

U.S. Customs and Border Protection



19 CFR PART 177

REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF 1937 ALFA ROMEO AUTOMOBILE

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

ACTION: Notice of revocation of two ruling letters and of revocation of treatment relating to the tariff classification of 1937 Alfa Romeo automobile.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters concerning tariff classification of a 1937 Alfa Romeo automobile under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 54, No. 12, on April 1, 2020. One comment was received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 26, 2020.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Chemicals, Petroleum, Metals & Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0041.

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), a notice was published in the *Customs Bulletin*, Vol. 54, No. 12, on April 1, 2020, proposing to revoke two ruling letters pertaining to the tariff classification of a 1937 Alfa Romeo automobile. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the 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 this notice.

In NY N278756, dated October 7, 2016, and NY N281521, dated December 23, 2016, CBP classified a 1937 Alfa Romeo automobile in heading 9705, HTSUS, specifically in subheading 9705.00.00, HTSUS, which provides for ““Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest: Archeological, historical, or ethnographic pieces.” CBP has reviewed NY N278756 and NY N281521 and has determined the ruling letters to be in error. It is now CBP's position that the 1937 Alfa Romeo automobile is properly classified, in heading 8703, HTSUS, specifically in subheading 803.23.01, 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: Of a cylinder capacity exceeding 1,500 cc but not exceeding 3,000 cc..”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N278756 and NY N281521 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H307522, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 13, 2020

for
CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H307522

May, 13, 2020

OT:RR:CTF:CPMM H307522 KSG

CATEGORY: Classification

TARIFF NO.: 8703.23.01

LAWRENCE MUSHINSKE
285 SOUTH VAN DIEN AVENUE
RIDGEWOOD NJ 07450

RE: Revocation of NY N278756 and NY N281521; tariff classification of 1937 automobile

DEAR MR. MUSHINSKE:

This letter is in reference to New York Ruling Letters (NY) N278756, dated October 7, 2016, and NY N281521, dated December 23, 2016, regarding the classification of a 1937 Alfa Romeo automobile in the Harmonized Tariff Schedule of the United States (HTSUS).

In NY N278756 and NY N281521, U.S. Customs & Border Protection (CBP) classified a 1937 Alfa Romeo automobile in heading 9705, HTSUS, which provides for collections and collectors' pieces of historical interest.

We have reviewed NY N278756 and NY N281521 and determined that the rulings are in error. Accordingly, for the reasons set forth below, CBP is revoking NY N278756 and NY N281521.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N278756 and NY N281521 was published on April 1, 2020, in Volume 54, Number 12 of the Customs Bulletin. One comment was received in response to this notice, which we will address below.

FACTS:

The merchandise discussed in both rulings, NY N278756 and NY N281521, is the same dismantled 1937 Alfa Romeo 8C 2900B Touring Lungo Berlinetta automobile, VIN #412020. The car underwent many major restorations having been dismantled many times. It is described in these rulings as containing engine #422001 amongst its dismantled components. There were 33 Alfa Romeo 8C 2900B automobiles built. Five of them have the Berlinetta long chassis.

ISSUE:

Whether this automobile is properly classified in heading 9705 as a collectors' piece of historical interest or in heading 8703 as a used automobile with an 8 cylinder engine.

LAW AND ANALYSIS:

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

GRI 6 provides that for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

The HTSUS headings under consideration are the following:

- 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: Other vehicles, with only spark-ignition internal combustion reciprocating piston engines
- 9705 Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest

Note 4(a) of Chapter 97, HTSUS, provides that "...articles of this chapter are to be classified in this chapter and not in any other chapter of the tariff schedule." Consequently, classification in heading 9705, HTSUS, must be considered before resorting to any other heading in the HTSUS. See Headquarters Ruling Letter ("HQ") H021886, dated August 6, 2008.

The Explanatory Note (EN) for heading 9705 states, in pertinent part, the following:

These articles are very often of little intrinsic value but derive their interest from their rarity, their grouping or their presentation...

(B) Collections and collectors' pieces of historical, ethnographic, palaeontological or archaeological interest, for example :

- (1) Articles being the material remains of human activity suitable for the study of the activities of earlier generations, such as : mummies, sarcophagi, weapons, objects of worship, articles of apparel, articles which have belonged to famous persons.
- (2) Articles having a bearing on the study of the activities, manners, customs and characteristics of contemporary primitive peoples, for example, tools, weapons or objects of worship.
- (3) Geological specimens for the study of fossils (extinct organisms which have left their remains or imprints in geological strata), whether animal or vegetable....

Goods produced as a commercial undertaking to commemorate, celebrate, illustrate or depict an event or any other matter, whether or not production is limited in quantity or circulation, **do not fall** in this heading as collections or collectors' pieces of historical or numismatic interest unless the goods themselves have subsequently attained that interest by reason of their age or rarity.

In Headquarters Ruling Letter ("HQ") H260566, dated July 7, 2016, CBP classified a 1955 Maserati that finished first in 1956 in the Coupe du Salon Montlhery race¹, and had been owned and driven by Paco Godia, a famous race car driver, in heading 9705, HTSUS. CBP stated that "[T]ypically, motor

¹ Further, this was an infamous car race in which one driver, Benoit Musy, was killed and another one crashed. The Coupe du Salon Montlhery is a famous French race track outside of Paris that dates back to 1925, when the 1925 French Grand Prix was held there.

vehicles are mass-produced for commercial consumption and as such, would not fall under heading 9705 as a collectors' piece. However, in circumstances where a care (sic) is very rare and satisfies the conditions for items of historical significance, then it may be considered a collectors' item for the purposes of tariff classification." Clearly, the Maserati described in HQ H260566 that won a famous car race and was driven by a famous race car driver is of historical significance.

CBP held in HQ 088031, dated October 8, 1991, that jewelry owned by the Duke and Duchess of Windsor was eligible for classification in subheading 9705.00.0090, HTSUS. Some of the pieces were marked with inscriptions and dates. The focus of this ruling was whether the pieces of jewelry were considered articles which have belonged to famous persons for the purposes of heading 9705. CBP stated that the phrase in EN 97.05 (B)(1), "articles that have belonged to famous persons," is susceptible to a broad interpretation that would be impossible to administer. CBP further noted that the EN describes only examples so as to illustrate the scope of the heading, and concluded that "since there is no strict rule, items such as this must be examined on a case-by-case basis, considering all the facts involved" with regard to the historical interest of the good.²

In HQ 088031, the factors considered were: 1) the articles belonged to famous people; 2) the individuals were not only famous, but historically significant; 3) the articles had a markedly increased value because of their historical significance³; 4) the jewelry was not just owned by the Duke and Duchess but was very closely associated with them⁴; 5) jewelry in general, and this jewelry in particular, is useful in the study of earlier generations.⁵ Several of the pieces of jewelry in this collection bear inscriptions containing dates and relating to historic events.⁶ CBP also considered the opinion of experts knowledgeable in the area.

Two collector automobiles, one produced in 1929 and the other produced in 1936, were determined in HQ 961279, dated November 5, 1998, to not qualify for classification in heading 9705, HTSUS. One automobile was a 1929 Bentley racing car. The other automobile was a 1936 Mercedes-Benz Special Roadster. Only 50 Bentleys of this type were produced; the first five were produced for racing purposes. It is estimated that less than 15 of the 1936 Mercedes-Benz Special Roadsters still exist. Both automobiles were owned by the Connor Living Trust that maintains a collection of unique and unusual automobiles, mainly produced during the late 1920's through the 1950's that

² We note that in HQ 960986, dated February 24, 1999, that CBP ruled that rock n' roll memorabilia imported by the Hard Rock Café was not included in heading 9705, HTSUS, as the heading does not include all classes of famous persons, only famous persons of historical interest.

³ For instance, the importer paid \$117,000 for a pair of cufflinks that normally sell of \$800.

⁴ The Duke personally designed many of the pieces.

⁵ A Sotheby expert in charge of this collection stated that the Duchess was among the first to wear yellow gold jewelry after 1945 instead of platinum, which soon became a popular fashion in France. Gold had been rationed and hence hoarded during WW II.

⁶ In addition, a pair of cufflinks featured a portrait of Queen Alexandria and a portrait of King Edward VII.

are exhibited at museums and public exhibitions. There was no claim that the automobiles in HQ 961279 were connected to famous persons or a historical event.⁷

In NY N138298, dated January 7, 2011, CBP ruled that a 1955 Mercedes Benz driven as a practice car at famous race tracks and driven as a practice car in the historic 1955 Le Mans race was not properly classified in heading 9705, HTSUS, but rather in heading 8703, HTSUS. This is despite the fact that only nine such cars were built.

In contrast to HQ 961279, CBP held in HQ 962234, dated July 17, 2000, that a 1936 Bugatti race car that was the winner of the Le Mans race in 1937, the French Grand Prix at Montlhery in 1936, the Marine Grand Prix and the Comings Grand Prix, was properly classified in heading 9705, HTSUS. CBP noted that not all of the automobiles designed and built by the Bugatti Family might qualify for classification in heading 9705, HTSUS, so the importer should consider future importations under subheading 9812.00.20, HTSUS, as articles imported by a non-profit foundation for public exhibition.

Based on HQ 961279, NY N138298 and the *dicta* in HQ 962234, the automobile in this case would not be eligible for classification in heading 9705, HTSUS, as it was not owned or driven by a famous person or of historical interest. The automobile has no connection with a historic car race. Merely being produced in a small quantity or being of a certain age is not sufficient to make an article eligible for classification in heading 9705. As indicated in HQ 088031, heading 9705 is construed narrowly rather than broadly.

As noted above, we received one comment in response to the notice of the proposed revocation. The commenter contends that the proposed revocation states a new legal standard for the interpretation of heading 9705 as applied to automobiles. The commenter argues that the EN calls for a broad interpretation of heading 9705, HTSUS.

CBP stated in HQ 961279 in 1998 that the EN for heading 9705 describes a narrow interpretation of coverage which would not include all collection pieces. The EN focuses on the rarity of the article. CBP has ruled in a long line of cases that this heading is to be applied narrowly. See HQ 961279, HQ 962234, dated July 7, 2000, HQ H265058, dated May 23, 2016, HQ 260566, dated July 7, 2016, HQ H271385, dated May 9, 2016, NY N289256, dated August 30, 2017, NY N284926, dated April 21, 2017, NY N277637, dated August 19, 2016, NY N280250, dated November 10, 2016, NY N273457, dated March 30, 2016, NY N254307, dated July 11, 2014, and NY N219015, dated June 18, 2012. All these cases involved race cars that raced in historic auto races and/or were driven by well-known race car drivers. CBP stated in HQ 961279 that not all collections qualify for classification in heading 9705.

The commenter cites to some rulings in the European Union Binding Tariff System (EUBTS), which he acknowledges are not binding on CBP. We note that in the EUBTS a 1971 Cadillac Coupe Deville (GBBT1504552079) and a 1973 Volkswagon (GB502315011) were classified in heading 9705 of the Harmonized Tariff System. The EU rulings do not include analysis so the reasoning supporting their conclusions are not known. As stated above, these foreign country rulings are not binding on CBP and we do not find them persuasive. Their conclusions do not seem consistent with the EN which

⁷ See NY 815818, dated December 7, 1995, in which CBP classified a 1938 Talbot Lago T-150 C Fignoni Falaschi Goutte d' Eau automobile in heading 8703, HTSUS.

would not find mass produced automobiles to be rare items. Lastly, the commenter suggested that CBP contact various historic automobile clubs to solicit their views. The statutory framework provided for in 19 U.S.C. 1625(c) requires publication of a proposed revocation in the Customs Bulletin, followed by a 30-day comment period and the publication in the Customs Bulletin of the final ruling regarding the revocation. There is no provision in the statutory framework for solicitation of views by CBP. CBP is not persuaded to adopt a broader interpretation of heading 9705, HTSUS.

Based upon the information in NY N278756 and NY N281521, the automobile would be classified in subheading 8703.23.0190, HTSUS, as a used automobile with an 8 cylinder engine.

HOLDING:

Pursuant to GRI's 1 and 6, the automobile provided for in NY N278756 and NY N281521 is classified in subheading 8703.23.0190, 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 reciprocating piston engines; Of a cylinder capacity exceeding 1,500 cc but not exceeding 3,000 cc: Other: Used." The column one, general rate of duty is 2.5%.

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

EFFECT ON OTHER RULINGS:

NY N278756 and NY N281521 are revoked in accordance with the above analysis.

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

Sincerely,
for

CRAIG T. CLARK,
Director

Commercial and Trade Facilitation Division

cc: NIS Matthew Sullivan
NIS Dharmendra Lilia