, Restoration argues that CBP has “previously accorded substantially similar articles with a ‘treatment’ amounting to an EUP,” and the issuance of NY N084615 was not done in accordance with the notice and comment provisions of 19 U.S.C. § 1625(c).

a. Section 1315(d)

19 U.S.C. § 1315(d) sets forth the publication requirement for administrative rulings that result in higher duty rates. It states the following:

No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under an established and uniform practice shall be effective with respect to articles entered for consumption

or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the Federal Register of notice of such ruling.¹

The plain language of the statute bars the imposition and collection of duty increases where an EUP exists that charges a lower tariff rate on the particular merchandise, unless the higher rate has been fixed by an administrative ruling, notice of which has been published in the Federal Register. The corresponding regulatory provision, 19 C.F.R. 177.10, provides the following:

(c) Changes of practice. Before the publication of a ruling which has the effect of changing an established and uniform practice and which results in the assessment of a higher rate of duty within the meaning of 19 U.S.C. 1315 (d), notice that the practice (or prior ruling on which that practice was based) is under review will be published in the Federal Register and interested parties will be given an opportunity to make written submissions with respect to the correctness of the contemplated change

(e) Effective dates. Except as otherwise provided in § 177.12(e) or in the ruling itself, all rulings published under the provisions of this part will be applied immediately. If the ruling involves merchandise, it will be applicable to all unliquidated entries, except that a change of practice resulting in the assessment of a higher rate of duty or increased duties shall be effective only as to merchandise entered for consumption or withdrawn from warehouse for consumption on or after the 90th day after publication of the change in the Federal Register.

The Court of International Trade has spoken to the issue of which types of importing scenarios serve to create an EUP, stating that such a determination can be made on a case-by-case basis according to certain guiding principles, with consideration of the following factors:

...the number of entries resulting in the alleged uniform classifications, the number of ports at which the merchandise was entered, the period of time over which the alleged uniform classifications took place, and whether there had been any uncertainty regarding the classification over its history. In essence, the question is whether a uniform and established practice existed that would lead an importer, in the absence of notice that change in classification will occur, reasonably to expect adherence to the established classification practice when making an importation.

Heraeus-Amersil, Inc. v. United States, 617 F. Supp. 89, 93, 9 C.I.T. 412, 415–16 (1985), *aff'd* 795 F.2d 1575 (Fed. Cir, 1986). Here, Restoration alleges that an EUP existed because “substantially similar items have been imported by [Restoration] and other home furnishings companies for years,” specifically citing to a single ruling letter, dated May 18, 2007, in which CBP classified one entry of “Napa style” brass lanterns in subheading 9405.50, HTSUS, as non-electric lamps and lighting fittings. One ruling concerning

¹ The functions of the Secretary of the Treasury relating to the former U.S. Customs Service have been transferred to the Secretary of Homeland Security. See 6 U.S.C. §§ 203(1), 551(d), 552(d) and 557, and the Department of Homeland Security Reorganization plan of November 25, 2002, as modified, set out as a note under 6 U.S.C. § 542.

one entry at one port does not an EUP make. See *Emil Dienert v. United States*, 9 Cust. Ct. 411, Abs. 47,544 (1942) (the court found that 5 to 8 years of classifying merchandise as a particular article constituted an established and uniform practice); compare *Siemens America, Inc. v. United States*, 692 F.2d 1382 (Fed. Cir. 1982), *aff'g* 2 C.I.T. 136 (1981) (100 entries of merchandise classified under a particular item number over possibly 2 years at a single port was not enough to create *de facto* an established and uniform practice). Additionally, there is some question as to whether the item considered in HQ W563490 is substantially similar to the subject Amalfi lanterns. HQ W563490 involved an analysis of the “value-content” requirements of the country of origin rules of the GSP, and the articles’ resultant eligibility for preferential treatment. It did not address the classification of the goods or the characteristics that would make them suitable for use as lanterns. There was no discussion regarding the typical features of a non-electric lamp or lighting fitting, nor was there discussion of the roles of the articles’ component materials. While both styles of lanterns visually appear to be able to hold candles and be placed on flat surfaces, that is insufficient information with which to find them to be “substantially similar.” Considering the above, we determine that the evidence is insufficient to demonstrate that an EUP classifying identical or similar merchandise in subheading 9405.50, HTSUS, was in effect at the time of entry or liquidation of the subject merchandise.

b. Section 1625(c)(2)

19 U.S.C. § 1625(c) sets forth the notice and comment requirements for the modification of treatment previously accorded to substantially similar transactions. It states the following:

A proposed interpretive ruling or decision which would –

- (1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or
- (2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions;

shall be published in the Customs Bulletin. The Secretary shall give interested parties an opportunity to submit, during not less than the 30-day period after the date of such publication, comments on the correctness of the proposed ruling or decision. After consideration of any comments received, the Secretary shall publish a final ruling or decision in the Customs Bulletin within 30 days after the closing of the comment period. The final ruling or decision shall become effective 60 days after the date of its publication.

Title 19 of the Code of Federal Regulations (CFR) sets forth the evidentiary standards for determining whether treatment was previously accorded to substantially similar transactions. 19 CFR 177.12(c)(1) provides, in pertinent part, as follows:

(i) There must be evidence to establish that:

- (A) There was an actual determination by a Customs officer regarding the facts and issues involved in the claimed treatment;
- (B) The Customs officer making the actual determination was responsible for the subject

matter on which the determination was made; and (C) Over a 2-year period immediately preceding the claim of treatment, Customs consistently applied that determination on a national basis as reflected in liquidations of entries or reconciliations or other Customs actions with respect to all or substantially all of that person's Customs transactions involving materially identical facts and issues;

... (iv) The evidentiary burden as regards the existence of the previous treatment is on the person claiming that treatment. The evidence of previous treatment by Customs must include a list of all materially identical transactions by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each transaction (where applicable), the ports of entry, the dates of final action by Customs, and, if known, the name and location of the Customs officer who made the determination on which the claimed treatment is based. In addition, in cases in which an entry is liquidated without any Customs review (for example, the entry is liquidated automatically as entered), the person claiming a previous treatment must be prepared to submit to Customs written or other appropriate evidence of the earlier actual determination of a Customs officer that the person relied on in preparing the entry and that is consistent with the liquidation of the entry.

In support of its argument, Restoration has provided photos from catalog photographs of the Napa style lanterns of HQ W563490 and the instant Amalfi lanterns, with the blanket assessment that the Napa style lanterns are "quite obviously identical [to the Amalfi lanterns] in overall style and intended use." Restoration's letter, *supra*, at 2. However, as discussed *supra*, HQ W563490 did not address the classification of the goods or the characteristics that would make them suitable for use as lanterns. Even if one were to favor Restoration's contention that the Napa style lanterns of HQ W563490 are "quite obviously identical [to the Amalfi lanterns] in overall style and intended use," Restoration has *failed* to show that, over a 2-year period immediately preceding its claim of treatment, CBP consistently applied that determination on a national basis as reflected in liquidations of entries or reconciliations or other CBP actions with respect to all or substantially all of Restoration's CBP transactions involving materially identical facts and issues. Therefore, we find that the notice and comment requirements of 19 U.S.C. § 1625(c) were inapplicable with regard to the issuance of NY N084615.

Proceeding to the classification of the subject articles, Note 1(e) to Chapter 70, HTSUS, states that Chapter 70 does not cover "Lamps or lighting fittings, illuminated signs, illuminated name-plates or the like, having a permanently fixed light source, or parts thereof of heading 9405." EN 70.13(f) echoes that exclusion with regard to heading 7013. Also, Note 1(k) to Section XV (which includes heading 7326, HTSUS) excludes articles of Chapter 94 from coverage in that Section. EN 73.26 notes that heading 7326, HTSUS, does not cover articles included in Chapters 82 or 83, HTS, or articles more specifically covered elsewhere in the Nomenclature. Finally, EN 83.06 states the following:

[Statuettes, and other ornaments, of base metal] 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 (emphasis added) ...

Therefore, if the articles at issue are classifiable in heading 9405, HTSUS, as “lamp[s] or lighting fitting[s],” then, by virtue of Note 1(e) to Chapter 70, HTSUS, and EN 70.13, the articles are excluded from heading 7013, HTSUS. They would be excluded from heading 7326, HTSUS, by application of Note 1(k) to Section XV. Finally, if the articles possess utility value, they are excluded from heading 8306, HTSUS, by the EN to that heading.

Heading 9405, HTSUS, provides, in relevant part, for “Lamps,” which are not defined in the HTSUS. In Headquarters Ruling letter (HQ) HQ 965248 July 26, 2002, CBP utilized the dictionary definitions of lamps. *See also* HQ H042586, dated January 26, 2009. In HQ 965248, we noted:

“Lamp” is defined in *The Random House College Dictionary*, Random House, Inc. (1973), at 752, as “a device providing an isolated source of artificial light”. *Webster’s New Collegiate Dictionary*, G. & C. Merriam Company (1979), at 639, defines “lamp” as “any of various devices for producing light or heat.”

Restoration states that the subject articles are not decorative glass articles but are instead of a utilitarian nature, and are classified under subheading 9405, HTSUS, as lamps. Restoration asserts that (with the exception of the smallest sized articles) the articles possess circular stamped depressions in their metal bases that provide stability for candles that are placed inside of the articles. The smallest sized articles do not possess such depressions and are designed only for use with very stable tea light candles. The articles also possess four glass panels to protect a candle’s flame, with one panel opening for candle placement, lighting, and extinguishing. The articles’ warning labels indicate that they are used as lanterns with candles. The articles also possess vented tops for heat dissipation and handles for placing the candles on hooks or stanchions. Finally, Restoration states that the marketing literature for the articles shows that they are used in outdoor settings (decks, porches).

We do not dispute Restoration’s contention that the glass panels can help to protect a candle’s flame from gusts of wind or breezes, and that one panel can open to accommodate candle placement, lighting, and extinguishing. Nor do we dispute that the vented tops may aid in heat dissipation.

Restoration also claims that the existence of handles is an essential criterion for classification of articles as lanterns, citing NY 073809, HQ W968278 (flashlights v. lanterns). Restoration’s reliance on HQ W968278 and NY 073809 is misguided. At issue in those rulings was the applicability of heading 8513, HTSUS, and its requirement of portability. While we note that that the ENs to heading 9405, HTSUS, describe “portable lamps,” which includes “hand lanterns,” they also have two references to lamps for exterior lighting and refer to “porch and gate lamps,” with no reference to the port-

ability of such lamps. As explained below, the instant analysis of the applicability of heading 9405, HTSUS, is not driven by the portability of the subject articles but by ability of the articles to provide lighting.

CBP has consistently noted that a non-electric lamp or lighting fitting should include design features to contain or stabilize a burning source of light while providing unobstructed light to the surrounding area. See NY N094121, dated March 4, 2010; NY N134835, dated December 28, 2010; NY N113545, dated July 19, 2010; NY N064544, dated July 7, 2009. Here, the articles contain flat surfaces with faint, circular depressions that are designed to support a candle. Although there may be some doubt as to whether the depressions are deep enough to effectively stabilize a candle while the articles are being carried by hand and moving about, there is no doubt that while stationary at least, the articles can act as “lamps” by “providing an isolated source of artificial light” or “producing light or heat.” While ASTM standards F2417 and F2601 may be helpful in determining the extent to which the articles may effectively be used when carried by hand, the fact remains that the articles possess characteristics that allow them to act as lamps. We therefore find that the subject articles are classifiable under heading 9405, HTSUS, as lamps, and are therefore excluded from all other headings under consideration.

Finally, in your letter you inquired about the applicability of the Generalized System of Preferences (GSP) to this merchandise. Articles classifiable under subheadings 9405.50.40, HTSUS, which are products of India, may be entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, you may visit www.cbp.gov and search for the term “GSP.”

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.

HOLDING

By application of GRI 1, the subject “Amalfi Lanterns” are classified in heading 9405, HTSUS, and specifically in subheading 9405.50.40, HTSUS, as “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: Non-electrical lamps and lighting fittings: Other: Other.” The column one general rate of duty is 6% *ad valorem*. However, the articles may be entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. 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 N084615, dated December 11, 2009, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF A RULING LETTER
RELATING TO THE TARIFF CLASSIFICATION OF
CERTAIN USB FLASH DRIVES**

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

ACTION: Notice of proposed revocation of a ruling letter relating to tariff classification of certain USB flash drives.

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

DATES: Comments must be received on or before January 17, 2014.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St. N.E., 10th Floor, Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 90 K St. N.E., Washington, D.C. 20229, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118

FOR FURTHER INFORMATION CONTACT: 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 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 to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of certain USB flash drives. Although in this notice, CBP is specifically referring to the revocation of NY N011540, dated June 18, 2007 (Attachment A), this notice covers any rulings on this merchandise which 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, as amended (19 U.S.C. 1625 (c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY N011540, CBP determined that four USB flash drives were classified in heading 8471, HTSUS, by operation of General Rule of Interpretation (GRI) 1. Specifically, CBP classified the products in subheading 8471.70.90, HTSUS, which provides for "Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included: Storage units: Other storage units: Other".

It is now CBP's position that these USB flash drives are properly classified under heading 8523, HTSUS, specifically under subheading 8523.51.00, HTSUS, which provides for "Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37: Semiconductor media: Solid-state non-volatile storage devices", by operation of GRI 3(a).

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N011540 and to revoke or modify any other ruling not specifically identified, to reflect the proper classification of USB flash drives according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H168206, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 18, 2013

IEVA K. O'ROURKE
for

MYLES B. HARMON
Director,
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N011540

June 18, 2007

CLA-2-1:RR:NC:1:120

CATEGORY: Classification

TARIFF NO.: 8471.70.9000

Ms. AMY JOHANNESEN
CERNY ASSOCIATES, P.C.
ATTORNEYS AT LAW
24 SMITH STREET
BUILDING 2, SUITE 102
PAWLING, NEW YORK 12564

RE: The tariff classification of Universal Serial Bus (USB) Flash Drives from China

DEAR Ms. JOHANNESEN:

In your letter dated May 3, 2007 you requested a tariff classification ruling on behalf of your client, Kingston Technology Company, Incorporated.

The merchandise under consideration includes four external flash memory devices: DataTraveler "R" for ReadyBoost (DTR/1GB), DataTraveler II with software security (KUSBDTII/512MB), DataTraveler Secure Privacy Edition (DTSP/512MB), and the DataTraveler Mini USB (DTMini/512MB). The KUSBDTII and DTSP are encrypted with 256-bit AES Hardware Based Encryption and password protection. The samples of each model will be returned as requested.

The USB Flash drives are storage devices that employ Single-Level Cell Not AND (NAND) Flash and a controller in a capsulated portable case. The built-in Flash memory controller manages the interface with the host computer, and reads and writes to the Flash chips on the Flash storage device.

The USB Flash drives meet Note 5 (C) to Chapter 84, Harmonized Tariff Schedule of the United States (HTSUS). These storage devices connect to a computer's central processing unit (CPU) directly through the USB port. They are able to accept or deliver data in a form which can be used by the computer system.

The applicable subheading for the DataTraveler "R" for ReadyBoost (DTR/1GB), DataTraveler II with software security (KUSBDTII/512MB), DataTraveler Secure Privacy Edition (DTSP/512MB), and the DataTraveler Mini USB (DTMini/512MB) will be 8471.70.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Automatic data processing machines and units thereof; Storage units: Other storage units: Other. The rate of duty will be free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Denise Faingar at 646-733-3010.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H168206
CLA-2 OT:RR:CTF:TCM H168206 AMM
CATEGORY: Classification
TARIFF NO.: 8523.51.00

MS. AMY JOHANNESSEN
CERNY ASSOCIATES, P.C., ATTORNEYS AT LAW
24 SMITH STREET BUILDING 2, SUITE 102
PAWLING, NY 12564

RE: Revocation of New York Ruling Letter N011540; Classification of USB Flash Drives

DEAR MS. JOHANNESSEN,

This is in reference to New York Ruling Letter (NY) N011540, dated June 18, 2007, issued to Kingston Technology Company, Incorporated (Kingston) regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of four USB flash drives, identified as the DataTraveler “R” for ReadyBoost, DataTraveler II with software security, DataTraveler Secure Privacy Edition, and the DataTraveler Mini USB. In that ruling, Customs and Border Protection (CBP) classified the articles under heading 8471, HTSUS, which provides for “Automatic data processing machines and units thereof”. We have reviewed this ruling and found it to be incorrect. For the reasons set forth below, we intend to revoke this ruling.

FACTS:

In NY N011540, CBP described the four products at issue in the following manner:

The merchandise under consideration includes four external flash memory devices: DataTraveler “R” for ReadyBoost (DTR/1GB), DataTraveler II with software security (KUSBDTII/512MB), DataTraveler Secure Privacy Edition (DTSP/512MB), and the DataTraveler Mini USB (DTMini/512MB). The KUSBDTII and DTSP are encrypted with 256-bit AES Hardware Based Encryption and password protection.

* * *

The USB Flash drives are storage devices that employ Single-Level Cell Not AND (NAND) Flash and a controller in a capsulated portable case. The built-in Flash memory controller manages the interface with the host computer, and reads and writes to the Flash chips on the Flash storage device. The USB Flash drives meet Note 5 (C) to Chapter 84, Harmonized Tariff Schedule of the United States (HTSUS). These storage devices connect to a computer’s central processing unit (CPU) directly through the USB port. They are able to accept or deliver data in a form which can be used by the computer system.

Pictures of the products at issue are included below:

	
<p>Data Traveler "R" for ReadyBoost (DTR/1GB)</p>	<p>Data Traveler II with software security (KUSBDTII/512MB)</p>
	
<p>Data Traveler Secure Privacy Edition (DTSP/512MB)</p>	<p>Data Traveler Mini USB (DTMini/512MB) has red cover</p>

In a correspondence dated January 31, 2012, Kingston confirmed that all four products at issue contained a printed circuit board within the housing.

ISSUE:

Whether the four USB flash drives at issue in NY N011540 are classifiable under heading 8523, HTSUS, as solid state non-volatile storage devices, and if so, whether this is the more specific provision over heading 8471, HTSUS, the provision for units of ADP machines.

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 at issue are:

- 8471 Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included:
- 8471.70 Storage units:
 - Other storage units:
- 8471.70.90 Other

8523 Discs, tapes, solid-state non-volatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37:

Semiconductor media:

8523.51.00 Solid-state non-volatile storage devices

GRI 3 states, in pertinent part:

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

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. * * *

Note 5(C) to Chapter 84, HTSUS, states, in pertinent part:

(C) Subject to paragraphs (D) and (E) below, a unit is to be regarded as being part of an automatic data processing system if it meets all of the following conditions:

- (i) It is of a kind solely or principally used in an automatic data processing system;
- (ii) It is connectable to the central processing unit either directly or through one or more other units; and
- (iii) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

Separately presented units of an automatic data processing machine are to be classified in heading 8471. However, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of paragraphs (C) (ii) and (C) (iii) above, are in all cases to be classified as units of heading 8471.

* * *

Note 4 to Chapter 85, HTSUS, states, in pertinent part:

For the purposes of heading 8523:

- (a) “Solid-state non-volatile storage devices” (for example, “flash memory cards” or “flash electronic storage cards”) are storage devices with a connecting socket, comprising in the same housing one or more flash memories (for example, “FLASH E²PROM”) in the form of integrated circuits mounted on a printed circuit board. They may include a controller in the form of an integrated circuit and discrete passive components, such as capacitors and resistors;

* * *

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

The EN to heading 85.23 states, in pertinent part:

In particular, this heading covers:

* * *

Products of this group contain one or more electronic integrated circuits.

Thus, this group includes:

- (1) **Solid-state, non-volatile data storage devices for recording data from an external source** (See Note 4 (a) to this chapter). These devices (also known as “flash memory cards” or “flash electronic storage cards”) are used for recording data from an external source, or providing data to, devices such as navigation and global positioning systems, data collection terminals, portable scanners, medical monitoring appliances, audio recording apparatus, personal communicators, mobile phones, digital cameras and automatic data processing machines. Generally, the data are stored onto, and read from, the device once it has been connected to that particular appliance, but can also be uploaded onto or downloaded from an automatic data processing machine.

The media use only power supplied from the appliances to which they are connected, and require no battery.

These non-volatile data storage devices are comprised of, in the same housing, one or more flash memories (“FLASH E²PROM/EEPROM”) in the form of integrated circuits mounted on a printed circuit board, and incorporate a connecting socket to a host appliance. They may include capacitors, resistors and a microcontroller in the form of an integrated circuit. Example of solid state non-volatile storage devices are USB flash drives.

* * *

In NY N011540, dated June 18, 2007, CBP classified four external flash memory devices, known as USB flash drives, under heading 8471, HTSUS, which provides, in pertinent part, for “Automatic data processing machines and units thereof”. CBP did not consider whether these devices were properly classified under heading 8523, HTSUS, which provides, in pertinent part, for “[S]olid state non-volatile storage devices”.

To be classified under heading 8471, HSTUS, as a “unit thereof” of an automatic data processing machine, the products at issue must satisfy Note 5(C) to Chapter 84, HTSUS. According to NY N011540, the products are storage devices which connect to a computer's central processing unit directly

through a USB port. They are able to accept or deliver data in a form which can be used by the computer system. Therefore, the criteria of Note 5(C)(ii) and (iii) to Chapter 84, HTSUS, are satisfied.

The products at issue employ Single-Level Cell Not AND (NAND) Flash memory, which is based on semiconductor microchip technology rather than magnetic disks. The products at issue are not “disk storage units” as described in Note 5(C) to Chapter 84, HTSUS. Therefore, the products must be “of a kind solely or principally used in an automatic data processing system” in accordance with Note 5(C)(i) to Chapter 84, HTSUS. See *BenQ Am. Corp. v. United States*, 646 F.3d 1371, 1379–81 (Fed. Cir. 2011).

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 other words, the article’s principal use at the time of importation determines whether it is classifiable within a particular class or kind of merchandise. See *BenQ*, 646 F.3d, at 1379–1380.

While Additional U.S. Rule of Interpretation 1(a), HTSUS, provides general criteria for discerning the principal use of an article, it does not provide specific criteria for individual tariff provisions. However, the courts have provided factors which are indicative but not conclusive, to apply when 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. See *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979. CBP has applied this principle in subsequent rulings. See, e.g., HQ 082780, dated December 18, 1989. This principle has been carried over to the HTSUS, as courts have determined that principal use under the HTSUS is defined as the use which “exceeds all other uses.” See *Lenox Collections v. United States*, 20 C.I.T. 194, 196 (Ct. Int’l. Trade, 1996).

The products at issue are flash memory storage devices designed to interface with laptops, personal computers, and other electronic devices. These products provide increased reliability from their lack of moving parts, decreased power consumption and noise, and increased speed compared to traditional compact disk or floppy disk drives. Kingston’s product literature indicates that the products “incorporate NAND Flash and a controller in a capsulated case. USB Flash drives work with the vast majority of computers and devices that incorporate the Universal Serial Bus interface, including most PCs, PDAs, and MP3 players.”¹ Kingston markets their USB Flash Drive products directly to individual consumers, enterprises, and governments.² The products are designed to be inserted directly into a USB port,

¹ See <http://www.kingston.com/products/pdf_files/FlashMemGuide.pdf>, at page 9.

² See <http://www.kingston.com/flash/dt_chart.asp>.

which is in turn connected to an automatic data processing unit. Based on the *Carborundum* factors and the information above, we find that the principal use of the products at issue is in an ADP machine, and that Note 5(C)(i) to Chapter 84, HTSUS, is satisfied.

Because the products at issue satisfy Note 5(C) to Chapter 84, HTSUS, they are properly classified under Heading 8471, HTSUS. Specifically, the products are classified under subheading 8471.70.90, HTSUS, which provides for: “Automatic data processing machines and units thereof; . . . Storage units; Other storage units; Other”.

Effective February 3, 2007, Chapter 85 of the HTSUS was revised by Presidential Proclamation 8097, pursuant to Section 1206(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. §3005(a)). See 72 Fed. Reg. 453. The proclamation states, in pertinent part:

In order to modify the HTS to conform it to the Convention or any amendment thereto recommended for adoption, to promote the uniform application of the Convention, to establish additional subordinate tariff categories, and to make technical and conforming changes to existing provisions, the HTS is modified as set forth in Annex I of Publication 3898 of the United States International Trade Commission, entitled, “*Modifications to the Harmonized Tariff Schedule of the United States Under Section 1206 of the Omnibus Trade and Competitiveness Act of 1988*,” which is incorporated by reference into this proclamation.

See 72 Fed. Reg. 453, 456. The modifications to the HTSUS set forth in Annex I of Publication 3898³ of the United States International Trade Commission (ITC) were included in the 2007 version of the HTSUS.

Prior to this date, heading 8523, HTSUS (2006), provided for “Prepared unrecorded media for sound recording or similar recording of other phenomena, other than products of chapter 37”. After the revision, heading 8523, HTSUS (2007), provided, in pertinent part, for “solid-state non-volatile storage devices”. In addition, certain chapter notes were renumbered, and new ones were added. For instance, Note 4 to Chapter 85, HTSUS (2007), was added, providing specific definitions for the phrases “solid state non-volatile storage devices” and “smart cards”. Therefore, CBP must consider whether the products at issue in NY N011540, dated June 18, 2007, are properly classified under the revised version of heading 8523, HTSUS.

To be classified as a “solid state non-volatile storage device” under heading 8523, HTSUS, the products must satisfy Note 4(a) to Chapter 85, HTSUS. This Note lists four criteria, namely: that it is a storage device; with a connecting socket; that it has flash memory in the same housing as the connecting socket; and that the flash memory be in the form of an integrated circuit mounted on a printed circuit board. There is no dispute that the instant merchandise is a storage device. NY N011540 states that “[t]hese storage devices connect to a computer’s central processing unit (CPU) directly through the USB port.”

The term “flash memory” is defined as “[A] type of EEPROM that can only be erased in blocks; it cannot be erased one byte at a time. In this regard, it

³ The full text is available at <http://www.usitc.gov/publications/tariff_affairs/pub3898.pdf>.

resembles a disk drive that is divided into sectors. Flash memory is usually used for storing large amounts of data, like a disk; ...". See *Dictionary of Computer and Internet Terms*, 10th Ed. (2009), at pp. 193–194. The term "EEPROM", which stands for Electrically Erasable Programmable Read-Only Memory, is defined as a type of memory chip whose contents can both be recorded and erased by electrical signals, but do not go blank when power is removed." See *Id.* at p. 162. A "chip", or "integrated circuit", is defined as "an electronic device consisting of many miniature transistors and other circuit elements on a single silicon chip." See *Id.* at pp. 90, 254.

According to NY N011540, the products at issue are storage devices which contain a flash memory and a controller in a capsulated portable case. Furthermore, the products incorporate an adapter which connects to a computer through the USB port. Kingston also admitted to CBP that the products at issue contain a printed circuit board, in correspondence dated January 31, 2012.

Hence, the products at issue in NY N011540 are storage devices with a connecting socket, comprising in the same housing one or more flash memories in the form of integrated circuits mounted on a printed circuit board. See Note 4(a) to Chapter 85, HTSUS. Therefore, they are properly classified under heading 8523, HTSUS, as "solid state non-volatile storage devices".

According to GRI 1, the products at issue are properly classified under headings 8471 and 8523, HTSUS. Therefore, we must resort to GRI 3 to determine which heading is the correct one. According to GRI 3(a), "[t]he heading which provides the most specific description shall be preferred to headings providing a more general description." The description provided by heading 8523, HTSUS, "[S]olid state non-volatile storage devices", is more specific than the description provided by heading 8471, HTSUS, "[U]nits thereof", because heading 8523, HTSUS, is "the provision with requirements that are more difficult to satisfy and, that describe the article with the greatest degree of accuracy and certainty." *Pomeroy Collection, Ltd. v. United States*, 559 F. Supp. 2d 1374, 1393 (Ct. Int'l. Trade 2008). Therefore, by operation of GRI 3(a), the products at issue in NY N011540 are correctly classified under heading 8523, HTSUS.

With regard to classification at the subheading level, CBP must consider whether the instant merchandise is "semiconductor media." The term "media" has been previously defined by CBP as "a material that stores or transmits data." See Headquarters Ruling Letter (HQ) H097659, dated August 31, 2010; HQ 962507, dated May 22, 2002 (citing *The Computer Glossary*, 6th Ed. (1993) p. 346). The products at issue in NY N011540 constitute "semiconductor media" as defined above, because they are data storage devices comprised of a flash memory, a type of integrated circuit incorporating semiconductor technology. As such, the products at issue are specifically classified under subheading 8523.51.00, HTSUS, which provides for "[S]olid state non-volatile storage devices ...: Semiconductor media: solid state non-volatile storage devices".

CBP notes that several rulings classified merchandise similar to the products at issue under heading 8471, HTSUS. See NY R04440, dated July 27, 2006; NY R04024, dated June 5, 2006; NY M80734, dated March 31, 2006;

NY L89889, dated January 20, 2006; and NY L88309, dated October 28, 2005. These rulings were published before the new text of heading 8523, HTSUS, took effect on February 3, 2007. Therefore, these rulings were revoked by operation of law on that date, in accordance with Presidential Proclamation 8097.

HOLDING:

By application of GRI 3(a), the DataTraveler “R” for ReadyBoost (DTR/1GB), DataTraveler II with software security (KUSBDTII/512MB), DataTraveler Secure Privacy Edition (DTSP/512MB), and the DataTraveler Mini USB (DTMini/512MB) are classified under heading 8523, HTSUS, specifically under 8523.51.00, HTSUS, which provides in for “Discs, tapes, solid-state non-volatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37: Semiconductor media: solid state non-volatile storage devices”. The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY N011540, dated June 18, 2007, is hereby REVOKED in accordance with the above analysis.

Furthermore, CBP notes that NY R04440, dated July 27, 2006, NY R04024, dated June 5, 2006, NY M80734, dated March 31, 2006, NY L89889, dated January 20, 2006, and NY L88309, dated October 28, 2005, were REVOKED by operation of law on February 3, 2007, in accordance with Presidential Proclamation 8097.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

AGENCY INFORMATION COLLECTION ACTIVITIES:

Arrival and Departure Record (Forms I-94 and I-94W) and Electronic System for Travel Authorization

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

ACTION: 60-Day Notice and request for comments; Revision of an existing collection of information: 1651-0111

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement

concerning the CBP Form I-94 (Arrival/Departure Record), CBP Form I-94W (Nonimmigrant Visa Waiver Arrival/Departure), and the Electronic System for Travel Authorization (ESTA). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3507).

DATES: Written comments should be received on or before January 27, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street, NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Arrival and Departure Record, Nonimmigrant Visa Waiver Arrival/Departure, and Electronic System for Travel Authorization (ESTA).

OMB Number: 1651-0111.

Form Number: I-94 and I-94W.

Abstract: CBP Forms I-94 (Arrival/ Departure Record) and I-94W (Nonimmigrant Visa Waiver Arrival/ Departure Record) are used to document a traveler's admission into the United States. These forms are filled out by aliens and are used to collect information on citizenship, residency, and contact information. The data elements collected on these forms enable the DHS to perform its mission related to the screening of alien visitors for potential risks to national security, and the determination of admissibility to the United States. The Electronic System for Travel Authorization (ESTA) applies to aliens traveling to the United States under the Visa Waiver Program (VWP) and requires that VWP travelers provide information electronically to CBP before embarking on travel to the United States. Travelers who are entering under the VWP in the air or sea environment, and who have a travel authorization obtained through ESTA, may forgo completing the paper Form I-94W.

CBP now gathers data collected on the paper Form I-94 from existing automated sources in lieu of requiring passengers arriving by air or sea to submit a paper I-94 upon arrival. The paper I-94 is still required from travelers entering the United States at a land border. Passengers can access and print their electronic I-94 via the Web site at www.cbp.gov/I94.

CBP proposes to revise some of the questions on ESTA and on Form I-94W in order to make them more easily understandable to respondents, and to collect more detailed information about health and security issues. CBP also proposes to remove some questions from ESTA and from Form I-94W that are no longer relevant.

ESTA can be accessed at http://www.cbp.gov/xp/cgov/travel/id_visa/esta/. Instructions and samples of CBP Forms I-94 and I-94W can be viewed at http://www.cbp.gov/xp/cgov/travel/id_visa/i-94_instructions/filling_out_i94.xml and http://www.cbp.gov/xp/cgov/travel/id_visa/business_pleasure/vwp/i94_samples.xml.

Current Actions: This submission is being made to revise the information collected on ESTA and on Form I-94W by adding some new health and security questions; by revising some of the existing questions; and by removing some questions that are no longer relevant. The estimated number of I-94Ws filed annually was increased due to updated estimates. There is no change to the estimated time to complete ESTA or Form I-94W. There are no proposed changes to Form I-94.

Type of Review: Revision.

Affected Public: Individuals, Carriers, and the Travel and Tourism Industry.

Form I-94 (Arrival and Departure Record)

Estimated Number of Respondents: 4,387,550.
Estimated Number of Total Annual Responses: 4,387,550.
Estimated Time per Response: 8 minutes.
Estimated Burden Hours: 583,544.
Estimated Annual Cost to Public: \$26,325,300.

I-94 Web Site

Estimated Number of Respondents: 5,047,681.
Estimated Number of Total Annual Responses: 5,047,681.
Estimated Time per Response: 4 minutes.
Estimated Annual Burden Hours: 333,147.

Form I-94W (Nonimmigrant Visa Waiver Arrival/Departure)

Estimated Number of Respondents: 1,835,951.
Estimated Number of Total Annual Responses: 1,835,951.
Estimated Time per Response: 8 minutes.
Estimated Annual Burden Hours: 244,181.
Estimated Annual Cost to the Public: \$11,015,706.

Electronic System for Travel Authorization (ESTA)

Estimated Number of Respondents: 21,910,000.
Estimated Number of Total Annual Responses: 21,910,000.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 5,477,500.
Estimated Annual Cost to the Public: \$252,420,000.

Dated: Dated: November 20, 2013.

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

AGENCY INFORMATION COLLECTION ACTIVITIES:

Commercial Invoice

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

ACTION: Day Notice and request for comments; Extension of an existing collection of information: 1651–0090.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Commercial Invoice. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507).

DATES: Written comments should be received on or before January 27, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are

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

Title: Commercial Invoice.

OMB Number: 1651-0090.

Form Number: None.

Abstract: The collection of the commercial invoice is necessary for conducting adequate examination of merchandise and determination of the duties due on imported merchandise as required by 19 CFR 141.81, 141.82, 141.83, 141.84, 141.85, 141.86, 141.88, 141.89, 141.90 and by 19 U.S.C. 1481 and 1484. The commercial invoice is provided to CBP by the importer. The information is used to ascertain the proper tariff classification and valuation of imported merchandise, as required by the Tariff Act of 1930. To facilitate trade, CBP did not develop a specific form for this information collection. Importers are allowed to use their existing invoices to comply with these regulations.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 38,500.

Estimated Number of Annual Responses per Respondent: 1208.

Estimated Number of Total Annual Responses: 46,500,000.

Estimated time per Response: 1 minute.

Estimated Total Annual Burden Hours: 744,000.

Dated: November 20, 2013.

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

[Published in the Federal Register, November 26, 2013 (78 FR 70569)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Customs Declaration

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

ACTION: 60-Day notice and request for comments; Extension of an existing collection of information: 1651-0009.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13).

DATES: Written comments should be received on or before January 21, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

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

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

Title: Customs Declaration.

OMB Number: 1651-0009.

Form Number: CBP Form 6059B.

Abstract: CBP Form 6059B, Customs Declaration, is used as a standard report of the identity and residence of each person arriving in the United States. This form is also used to declare imported articles to U.S. Customs and Border Protection (CBP) in accordance with 19 U.S.C. 66 and section 498 of the Tariff Act of 1930, as amended (19 U.S.C. 1498). Section 148.13 of the CBP regulations prescribes the use of the CBP Form 6059B when a written declaration is required of a traveler entering the United States. Generally, written declarations are required from travelers arriving by air or sea. Section 148.12 requires verbal declarations from travelers entering the United States. Generally, verbal declarations are required from travelers arriving by land.

A sample of CBP Form 6059B can be found at:
http://www.cbp.gov/xp/cgov/travel/vacation/sample_declaration_form.xml

Current Actions: This submission is being made to extend the expiration date. In addition, burden hours have been added to this collection to allow for existing requirements for verbal declarations under 19 CFR 148.12. There are no changes to the data CBP collects under the provisions of 19 CFR 148.12, 148.13 or CBP Form 6059B.

Type of Review: Extension (with change).

Affected Public: Individuals.

CBP Form 6059B:

Estimated Number of Respondents: 105,606,000.

Estimated Number of Total Annual Responses: 105,606,000.

Estimated Time per Response: 4 minutes.

Estimated Total Annual Burden Hours: 7,075,602.

Verbal Declarations:

Estimated Number of Respondents: 233,000,000.

Estimated Number of Total Annual Responses: 233,000,000.

Estimated Time per Response: 10 seconds.

Estimated Total Annual Burden Hours: 669,000.

Dated: November 18, 2013.

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

