

U.S. Customs and Border Protection



PROPOSED REVOCATION OF THREE RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF FORKLIFT ACCESSORIES

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

ACTION: Notice of proposed revocation of three ruling letters and proposed revocation of treatment relating to the tariff classification of forklift accessories.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke three ruling letters concerning the tariff classification of forklift accessories under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before December 27, 2024.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon L. Stillwell, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: 1625Comments@cbp.dhs.gov. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon L. Stillwell at (202)325–0739.

FOR FURTHER INFORMATION CONTACT: Suzanne Kingsbury, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at suzanne.kingsbury@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public 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 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke three ruling letters pertaining to the tariff classification of forklift accessories. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N301485, dated November 27, 2018 (Attachment A), NY 893829, dated February 7, 1994 (Attachment B), and NY N249028, dated February 8, 2017 (Attachment C), this notice also covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the three 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 the comment period.

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

In NY N301485, NY 893829 and NY N249028, CBP classified forklift accessories in heading 8431, HTSUS, specifically in subheading 8431.20.00, HTSUS, which provides for “[P]arts suitable for use solely or principally with the machinery of headings 8425 to 8430: Of machinery of heading 8427.” CBP has reviewed NY N301485, NY 893829 and NY N249028 and has determined the ruling letters to be in error. It is now CBP’s position that the forklift snowplow blade accessory at issue in NY N301485 is properly classified in subheading 8430.20.00, HTSUS, which provides for “[O]ther moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snowplows and snowblowers: snowplows and snowblowers”; the forklift “PalletSaver” accessory at issue in NY 893829 is properly classified in subheading 7326.90.86, HTSUS, which provides for “[O]ther articles of iron or steel: Other: Other: Other: Other”, and; the forklift “Magnetic Fork Cover” accessory at issue in NY N249028 is properly classified in subheading 4016.99.60, HTSUS, which provides for “[O]ther articles of vulcanized rubber other than hard rubber: Other: Other: Other: Other: Other: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N301485, NY 893829 and NY N249028 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H332697, set forth as Attachment D to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

N301485

November 27, 2018

CLA-2-84:OT:RR:NC:N1:104

CATEGORY: Classification

TARIFF NO.: 8431.20.0000; 9903.88.01

MR. MICHAEL FORREST SCHLENDER
VIKING-WEST ENGINEERED PRODUCTS
#8 27272 GLOUCESTER WAY
LANGLEY V4W 4A1
CANADA

RE: The tariff classification of a snow blade from China

DEAR MR. SCHLENDER:

In your letter dated October 30, 2018, you requested a tariff classification ruling.

The Model F18 (Part #100344) snow blade, to be imported into the United States from Canada, is said to be made in China. It is designed to be used as an attachment for forklifts. Use of this blade converts a forklift into a snow plow. The blade features a hardened cutting edge, mast safety chain and hook and pull pin blade angle adjustment. It angles left or right 40 degrees. The blade measures 84" L x 74" W x 21" H and weighs 525 lbs.

The applicable subheading for the Model F18 (Part #100344) snow blade described above will be 8431.20.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Parts suitable for use solely or principally with the machinery of headings 8425 to 8430: Of machinery of heading 8427". The duty rate will be free.

Effective July 6, 2018, the Office of the United States Trade Representative (USTR) imposed an additional tariff on certain products of China classified in the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(b), HTSUS. The USTR imposed additional tariffs, effective August 23, 2018, on products classified under the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(d), HTSUS. Subsequently, the USTR imposed further tariffs, effective September 24, 2018, on products classified under the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(f) and U.S. Note 20(g), HTSUS. For additional information, please see the relevant Federal Register notices dated June 20, 2018 (83 F.R. 28710), August 16, 2018 (83 F.R. 40823), and September 21, 2018 (83 F.R. 47974). Products of China that are provided for in subheading 9903.88.01, 9903.88.02, 9903.88.03, or 9903.88.04 and classified in one of the subheadings enumerated in U.S. Note 20(b), U.S. Note 20(d), U.S. Note 20(f) or U.S. Note 20(g) to subchapter III shall continue to be subject to antidumping, countervailing, or other duties, fees and charges that apply to such products, as well as to those imposed by the aforementioned Chapter 99 subheadings.

Products of China classified under subheading 8431.20.0000, HTSUS, unless specifically excluded, are subject to the additional 25 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.01, in addition to subheading 8431.20.0000, HTSUS, listed above.

The tariff is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Notice cited above and the applicable Chapter 99 subheading.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patricia O'Donnell at patricia.k.odonnell@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK

Director

National Commodity Specialist Division

NY 893829

February 7, 1994

CLA-2-84:S:N:N1:103 893829

CATEGORY: Classification

TARIFF NO.: 8431.20.0000

MR. RICHARD LEE
DUBOSE TRADING COMPANY, INC.
PO BOX 819
906 INDUSTRIAL DRIVE
CLINTON, NC 28328

RE: The tariff classification of a Pallet Saver from China

DEAR MR. LEE:

In your letter dated January 10, 1994 you requested a tariff classification ruling.

The Pallet Saver is made of carbon steel in the shape of an inverted T, and is used to prevent damage to wood pallets. It attaches to the fork frame which moves up and down the mast of a fork-lift truck. In order to lift a palletized load, the forks of the fork-lift truck are normally positioned under the top deckboards of the pallet. These deckboards are made of relatively thin and narrow wood boards and thus can be damaged by the forks. The Pallet Saver is mounted to the fork frame between the regular forks. The base of the Pallet Saver comes into contact with the pallet's central wood stringer, made of thick lumber, which serves as the pallet's main brace. The Pallet Saver thus prevents the forks from making contact with, and possibly damaging, the deckboards.

The applicable subheading for the Pallet Saver will be 8431.20.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for parts suitable for use solely or principally with the machinery of heading 8427 (fork-lift trucks). The rate of duty will be free.

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

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

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

N249028

February 3, 2014
CLA-2-84:OT:RR:NC:1:104
CATEGORY: Classification
TARIFF NO.: 8431.20.0000

MR. STEVEN R KELLER
CASCADE CORPORATION
2201 NE 201ST AVENUE
FAIRVIEW, OR 97024

RE: The tariff classification of Magnetic Fork Covers from Italy

DEAR MR. KELLER:

In your letter dated January 3, 2014, you requested a tariff classification ruling.

From the information provided, the “Magnetic Fork Covers”, DAGS Part Number 6538264, are designed to be used with fork lift forks. It is said the covers are used to grip products that could be damaged from contact with bare forks. The forklift driver can easily install the covers on the forks very quickly, improving stability and decreasing the chances of the load slipping off the forks.

The “Magnetic Fork Covers” are constructed of an upper layer that consists of 70 durometer black rubber, a metal inner core and a bottom magnetic layer that measures approximately 1/16” thick. The rubber is molded around the edge of the magnet in order to hold it in place. The magnet is designed to hold the rubber onto the fork lift forks.

In your letter you suggested the classification should be in Heading 8505, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof”. Tariff classification under the HTSUS is governed by the principles set forth in the General Rules of Interpretation and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation. The General Rules of Interpretation and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes. The Explanatory Notes (“ENs”) to the Harmonized Tariff System provide guidance in the interpretation of the Harmonized Commodity Description and Coding System at the international level. While neither legally binding nor dispositive of classification issues, the ENs provide commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989). As stated in the ENs to heading 85.05, i.e., exclusionary note (b), this heading does not cover “Electro-magnets, permanent magnets or magnetic devices of this heading, when presented with machines, apparatus, toys, games, etc., of which they are designed to form part (classified with those machines, apparatus, etc.)”. This cover incorporates a magnet to hold the rubber in place on the fork lift forks only. The magnet is not performing the actual function of the “Magnetic Fork Cover”. The magnet is a part of the cover. The complete cover is not a magnet nor is the magnet the essential character of the cover. Therefore, heading 8505 is not applicable.

The applicable subheading for the “Magnetic Fork Covers”, DAGS Part Number 6538264, will be 8431.20.0000, HTSUS, which provides for “Parts suitable for use solely or principally with the machinery of headings 8425 to 8430: Of machinery of heading 8427”. 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 Patricia O'Donnell at (646) 733-3011.

Sincerely,

GWENN KLEIN KIRSCHNER

Acting Director

National Commodity Specialist Division

HQ H332697
OT:RR:CTF:EMAIN H332697 SKK
CATEGORY: Classification

TARIFF NOs.: 4016.99.60; 7326.90.86; 8430.20.00

MR. MICHAEL FORREST SCHLENDER
VIKING-WEST ENGINEERED PRODUCTS
#8 27272 GLOUCESTER WAY
LANGLEY V4W 4A1
CANADA

RE: Revocation of NY N301485, NY 893829 and NY N249028; Tariff classification of forklift attachments

DEAR MR. SCHLENDER:

This ruling is in reference to New York Ruling Letter (NY) N301485, issued to Viking-West Engineered Products on November 27, 2018, in which U.S. Customs and Border Protection (CBP) classified a snowplow blade designed for use as a forklift attachment (referenced Model F18, Part #100344) under heading 8431, specifically subheading 8431.20.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “[P]arts suitable for use solely or principally with the machinery of headings 8425 to 8430: Of machinery of heading 8427.” Upon review, we have determined that NY N301485 is in error.

CBP also reviewed NY 893829, dated February 7, 1994, in which the U.S. Customs Service classified a forklift “Pallet Saver” under subheading 8431.20.00, HTSUS, and NY N249028, dated February 3, 2014, in which CBP classified magnetic forklift fork covers under subheading 8431.20.00, HTSUS. CBP has determined that the tariff classification of the merchandise at issue in NY 893829 and NY N249028 is incorrect.

CBP is revoking NY N301485, NY 893829 and NY N249028 pursuant to the analysis set forth below.

FACTS:

In NY N301485, CBP classified a snowplow blade designed for use as a forklift attachment (Model F18, Part #100344) under subheading 8431.20.00, HTSUS. The blade features a hardened cutting edge, mast safety chain and hook and pull pin blade angle adjustment (40° bi-directional angling). The blade measures 84” L x 74” W x 21” H and weighs 525 lbs. It is described on the manufacturer’s website as designed to “clear snow quickly, easily and affordably by converting your forklift into a snow plow.” The website describes the blade as engineered for “optimal snow roll and curl for maximum productivity.” See <https://viking-west.com/products/snow-blades/> (site last visited November 7, 2024).

In NY 893829, CBP classified an article described as a “Pallet Saver” under subheading 8431.20.00, HTSUS. The “Pallet Saver” is made of carbon steel in the shape of an inverted T and attaches to the fork frame that moves up and down the mast of a fork-lift truck. It mounts between the regular forks. The “Pallet Saver” only comes into contact with a wood pallet’s more durable central wood stringer, thereby preventing forks from making contact with and possibly damaging the pallet’s thinner deck boards.

In NY N249028, CBP classified a “Magnetic Fork Cover” (DAGS Part Number 6538264) under subheading 8431.20.00, HTSUS. The article is designed to cover forklift forks and provide added grip and anti-slip function-

ality to increase the stability of loads. The cover is a composite good constructed of an upper layer of 70 durometer black rubber, an inner core of iron and a bottom magnetic layer measuring approximately 1/16". The rubber component adds grip and the magnet layer is designed to hold the cover onto metal forks.

ISSUE:

What is the proper classification of the subject forklift attachments?

LAW AND ANALYSIS:

Classification under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods will be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. If 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 will then be applied in order.

The following 2024 HTSUS headings are under consideration:

- 4016 Other articles of vulcanised rubber other than hard rubber.
- 7326 Other articles of iron or steel:
- 8430 Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snowplows and snowblowers.
- 8431 Parts suitable for use solely or principally with the machinery of headings 84.25 to 84.30.
- 8505 Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof."

The merchandise at issue in NY N301485, NY 893829 and NY N249028 was classified under subheading 8431.20.00, HTSUS, as forklift truck parts. Heading 8431, HTSUS, does not cover forklift accessories. Therefore, the threshold determination is whether the instant attachments should be considered as parts or accessories.

The courts have examined the meaning of "parts" for purposes of classification under the HTSUS, resulting in two distinct, though not inconsistent, tests. See *Bauerhin Technologies Limited Partnership*, and *John V. Carr & Sons Inc., v. United States*, 110 F.3d 774 (Fed. Cir. 1997), citing *United States v. Willoughby Camera Stores, Inc.*, 21 C.C.P.A. 322 (1933), and *United States v. Pompeo*, 43 C.C.P.A. 9 (1955). In *Bauerhin*, citing *Willoughby Camera*, the court held that "the mere fact that two articles are designed and constructed to be used together, does not necessarily make either a part of the other" and that the threshold question is whether an item "is an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article." *Willoughby Camera*, 21 C.C.P.A. at 324. In *United States v. Pompeo*, the court stated that an imported item dedicated solely for use with another article is a part of that article provided that, when applied to that use, the article will not function without it. *Pompeo*, 43 C.C.P.A. at 14.

The term "accessory" is not defined in the tariff. This office has previously held that the term "accessory" is generally understood to mean an article that

must directly contribute to the effectiveness of the principal article (*e.g.*, facilitate the use or handling of the principal article, widen the range of its uses, or improve its operation). See HQ 301594, dated December 18, 2018; HQ 958710, dated April 8, 1996; and, HQ 950166, dated November 8, 1991. CBP employs the common and commercial meaning of the term “accessory” as prescribed by the court in *Rollerblade, Inc. v. United States*, 116 F.Supp. 2d 1247 (Ct. Int’l Trade 2000), *aff’d*, 282 F.3d 1349 (Fed. Cir. 2002), where the court held that an accessory must relate directly to the thing accessorized. See *Rollerblade, Inc. v. United States*, 116 F.Supp. 2d 1247 (Ct. Int’l Trade 2000), *aff’d*, 282 F.3d 1349 (Fed. Cir. 2002).

On the basis of the foregoing, CBP generally will consider an article to be a part if it is an integral constituent or component without which the article to which it is joined could not function. CBP generally will consider an article to be an accessory if it facilitates use or handling or widens the range of uses or improved the operation of the main article.

While the attachments at issue in NY N301485, NY 893829 and NY N249028 are for use solely or principally with forklift trucks of heading 8427, HTSUS, they are not essential to a forklift’s normal operation and are therefore not parts. Rather, the subject attachments are optional devices that mount or attach to a forklift to expand its range of operations (*i.e.*, the blade attachment in NY N301485 allows a forklift to plow snow) or facilitate or enhance its use (*i.e.*, the “PalletSaver” at issue in NY 893829 enables the forklift to protect wood pallets and the magnet cover at issue in NY N249029 enhances a forklift’s ability to secure loads). As such, the articles at issue in NY N301485, NY 893829 and NY N249028 are forklift accessories. As heading 8431, HTSUS, provides for parts, and does not provide for accessories, the attachments at issue in NY N301485, NY 893829 and NY N249028 are not covered by heading 8431, HTSUS.

The snowplow blade attachment at issue in NY N301485 is classified in subheading 8430.20.00, HTSUS, which provides for, in pertinent part, “snowplows and snowblowers.” See Explanatory Note (II) to 84.30, which provides that this heading covers blade type snowplows designed to be pushed, *e.g.* “those designed to be attached to lorries or tractors.”¹

The “PalletSaver” forklift attachment at issue in NY 893829 is not covered by heading 8431, HTSUS, of Section XVI, nor is it more specifically provided for in any other heading of the tariff. Therefore, classification is not precluded by Section XV Note 1(f) which excludes articles of Section XVI and the carbon steel “PalletSaver” is classified under heading 7326, HTSUS, specifically subheading 7326.90.86, HTSUS, which provides for “[O]ther articles of iron or steel: Other: Other: Other: Other.”

The “Magnetic Fork Cover” at issue in NY N249029 is a composite article comprised of neoprene rubber, iron and a magnetic layer. Its upper layer and molded edges are of black neoprene rubber that provides enhanced anti-slip and grip functionality to forklift forks. The cover features an inner core of iron and a bottom magnetic layer that secures the cover to the metal forklift forks. As a composite article, the subject fork cover is classified pursuant to

¹ In understanding the language of the HTSUS, the Explanatory Notes of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the HTSUS at the international level, may be utilized. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

GRI 3(b) that directs that composite goods are classified according to the component that gives the goods their essential character. EN VIII to GRI 3(b) explains that 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 the use of the goods.” In examining which constituent material imparts the essential character to the subject fork cover, we look to their role in relation to the use of the good. While the iron component provides rigidity, and the magnetic component serves to enable the cover to adhere to the forks, it is the rubber component that performs the intended purpose of the subject fork cover which is to enhance the stabilization and security of forklift loads by adding a grip and anti-slip functionality. Therefore, the rubber constituent material imparts the essential character to the subject article and, pursuant to GRI 3(b), the “Magnetic Fork Covers” are classified under heading 4016, specifically subheading 4016.99.60, HTSUS, which provides for “[O]ther articles of vulcanized rubber other than hard rubber: Other: Other: Other: Other.”

HOLDING:

By application of GRIs 1 and 6, the snowplow blade forklift attachment at issue in NY N301485 is classified in heading 8430, specifically subheading 8430.20.00, HTSUS, which provides for “[O]ther moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snowplows and snowblowers: snowplows and snowblowers.” The applicable rate of duty is free.

By application of GRIs 1 and 6, the “PalletSaver” at issue in NY 893829 is classified in heading 7326, specifically subheading 7326.90.86, HTSUS, which provides for “[O]ther articles of iron or steel: Other: Other: Other: Other.” The applicable rate of duty is 2.9% *ad valorem*.

By application of GRIs 1, 3(b) and 6, the “Magnetic Fork Cover” at issue in NY N249028 is classified under heading 4016, specifically subheading 4016.99.60, HTSUS, which provides for “[O]ther articles of vulcanized rubber other than hard rubber: Other: Other: Other: Other: Other.” The applicable rate of duty is 2.5% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N301485, dated November 27, 2018, NY 893829, dated February 7, 1994, and NY N249028, dated February 3, 2014, are hereby REVOKED.

Sincerely,

YULIYA A. GULIS,
Director

Commercial and Trade Facilitation Division

CC:

Mr. Richard Lee
DuBose Trading Company, Inc.
PO Box 819
906 Industrial Drive
Clinton, NC 28328

Mr. Steven R Keller
Cascade Corporation
2201 NE 201st Avenue
Fairview, OR 97024

**PROPOSED MODIFICATION OF ONE RULING LETTER
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF CUB
CADET UTILITY VEHICLES**

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

ACTION: Notice of proposed modification of one ruling letter and proposed revocation of treatment relating to the tariff classification of Cub Cadet Utility Vehicles.

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 concerning tariff classification of Cub Cadet Utility Vehicles under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before December 27, 2024.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon L. Stillwell, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229-1177. CBP is also allowing commenters to submit electronic comments to the following email address: 1625Comments@cbp.dhs.gov. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon L. Stillwell at (202) 325-0739.

FOR FURTHER INFORMATION CONTACT: Michael F. Thompson, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325-1917.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public 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 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of Cub Cadet Utility Vehicles. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N309547, dated March 3, 2020 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N309547, CBP classified Cub Cadet Utility Vehicles in heading 8704, HTSUS, specifically in subheading 8704.31.00, HTSUS, which provides for "Motor vehicles for the transport of goods: Other, with spark-ignition internal combustion piston engine: G.V.W. not exceeding 5 metric tons: G.V.W. not exceeding 2.5 metric tons." CBP has reviewed NY N309547 and has determined the ruling letter to be

in error. It is now CBP's position that Cub Cadet Utility Vehicles are properly classified, in heading 8703, HTSUS, specifically in subheading 8703.21.01, HTSUS, which provides for "Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars: Other vehicles, with only spark-ignition internal combustion piston engines: Of a cylinder capacity not exceeding 1,000 cc."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N309547 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H339953, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

N309547

March 3, 2020

CLA-2 OT:RR:NC:N2:201

CATEGORY: Classification, Origin

TARIFF NO.: 8704.31.0020; 9903.88.01

MICHELLE M. KLEIN
MTD CONSUMER GROUP INC.
5903 GRAFTON ROAD
VALLEY CITY, OH 44280

RE: The country of origin of utility vehicles

DEAR Ms. KLEIN:

This is in response to your letter dated February 5, 2020, requesting a ruling on the origin of imported Utility Vehicles.

The item under consideration has been identified as the MTD Cub Cadet, a 4-wheeled, utility vehicle powered by a 546cc spark-ignition internal combustion engine. The vehicle is equipped with two (2) bucket seats and an open rear cargo bed with a 500lb payload capacity. The vehicle measures 118 inches by 61.75 inches by 76.75 inches, and weighs approximately 1,456lbs.

You state these vehicles will be imported to the United States from Vietnam after assembly in Vietnam as part of a knock down operation. You request that the vehicles should be classifiable under subheadings 8703.21.0150, Harmonized Tariff Schedule of the United States (“HTSUS”).

This office disagrees.

Classification of goods in the HTSUS is governed by the General Rules of Interpretation (GRIs). GRI 1. states “ ... classification shall be determined according to the terms of the headings” Heading 8704.31 provides for, “Motor vehicles for the transport of goods: Other, with spark-ignition internal combustion piston engine: G.V.W. not exceeding 5 metric tons”.

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and the GRIs. The ENs to 87.04 state in part:

The following features are indicative of the design characteristics generally applicable to the vehicles which fall in this heading:

- a) Presence of bench-type seats without safety equipment (e.g., safety seat belts or anchor points and fittings for installing safety seat belts) or passenger amenities in the rear area behind the area for the driver and front passengers. Such seats are normally fold-away or collapsible to allow full use of the rear floor (van-type vehicles) or a separate platform (***pick-up vehicles***) for the transport of goods;
- b) Presence of a separate cabin for the driver and passengers and a separate ***open platform with side panels and a drop-down tailgate (pick-up vehicles)***;
- c) Absence of rear windows along the two side panels; presence of sliding, swing-out or lift-up door or doors, without windows, on the side panels or in the rear for loading and unloading goods (van-type vehicles);

- d) Presence of a permanent panel or barrier between the area for the driver and front passengers and the rear area;
- e) Absence of comfort features and interior finish and fittings in the cargo bed area which are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays).

General Note 3. (h) (vi) to the HTSUS states “... a reference to “headings” encompasses subheadings indented thereunder.”

The applicable classification subheading for the Cub Cadet Brand utility vehicle will be 8704.31.0020, HTSUS, which provides for “Motor vehicles for the transport of goods: Other, with spark-ignition internal combustion piston engine: G.V.W. not exceeding 5 metric tons: G.V.W. not exceeding 2.5 metric tons”. The general rate of duty will be 25% ad valorem.

As for the country of origin of the subject utility vehicle, based on the information provided, *all* the components and subassemblies of this vehicle are of Chinese origin. The components and subassemblies will then be shipped to Vietnam for final assembly.

You provided an illustration of the knock down components. The final vehicle assembly will take place in Vietnam where you claim that the operation will result in a new and different article of commerce.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such a manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The regulations implementing the requirements and exception to 19 U.S.C. § 1304 are set forth in Part 134, U.S. Customs and Border Protection Regulations (19 C.F.R. Part 134).

19 C.F.R. § 134.1(b) provides as follows:

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

When determining the country of origin for purposes of applying current trade remedies under Section 301, the substantial transformation analysis is applicable. The test for determining whether a substantial transformation has occurred is whether an article emerges from a process with a new name, character, or use, different from that possessed by the articles prior to processing. See *Texas Instruments Inc. v. United States*, 69 C.C.P.A. 151 (1982). This determination is based on the totality of the evidence. See *National Hand Tool Corp. v. United States*, 16 C.I.T. 308 (1992), *aff’d*, 989 F.2d 1201 (Fed. Cir. 1993).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 573 F. Supp. 1149 (Ct. Int’l Trade 1983), *aff’d*, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97.

If the manufacturing or combining process is a minor one which leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 C.I.T. 220, 542 F. Supp. 1026 (1982), *aff'd* 702 F.2d 1022 (Fed. Cir. 1983).

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

In *Energizer Battery, Inc. v. United States*, 190 F. Supp. 3d 1308 (2016), the Court of International Trade (“CIT”) interpreted the meaning of “substantial transformation.” *Energizer* involved the determination of the country of origin of a flashlight, referred to as the Generation II flashlight. All of the components of the Generation II flashlight were of Chinese origin, except for a white LED and a hydrogen getter. The components were imported into the United States where they were assembled into the finished Generation II flashlight.

The court reviewed the “name, character and use” test utilized in determining whether a substantial transformation has occurred and noted, citing *Uniroyal, Inc. v. United States*, 3 C.I.T. at 226, 542 F. Supp. at 1031, *aff'd*, 702 F.2d 1022 (Fed. Cir. 1983), that when “the post-importation processing consists of assembly, courts have been reluctant to find a change in character, particularly when the imported articles do not undergo a physical change.” *Energizer* at 1318. In addition, the court noted that “when the end-use was pre-determined at the time of importation, courts have generally not found a change in use.” *Energizer* at 1319, citing as an example, *National Hand Tool Corp. v. United States*, 16 C.I.T. 308, 310, *aff'd*, 989 F.2d 1201 (Fed. Cir. 1993).

In HQ H118435, the U.S. was determined to be the country of origin for purposes of U.S. Government procurement for a line of electric golf and recreational vehicles. In that case, the chassis, plastic body parts, and various miscellaneous pieces of plastic trim were imported into the U.S. from China and assembled with U.S.-origin battery packs, motors, electronics, wiring assemblies, seats, and chargers. The vehicles were composed of approximately 53 to 62 components, of which between 12 and 17 were of U.S. origin. HQ H118435 held that none of the imported parts could function as an electric vehicle on their own and needed to be assembled with other necessary U.S. components. Additionally, it was held that given the complexity and duration of the U.S. manufacturing process, the operations were more than mere assembly. It was determined that a substantial transformation occurred, and further, the critical components to making an electric vehicle – battery pack, motor, electronics, wiring assemblies, and charger – were of U.S.-origin.

In HQ H302821, CBP found that components and subassemblies made in China and assembled into a passenger vehicle in Sweden had a pre-determined end-use and did not undergo a change in use due to the assembly

process. Accordingly, CBP found that the articles imported were not substantially transformed as a result of the assembly operations performed in Sweden.

In the instant case, all the components and subassemblies are manufactured in China. The subassemblies and other components from China will then be assembled into the utility vehicle in Vietnam. In this case, the complex assembly process occurs when producing the subassemblies in China. With respect to the final assembly, we find the manufacturing processes of the subassemblies in Vietnam do not rise to the level of complex processes necessary for a substantial transformation to occur. Further, the components and subassemblies from China have a pre-determined end-use and do not undergo a change in use due to the assembly process in Vietnam. Accordingly, we find that based on the information provided, the subassemblies and the foreign parts that are imported to Vietnam are not substantially transformed as a result of the assembly operations performed in Vietnam.

Based on the facts presented, it is the opinion of this office that the country of origin of the subject utility vehicles is China for marking and origin purposes.

Being that the utility vehicle has been determined to be from China, products of China classified under subheading 8704.31.0020, HTSUS, unless specifically excluded, are subject to the additional 25 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.01, in addition to subheading 8704.31.0020, HTSUS, listed above. See U.S. Note 20 to Subchapter III, Chapter 99, HTSUS.

The HTSUS is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Note cited above and the applicable Chapter 99 subheading. For background information regarding the Section 301 trade remedy, you may refer to the relevant parts of the USTR and CBP websites, which are available at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions> and <https://www.cbp.gov/trade/remedies/301-certain-products-china>, respectively.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR Part 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 Matthew Sullivan at (646) 733-3013.

Sincerely,

STEVEN A. MACK

Director

National Commodity Specialist Division

HQ H339953
OT:RR:CTF:EMAIN H339953 MFT
CATEGORY: Classification
TARIFF NO.: 8703.21.01

MS. MARILYN-JOY CERNY
SANDLER, TRAVIS & ROSENBERG, P.A.
5835 WATERFORD DISTRICT DRIVE, SUITE 200
MIAMI, FL 33126

Re: Modification of NY N309547; Classification of the Cub Cadet Utility Vehicles

DEAR MS. CERNY:

This letter is in response to your request, dated June 18, 2024, and filed on behalf of your client MTD Consumer Group, Inc. (MTD), for the modification of New York Ruling Letter (NY) N309547, issued on March 3, 2020, in which U.S. Customs and Border Protection (CBP) classified a certain four-wheeled utility vehicle under heading 8704 of the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N309547 and determined that its reasoning is in error considering additional information you provided on the subject merchandise. Accordingly, for the reasons set forth below, CBP is modifying NY N309547.

FACTS:

The pertinent facts of NY N309547 are as follows:

The item under consideration has been identified as the MTD Cub Cadet, a 4-wheeled, utility vehicle powered by a 546cc spark-ignition internal combustion engine. The vehicle is equipped with two (2) bucket seats and an open rear cargo bed with a 500lb payload capacity. The vehicle measures 118 inches by 61.75 inches by 76.75 inches, and weighs approximately 1,456lbs.

You clarify that MTD's underlying application for a binding ruling on the Cub Cadet referenced four models not mentioned in NY N309547. These models are the M 550, MX 550, M 750, and MX 750. The "M" and "MX" designations signify different packages for standard features. You indicate that the "M" models have fewer features that come standard than the "MX" models. Additionally, the "550" and "750" designations reflect the models' approximate engine displacement. The M 550 and MX 550 have 546cc engines, while the M 750 and MX 750 have 735cc engines. You indicate that each model at issue was designed and equipped with certain structural and auxiliary features that come standard.

The standard structural features include:

- (1) a rollover protection structure, including bars designed for driver and passenger safety;
- (2) three-way adjustable suspension systems to enhance traction and driver and passenger comfort on trails;
- (3) steel skid plates to prevent sticks or other debris from puncturing the floor of the passenger compartment and allow the vehicles to slide over rocks or other debris;

- (4) partial or full doors for driver and passenger hip and shoulder retention while riding on rough terrain;
- (5) front, or front and rear, lockable differentials for increased traction in offroad conditions;
- (6) three-way adjustable shocks for better traction and comfort on off-road terrain;
- (7) front and rear sway bars to keep the vehicles from pitching and rolling while driving at speed over rough terrain;
- (8) paint, wiring, fuse boxes, seat fabric, and seat stitching designed to withstand pressure washing after muddy trail rides;
- (9) low-pressure 26-inch tires with offroad and trail tread patterns to help grip uneven terrain;
- (10) on-demand four-wheel drive for enhanced offroad traction;
- (11) front suspension with nine inches of travel and a rear suspension with eight inches of travel to maintain ground contact while traveling at speed over uneven ground;
- (12) multi-ply tires to prevent punctures on rough terrain;
- (13) seventy-six-inch wheelbase for stability on uneven terrain and slopes;
- (14) between 11.6 and 13 inches of ground clearance to traverse debris-strewn trails; and
- (15) specially positioned air intakes to prevent drawing dust and dirt into the engine and enhance fording capabilities.

The standard auxiliary features include:

- (1) an ergonomic foam seating specifically designed to provide a comfortable ride and lumbar support for the driver and passenger;
- (2) specially located and designed permanent, three-point safety belts for the driver and passenger;
- (3) sensors which limit vehicle speed to 15 mph if the driver's safety belt is not buckled;
- (4) cupholders for the driver and passenger's convenience;
- (5) glove box and front storage to store personal effects;
- (6) twelve-volt power outlet for charging passenger electronics such as smartphones;
- (7) noise dampening ducts and engine isolation for a quieter and more comfortable ride; and
- (8) compatibility with optional passenger-oriented add-ons, including soundbars, cabin heaters, full doors, windshields, lighting, and grab bars.

Additionally, the MX models of the Cub Cadet include power steering, head restraints, a front-mounted winch, finished lower doors, and a roof. You further indicate that the Cub Cadet was designed primarily "for offroad

recreational riding, transporting passengers for outdoor activities such as camping, hunting, and fishing, and for occasional outdoor work.”

CBP classified the Cub Cadet utility vehicles under heading 8704, HTSUS, specifically subheading 8704.31.00, HTSUS, which provides for, “Motor vehicles for the transport of goods: Other, with spark-ignition internal combustion piston engine: G.V.W. not exceeding 5 metric tons: G.V.W. not exceeding 2.5 metric tons.” You argue that the subject merchandise is properly classified under heading 8703, HTSUS, specifically subheading 8703.21.01, HTSUS, which provides for “Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars: Other vehicles, with only spark-ignition internal combustion piston engines: Of a cylinder capacity not exceeding 1,000 cc.”

ISSUE:

Whether the subject Cub Cadet utility vehicles are classified under heading 8703, HTSUS, as “other motor vehicles principally designed for the transport of persons,” or under heading 8704, HTSUS, as “motor vehicles for the transport of goods.”

LAW AND ANALYSIS:

Classification under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods will 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 will then be applied in order.

The 2024 HTSUS headings under consideration are as follows:

8703 Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars:

* * * * *

8704 Motor vehicles for the transport of goods:

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings.¹

Whether a motor vehicle is principally designed for the transport of persons, goods, or equally designed for transport of both persons and goods, is a fact-intensive inquiry decided on a case-by-case basis. The Court of Appeals for the Federal Circuit explored this inquiry in *Marubeni America Corp. v. United States*:

By the express language of 8703, “motor vehicle principally designed for the transport of persons,” it is clear that the vehicle must be designed “more” for the transport of persons than goods. *Webster’s Third New International Dictionary of the English Language*, Unabridged (1986)

¹ See T.D. 89–80, 54 Fed. Reg. 35127, 35127–28 (Aug. 23, 1989).

defines “principally” as “in the chief place, chiefly;” and defines “designed” as “done by design or purposefully opposed to accidental or inadvertent; intended, planned.” Thus, if the vehicle is equally designed for the transport of goods and persons, it would not be properly classified under 8703, HTSUS. There is nothing in the legislative history that indicates a different meaning. [. . .]

While we find it unnecessary to assign a quantitative value to “principally,” the statutory language is clear that a vehicle’s intended purpose of transporting persons must outweigh an intended purpose of transporting goods. To make this determination, we find that both the structural and auxiliary design features must be considered. This construction comports with Customs’ interpretations and the CIT’s analysis; and it is equally consistent with the common and popular meaning of the terms.²

More recently, the Federal Circuit stated in *Ford Motor Co. v. United States* that “heading 8703 is an *eo nomine* provision for which consideration of use is appropriate because HTSUS Heading 8703 inherently suggests looking to intended use.”³ We thus consider *Marubeni* and *Ford* together as standing for the principle that a motor vehicle of heading 8703, HTSUS, must be designed “more” for the transport of persons than goods”, “even if they are equally designed for the transport of persons and goods, [such vehicles] will fall under heading 8704, HTSUS.”⁴

With further regard to this inquiry, CBP has previously noted the following:

The determination whether a vehicle is primarily for the transport of goods or persons is a fact-intensive issue that relies heavily on the presence or absence of certain features in a vehicle. This analysis has been consistently applied in prior CBP rulings spanning a wide range of vehicles. HQ H268649 (Aug. 14, 2016) (Muck-Truck Pedestrian Dumper); NY N304428 (May 29, 2019) (1994 Land Rover Defender); NY N287720 (June 30, 2017) (electric trucks); NY N285120 (April 11, 2017) (EV2plus+ Mini Car, and an EV4plus+ Mini Car); NY L85735 (June 29, 2005) (golf-cart style “dumper” vehicle). Additionally, we are mindful that the courts have instructed us that if a vehicle is equally designed for transport of both passengers and goods, it cannot be classified under heading 8703, HTSUS. *Marubeni*, 35 F.3d at 534. Finally, we also consider intended use of the vehicle when determining whether it should be classified in heading 8703, HTSUS.⁵

We additionally emphasize that this inquiry is subject to the facts *as they are described to CBP*. As such, the determination reached in one inquiry may not necessarily apply to another transaction, thus the specific facts supporting the structural and auxiliary features exhibited by a motor vehicle will govern

² *Marubeni Am. Corp. v. United States*, 35 F.3d 530, 534–35 (Fed. Cir. 1994).

³ See *Ford Motor Co. v. United States*, 926 F.3d 741, 753 (Fed. Cir. 2019).

⁴ See Headquarters Ruling Letter (HQ) H318061 (May 23, 2023) (classification of Nissan “S-Cargo” vans).

⁵ *Id.*

the disposition of the merchandise.⁶ The ENs to headings 8703 and 8704, HTSUS, offer some guidance as to the structural and auxiliary features that are generally applicable to vehicles classified under the respective headings.

The EN to heading 8703, HTSUS, provides in pertinent part:

The classification of certain motor vehicles in this heading is determined by certain features which indicate that the vehicles are principally designed for the transport of persons rather than for the transport of goods (heading 87.04). These features are especially helpful in determining the classification of motor vehicles which generally have a gross vehicle weight rating of less than 5 tonnes and which have a single enclosed interior space comprising an area for the driver and passengers and another area that may be used for the transport of both persons and goods. Included in this category of motor vehicles are those commonly known as “multipurpose” vehicles (e.g., van-type vehicles, sports utility vehicles, certain pick-up type vehicles). The following features are indicative of the design characteristics generally applicable to the vehicles which fall in this heading:

- (a) Presence of permanent seats with safety equipment (e.g., safety seat belts or anchor points and fittings for installing safety seat belts) for each person or the presence of permanent anchor points and fittings for installing seats and safety equipment in the rear area behind the area for the driver and front passengers; such seats may be fixed, fold-away, removable from anchor points or collapsible;
- (b) Presence of rear windows along the two side panels;
- (c) Presence of sliding, swing-out or lift-up door or doors, with windows, on the side panels or in the rear;
- (d) Absence of a permanent panel or barrier between the area for the driver and front passengers and the rear area that may be used for the transport of both persons and goods;
- (e) Presence of comfort features and interior finish and fittings throughout the vehicle interior that are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ash-trays).

The EN to heading 8704, HTSUS, provides in pertinent part:

The classification of certain motor vehicles in this heading is determined by certain features which indicate that the vehicles are designed for the transport of goods rather than for the transport of persons (heading 87.03). These features are especially helpful in determining the classification of motor vehicles, generally vehicles having a gross vehicle weight rating of less than 5 tonnes, which have either a separate closed rear area or an open rear platform normally used for the transport of goods, but may have rear bench-type seats that are without safety seat belts, anchor

⁶ “Each ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling letter by a Customs Service field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the ruling was based.” See 19 C.F.R. § 177.9(b).

points or passenger amenities and that fold flat against the sides to permit full use of the rear platform for the transport of goods. Included in this category of motor vehicles are those commonly known as “multipurpose” vehicles (e.g., van-type vehicles, pick-up type vehicles and certain sports utility vehicles). The following features are indicative of the design characteristics generally applicable to the vehicles which fall in this heading:

- (a) Presence of bench-type seats without safety equipment (e.g., safety seat belts or anchor points and fittings for installing safety seat belts) or passenger amenities in the rear area behind the area for the driver and front passengers. Such seats are normally fold-away or collapsible to allow full use of the rear floor (van-type vehicles) or a separate platform (pick-up vehicles) for the transport of goods;
- (b) Presence of a separate cabin for the driver and passengers and a separate open platform with side panels and a drop-down tailgate (pick-up vehicles);
- (c) Absence of rear windows along the two side panels; presence of sliding, swing-out or lift-up door or doors, without windows, on the side panels or in the rear for loading and unloading goods (van-type vehicles);
- (d) Presence of a permanent panel or barrier between the area for the driver and front passengers and the rear area;
- (e) Absence of comfort features and interior finish and fittings in the cargo bed area which are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays).

Based on the structural and auxiliary features of the subject Cub Cadet vehicles, we find that the merchandise is properly classified as one primarily designed for the transportation of passengers, not goods, and is thus classifiable under heading 8703, HTSUS, by application of GRI 1. The vehicles in this case share many of the design characteristics described in the EN to heading 8703, HTSUS, that are applicable to vehicles classifiable under that heading. For example, the subject merchandise includes safety features such as permanent, three-point safety belts for the driver and passenger, sensors that limit the vehicle speed to 15 mph if the driver’s safety belt is not buckled, and a rollover protection structure and bars. Each of these physical characteristics indicate that driver and passenger safety are a significant concern. Driver and passenger comfort was also prioritized in the Cub Cadet’s design, as evinced by the several comfort features and finishings such as the three-way adjustable suspension system, ergonomic foam seating with lumbar support, cupholders, glove box, and twelve-volt power outlet. Although individually, none of these may be determinative, when taken as a whole, these physical characteristics all demonstrate that the utility vehicles under consideration are primarily used for the transport of persons, and the facts indicate with particularity its fitness for use in transporting persons for offroad recreational activities. As such, the subject Cub Cadet utility vehicles are properly classified under heading 8703, HTSUS, as a motor vehicle principally for the transport of persons.

HOLDING:

By application of GRIs 1 and 6, the subject Cub Cadet utility vehicles are classified under heading 8703, HTSUS, specifically subheading 8703.21.01, HTSUS, which provides for, “Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars: Other vehicles, with only spark-ignition internal combustion piston engines: Of a cylinder capacity not exceeding 1,000 cc.” The general column one rate of duty is 2.5 percent ad valorem.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 8703.21.01, HTSUS, unless specifically excluded, are subject to an additional 2.5 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.01, in addition to subheading 8703.21.01, HTSUS, listed above.

The HTSUS is subject to periodic amendment, so you should exercise reasonable care in monitoring the status of goods covered by the Note cited above and the applicable Chapter 99 subheading. For background information regarding the trade remedy initiated pursuant to Section 301 of the Trade Act of 1974, including information on exclusions and their effective dates, you may refer to the relevant parts of the USTR and CBP websites, which are available at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions> and <https://www.cbp.gov/trade/remedies/301-certain-products-china>, respectively.

EFFECT ON OTHER RULINGS:

CBP Ruling NY N309547 is hereby MODIFIED.

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

Sincerely,

YULIYA A. GULIS,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OR REVOCATION OF NINE
RULING LETTERS AND PROPOSED REVOCATION OF
TREATMENT RELATING TO THE APPLICABILITY OF
SUBHEADING 9817.00.96, HTSUS, TO EXTERNAL
DEFIBRILLATORS AND EXTERNAL DEFIBRILLATOR
COMPONENTS**

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

ACTION: Notice of proposed modification or revocation of nine ruling letters and proposed revocation of treatment relating to the applicability of subheading 9817.00.96, Harmonized Tariff Schedule of the United States (HTSUS) to certain external defibrillator and external defibrillator components.

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 or revoke nine ruling letters concerning the applicability of subheading 9817.00.96, HTSUS, to certain external defibrillators and external defibrillator cases and components. Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before December 27, 2024.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon L. Stillwell, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: 1625Comments@cbp.dhs.gov. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon L. Stillwell at (202) 325–0739.

FOR FURTHER INFORMATION CONTACT: Teresa M. Frazier, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0139.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public 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 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify or revoke nine ruling letters pertaining to the applicability of subheading 9817.00.96, HTSUS, to certain external defibrillators and external defibrillator parts. Although in this notice, CBP is specifically referring to Headquarters Ruling Letters ("HQ") 563109, dated October 19, 2004 (Attachment A); HQ 563125, dated December 27, 2004 (Attachment B); New York Ruling Letter ("NY") N011491, dated June 19, 2007 (Attachment C); NY I80189, dated April 15, 2002 (Attachment D); NY N071646, dated September 10, 2009 (Attachment E); NY N075840, dated September 25, 2009 (Attachment F); NY N234669, dated November 19, 2012 (Attachment G); NY N263755, dated May 1, 2015 (Attachment H); and NY N302256, dated March 6, 2019 (Attachment I), this notice also covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified. 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 the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise

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

In HQ 563109, NY N011491, NY I80189, NY N071646, and NY N302256, CBP found external defibrillator carrying cases eligible for subheading 9817.00.96, HTSUS, treatment as articles specially designed for the use or benefit of the handicapped. In HQ 563125, CBP found that an AC/DC power adapter and battery pack charger specially designed for a LIFEPAK 12, an advanced resuscitation portable device, was eligible for subheading 9817.00.96, HTSUS, treatment. In NY N075840, and NY N263755, CBP found external chest compression systems eligible for subheading 9817.00.96, HTSUS, treatment. In NY N234669, CBP also found a printed circuit board assembly for a LIFEPAK series external defibrillator eligible for subheading 9817.00.96, HTSUS, treatment. The rulings were mainly based on HQ 563109, which relied on HQ 556243, dated December 2, 1991, and HQ 557302, dated March 17, 1993, pertaining to internal defibrillator pacemakers. It is now CBP's position that external defibrillators are not eligible for subheading 9817.00.96, HTSUS, treatment, and that any components or cases for use with such defibrillators are also not eligible for such treatment.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify or revoke these rulings and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in HQ H331366, set forth as Attachment J to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

HQ 563109

October 19, 2004

CLA-2 RR:CR:SM 563109 KSG

CATEGORY: Classification

TARIFF NO.: 9817.00.96

MARGARET R. POLINO, Esq.
NEVILLE PETERSON LLP
17 STATE STREET- 19TH FLOOR
NEW YORK, NY 10004

RE: Eligibility of defibrillator cases for duty-free treatment under subheading 9817.00.96; Nairobi Protocol; articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped

DEAR MS. POLINO:

This is in reference to your letter dated August 31, 2004, requesting a binding ruling on behalf of Medtronic, Inc., on the eligibility for duty-free treatment under subheading 9817.00.96, of the Harmonized Tariff Schedule of the United States (“HTSUS”), of imported defibrillator cases. You submitted two samples for our examination.

FACTS:

The defibrillator cases (“cases”) are made in China and are made of polyester fabric. The dimensions of the cases correspond to the shape of automated external defibrillators they are designed to carry. One sample case has a special side opening to access the battery. This case also features an inside pocket to store electrodes and cables. The other sample has a velcro layer on the inside to secure the defibrillator in place.

The cases manufactured for Medtronic are sold only in conjunction with its sale of defibrillators.

ISSUE:

Whether the imported defibrillator cases are eligible for duty-free treatment under subheading 9817.00.96, HTSUS.

LAW AND ANALYSIS:

The Nairobi Protocol to the Agreement on the Importation of Educational, Scientific and Cultural Materials established duty-free treatment for certain articles for the use or benefit of the handicapped in addition to providing duty-free treatment for articles for the blind. The 97th Congress passed Pub. L. 97-446 to ratify the Nairobi Protocol in the U.S. The Senate stated in its Report that one of the goals of this law was to benefit the handicapped and show U.S. support for the rights of the handicapped. The Senate, however, did state that it did not intend “that an insignificant adaptation would result in duty-free treatment for an entire relatively expensive article... the modification or adaptation must be significant so as to clearly render the article for use by handicapped persons.” S. Rep. No. 97-564, 97th Cong. 2nd Sess. (1982). The Senate was concerned that persons would misuse this tariff provision to avoid paying duties on expensive products.

Section 1121 of the Omnibus Trade and Competitiveness Act of 1988 and Presidential Proclamation 5978 provided for the implementation of the Nai-

robi Protocol by inserting permanent provisions, subheadings 9817.00.92, 9817.00.94, and 9817.00.96 into the HTSUS. These tariff provisions specifically state that “articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons” are eligible for duty-free treatment.

U.S. Note 4(a), Chapter 98, HTSUS, states that the term “blind or other physically or mentally handicapped persons” includes any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

U.S. Note 4(b), chapter 98, HTSUS, states that subheadings 9817.00.92, 9817.00.94 and 9817.00.96 do not cover (i) articles for acute or transient disability; (ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled; (iii) therapeutic and diagnostic articles; or (iv) medicine or drugs.

Customs has previously held that a person suffering from arrhythmia or bradycardia is physically handicapped as that term is defined in U.S. Note 4(a) to Subchapter XVII. See Headquarters Ruling Letter (“HRL”) 556243, dated December 2, 1991, and HRL 557302, dated March 17, 1993, both rulings holding that defibrillator pacemakers are eligible for duty-free treatment under subheading 9817.00.96, HTSUS. Therefore, persons who suffer from irregular heart beats are considered handicapped within the meaning of U.S. Note 4(a).

The issue is whether the defibrillator cases are “specially designed or adapted” for the use or benefit of handicapped persons, which is required by the superior text in subheading 9817.00.96, HTSUS.

The meaning of the phrase “specially designed or adapted” has been decided on a case-by-case basis. In HRL 556449, dated May 5, 1992, Customs set forth factors it would consider in making this case-by-case determination. These factors include: 1) the physical properties of the article itself, *i.e.*, whether the article is easily distinguishable, by properties of the design, form, and the corresponding use specific to this unique design, from articles useful to non-handicapped persons; 2) whether any characteristics are present that create a substantial probability of use by the chronically handicapped so that the article is easily distinguishable from articles useful to the general public and any use thereof by the general public is so improbable that it would be fugitive; 3) whether articles are imported by manufacturers or distributors recognized or proven to be involved in this class or kind of articles for the handicapped; 4) whether the articles are sold in specialty stores which serve handicapped individuals; and 5) whether the condition of the articles at the time of importation indicates that these articles are for the handicapped.

Customs suggested in HRL 965620, dated September 5, 2002, that imported defibrillator cases might be eligible for duty-free treatment under subheading 9817.00.096, HTSUS, but did not making a finding because there was insufficient information presented. Based on the special design of the samples submitted (the dimensions, special side opening to access the battery, an inside pocket to store electrodes and cables, a Velcro layer on the inside to secure the defibrillator in place), we find that the defibrillator cases submitted are “specially designed or Adapted and would be eligible for duty-free treatment under subheading 9817.00.96, HTSUS.

HOLDING:

The imported defibrillator cases are specially designed or adapted for the use or benefit of handicapped persons and are eligible for duty-free treatment under subheading 9817.00.96, HTSUS.

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

Sincerely,
MYLES B. HARMON,
Director
Commercial Rulings Division

ATTACHMENT B

HQ 563125

December 27, 2004

CLA-02 RR:CR:SM 563125 AL

Category: Classification

LAURA ROBERTS
EAGLE GLOBAL LOGISTICS
2151 AIRWEST BOULEVARD
PLAINFIELD, INDIANA 46168

RE: Eligibility of AC and DC Power Adapters for duty-free treatment under subheading 9817.00.96, HTSUS; Nairobi Protocol

DEAR MS. ROBERTS:

This is in response to your ruling request dated September 7, 2004, on behalf of Medtronic Physio-Control of Redmond, Washington (“Medtronic”), concerning the eligibility for duty-free treatment under subheading 9817.00.96, of the Harmonized Tariff Schedule of the United States (“HTSUS”), on AC and DC Power Adapters. A sample was submitted for our review.

FACTS:

According to your request, Medtronic is a domestic manufacturer of defibrillators, in particular, the Physio-Control LIFEPAK 12 defibrillator/monitor series (“LIFEPAK 12”). The LIFEPAK 12 is an advanced resuscitation portable device that is powered by an AC and DC power adapter that also charges the battery pack in the LIFEPAK 12. The AC and DC power adapters connect to the LIFEPAK 12 by a “short pigtail” and are also customized to fit in the carrying bag along with the LIFEPAK 12.

The AC and DC power adapter has two power outputs to the LIFEPAK 12. One of those outputs is for the main 12V source and the other for the battery charger output. The AC and DC power adapters have five normal operation modes for each of its two host battery wells: standby, charging, charge pending, ready and failed. The AC and DC power adapters function as a relay system between the battery pack in the LIFEPAK 12 and the user to indicate the mode or status of the battery pack’s function. For example, if two battery packs occupy the two host wells and the AC and DC power adapter is connected, then one battery well will default to the “charging” mode and the other battery well will default to “charge pending” mode, as it is set up by the charge sequence protocol. If the AC and DC power adapters detect a failure, the adapters will light the “service” light and send a “system fault” message and a “disconnect the batteries” message to the LIFEPAK 12.

You have stated in your request that the imported AC and DC power adapters have been engineered for exclusive use with the LIFEPAK 12 and cannot be used for other types of equipment.

LAW AND ANALYSIS:

The Nairobi Protocol to the Agreement on the Importation of Educational, Scientific and Cultural Materials established duty-free treatment for certain articles for the use or benefit of the handicapped in addition to providing duty-free treatment for articles for the blind. Section 1121 of the Omnibus Trade and Competitiveness Act of 1988 and Presidential Proclamation 5978

provided for the implementation of the Nairobi Protocol by inserting permanent provisions, subheadings 9817.00.92, 9817.00.94, and 9817.00.96 into the HTSUS. These tariff provisions specifically state that “articles specifically designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons” are eligible for duty-free treatment.

U.S. Note 4(a), Chapter 98, HTSUS, states that the term “blind or other physically or mentally handicapped persons” includes any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

U.S. Note 4(b), Chapter 98, HTSUS, states that subheadings 9817.00.92, 9817.00.94 and 9817.00.96 do not cover (i) articles for acute or transient disability; (ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled; (iii) therapeutic and diagnostic articles; or (iv) medicine or drugs.

U.S. Customs and Border Protection (“CBP”) has held that a person suffering from arrhythmia or bradycardia is physically handicapped as that term is defined in U.S. Note 4(a) to Subchapter XVII. *See* Headquarters Ruling Letter (“HRL”) 556243, dated December 2, 1991, and HRL 557302, dated March 17, 1993, both rulings held that defibrillator pacemakers are eligible for duty-free treatment under subheading 9817.00.96, HTSUS. Therefore, persons who suffer from irregular heartbeats are considered handicapped within the meaning of U.S. Note 4(a).

The issue is whether the AC and DC power adapters are “specially designed or adapted” for the use or benefit of handicapped persons, which is required under subheading 9817.00.96, HTSUS. The meaning of the phrase “specifically designed or adapted” has been decided on a case-by-case basis. In HRL 556449, dated May 5, 1992, CBP set forth factors it would consider in making this case-by-case determination. These factors include: 1) the physical properties of the article itself, i.e., whether the article is easily distinguishable, by properties of the design, form, and the corresponding use specific to this unique design, from articles useful to non-handicapped persons; 2) whether any characteristics are present that create a substantial probability of use by the chronically handicapped so that the article is easily distinguishable from articles useful to the general public and any use thereof by the general public is so improbable that it would be fugitive; 3) whether articles are imported by manufacturers or distributors recognized or proven to be involved in this class or kind of articles for the handicapped; 4) whether the articles are sold in specialty stores which serve handicapped individuals; and 5) whether the condition of the articles at the time of importation indicates that these articles are for the handicapped.

In HRL 563109, dated October 19, 2004, CBP determined that imported defibrillator cases are specially designed or adapted for the use or benefit of handicapped person and are eligible for duty-free treatment under subheading 9817.00.96, HTSUS. In the instant case, the AC and DC power adapters are similar to the defibrillator cases where these AC and DC power adapters are specially designed to power the LIFEPAK 12 defibrillator/monitor series, and thus are intended for the use or benefit of handicapped persons. According to the “Product Requirements Specification” report on the AC and DC power adapters and supplemental information regarding the AC and DC power adapters from Medtronic, the AC and DC power adapters “have been

engineered for exclusive use with the LIFEPAK 12 and cannot be used for other types of equipment.” Therefore, the AC and DC power adapters are eligible for duty-free treatment under subheading 9817.00.96, HTSUS.

HOLDING:

Based on the information submitted, the imported AC and DC power adapters are specifically designed or adapted for the use or benefit of handicapped persons and thus, are eligible for duty-free treatment under subheading 9817.00.96, HTSUS.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial Rulings Division

ATTACHMENT C

NY N011491

June 19, 2007

CLA-2-42:RR:NC:N3:341

CATEGORY: Classification

TARIFF NO.: 4202.92.9026, 4202.92.9060,
9817.00.96

RITA MIHALEK

PHILIPS ELECTRONICS NORTH AMERICA CORPORATION

1251 AVENUE OF THE AMERICAS

NEW YORK, NY 10020

RE: The tariff classification of defibrillator cases from China

DEAR MS. MIHALEK:

In your letter dated May 16, 2007, you requested a classification ruling. Your samples will be returned to you as requested.

The submitted samples are defibrillator carrying cases. Each case measures 9.5" (W) x 8.5" (H) x 4.8" (D) except for 989803139251, which measures 9" (W) x 7.5" (H) x 4.8" (D). Model numbers M3868A, M5075A, & M5076A have outer surfaces of man-made textile material. Model numbers M3869A and 989803139251 have outer surfaces of polyvinyl chloride (PVC) plastic sheeting. Model numbers M3868A and M3869A are specifically fitted and designed with compartments to hold the Philips FR2 series defibrillator, a spare battery, and up to three sets of pads. Both cases have shoulder straps, zipper closures, and foam covered handles. Model number M5075A is specifically fitted with compartments to hold a Philips Heartstart HS1 defibrillator, a spare battery pack, a spare pad cartridge and a pair of paramedic scissors. Model number M5076A is specifically fitted with compartments to hold a Philips Heartstart Onsite defibrillator and a pair of paramedic scissors. Both cases have zippered closures, and rubber covered handles. Model number 989803139251 is specifically fitted with compartments to hold a Philips HeartStart FRx defibrillator, a spare battery pack and electrodes. It has a shoulder strap and a flap with a hook and loop closure. Each case has an external clear window tab insert to display "Call 911" and a self-check indicator that can be seen through a clear window without having to remove the defibrillator from the carrying case.

The applicable heading for model numbers M3868A, M5075A, and M5076A is 4202.92.9026, which provides for other containers and cases, other, with outer surface of textile materials, of man-made fibers. The duty rate will be 17.6 percent ad valorem.

The applicable heading for model numbers M3869A and 989803139251 is 4202.92.9060, for other containers and cases, other, with outer surface of plastic sheeting material, other. The rate of duty will be 17.6 percent ad valorem.

Regarding your claim of an alternate classification of these carrying cases for the Phillips Automated External Defibrillator (AED) devices, ww.osha.gov/SLTC/aed states:

"An AED is an electronic device designed to deliver an electric shock to a victim of sudden cardiac arrest. Ventricular fibrillation may be restored to normal rhythm up to 60 percent of the time if treated promptly with an AED, a procedure called defibrillation."

A typical use would be to store the AED at a work place, ready for use, in case any of those present suffered a sudden cardiac rest.

Per Headquarters Ruling Letter 563109 KSG, 10-19-04, an AED is not excluded from classification in HTSUS 9817.00.96 either on the basis that it is an article for an acute or transient disability or that it is therapeutic.

Your articles have internal shapings and pockets similar to those in 563109. Also, each is imprinted Heartstart Defibrillator in large print.

On that basis, we agree that a secondary classification will apply for these AED cases in HTSUS 9817.00.96, as parts specially designed or adapted for use in articles specially designed or adapted for the use or benefit of the permanently or chronically physically or mentally handicapped, free of duty and user fees (if any), if all applicable entry requirements are met including the filing with the Customs port of entry of the U.S. Department of Commerce form ITA-362P.

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 classification of these items in subheading 9817.00.96, contact National Import Specialist Jim Sheridan at 646-733-3012.

If you have any other questions regarding the ruling, contact National Import Specialist Vikki Lazaro at 646-733-3041.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT D

NY I80189

April 15, 2002

CLA-2-42:RR:NC:TA:341 I80189

CATEGORY: Classification

TARIFF NO.: 4202.92.9026

MR. STEVE CHANG
DELTAMAX CUSTOMS SERVICE, INC.
10834 S. LA CIENEGA BLVD.
INGLEWOOD, CA 90304

RE: The tariff classification of a defibrillator carrying case from Hong Kong and/or China.

DEAR MR. CHANG:

In your letter dated April 1, 2002, on behalf of Global Components Corp., you requested a tariff classification ruling for a defibrillator carrying case.

The sample submitted is identified as article number OIE-153. The item is a carrying case designed and fitted to contain an external personal defibrillator. It is manufactured with an exterior surface of man-made fiber textile material. The case measures approximately 12.5"(L) x 10"(W) x 4"(H). Your sample is being returned as requested.

The applicable subheading for the carrying case will be 4202.92.9026, Harmonized Tariff Schedule of the United States (HTS), which provides in part, for other bags and containers, with outer surface of textile materials, other, other, of man-made fibers. The rate of duty will be 18.1 percent ad valorem.

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 Kevin Gorman at 646-733-3041.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT E

NY N071646

September 10, 2009

CLA-2-42:OT:RR:NC:N4:441

CATEGORY: Classification

TARIFF NO.: 4202.92.9060; 6307.90.9889;

9817.00.96

RITA MIHALEK
PHILIPS ELECTRONICS NORTH AMERICA CORP.
3000 MINUTEMAN ROAD
BUILDING 1, M/S 109
ANDOVER, MA 01810

RE: The tariff classification of defibrillator carrying cases and component pieces from China

DEAR Ms. MIHALEK:

In your letter dated August 13, 2009, you requested a tariff classification ruling. You state in your letter that you are requesting a binding ruling for six carrying cases; however, you have only submitted samples of two complete carry cases. We are only able to issue a binding ruling for the two carrying cases for which samples were submitted. You are also requesting a binding ruling on five component pieces. A sample of each component piece was provided. Your samples will be returned to you as requested.

Style 989803163341 (black) is a carrying case for the Philips IntelliVue MP2/X2 patient monitor. The carrying case is constructed of polyester textile material coated on the outer surface with a sheeting of plastic. The bag is equipped with side-end zippered compartments and sleeves that hold cables, leads, probes, electrodes and a spare battery. It has a main compartment which contains foam padding that encases and protects the MP2/X2 patient monitor. Rigid plastic base panels on the bottom of the case protect it and the contents from water, shock, etc. It allows the MP2/X2 monitor to be connected to the patient while still in the carrying case. It has a removable, padded shoulder strap and measures approximately 18.5" (W) x 7.5" (H) x 8" (D).

Style M3541A (red) is a carrying case for the Philips Heartstart Defibrillator MRx/MRx ALS. The carrying case consists of five component pieces (the bottom piece, the back piece, a left side piece, a right side piece, and a carrying strap) that are specially shaped and adapted to one another. They are attached together by hook-and-loop fasteners. When all five pieces are attached together, they form a complete carrying case. It is constructed of a polyester textile material coated on the outer surface with a sheeting of plastic. The case has a specialized compartment to store electrode pads, cables and a spare battery. Rigid plastic base panels on the bottom of the case protect it and the contents from water, shock, etc. It has a removable, padded shoulder strap and measures approximately 18.5" (W) x 7.5" (H) x 8" (D).

You state in your letter that style M3541A will be imported empty, unassembled, and including all component pieces. General Rule of Interpretation (GRI) 2(a) provides that goods imported in an unassembled condition are to be classified as the assembled article. GRI 2(a) states that:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of

the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

When imported together, but unassembled, the five component pieces possess the essential character of a defibrillator case.

You stated in your letter that each of the five individual component pieces will also be imported separately and available for sale at retail on their own. No one component piece provides the essential character of a defibrillator carrying case on its own. The component pieces when imported separately are classifiable as made up articles. The individual component pieces are made from a material composed of plastics and textile fabrics. This construction is considered a textile fabric for tariff purposes.

In your submission, you request consideration for a secondary classification for these cases under Harmonized Tariff Schedule of the United States (HTSUS) 9817.00.96, as articles specially designed or adapted for use by the permanently disabled or handicapped. HTSUS, Chapter 98, Subchapter 17, U.S. Note 4-b states that HTSUS 9817.00.96 cannot be applied to articles designed to treat an acute or transient disability, as opposed to a chronic or permanent affliction, nor can it be applied to therapeutic articles.

Style M3541A (Red), described above, is specially designed to carry the Philips HeartStart Defibrillator MRx. The dimensions of the case directly correspond with the shape of those automated external defibrillators (AEDs). The defibrillators are designed to detect a subject's heart rhythm, and if an irregular rhythm is detected, they can administer an electric shock to restore the heart to normal rhythm. They can also be utilized in cases of cardiac arrest.

Headquarters Ruling Letter 563109, October 19, 2004, indicated that AEDs are not excluded from classification in HTSUS 9817.00.96 on the basis that it is an article for an acute or transient disability, nor that it is a therapeutic article.

Much like the cases described in Headquarters Ruling Letter 563109, and those in New York Ruling Letter N011491, June 19, 2007, yours have special fittings and attachments to allow easy access to a battery, as well as pockets to store the electrodes and cables. The cases are also conspicuously adorned with the Philips and Heartstart MRx logos. They are clearly specially designed to be used with a defibrillator. Even in their unassembled form, it is evident that the separately imported components are specially designed to be used with a defibrillator and its constituent parts.

Style 989803163341 (black), is designed to carry the Philips IntelliVue MP2 Patient Monitor and the IntelliVue MMS X2 multi-measurement module. Your submission describes the MP2 and MMS X2 as devices that "will help medical care providers and first responders better focus on treating patients." You go on to state that the MP2 and the MMS X2 have "the potential to be the gold standard for mass casualty monitoring and disaster preparedness."

Per U.S. Note 4-b, cited above, HTSUS 9817.00.96 cannot be applied to articles designed to treat an acute or transient disability, nor to diagnostic articles. HTSUS, Chapter 98, Subchapter 17, U.S. Note 4 describes a physically or mentally handicapped person as someone suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities. There is nothing in your description of the IntelliVue monitors to establish that they are specially designed to treat those

with chronic impairments, as opposed to those with temporary ailments. In fact, in your submission you state that these devices provide “the ability to have a dedicated monitor for every patient that comes into the hospital.” Bearing in mind that most patients admitted into a hospital do not suffer from a chronic impairment, the IntelliVue MP2 and MMS X2, and their carrying cases, would not be considered articles specially designed to benefit the physically or mentally handicapped.

We note that Patient Monitoring Systems is an eight digit HTSUS sub-heading within heading 9018 for Electro-diagnostic apparatus (including apparatus... for checking physiological parameters); parts and accessories thereof.

On that basis a secondary classification will apply for style M3541A, the carrying case for the HeartStart Defibrillator (and its components parts, when imported separately) in HTSUS 9817.00.96, as specially designed or adapted for the use or benefit of the permanently or chronically physically or mentally handicapped, free of duty and user fees (if any), if all applicable entry requirements are met including the filing with the Customs port of entry of the U.S. Department of Commerce form ITA-362P. Note that this classification has no effect on any quota, visa, or restricted merchandise requirements.

The carrying case for the IntelliVue MP2 and MMS X2 will not qualify for secondary classification in HTSUS 9817.00.96. You have not established that these items were designed for those with a permanent or chronic incapacity, as opposed to an acute, but often transient, disability, e.g., a broken leg, which might also result in being bedridden in a medical facility. While the carrying cases are specially designed to be used with the IntelliVue monitors, you have not established that the patient monitors are designed for those with a chronic disability, nor have you shown that they are not diagnostic articles.

The applicable subheading for style 989803163341 will be 4202.92.9060, HTSUS, which provides for other containers and cases, with outer surface of plastic sheeting. The rate of duty will be 17.6% ad valorem.

The primary classification for style M3541A (when all 5 component pieces are imported together) will be 4202.92.9060, HTSUS, which provides for other containers and cases, with outer surface of plastic sheeting.

The primary classification for the five individual component pieces of style M3541A, when imported separately, will be 6307.90.9889, HTSUS, which provides for other made up textile articles, other.

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 classification in 9817.00.96 of these items, contact National Import Specialist J. Sheridan at 646-733-3012. If you have any other questions regarding the ruling, contact National Import Specialist Vikki Lazaro at (646) 733-3041.

Sincerely,
ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

ATTACHMENT F

N075840

September 25, 2009

CLA-2-90:OT:RR:NC:N4:405

CATEGORY: Classification

TARIFF NO.: 9019.20.0000, 9817.00.96

MARGARET POLITO
NEVILLE PETERSON, LLP
17 STATE STREET, 19TH FLOOR
NEW YORK, NY 10004

RE: The tariff classification of a chest compression system from Sweden

DEAR MS. POLITO:

In your letter dated September 14, 2009, on behalf of Medtronic, Inc., you requested a tariff classification ruling. No sample was provided.

In your submission you state:

“Powered by compressed air, the Lucas chest compression system is strapped around the chest of a victim and a suction cup with a compression pad is placed on the victim’s chest. The device is turned on and regular, steady compression is created for as long as necessary. The accessories included with the Lucas compression system include: (1) a specially designed connector to attach the device to a compressed air cylinder; (2) a regulator that controls the pressure of air that exits the cylinder; (3) a stabilization strap that secure the Lucas chest compression to the patient; (4) patient straps that secure the patient’s arms during transportation to prevent removal of the device before it is safe to do so; (5) an extension hose that enables the system to operate at a greater distance from the air cylinder, and (6) a carrying bag designed to fit the compression system, stabilization strap, and regulator.”

That is consistent with the additional information you provided.

You also state, “The sole purpose of this system is to provide automated CPR so that the person can live long enough to obtain proper medical treatment for what caused the arrhythmia in the first place.”

The system mechanically compresses the chest/heart to cause oxygenated blood to move along the circulatory system, most importantly to the brain. It differs from the most common form of manual CPR in that it does not blow air into the lungs. We do not agree that all heart malfunctions that it will be used for will be arrhythmias. However, arrhythmias are a common cause of the heart’s inability to pump sufficient blood, and it is standard practice in those emergencies to first begin CPR and then to use an automated external defibrillator, if available, to determine if an arrhythmia is present and then to provide the appropriate form of electric shock if it is.

The system, including the accessories you cited, forms a set whose essential character is supplied by the chest compression device.

Regarding the primary classification of this system, Harmonized System Explanatory Note V-A to 9019 includes “Appliances used instead of manual methods of artificial respiration, e.g., mechanical devices operating by bringing pressure to bear on the patient’s chest...”

The applicable subheading for these systems, including the accessories you cited, will be 9019.20.0000, Harmonized Tariff Schedule of the United States

(HTSUS), which provides for, inter alia, Artificial Respiration or other therapeutic respiration apparatus. The rate of duty will be free.

Regarding your proposed classification in HTSUS 9817.00.96, Headquarters Ruling Letters 563109, 10-29-04, and 563125, 12-27-04, did determine that external defibrillators, which are often used in conjunction with CPR in treating heart failure emergencies, were not articles for acute disabilities, but for permanent or chronic impairments, and were not therapeutic (per U.S. Note 4 to HTSUS Chapter 98, Subpart 17.)

On that basis we agree that a classification, although a secondary one, will apply for these systems in HTSUS 9817.00.96 as specially designed or adapted for the use or benefit of the permanently or chronically physically or mentally handicapped if all applicable entry requirements are met, including the filing with the Customs port of entry of the U.S. Department of Commerce form ITA-362P. This merchandise is already duty free, but if you elect to claim the secondary classification in Chapter 98 of 9817.00.96 and meet the entry requirements, no merchandise processing fee will apply to those importations even if they are non-NAFTA, noting, e.g., Headquarters Ruling Letter 229110 IDL, 8-29-02. This classification has no effect on any quota, visa, or restricted merchandise requirements.

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 J. Sheridan at (646) 733-3012.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT G

N234669

November 19, 2012

CLA-2-90:OT:RR:NC:N4:405

CATEGORY: Classification

TARIFF NO.: 9018.90.6800

KIERA ANN MANN
SR. TRADE COMPLIANCE ANALYST
PHYSIO-CONTROL, INC.
11811 WILLOWS RD. N.E.
REDMOND, WA 98052

RE: The tariff classification of printed circuit board assemblies for a defibrillator/monitor.

DEAR MS. MANN:

In your letter dated October 22, 2012, you requested a tariff classification ruling. No samples were provided.

According to your submission, “Physio-Control is a domestic manufacturer of external defibrillators, specifically the defibrillator/monitor LIFEPAK series. The LIFEPAK series defibrillator is an advanced portable resuscitation device. The printed circuit board assemblies (PCBAs) contribute to the effective and unique functioning of the device as manufactured and assembled.”

We take it that you do not mean by PCBA only the flat circuit board with connections and connectors, but an item as described at, e.g., www.ehow.com/about_5049713_pcb-board.html, i.e., PCB board assemblies (PCBA) are printed circuit boards with electronic components embedded. Such components as diodes or resistors populate PCB boards...

Complete external defibrillators are classified in HTSUS 9018.90.64.

Separately imported parts or accessories, if identifiable as suitable for use solely or principally as parts or accessories of this kind of device (see General Harmonized System Explanatory Note III to Chapter 90) or of one particular item (see Headquarters Ruling Letter 965546, 8-6-02), are classified in its heading if not excluded from that heading by Note 2(a) or (c) to Chapter 90 or by HTSUS Add. US Rule of Interpretation 1-c (see HRLs 965968, 12-16-02, and 967233, 2-18-05) or from Chapter 90 by its Note 1.

From your description and documentation, it is clear that the PCBA's here are designed specifically for external defibrillators. We do not find any of the exclusions to apply.

We agree that the applicable subheading for these PCBA's will be 9018.90.6800, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “other” instruments and appliances used in medical, surgical, dental or veterinary sciences, which are other electro-medical apparatus or parts and accessories thereof, printed circuit assemblies for the defibrillators of subheading 9018.90.64. The rate of duty will be free.

Regarding your claim of a secondary classification 9817.00.96, HTSUS, for these items, Headquarters Ruling Letter 563109 KSG, 10-19-04, held that an external defibrillator is not excluded from classification in HTSUS 9817.00.96 either on the basis that it is an article for an acute or transient disability or that it is therapeutic in terms of HTSUS Chapter 98, Subchapter 17, U.S. Note 4-b.

Since they were specially designed for use in external defibrillator, we agree that a secondary classification will apply for these items in HTS 9817.00.96, as parts which were specially designed or adapted for use in articles which were specially designed or adapted for the use or benefit of the permanently or chronically physically or mentally handicapped (except articles for the blind.) Note that the requirement that you prepare and file a U.S. Department of Commerce form ITA-362P has been eliminated via a notice from the International Trade Administration, published in the Federal Register of June 1, 2010. This merchandise is already duty free, but if you elect to claim the secondary classification in Chapter 98 of 9817.00.96 and meet the entry requirements, no merchandise processing fee will apply to those importations even if they are non-NAFTA, noting, e.g., Headquarters Ruling Letter 229110 IDL, 8-29-02. Also note that this classification has no effect on any quota, visa, or restricted merchandise requirements or any dumping or countervailing duties.

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 J. Sheridan at (646) 733-3012.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

ATTACHMENT H

N263755

May 1, 2015

CLA-2-90 OT:RR:NC:N2:235

CATEGORY: Classification

TARIFF NO.: 9019.20.0000; 8544.42.9090;
8504.40.9510; 9817.00.96

Ms. SAMANTHA PATE
PHYSIO-CONTROL, INC.
11811 WILLOWS ROAD NE
REDMOND, WA 98052

RE: The tariff classification of chest compression system accessories from Sweden.

DEAR Ms. PATE:

In your letter dated April 9, 2015, you requested a tariff classification ruling. No samples were provided.

You state in your submission that “The LUCAS Chest Compression System is used to perform external cardiac compressions on adult patients who have acute circulatory arrest defined as absence of spontaneous breathing and pulse, and loss of consciousness.” You have requested classification of several items that are sold separately, and are used with the LUCAS Chest Compression System. The items are a battery charger, a corded auxiliary power supply unit, a unit charger for the car, a back plate, and back plate grip tape.

The LUCAS Chest Compression System is a portable tool designed to overcome problems identified with manual chest compressions. The system mechanically compresses the chest/heart to cause oxygenated blood to move along the circulatory system, most importantly to the brain. The aforementioned accessories will be used in conjunction with the LUCAS Chest Compression System.

The LUCAS Back Plate is placed under the patient directly below the armpits and connects with the legs of the chest compression system, which then lock into place. Correct positioning of the back plate makes it easier and faster to accurately position the system at the correct compression point. The LUCAS Back Plate Grip Tape is designed to increase the friction of the Back Plate and to reduce the risk of the device slipping when the Back Plate is in contact with other hard surfaces. As per our telephone conversation, you stated that these items are specifically designed for and only used with the LUCAS Chest Compression System.

Note 2(a) to Chapter 90, HTSUS, excludes, in all cases, any part or accessory of an apparatus of Heading 9019, HTSUS from classification in that heading if it is, in itself, included, inter alia, in any of the headings of Chapter 85 (except heading 8487, 8548, or 9033).

The applicable subheading for the back plate and back plate grip tape will be 9019.20.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Inter alia: Artificial respiration or other therapeutic respiration apparatus.” The rate of duty will be Free.

The applicable subheading for the battery charger and the power cord will be 8504.40.9510, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Electric transformers, static converters....: Static convert-

ers: Other: Rectifiers...: Power supplies: With a power output not exceeding 50 W.” The rate of duty will be 1.5 percent ad valorem.

The applicable subheading for the unit car charger will be 8544.42.9090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Insulated (including enameled or anodized) wire, cable...: other electric conductors, for a voltage not exceeding 1,000 V: fitted with connectors: other: other: other.” The rate of duty will be 2.6 percent ad valorem.

Regarding your proposed secondary classification in 9817.00.96, HTSUS, for these items, Headquarters Ruling Letter 563109, held that an external defibrillator is not excluded from classification in HTSUS 9817.00.96 either on the basis that it is an article for an acute or transient disability or that it is therapeutic in terms of HTSUS Chapter 98, Subchapter 17, U.S. Note 4-b. Since these articles were specially designed for use in an external defibrillator, we agree that a secondary classification will apply for these items in HTS 9817.00.96, as parts which were specially designed or adapted for use in articles which were specially designed or adapted for the use or benefit of the permanently or chronically physically or mentally handicapped (except articles for the blind).

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 Kimberly Praino at kimberly.praino@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

ATTACHMENT I

302256

March 6, 2019

CLA-2-42:OT:RR:NC:N4:441

CATEGORY: Classification

TARIFF NO.: 4202.92.9100; 9817.0096;
9903.88.03

KARI H. RACE
CARDIAC SCIENCE CORPORATION
500 BURDICK PARKWAY
DEERFIELD, WI 53531

RE: The tariff classification of three carry cases from China

DEAR Ms. RACE:

In your letter dated December 6, 2018, you requested a tariff classification ruling. You have submitted samples which will be returned to you under separate cover.

The subject merchandise are three carry cases constructed with an outer surface of man-made textile material. They are specifically designed to provide storage for the Powerheart® Automatic External Defibrillator (AEDs) devices. Each case is specially shaped and adapted to contain one device. You state that the carry cases will be imported separately from the AEDs with which they are used.

The applicable subheading for the carry cases will be 4202.92.9100, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other containers and cases, with outer surface of sheeting of plastics or of textile materials, other, other, with outer surface of textile materials, of man-made fibers (except for jewelry boxes of a kind normally sold at retail with their contents). The general rate of duty will be 17.6 percent ad valorem.

In your submission, you request consideration for a secondary classification for these cases under HTSUS 9817.00.96, which provides for articles specially designed or adapted for the use or benefit of the blind or other permanently disabled or handicapped persons.

The submitted samples are specially designed to carry AED devices. The dimensions of the cases directly correspond with the shape of those AEDs. The defibrillators are designed to detect a subject's heart rhythm, and if an irregular rhythm is detected, they can administer an electric shock to restore the heart to normal rhythm.

U.S. Note 4(a), Chapter 98, HTSUS, states that the term "blind or other physically or mentally handicapped persons" includes any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

Customs and Border Protection has previously held that a person suffering from arrhythmia or bradycardia is physically handicapped as that term is defined in U.S. Note 4(a) to Subchapter XVII. See Headquarters Ruling Letter ("HRL") 556243, dated December 2, 1991, and HRL 557302, dated March 17, 1993, both rulings hold that defibrillator pacemakers are eligible for duty-free treatment under subheading 9817.00.96, HTSUS. Therefore, persons who suffer from irregular heart beats are considered handicapped

within the meaning of U.S. Note 4(a). HQ 563109, dated October 19, 2004, extended this special treatment to the cases for defibrillators.

On that basis, a secondary classification will apply the carrying cases for the Powerheart® Defibrillator in HTSUS 9817.00.96, as specially designed or adapted for the use or benefit of the permanently or chronically physically or mentally handicapped. The rate of duty is free.

While the aforementioned merchandise is eligible for reduced duty treatment under subheading 9817.00.96, when that merchandise is produced in China it will be subject to additional duties imposed by Section 301, as described below.

Effective July 6, 2018, the Office of the United States Trade Representative (USTR) imposed an additional tariff on certain products of China classified in the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(b), HTSUS. The USTR imposed additional tariffs, effective August 23, 2018, on products classified under the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(d), HTSUS. Subsequently, the USTR imposed further tariffs, effective September 24, 2018, on products classified under the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(f) and U.S. Note 20(g), HTSUS.

For additional information, please see the relevant Federal Register notices dated June 20, 2018 (83 F.R. 28710), August 16, 2018 (83 F.R. 40823), and September 21, 2018 (83 F.R. 47974).

Products of China that are provided for in subheading 9903.88.01, 9903.88.02, 9903.88.03, or 9903.88.04 and classified in one of the subheadings enumerated in U.S. Note 20(b), U.S. Note 20(d), U.S. Note 20(f) or U.S. Note 20(g) to subchapter III shall continue to be subject to antidumping, countervailing, or other duties, fees and charges that apply to such products, as well as to those imposed by the aforementioned Chapter 99 subheadings.

Products of China classified under subheading 4202.92.91, HTSUS, unless specifically excluded, are subject to the additional 10 percent ad valorem rate of duty. At the time of importation, you must report subheadings 9903.88.03, 9817.0096, and 4202.92.9100.

The tariff is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the notice cited above and the applicable Chapter 99 subheading.

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

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 Vikki Lazaro at vikki.lazaro@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK

Director

National Commodity Specialist Division

ATTACHMENT J

H331366
OT:RR:CTF:VS H331366 TMF
CATEGORY: Classification
TARIFF NO.: 9817.00.96

MARGARET R. POLINO, Esq.
NEVILLE PETERSON LLP
17 STATE STREET - 19TH FLOOR
NEW YORK, NY 10004

RE: Revocation of HQ 563109 and HQ 563125; Modification of NY N011491, NY I80189, NY N071646, NY N075840, NY N234669, NY N263755, NY N302256; Eligibility of defibrillator cases, AC & DC power adapters, and chest compression systems for duty-free treatment under subheading 9817.00.96, HTSUS; Nairobi Protocol; Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped

DEAR Ms. POLINO:

This letter is in reference to Headquarters Ruling Letter (“HQ”) 563109, dated October 19, 2004, on the eligibility for duty-free treatment under subheading 9817.00.96, Harmonized Tariff Schedule of the United States (“HTSUS”), of imported defibrillator cases. This letter also concerns the following rulings:

HQ 563125, dated December 27, 2004 (finding an AC/DC power adapter and battery pack charger specially designed for a LIFEPAK 12, an advanced resuscitation portable device, eligible for subheading 9817.00.96, HTSUS, treatment);

New York Ruling Letter (“NY”) N011491, dated June 19, 2007; NY I80189, dated April 15, 2002; NY N071646, dated September 10, 2009; and NY N302256, dated March 6, 2019 (finding external defibrillator carrying cases eligible for subheading 9817.00.96, HTSUS, treatment as articles specially designed for the use or benefit of the handicapped);

NY N075840, dated September 25, 2009; and NY N263755, dated May 1, 2015 (finding chest compression systems eligible for subheading 9817.00.96, HTSUS, treatment); and,

NY N234669, dated November 19, 2012 (finding a printed circuit board assembly for a LIFEPAK series external defibrillator eligible for subheading 9817.00.96, HTSUS, treatment).

We have reconsidered these rulings and now believe that they are incorrect. For the reasons that follow, we hereby revoke HQ 563109 and HQ 563125, and modify NY N011491, NY I80189, NY N071646, NY N075840, NY N234669, NY N263755, and NY N302256 as to the eligibility under subheading 9817.00.96, HTSUS.

FACTS:

The defibrillator cases (“cases”) in HQ 563109 are made in China and are made of polyester fabric. The dimensions of the cases correspond to the shape of automated external defibrillators they are designed to carry. One sample case has a special side opening to access the battery. This case also features an inside pocket to store electrodes and cables. The other sample has a velcro layer on the inside to secure the defibrillator in place. The cases manufactured for Medtronic are sold only in conjunction with its sale of defibrillators.

NY N011491, NY I80189, NY N071646, and NY N302256, involve various styles of carrying cases for automated external defibrillators (AEDs), such as the Philips IntelliVue MP2/X2 patient monitor and Philips Heartstart Defibrillator MRx/MRx ALS, with dimensions that correspond with the shape of the AEDs that are designed to detect a subject's heart rhythm, and if an irregular rhythm is detected, to administer an electric shock to restore the heart to normal rhythm.

HQ 563125 concerns an AC and DC power adapter that also charges the battery pack of the Physio-Control LIFEPAK 12 defibrillator/monitor series ("LIFEPAK 12"), an advanced resuscitation portable device. NY N234669 concerns printed circuit board assemblies (PCBAs) that contribute to the effective and unique functioning of advanced portable resuscitation devices, specifically the LIFEPAK series defibrillators.

NY N075840, concerns the Lucas chest compression system with accessories, such as a regulator, connector, stabilization strap, and extension hose, and carry bag. NY N263755 concerns additional items that are sold separately with the system, such as a battery charger, a corded auxiliary power supply unit, a unit charger for the car, a back plate, and back plate grip tape. The sole purpose of the Lucas system is to provide automated CPR so that the person can live long enough to obtain proper medical treatment for what caused the arrhythmia in the first place. The system mechanically compresses the chest/heart to cause oxygenated blood to move along the circulatory system, most importantly to the brain.

ISSUE:

Whether the subject articles are eligible for subheading 9817.00.96, HTSUS, treatment.

LAW AND ANALYSIS:

The Nairobi Protocol to the Agreement on the Importation of Educational, Scientific and Cultural Materials of 1982, Pub. L. No. 97-446, 96 Stat. 2329, 2346 (1983) established the duty-free treatment for certain articles for the handicapped. Presidential Proclamation 5978 and Section 1121 of the Omnibus Trade and Competitiveness Act of 1988, provided for the implementation of the Nairobi Protocol into subheadings 9817.00.92, 9817.00.94, and 9817.00.96, HTSUS.

Subheading 9817.00.96, HTSUS, covers: "Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles . . . Other."

Subheading 9817.00.96, HTSUS, excludes "(i) articles for acute or transient disability; (ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled; (iii) therapeutic and diagnostic articles; or, (iv) medicine or drugs."

U.S. Note 4(b), subchapter XVII, Chapter 98, HTSUS.

CBP has previously held that a person suffering from arrhythmia, or bradycardia is physically handicapped as defined in U.S. Note 4(a) to Subchapter XVII. In Headquarters Ruling Letter ("HQ") 556243, dated December 2, 1991, and HQ 557302, dated March 17, 1993, CBP held that internal defi-

brillator pacemakers are eligible for duty-free treatment under subheading 9817.00.96, HTSUS. In HQ 556243, the article under consideration was referred to as a pacemaker-cardioverter-defibrillator, and although not specifically mentioned in the FACTS portion of HQ 556243, it is a device that is implanted into the chest of the afflicted patient for long-term use. *See <https://pubmed.ncbi.nlm.nih.gov/7743010/>*. After the issuance of these decisions, HQ 563109 granted a defibrillator case subheading 9817.00.96, HTSUS, treatment, under the mistaken belief that the same type of defibrillators considered in HQ 556243 and HQ 557302 were involved.

Subsequently, although several of the rulings discussed in the FACTS above, referred to U.S. Note 4(b) and the exclusion of subheading 9817.00.96, HTSUS, to articles designed to treat an acute or transient disability, or to diagnostic articles, the rulings relied on the finding in HQ 563109. For example, in NY N075840, although the chest compression system was stated to be strapped around the chest of a victim in order to allow steady compression to the chest for as long as necessary, and that the “sole purpose of this system is to provide automated CPR so that the person can live long enough to obtain proper medical treatment for what caused the arrhythmia in the first place”, relying on HQ 563109, subheading 9817.00.96, HTSUS, treatment was granted. Similarly, in NY N011491, pertaining to defibrillator cases for the Phillips Automated External Defibrillator, it was stated that this article is “an electronic device designed to deliver an electric shock to a victim of sudden cardiac arrest” and that its typical use is for storage, ready for use, in case someone suffers a sudden cardiac rest. This type of use would be for acute purposes. In fact, in NY N071646, one of the articles under consideration, the IntelliVue monitors, was denied subheading 9817.00.96, HTSUS, treatment, because there was nothing to show that the article was specially designed to treat those with chronic impairments, as opposed to those with temporary ailments. Rather, the device provided “the ability to have a dedicated monitor for every patient that comes into the hospital, and the decision noted that most patients admitted into a hospital do not suffer from a chronic impairment.

Therefore, after further examination and consistent with the statements made in the ruling requests at issue, we find that, as opposed to internal pacemakers/defibrillators, external defibrillators are primarily used to evaluate and treat an acute or transient disability such as an acute cardiac event. Someone suffering from an irregular heart rhythm or cardiac event, requiring the use of an external defibrillator may go on and live a normal life thereafter. If indeed, further treatment is required necessitating an internal pacemaker/defibrillator, such articles are already granted subheading 9817.00.96, HTSUS, treatment per HQ 556243, and HQ 557302. As such, it is our view that the prior decisions erroneously granted duty-free treatment to all defibrillators and their components, as external defibrillators are designed for acute situations, and they should be modified or revoked.

HOLDING:

The subject defibrillators and components are not eligible for subheading 9817.00.96, HTSUS, treatment.

EFFECT ON OTHER RULINGS:

HQ 563109 and HQ 563125 are revoked. NY N011491, NY I80189, NY N071646, NY N075840, NY N234669, NY N263755, and NY N302256 are modified as to the application of subheading 9817.00.96, HTSUS.

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

Sincerely,

YULIYA A. GULIS,

Director

Commercial and Trade Facilitation Division

U.S. Court of International Trade

Slip Op. 24–126

BYUNGMIN CHAE, Plaintiff, v. UNITED STATES, Defendant.

Before: Timothy M. Reif, Judge
Court No. 24–00086

[Granting defendant’s motion to dismiss for failure to state a claim in challenge to customs broker’s license denial.]

Dated: November 13, 2024

Byungmin Chae, plaintiff, of Omaha, Nebraska, proceeding pro se.

Marcella Powell, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of New York, N.Y., argued for defendant United States. With her on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, *Aimee Lee*, Assistant Director and *Justin R. Miller*, Attorney-in-Charge, International Trade Field Office. Of counsel on the brief was *Yelena Slepak*, Office of the Assistant Chief Counsel, International Trade Litigation, U.S. Customs and Border Protection.

OPINION

Reif, Judge:

Before the court is the motion to dismiss of defendant United States (“defendant”). Def.’s Mot. to Dismiss (“Def. Br.”), ECF No. 7.

Plaintiff Byungmin Chae (“plaintiff”) filed his second action with this Court to challenge the denial by U.S. Customs and Border Protection (“Customs”) of credit for plaintiff’s answer to Question No. 27 on the April 2018 Customs Broker License Exam (CBLE). Pl.’s Complaint (“Compl.”) at 1, ECF No. 2. To obtain a license, section 641(b) of the Tariff Act of 1930, 19 U.S.C. § 1641(b)(2), requires that applicants take the CBLE to demonstrate their knowledge of U.S. customs laws and regulations.¹ A passing score of 75 percent or more is one prerequisite to becoming a licensed broker.² 19 U.S.C. § 1641(f) (granting authority to the Secretary of the Treasury to “establish rules and regulations governing” licensing of customs brokers); 19 C.F.R. § 111.11(a)(4) (requiring a score of 75 percent or higher to pass

¹ Further citations to the Tariff Act of 1930, as amended, are to the relevant portions of Title 19 of the U.S. Code, 2018 edition.

² Applicants who do not meet the score threshold may retake the exam without penalty. 19 C.F.R. § 111.13(e). Plaintiff acknowledges the opportunity to retake but states that the process would create an “additional financial burden” and “take additional time to prepare.” Teleconference Transcript at 14:12–25, 15:1, ECF No. 13.

the CBLE). A 75 percent score entails that applicants must answer 60 or more questions correctly out of 80.

Broker license applicants who are dissatisfied with their exam scores may file an appeal first to the Broker Management Branch (“BMB”) of Customs and then to Customs’ Executive Assistant Commissioner (“Commissioner”). 19 C.F.R. § 111.13(f). Applicants may further file for judicial review by the U.S. Court of International Trade (the “Court” or “USCIT”) within 60 days of the final agency decision. 19 U.S.C. § 1641(e)(1) (outlining the procedure for appealing decisions by the Secretary of the Treasury on license and permit denials or revocations); 28 U.S.C. § 2636(g) (setting time limits for contesting the Secretary’s decisions).

On the April 2018 CBLE, plaintiff received a score of 65 percent and subsequently filed an appeal with the BMB. *Chae v. Sec’y of the Treasury*, 45 CIT ___, ___, 518 F. Supp. 3d 1383, 1390 (2021); 19 C.F.R. § 111.13(f). The BMB reviewed plaintiff’s appeal and awarded plaintiff credit for two out of the thirteen questions reviewed, which raised plaintiff’s score to 67.5 percent. *Chae*, 45 CIT at ___, 518 F. Supp. 3d at 1390. However, plaintiff’s score remained below the minimum passing grade. *Id.* On September 28, 2018, plaintiff requested review by the Commissioner of the BMB decision with respect to 11 questions. *Id.* The Commissioner granted credit for three more questions and recalculated plaintiff’s score to 71.25 percent. *Id.* In a letter dated May 23, 2019, the Commissioner informed plaintiff that his score nonetheless remained insufficient and denied plaintiff’s application for a license. *Id.* at ___, 518 F. Supp. 3d at 1391.

On March 4, 2020, plaintiff brought his first action to contest the decision of Customs to deny plaintiff’s application for a customs broker license. *Id.* at ___, 518 F. Supp. 3d at 1390. Customs had justified its denial by noting plaintiff’s insufficient score on the April 2018 CBLE. *Chae v. Yellen*, 46 CIT ___, ___, 579 F. Supp. 3d 1343, 1343 (2022); see *Kenny v. Snow*, 401 F.3d 1359, 1362 (Fed. Cir. 2005) (finding that a failure to achieve a passing score justified denial of a license application). Plaintiff challenged Customs’ decision and sought a ruling that he was entitled to credit for several exam questions. *Chae*, 46 CIT at ___, 579 F. Supp. 3d at 1348. Defendant moved to dismiss for lack of subject matter jurisdiction, arguing that plaintiff filed his complaint after the statute of limitations had expired.³ *Chae*, 45 CIT at ___, 518 F. Supp. 3d at 1389. The Court denied defendant’s motion and granted plaintiff leave to amend his com-

³ Defendant also asserted that plaintiff failed to meet procedural requirements for filing a summons and complaint. *Chae*, 45 CIT at ___, 518 F. Supp. 3d at 1389.

plaint and summons.⁴ *Id.* at ___, 518 F. Supp. 3d at 1392. Plaintiff's amended request challenged five CBLE questions (Question Nos. 5, 27, 33, 39 and 57). *Chae*, 46 CIT at ___, 579 F. Supp. 3d at 1353.

On June 6, 2022, this Court held that Customs' denial of credit for four of the five contested questions (Question Nos. 5, 27, 33 and 39) was supported by substantial evidence. *Id.* at ___, 579 F. Supp. 3d at 1372. The Court determined that Customs' decision to deny credit for Question No. 57, however, was not. *Id.* Despite the credit adjustment, plaintiff's score was 72.5 percent and still below the passing requirement. *Id.* at ___, 579 F. Supp. 3d at 1370–71. The Court denied plaintiff's motion for judgment on the agency record and concluded that Customs' decision to reject plaintiff's application for a customs broker's license was not "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id.* (quoting 5 U.S.C. § 706(2)(A)). The Court then issued judgment for defendant. *Id.* at ___, 579 F. Supp. 3d at 1372.

On July 13, 2022, plaintiff appealed to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") this Court's decision to sustain Customs' denial of credit for Question Nos. 5, 27 and 33 on the CBLE. *Chae v. Yellen*, 2023 WL 3072385, at *2 (Fed. Cir. Apr. 25, 2023). On April 25, 2023, the Federal Circuit affirmed this Court's decision as to Question Nos. 27 and 33 but found that Customs' denial of credit for Question No. 5 was not supported by substantial evidence. *Id.* at *7. As a result, plaintiff's score rose to 73.75 percent, but stayed below the minimum 75 percent. *Id.* The Federal Circuit accordingly upheld this Court's judgment that Customs was justified in denying plaintiff a license due to an insufficient score. *Id.* (citing *Kenny*, 401 F.3d at 1361).

On June 24, 2023, plaintiff filed a petition for a writ of certiorari with the Supreme Court seeking review of the Federal Circuit's decision. *See Chae v. Yellen*, 144 S. Ct. 347 (2023). On October 23, 2023, the Supreme Court denied plaintiff's request. *Id.* On January 22, 2024, the Supreme Court also rejected plaintiff's subsequent request for a rehearing. *Chae*, 46 CIT at ___, 579 F. Supp. 3d at 1372, *aff'd*, 2023 WL 3072385 (Fed. Cir. Apr. 25, 2023), *cert. denied*, 144 S. Ct. 347 (Oct. 30, 2023), *reh'g denied*, 144 S. Ct. 714 (Jan. 22, 2024) ("*Chae I*").

On May 8, 2024, plaintiff commenced the instant action with this Court. *See Compl.* at 1. Plaintiff contended that Customs' denial of credit for Question No. 27 was improper given that a vague term in 19

⁴ The Court concluded that circumstances permitted equitable tolling of plaintiff's filing period. *Id.* at ___, 518 F. Supp. 3d at 1389–1392. The Court then granted plaintiff 60 days to amend his complaint in accordance with USCIT Rule 10(a). *Id.*

C.F.R. § 145.2 rendered Question No. 27 a faulty question. *Id.* On July 22, 2024, defendant moved to dismiss plaintiff's action under USCIT Rule 12(b)(6), arguing that claim preclusion barred plaintiff from bringing suit. Def. Br. at 6–7.⁵

For the following reasons, the court grants defendant's motion to dismiss.

JURISDICTION AND STANDARD OF REVIEW

The court maintains exclusive jurisdiction to review “any decision of the Secretary of the Treasury to deny a customs broker's license under section 641(b)(2) or (3) of the Tariff Act of 1930.” 28 U.S.C. § 1581(g)(1); 19 U.S.C. § 1641(e).

“A court may properly dismiss a claim pursuant to Rule 12(b)(6) only if Plaintiffs' allegations of fact are not ‘enough to raise a right to relief above the speculative level.’” *VoestAlpine USA Corp. v. United States*, 46 CIT ___, ___, 578 F. Supp. 3d 1263, 1276 (2022) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Courts consider allegations within the complaint along with other “matters incorporated by reference or integral to the claim, items subject to judicial notice, [and] matters of public record.” *A & D Auto Sales, Inc. v. United States*, 748 F.3d 1142, 1147 (Fed. Cir. 2014) (alteration in original) (quoting 5B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1357 (3d ed. 2004)).

“The court may decide to dismiss an action for failure to state a claim if the claim is barred by the doctrine of claim preclusion.” *United States Steel Corp. v. United States*, 42 CIT ___, ___, 319 F. Supp. 3d 1295, 1300 (2018) (citing *Bowers Inv. Co. v. United States*, 695 F.3d 1380, 1384 (Fed. Cir. 2012)).

DISCUSSION

The court considers whether plaintiff's claim is barred by claim preclusion. Because plaintiff's arguments in the instant action could have been raised in *Chae I*, the court answers yes. Plaintiff is barred from bringing the instant action.

⁵ In a letter dated August 7, 2024, plaintiff filed an opposition to defendant's motion to dismiss. Pl.'s Resp. to Def.'s Mot. to Dismiss (“Pl. Letter”), ECF No. 11. On August 30, 2024, defendant filed its reply, reiterating that plaintiff had the “opportunity to present arguments in its motion for judgment on the agency record and at oral argument on that motion . . . [and] the opportunity to present arguments in support of his Federal Circuit appeal.” Def.'s Reply Br. (“Def. Reply Br.”) at 4–5, ECF No. 14.

I. Whether plaintiff's claim is barred under the doctrine of claim preclusion

A. Legal framework

Under the doctrine of claim preclusion, “a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.” *Allen v. McCurry*, 449 U.S. 90, 94 (1980) (citing *Cromwell v. Cnty. of Sac*, 94 U.S. 351, 352 (1876)); *Brown v. Felsen*, 442 U.S. 127, 131 (1979) (“Res judicata prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding.”); see also *Golden Pac. Bancorp. v. United States*, 15 F.3d 1066, 1071 (Fed. Cir. 1994). The party asserting claim preclusion is required to show that: (1) the parties in both suits are identical; (2) the first suit reached a final judgment on the merits; and (3) the second suit is based on the same set of transactional facts as in the first suit. *Jet, Inc. v. Sewage Aeration Sys.*, 223 F.3d 1360, 1362 (Fed. Cir. 2000) (citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.5 (1979)); see also *Young Eng’rs, Inc. v. U.S. Int’l Trade Comm’n*, 721 F.2d 1305, 1314 (Fed. Cir. 1983) (citing Restatement (Second) of Judgments § 13 (1982)); *Apotex, Inc. v. FDA*, 393 F.3d 210, 217 (D.C. Cir. 2004) (“[A] judgment on the merits in a prior suit bars a second suit involving identical parties . . . based on the same cause of action.”).

A transaction is characterized as having “the same, or nearly the same factual allegations” or “the same nucleus of operative facts.” *Herrmann v. Cencom Cable Assocs., Inc.*, 999 F.2d 223, 226 (7th Cir. 1993) (first quoting *Parsons Steel, Inc. v. First Ala. Bank*, 474 U.S. 518, 521 (1986); and then quoting *Lane v. Peterson*, 899 F.2d 737, 744 (8th Cir. 1990)). By contrast, new events or facts arising after the first suit are not part of the same “operative nucleus of facts.”⁶ *Ammex, Inc. v. United States*, 334 F.3d 1052, 1057 (2003) (citing *Herrmann*, 999 F.2d at 226); see also *E.I du Pont de Nemours & Co. v. United States*, 32 CIT 476, 489, 561 F. Supp. 2d 1320, 1331 (2008) (explaining that claim preclusion did not apply because the first suit concerned “a judicial challenge to a different administrative determination by Customs” than in the second suit).

⁶ Similarly, claim preclusion does not bar claims that could not have been anticipated when the first suit was filed or “would have been utterly impracticable” to raise at the time. *U.S. Indus., Inc. v. Blake Const. Co.*, 765 F.2d 195, 205 n.21 (D.C. Cir. 1985); see also *Apotex*, 393 F.3d at 212 (acknowledging how “there has been no intervening change in the law[,] and there have been no material changes in the facts”).

B. Analysis

The court asks whether the proceedings in *Chae I* bar plaintiff from making his current claim in this court. Plaintiff insists that he is not barred by claim preclusion on the basis that his current claim as to Question No. 27 differs from his previous claim. Compl. at 2; see Pl. Letter. Specifically, he highlights a perceived ambiguity in 19 C.F.R. § 145.2 and its definition of the term “Customs territory,” a point not raised in *Chae I*. Pl. Letter. Plaintiff asserts that the regulation’s vagueness resulted in an incorrect assessment of Question No. 27, and, therefore, he is due credit for the question. *Id.*

Defendant contends that the three elements of claim preclusion are satisfied. Def. Br. at 8. Specifically, defendant asserts that the parties involved in the present action and in *Chae I* are identical and that the claim under consideration here matches plaintiff’s claim in *Chae I*. *Id.* (citing *Smalls v. United States*, 471 F.3d 186, 192 (D.C. Cir. 2006)); see also *Parklane Hosiery Co.*, 439 U.S. at 326 n.5. Defendant notes additionally that this Court issued a final judgment in plaintiff’s first action. *Id.*

Plaintiff is foreclosed from bringing the instant action because each element of claim preclusion is satisfied. First, the parties in *Chae I* and the instant case are identical. Second, this Court issued a final judgment on the merits in plaintiff’s first action, and the Federal Circuit affirmed that judgment. See *Chae I*, 46 CIT at ___, 579 F. Supp. 3d at 1372. Third, the instant action is “based on the same set of transactional facts” as plaintiff’s first suit. *Ammex, Inc.*, 334 F.3d at 1055. Plaintiff’s first action concerned Customs’ decision to deny plaintiff credit for his answer to Question No. 27 of the April 2018 CBLE. *Chae I*, 46 CIT at ___, 579 F. Supp. 3d at 1358–61. Here, plaintiff once again contests the same Customs decision to deny him credit for his answer to Question No. 27 on the same exam. Compl. at 3; see *E.I. du Pont de Nemours & Co.*, 32 CIT at 489, 561 F. Supp. 2d at 1331. Plaintiff does not provide to the court any new facts that arose after his initial action reached a final judgment. Plaintiff only supplements his earlier arguments in *Chae I*.

Plaintiff rebuts that he “was not seeking to relitigate the claim challenging CBP’s decision on Question No. 27.” Pl. Letter at 1. Plaintiff asserts instead that the definitions of “Customs territory” in 19 C.F.R. § 145.2(b) and 19 C.F.R. § 101.1 create a “discrepancy,” and lead the plaintiff to “believe in the vulnerability of the regulation.” *Id.*; Compl. at 1. Plaintiff asserts for this reason that the question’s fault warrants awarding him the credit. Pl. Letter at 1.

Plaintiff’s position is unsupported. Plaintiff here simply presents an additional reason that he should have been awarded credit for the

same question that was the subject of *Chae I*. The claim in *Chae I* and the present claim share the identical objective of obtaining credit for Question No. 27 and achieving a 75 percent score on the CBLE. *See Chae I*, 46 CIT at ___, 579 F. Supp. 3d at 1358–61. Plaintiff already received a final judgment from this Court and the Federal Circuit’s affirmation of that judgment. *Id.*

Additionally, plaintiff had the opportunity to address his purported confusion regarding “Customs territory” while he challenged the same regulation in *Chae I*. *See Allen*, 449 U.S. at 94 (“[A] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.” (citation omitted)); *see also Federated Dep’t Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981). Plaintiff contested the same regulation — 19 C.F.R. § 145.2 — but disputed a term different from the one at issue now.⁷ *See Chae I*, 46 CIT at ___, 579 F. Supp. 3d at 1359. Plaintiff is not entitled to an ongoing forum after a final judgment has been made in this Court.

In sum, the instant action is barred due to the doctrine of claim preclusion. Plaintiff has no valid claim to present, and the court in turn grants defendant’s motion to dismiss for failure to state a claim.

CONCLUSION

Based on the foregoing reasons, the court grants defendant’s motion to dismiss for failure to state a claim. Judgment will enter accordingly.

Dated: November 13, 2024
New York, New York

/s/ Timothy M. Reif
TIMOTHY M. REIF, JUDGE

⁷ In *Chae I*, plaintiff presented an argument concerning the definition of mail packages. *See Chae I*, 46 CIT at ___, 579 F. Supp. 3d at 1359 (citing 19 C.F.R. § 145.2(b); 19 C.F.R. § 145.37). In the instant case, plaintiff attempts to explain the inconsistent definition of “Customs territory.” Compl. at 1; *see also* 19 C.F.R. § 145.2(b); 19 C.F.R. § 101.1.

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