

U.S. Customs and Border Protection

General Notices

Docket No. USCBP-2008-0112

ENHANCED BONDING REQUIREMENT FOR CERTAIN SHRIMP IMPORTERS

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

ACTION: Notice of proposed modification; request for comments.

SUMMARY: This notice proposes to end the designation of shrimp subject to antidumping or countervailing duty orders as a special category or covered case subject to an enhanced bonding requirement (EBR). A recent World Trade Organization (WTO) Appellate Body Report has found that CBP's application of this requirement to shrimp from Thailand and India is inconsistent with U.S. WTO obligations. In response to this report, CBP proposes to end the designation of shrimp subject to antidumping or countervailing duty orders as a special category or covered case subject to the EBR. CBP proposes that shrimp importers affected by this requirement may request termination of any existing continuous bonds pursuant to 19 CFR 113.27(a) and submit a new bond application pursuant to 19 CFR 113.12(b). CBP seeks comment on this proposal.

DATES: Comments must be received on or before February 11, 2009.

ADDRESSES: Commenters may submit comments, identified by docket number, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2008-0112.

- Mail: Trade and Commercial Regulations Branch, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street N.W. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this document. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, N.W. (5th Floor), Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: David Genovese, ADCVD/Revenue Policy & Programs Division, Trade Policy and Programs, Office of International Trade, *David.Genovese@dhs.gov*, (202) 863-6092.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposal. Comments that will provide the most assistance will reference a specific portion of the proposal, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

A key CBP mission is to collect all import duties determined to be due to the United States. Under CBP statutes and regulations, release of merchandise prior to the determination of all duties that may be owed is ordinarily permitted, provided the importer posts a bond or other security to insure payment of duties and compliance with other applicable laws and regulations. The final assessment of duties occurs at liquidation of the entry.

In the case of goods subject to antidumping (AD) or countervailing (CV) duties, CBP follows instructions from the Department of Commerce (DOC) (which administers the AD/CV duty laws in conjunction with the U.S. International Trade Commission) regarding the

applicable AD/CV duty rate, and collects any additional duties owed upon liquidation. However, CBP has found that many importers subject to AD/CV duties fail to pay the additional duties determined to be due at liquidation. As a result, since defaults for AD/CV duty supplemental bills have increased drastically, CBP conducted an internal policy review of revenue protection strategies at CBP.

Issuance of CBP's Enhanced Bonding Requirement (EBR)

In response to importers' increasing failure to pay additional duties determined to be due at liquidation, CBP reconsidered the general bond formula which provides that the minimum continuous bond may be in an amount equal to the greater of \$50,000 or ten percent of the amount of the previous year's duties, taxes and fees. In order to address the growing collection problem, CBP announced an enhanced customs bonding requirement (EBR) for those continuous bonds that secure the importer's promise to pay all duties finally determined to be due on certain merchandise subject to an AD/CV duty order. See "Monetary Guidelines for Setting Bond Amounts for Importations Subject to Enhanced Bonding Requirements", 71 FR 62276 (October 24, 2006).

Application of CBP EBR

Application of the EBR has been limited to merchandise subject to the first antidumping orders involving agriculture and aquaculture merchandise imposed after the issuance of the July 2004 Amendment to the Bond Guidelines.¹ CBP required that continuous bond amounts for importers of shrimp subject to AD or CV duty orders be increased to the rate established in the final AD or CV duty order, multiplied by the value of the importer's entries of the subject merchandise in the previous 12-month period.

World Trade Organization Disputes Regarding EBR

On April 24, 2006, Thailand requested consultations with respect to certain issues relating to the imposition of antidumping measures on shrimp from Thailand, including the application of the EBR to

¹ Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Brazil, 70 FR 5143 (Feb. 1, 2005); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand, 70 FR 5145 (Feb. 1, 2005); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India, 70 FR 5147 (Feb. 1, 2005); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from People's Republic of China, 70 FR 5149 (Feb. 1, 2005); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 70 FR 5152 (Feb. 1, 2005); and Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Ecuador, 70 FR 5156 (Feb. 1, 2005).

importers of shrimp from Thailand. Thailand requested the establishment of a panel on September 15, 2006, and the World Trade Organization (WTO) Dispute Settlement Body (DSB) established a panel on October 26, 2006.

On June 6, 2006, India requested consultations with respect to certain issues relating to Customs Bond Directive 99–3510–004, as amended by the Amendment to Bond Directive 99–3510–004 for Certain Merchandise Subject to Antidumping Countervailing Duty Cases (July 9, 2004) and clarifications and amendments thereof. India alleged that the United States has imposed on importers a requirement to maintain a continuous entry bond in the amount of the anti-dumping duty margin multiplied by the value of imports of subject shrimp imported by the importer in the preceding year, and that this action breached several provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994), the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement), and the Agreement on Subsidies and Countervailing Measures. India requested the establishment of a panel on October 13, 2006, and the DSB established a panel on November 21, 2006.

The panels circulated the reports in both cases on February 29, 2008. Among other things, the panels found that the additional bond requirement as applied to importers of shrimp from Thailand and India was a “specific action against dumping” inconsistent with Article 18.1 of the AD Agreement and was inconsistent with the Ad Note to paragraphs 2 and 3 of GATT 1994 Article VI because it did not constitute “reasonable” security.² On April 17, 2008, Thailand and India appealed the findings of the panels with respect to the additional bond requirement. The United States cross-appealed one aspect of those findings on April 29, 2008.

The Appellate Body report was issued on July 16, 2008.³ The Appellate Body found that the panels properly concluded that the additional bond requirement as applied to importers of shrimp from Thailand and India did not constitute reasonable security. It rejected Thailand and India’s other claims regarding the panels’ interpretation of the Ad Note. The Panel and Appellate Body reports were adopted by the DSB on August 1, 2008. On August 29, 2008, the United States indicated that it intended to comply with the recommendations and rulings of the DSB.

² Panel Report, *United States – Measures Relating to Shrimp from Thailand*, WT/DS343/R, adopted August 1, 2008.

³ WTO Appellate Body Report, “*United States– Measures Relating to Shrimp from Thailand*” and “*United States– Customs Bond Directive for Merchandise Subject to Anti-Dumping / Countervailing Duties*,” WT/DS343/AB/R and WT/DS345/AB/R, adopted August 1, 2008.

Proposed Modification

CBP proposes to comply with the recommendations and rulings of the DSB by ending the designation of shrimp covered by antidumping or countervailing duty orders as a special category or covered case subject to the requirement of additional bond amounts. Furthermore, shrimp importers may request termination of existing continuous bonds pursuant to 19 CFR 113.27(a) and submit a new continuous bond application pursuant to 19 CFR 113.12(b). The requirements for submitting a new bond application pursuant to 19 CFR 113.12 are available on the CBP website at http://www.cbp.gov/xp/cgov/trade/priority_trade/revenue/bonds/pilot_program/news_develop/ under the “Policy and Procedures” section.

After public comments are received, reviewed, and considered, CBP will publish in the Customs Bulletin and in the **Federal Register** a final notice regarding the designation of shrimp covered by antidumping or countervailing duty orders as a special category or covered case subject to the requirement of additional bond amounts. Any change to the designation of this merchandise and the bond amounts required of importers of this merchandise will be effective for entries made on or after the date of publication of the final notice.

Dated: January 7, 2009

W. RALPH BASHAM,
Commissioner,
Customs and Border Protection.

[Published in the Federal Register, January 12, 2009 (74 FR 1224)]



QUARTERLY IRS INTEREST RATES USED IN CALCULATING INTEREST ON OVERDUE ACCOUNTS AND REFUNDS ON CUSTOMS DUTIES

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

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning January 1, 2009, the interest rates for overpayments will be 4 percent for corporations and 5 percent for non-corporations, and the interest rate for underpayments will be 5 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

EFFECTIVE DATE: January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614-4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2008-54, the IRS determined the rates of interest for the calendar quarter beginning January 1, 2009, and ending on March 31, 2009. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%). For corporate overpayments, the rate is the Federal short-term rate (2%) plus two percentage points (2%) for a total of four percent (4%). For overpayments made by non-corporations, the rate is the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%). These interest rates are subject to change for the calendar quarter beginning April 1, 2009, and ending June 30, 2009.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under- payments</u> (percent)	<u>Over- payments</u> (percent)	<u>Corporate Overpay- ments</u> (Eff. 1-1-99) (percent)
070174	063075	6%	6%	
070175	013176	9%	9%	
020176	013178	7%	7%	
020178	013180	6%	6%	
020180	013182	12%	12%	
020182	123182	20%	20%	
010183	063083	16%	16%	
070183	123184	11%	11%	
010185	063085	13%	13%	
070185	123185	11%	11%	
010186	063086	10%	10%	
070186	123186	9%	9%	
010187	093087	9%	8%	
100187	123187	10%	9%	
010188	033188	11%	10%	
040188	093088	10%	9%	
100188	033189	11%	10%	
040189	093089	12%	11%	
100189	033191	11%	10%	
040191	123191	10%	9%	
010192	033192	9%	8%	
040192	093092	8%	7%	
100192	063094	7%	6%	
070194	093094	8%	7%	
100194	033195	9%	8%	
040195	063095	10%	9%	
070195	033196	9%	8%	
040196	063096	8%	7%	
070196	033198	9%	8%	

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under- payments (percent)</u>	<u>Over- payments (percent)</u>	<u>Corporate Overpay- ments (Eff. 1-1-99) (percent)</u>
040198	123198	8%	7%	
010199	033199	7%	7%	6%
040199	033100	8%	8%	7%
040100	033101	9%	9%	8%
040101	063001	8%	8%	7%
070101	123101	7%	7%	6%
010102	123102	6%	6%	5%
010103	093003	5%	5%	4%
100103	033104	4%	4%	3%
040104	063004	5%	5%	4%
070104	093004	4%	4%	3%
100104	033105	5%	5%	4%
040105	093005	6%	6%	5%
100105	063006	7%	7%	6%
070106	123107	8%	8%	7%
010108	033108	7%	7%	6%
040108	063008	6%	6%	5%
070108	093008	5%	5%	4%
100108	123108	6%	6%	5%
010109	033109	5%	5%	4%

Dated: January 7, 2009

JAYSON P. AHERN,
Acting Commissioner,
U.S. Customs and Border Protection.

[Published in the Federal Register, January 12, 2009 (74 FR 1225)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, January 14, 2009

The following documents of U.S. Customs and Border Protection (“CBP”), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

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

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE CLASSIFICATION OF CATALYTIC
CONVERTER CERAMIC SUBSTRATES**

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

ACTION: Proposed revocation of two classification ruling letters and proposed revocation of treatment relating to the classification of catalytic converter ceramic substrates.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is proposing to revoke two ruling letters relating to the classification of catalytic converter ceramic substrates. CBP is also proposing to modify or revoke any treatment previously accorded by it to substantially identical transactions.

DATE: Comments must be received on or before February 23, 2009.

ADDRESS: Written comments are to be addressed to the Bureau of Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at the offices of Customs and Border Protection, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Kelly Herman,
Tariff Classification and Marking Branch: (202) 325-0026.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke two ruling letters pertaining to the classification of catalytic converter ceramic substrates. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N013892, dated July 26, 2007 (Attachment A) and Headquarters Ruling Letter (HQ) 954365, dated September 14, 1993 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is 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 notice

period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N013892, a catalytic converter ceramic substrate was classified in subheading 6909.19.5095, HTSUS, which provides for "Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods: Ceramic wares for laboratory, chemical or other technical uses: Other, Other, Other." Since the issuance of that ruling, CBP has reviewed the classification of the catalytic converter substrate and has determined that the cited ruling is in error.

In HQ 954365, a catalytic converter ceramic substrate was classified in subheading 8708.99.5000, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other." Since the issuance of that ruling, CBP has reviewed the classification of the catalytic converter substrate and has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY N013892 and HQ 954365 and is proposing to revoke or modify any other ruling not specifically identified, to reflect the classification of the catalytic converter ceramic substrates according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H015618 and H017942, set forth as Attachments C and D to this document. 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, we will give consideration to any written comments timely received.

DATED: January 8, 2009

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
N013892
July 20, 2007
CLA-2-69:RR:NC:1:128
CATEGORY: CLASSIFICATION
TARIFF NO.: 6909.19.5095

MR. M. JASON CUNNINGHAM
SONNENBERG & ANDERSON
300 South Wacker Drive
12th Floor
Chicago, IL 60606

RE: The tariff classification of a Diesel Particulate Filter (DPF) from Japan.

DEAR MR. CUNNINGHAM:

In your letter dated July 5, 2007, on behalf of Ibiden Co., Ltd. ("Ibiden"), you requested a tariff classification ruling.

The submitted sample is a diesel particulate filter (DPF). The item is designed to filter diesel particulates from diesel exhaust emissions. The substrate, contained within a diesel particulate filter, is suitable for use solely with a motor vehicle for diesel exhaust purification in order to remove or reduce harmful emissions. The DPF is part of the exhaust system used to reduce emissions through a filtering process. As imported, the DPF does not contain a catalyst coating. Subsequent to importation, it may or may not be coated with a catalyst by Ibiden's customers. In its condition as imported, the DPF reduces emissions by filtering of particles through a ceramic material, not through catalytic processes. The DPF captures particles in a series of ceramic honeycomb channels. Gas passes through the porous material, and the particulates are trapped and accumulate on the channel walls. After importation, the DPF is canned into the diesel exhaust purification system, or, at the option of Ibiden's customer, it is first coated with a catalyst, then canned into the exhaust purification system.

Your sample is being returned as requested.

In your letter you suggest classification under subheading 8708.99.8080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories . . . Other." Alternatively, you suggest classification under 8421.39.40, HTSUS, which provides for "Centrifuges, including dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: filtering or purifying machinery for gases: Other: Catalytic converters."

The National Import Specialist (NIS) whose area of responsibility includes Chapter 87, HTSUS, has determined that since the DPF in question is part of a catalytic filtering system and plays no part in the operation of a motor vehicle; it cannot be classified *eo nomine*, as a part of motor vehicles in Chapter 87.

Although catalytic converters are classifiable in subheading 8421.39.4000, HTSUS, Note 1(b) to Chapter 84 states: "This chapter does not cover machinery or appliances (for example, pumps) of ceramic material and ceramic

parts of machinery or appliances of any material (chapter 69)." The DPF is therefore precluded from classification in heading 8421 by virtue of this note.

The applicable subheading for the Diesel Particulate Filter will be 6909.19.5095, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Ceramic wares for laboratory, chemical or other technical uses . . . Other." The rate of duty will be 4% ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact NIS Sharon Chung at 646-733-3028.

ROBERT B. SWIERUPSKI,
Director,
National Commodity,
Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ 954365
September 14, 1993
CLA-2 CO:R:C:M 954365 DWS
CATEGORY: Classification
TARIFF NO.: 8708.99.50

DISTRICT DIRECTOR
U.S. CUSTOMS SERVICE
Second and Chestnut Streets
Philadelphia, PA 19106

RE: Protest No. 1101-93-100122; Catalytic Converter Ceramic Substrates; Explanatory Note 84.21(II)(B)(4); Chapter 84, Note 1(b); Explanatory Note (A) to Chapter 84; **HQ 950892**; Parentheticals; Explanatory Note 69.14; Explanatory Note (III) to Section XVII; **HQ 950417**; Additional U.S. Rule of Interpretation 1(c); 8421.39.00; 8421.99.00; 6914.90.00

DEAR DISTRICT DIRECTOR:

The following is our decision regarding the request for further review of Protest No. 1101-93-100122 concerning your action in classifying and assessing duty on catalytic converter ceramic substrates under the Harmonized Tariff Schedule of the United States (HTSUS).

FACTS:

The merchandise consists of catalytic converter ceramic substrates. The substrate is a specially designed honeycombed body made of ceramic cordierite. The production of the honeycomb begins with a combination of alumina, kalil, and talc contained within a slurry box. Water is then added

to bind the components. The honeycomb is extruded and fired to produce the catalytic converter substrate. After importation into the U.S., it is then coated with a catalytic agent, bracketed in place in a metal converter housing, and inserted in a motor vehicle exhaust system. The substrate, contained within a catalytic converter, is suitable for use solely with a motor vehicle for exhaust gas purification in order to convert carbon monoxide, hydrocarbons, and nitrogen oxide into non-toxic substances.

The substrates were entered under subheading 8708.99.50, HTSUS, as other parts of motor vehicles. The entries were liquidated on December 4, 1992, and January 22, 1993, under subheading 6914.90.00, HTSUS, as other ceramic articles. The protest was timely filed on March 4, 1993.

The subheadings under consideration are as follows:

6914.90.00: [o]ther ceramic articles: [o]ther.

The general, column one rate of duty is 8 percent ad valorem.

8421.99.00: . . . filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: [p]arts: [o]ther.

The general, column one rate of duty is 3.9 percent ad valorem.

8708.99.50: [p]arts and accessories of the motor vehicles of headings 8701 to 8705: [o]ther parts and accessories: [o]ther: [o]ther: [o]ther.

The general, column one rate of duty is 3.1 percent ad valorem.

ISSUE:

Whether the catalytic converter ceramic substrates are classifiable under subheading 6914.90.00, HTSUS, as other ceramic articles, under subheading 8421.99.00, HTSUS, as other parts of filtering apparatus for gases, or under subheading 8708.99.50, HTSUS, as other parts of motor vehicles.

LAW AND ANALYSIS:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order.

GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

Before we determine the classification of the substrates, we note that complete catalytic converters, of which the substrates are a part, are classifiable under subheading 8421.39.00, HTSUS, which provides for: “[f]iltering or purifying machinery and apparatus for gases: [o]ther.”

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes, although not dispositive, are to be used to determine the proper interpretation of the HTSUS. 54 Fed. Reg. 35127, 35128 (August 23, 1989). Explanatory Note 84.21(II)(B)(4) (pp. 1182 – 1183) states:

(B) Filtering or purifying machinery, etc., for gases.

These gas filters and purifiers are used to separate solid or liquid particles from gases, either to recover products of value (e.g., coal dust, metallic particles, etc., recovered from furnace flue gases), or to eliminate harmful materials (e.g., dust extraction, removal of tar, etc., from gases or smoke fumes, removal of oil from steam engine vapours).

They include:

(1) – (3) xxx

(4) Other chemical filters and purifiers for air or other gases (including catalytic converters which change carbon monoxide in the exhaust gases of motor vehicles to carbon dioxide).

Chapter 84, note 1(b), HTSUS, states:

1. This Chapter does not cover:

(b) Appliances or machinery (for example, pumps) or parts thereof, of ceramic material.

In part, Explanatory Note (A) (p. 1137) to chapter 84, HTSUS, states that:

[s]ince machinery or appliances (for example, pumps) of ceramic material and ceramic parts of machinery or appliances of any material (Chapter 69) . . . are excluded from this Chapter, it follows that even if a machine or mechanical appliance is covered, because of its description or nature, by a heading of this Chapter it is not to be classified therein if it has the character of an article of ceramic materials . . .

This applies, for example, to articles of ceramic material . . . incorporating components of minor importance of other materials, such as stoppers, joints, taps, etc., clamping or tightening bands or collars or other fixing or supporting devices (stands, tripods, etc.).

On the other hand, the following are, as a rule, to be taken to have lost the character of ceramic articles, . . . or machinery or appliances and parts thereof, of ceramic material . . .:

(i) Combinations of ceramic . . . components with a high proportion of components of other materials (e.g., of metal); also articles consisting of a high proportion of ceramic . . . components incorporated or permanently mounted in frames, cases or the like, of other materials.

Therefore, according to Explanatory Note (A) to chapter 84, HTSUS, it is our position that the complete catalytic converters containing the ceramic substrates are not precluded from classification under heading 8421, HTSUS. After importation into the U.S., the substrates must be coated with a catalytic agent and then placed in metal housings. Consequently, the complete catalytic converter contains other materials so that it has lost the character of a ceramic article.

The ceramic substrates themselves, however, are precluded from classification under heading 8421, HTSUS. The substrates, which are of ceramic material, are a part of catalytic converters. Under chapter 84, note 1(b), therefore, they are excluded from chapter 84, HTSUS, because they have the character of ceramic articles. Consequently, it is our position that the substrates are not classifiable under subheading 8421.99.00, HTSUS.

Chapter 84, note 1(b), HTSUS, directs, through the use of a parenthetical, that parts of ceramic material are to be classifiable chapter 69, HTSUS. Specifically, the substrates are described under 6914, HTSUS, and would be classifiable under subheading 6914.90.00, HTSUS.

It is our position that parenthetical language should be strictly interpreted, unless the Explanatory Notes expand the scope of the parenthetical language, thereby mandating a liberal interpretation. See **HQ 950892**, dated May 13, 1992. In this instance, because there are no Explanatory Notes in chapter 84, HTSUS, which expand the parenthetical of chapter 84, note 1(b), HTSUS, the substrates are to be classifiable according to the terms of chapter 69, HTSUS.

In part, Explanatory Note 69.14 (p. 924) states that:

[t]his heading covers all ceramic articles not covered by any other headings of this Chapter or in other Chapters of the Nomenclature.

The question, then, is whether the substrates are more specifically classifiable elsewhere in the HTSUS. As was previously stated, the substrates are parts of catalytic converters solely used with motor vehicles. Therefore, it is

our position that, if the terms of section XVII, HTSUS, are met, then the substrates are described under heading 8708, HTSUS. Specifically, they would be classifiable under subheading 8708.99.50, HTSUS.

In part, Explanatory Note (III) (pp. 1410 – 1411) to section XVII, HTSUS, states that:

[i]t should, however, be noted that these headings apply only to those parts or accessories which comply with all three of the following conditions:

(a) They must not be excluded by the terms note 2 to this Section (see paragraph (A) below).

and (b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88 (see paragraph (B) below).

and (c) They must not be more specifically included elsewhere in the Nomenclature . . .

(A) Parts and accessories excluded by Note 2 to Section XVII.

This Note excludes the following parts and accessories, whether or not they are identifiable as for the articles of this Section:

(1) – (4) xxx

(5) Machines and mechanical appliances, and parts thereof, of headings 84.01 to 84.79 . . .

(B) Criterion of sole or principal use.

(1) Parts and accessories classifiable both in Section XVII and in another Section.

Under Section Note 3, parts and accessories which are not suitable for use solely or principally with the articles of Chapters 86 to 88 are excluded from those Chapters. . .

First, the ceramic substrates are not parts excluded by section XVII, note 2, HTSUS, because they are not parts of headings 8401 to 8479, HTSUS. Even though they are parts of catalytic converters classifiable under heading 8421, HTSUS, the substrates themselves, based upon chapter 84, note 1(b), HTSUS, are precluded from classification under chapter 84, HTSUS.

Second, although the substrates are parts of catalytic converters, both they and the converters are parts suitable for use solely with the motor vehicles of chapter 87, HTSUS. The substrates are both parts of parts (catalytic converters) and parts of the whole (motor vehicles).

Third, we find that the substrates are not more specifically included elsewhere in the HTSUS, even though they are described under heading 6914, HTSUS. In **HQ 950417**, dated January 7, 1992, which dealt with the classification of ferrite substrates for thin-film magnetic recording heads, it was stated that:

[i]t is Customs position that subheading 6914.90.00, HTSUS, . . . is an unlimited general description of the merchandise that does not name and describe the goods specifically.

Additional U.S. Rule of Interpretation 1(c), HTSUS, states that:

[i]n the absence of special language or context which otherwise requires -

(a) – (b) xxx

(c) a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part or accessory.

In this instance, heading 6914, HTSUS, does not prevail over heading 8708, HTSUS, a “parts” provision, because, as stated, heading 6914, HTSUS, does not name and describe the merchandise specifically.

Therefore, under Explanatory Notes 69.14 and (III) to section XVII, HTSUS, we find that the catalytic converter ceramic substrates are classifiable under subheading 8708.99.50, HTSUS.

HOLDING:

The catalytic converter ceramic substrates are classifiable under subheading 8708.99.50, HTSUS, as other parts of motor vehicles.

The protest should be granted in full. A copy of this decision should be attached to the Customs Form 19 and provided to the protestant as part of the notice of action on the protest.

JOHN DURANT,
Director.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H015618
CLA-2 OT:RR:CTF:TCM H015618 KSH
CATEGORY: Classification
TARIFF NO.: 6909.12.0000

MR. M. JASON CUNNINGHAM, ESQ.
SONNENBERG & ANDERSON
300 S. Wacker Drive
Chicago, IL 60606

RE: Revocation of NY N013892; Diesel Particulate Filter.

DEAR MR. CUNNINGHAM:

This letter is in response to your request of July 26, 2007, for reconsideration of New York Ruling Letter (NY) N013892, dated July 20, 2007, as it pertains to the classification of Diesel Particulate Filter (DPF) under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N013892, the DPF was classified in subheading 6909.19.5095, HTSUS, which provides for "Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods: Ceramic wares for laboratory, chemical or other technical uses: Other, Other, Other." Since the issuance of that ruling you have submitted additional information which evidences that the hardness of the DPF on the Mohs scale is nine. On the revised Mohs scale it is thirteen. Accordingly, we have reviewed NY N013892 and found it to be in error. Therefore, this ruling revokes NY N013892. In reaching this decision, additional consideration was given to the meeting held on October 29, 2007.

FACTS:

The DPF is a catalytic converter ceramic substrate. The DPF is part of an exhaust system used to reduce diesel exhaust emissions through a filtering process. Upon importation, the DPF does not contain a catalyst coating. The DPF filters diesel particles through a series of ceramic honeycomb channels. Gas passes through the porous material where the particulates are trapped

and accumulate on the channel walls. The DPF is designed to fit into and is dedicated for use in a particular model of diesel automobile.

The DPF consists of 85–90% silicon carbide; 5–6% alumina fibres; 5–6% mullite and; 2–4% silica. The hardness of the DPF on the Mohs scale is nine. On the revised Mohs scale it is thirteen.

A Customs and Border Protection (CBP) Laboratory Report (NY20081475), dated October 20, 2008, indicates that the sample submitted consists of fifteen long honeycomb channel pieces cemented together and sealed on the outside surface with a white material. The gray channel material and white cement material are principally composed of silicon carbide and is not principally in the form of fibers. It is resistant to refractory temperatures (1500° Centigrade).

ISSUE:

Whether the DPF is classified in subheading 6909.19.5095, HTSUS, which provides for other ceramic wares for laboratory, chemical or other technical uses, or subheading 6909.12.0000, HTSUS, which provides for ceramic wares for laboratory, chemical or other technical uses having a hardness equivalent to 9 or more on the Mohs scale, or heading 8421, HTSUS, which provides for filtering or purifying machinery and apparatus for liquids or gases, or heading 8708, HTSUS, which provides for parts and accessories of motor vehicles.

LAW AND ANALYSIS:

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

Heading 8421, HTSUS, which provides for “Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases.”

The Explanatory Notes (EN) 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 GRI. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Explanatory Note 84.21(II)(B)(4) states:

(B) Filtering or purifying machinery, etc., for gases.

These gas filters and purifiers are used to separate solid or liquid particles from gases, either to recover products of value (e.g., coal dust, metallic particles, etc., recovered from furnace flue gases), or to eliminate harmful materials (e.g., dust extraction, removal of tar, etc., from gases or smoke fumes, removal of oil from steam engine vapours).

They include:

* * * *

(4) **Other chemical filters and purifiers for air or other gases** (including catalytic converters which change carbon monoxide in the exhaust gases of motor vehicles).

* * * *

Chapter 84, note 1(b), HTSUS, states:

1. This Chapter does not cover:

(b) Machinery or appliances (for example, pumps) of ceramic material and ceramic parts of machinery or appliances of any material (Chapter 69);

In part, General Explanatory Note (A) to chapter 84, HTSUS, states in relevant part that:

Since machinery or appliances (for example, pumps) of ceramic material and ceramic parts of machinery or appliances of any material (**Chapter 69**), laboratory glassware (**heading 70.17**) and machinery and appliances and parts thereof, of glass (**heading 70.19 or 70.20**) are **excluded** from this Chapter, it follows that even if a machine or mechanical appliance is covered, because of its description or nature, by a heading of this Chapter it is not to be classified therein if it has the character of an article of ceramic materials or of glass.

This applies, for example, to articles of ceramic material or of glass, incorporating components of minor importance of other materials, such as stoppers, joints, taps, etc., clamping or tightening bands or collars or other fixing or supporting devices (stands, tripods, etc.).

On the other hand, the following are, as a rule, to be taken to have lost the character of ceramic articles, laboratory glassware, or machinery or appliances and parts thereof, of ceramic material or of glass:

- (i) Combinations of ceramic or glass components with a high proportion of components of other materials (e.g., of metal); also articles consisting of a high proportion of ceramic or glass components incorporated or permanently mounted in frames, cases or the like, of other materials.

The EN to heading 6909, HTSUS, reads in relevant part:

* * * *

The heading covers in particular:

* * * *

(2) Ceramic wares for other technical uses, such as pumps, valves ; reports, vats, chemical baths and other static containers with single or double walls (e.g., for electroplating, acid storage); taps for acids; coils, fractionating or distillation coils and columns, Raschig rings for petroleum fractionating apparatus; grinding apparatus and balls, etc., for grinding mills; thread guides for textile machinery and dies for extruding man-made textiles; plates, sticks, tips and the like, for tools.

Subheading EN to subheading 6909.12 provides:

This subheading covers high-performance ceramic articles. These articles are composed of a crystalline ceramic matrix (e.g. of alumina, silicon carbide, zirconia, or nitrides of silicon, boron or aluminium, or of combinations thereof): whiskers or fibres of reinforcing material (e.g. of metal or graphite) may also be dispersed in the matrix to form a composite ceramic material.

These articles are characterized by a matrix which has a very low porosity and in which the grain size is very small; by high resistance to wear,

corrosion, fatigue and thermal shock; by high-temperature strength; and by strength-to-weight ratios comparable to or better than those of steel.

They are often used in place of steel or other metal parts in mechanical applications requiring close dimensional tolerances (e.g. engine turbo-charger rotors, rolling contact bearings and machine tools).

The Mohs scale mentioned in this subheading rates a material by its ability to scratch the surface of the material below it on the scale. Materials are rated from 1 (for talc) to 10 (for diamond). Most of the high-performance ceramic materials fall near the top of the scale. Silicon carbide and aluminium oxide, both of which are used in high-performance ceramics, fall at 9 or above on the Mohs scale. To distinguish among harder materials, the Mohs scale is sometimes expanded, with talc as 1 and diamond as 15. On the expanded Mohs scale, fused alumina has a hardness equivalent to 12, and silicon carbide has a hardness equivalent to 13.

The substrates are made of ceramic material. In accordance with Note 1(b) to chapter 84, HTSUS, the ceramic substrates are precluded from classification under heading 8421, HTSUS, because they have the character of ceramic articles. Consequently, the substrates are not classifiable under subheading 8421.99.00, HTSUS.

The substrates fall within the purview of high-performance ceramics as they are a composite ceramic composed in part of silicon carbide, are machined to exacting dimensional tolerances for use in the automotive industry, and have a hardness equivalent to more than 9 on the Mohs scale. As such, the substrates are within the purview of the subheading EN description. As such, the DPF is classified in subheading 6909.12, HTSUS.

Heading 8708, HTSUS, provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705." You argue that the DPF should be classified in heading 8708, HTSUS, because it plays a crucial role to the diesel automobile's function by reducing emissions in accordance with the legal requirements for its operation in the United States.

Note 2 to Section XVII, excludes various items from classification as parts and accessories of motor vehicles. It reads in part:

The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this section:

* * * *

(e) Machines or apparatus of headings 84.01 to 84.79, or parts thereof; articles of heading 84.81 or 84.82 or, provided they constitute integral parts of engines or motors, articles of heading 84.83;

The criteria set forth in the General Explanatory Notes to Section XVII regarding parts and accessories provide the following:

It should, however, be noted that these headings apply **only** to those parts or accessories which comply with **all three** of the following conditions:

(a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below).

and (b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88 (see paragraph (B) below).

and (c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (C) below).

The ceramic substrates are not parts excluded by section XVII, note 2, HTSUS, because they are not a machine or mechanical appliance nor a part of headings 8401 to 8479, HTSUS. As previously noted, in accordance with Note 1(b) to Chapter 84, HTSUS, the ceramic substrates are precluded from classification under chapter 84, HTSUS.

The ceramic substrates are suitable for use solely or principally with the motor vehicles of chapter 87, HTSUS. However, Additional U.S. Rule of Interpretation (AUSR) 1(c) provides:

A provision for parts of an article covers products solely or principally used as a part of such articles, but a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part or accessory[.]

At importation, the substrates at issue are clearly identifiable as ceramic articles. Heading 6909, HTSUS, which provides for “Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture ; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods” is more specific than heading 8708, HTSUS, which provides for “Parts and accessories of the motor vehicles of headings 8701 to 8705.” Heading 6909, HTSUS, most narrowly and definitely describes the ceramic substrate and has the requirements that are the most difficult to satisfy. See Additional U.S. Rule of Interpretation 1(c). Numerous court cases have held that an *eo nomine* designation will prevail over a provision of general description. See Sharp Microelectronics Technology, Inc., v. United States, 122 F.3d 1446 (Sept. 2, 1997). It logically follows, therefore, that a provision which names a good, heading 6909, HTSUS, in this case, must prevail over a heading that provides for parts, but which does not identify any particular article. Accordingly, the ceramic substrates are classified in heading 6909, HTSUS.

HOLDING:

Pursuant to GRI 1 and Additional U.S. Rule of Interpretation 1(c), the DPF is classified in heading 6909, HTSUS. It is specifically provided for in subheading 6909.12.0000, HTSUS, which provides for: “Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods: Ceramic wares for laboratory, chemical or other technical uses: Articles having a hardness equivalent to 9 or more on the Mohs scale.” The column one, general rate of duty is 4% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N013892, dated July 20, 2007, is hereby revoked.

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT D]

HQ H017942
CLA-2 OT:RR:CTF:TCM H017942 KSH
CATEGORY: Classification
TARIFF NO.: 6909

MR. SHUN MATSUSHITA
NGK-LOCKE, INC.
1000 Town Center
Southfield, MI 48075

RE: Revocation of HQ 954365; Catalytic Converter Ceramic Substrates.

DEAR MR. MATSUSHITA:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered Headquarters Ruling Letter (HQ) 954365, issued to NGK-Locke, Inc., on September 14, 1993, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of catalytic converter ceramic substrates. The ceramic substrates were classified under heading 8708, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes HQ 954365.

HQ 954365 is a decision on a specific protest. A protest is designed to handle entries of merchandise which have entered the U.S. and been liquidated by CBP. A final determination of a protest, pursuant to Part 174, CBP Regulations (19 CFR 174), cannot be modified or revoked as it is applicable only to the merchandise which was the subject of the entry protested. Furthermore, CBP lost jurisdiction over the protested entries in HQ 955742 when notice of denial of the protest was received by the protestant. See, San Francisco Newspaper Printing Co. v. U.S., 9 CIT 517, 620 F.Supp. 738 (1935).

However, CBP can modify or revoke a protest review decision to change the legal principles set forth in the decision. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), 60 days after the date of issuance, CBP may propose a modification or revocation of a prior interpretive ruling or decision by publication and solicitation of comments in the CUSTOMS BULLETIN. This revocation will not affect the entries which were the subject of Protest 1101-93-100122, but will be applicable to any unliquidated entries, or future importations of similar merchandise 60 days after publication of the final notice of revocation in the CUSTOMS BULLETIN, unless an earlier date is requested pursuant to 19 CFR 177.12(e)(2)(ii).

FACTS:

As stated in HQ 954365, the merchandise consists of catalytic converter ceramic substrates. The substrate is a specially designed honeycombed body made of ceramic cordierite. The production of the honeycomb begins with a combination of alumina, kalil, and talc contained within a slurry box. Water is then added to bind the components. The honeycomb is extruded and fired to produce the catalytic converter substrate. After importation into the U.S., it is then coated with a catalytic agent, bracketed in place in a metal converter housing, and inserted in a motor vehicle exhaust system. The substrate, contained within a catalytic converter, is suitable for use solely with

a motor vehicle for exhaust gas purification in order to convert carbon monoxide, hydrocarbons, and nitrogen oxide into non-toxic substances.

ISSUE:

Whether the catalytic converter ceramic substrates are classified in heading 6909, HTSUS, which provides for “Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods” or heading 8708, HTSUS, which provides for “Parts and accessories of the motor vehicles of heading 8701 to 8705”

LAW AND ANALYSIS:

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

Heading 8708, HTSUS, provides for: “Parts and accessories of the motor vehicles of headings 8701 to 8705.”

Heading 6909, HTSUS, provides for: “Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods.”

Note 2 to Section XVII, excludes various items from classification as parts and accessories of motor vehicles. It reads in part:

The expressions “parts” and “parts and accessories” do not apply to the following articles, whether or not they are identifiable as for the goods of this section:

* * * * *

(e) Machines or apparatus of headings 84.01 to 84.79, or parts thereof; articles of heading 84.81 or 84.82 or, provided they constitute integral parts of engines or motors, articles of heading 84.83;

The Explanatory Notes (EN) 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 GRI. See T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The criteria set forth in the General Explanatory Notes to Section XVII regarding parts and accessories provide the following:

It should, however, be noted that these headings apply **only** to those parts or accessories which comply with **all three** of the following conditions:

(a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below).

and (b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88 (see paragraph (B) below).

and (c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (C) below).

The EN to heading 6909, HTSUS, reads in relevant part:

* * * *

The heading covers in particular:

* * * *

(2) Ceramic wares for other technical uses, such as pumps, valves ; re-torts, vats, chemical baths and other static containers with single or double walls (e.g., for electroplating, acid storage); taps for acids; coils, fractionating or distillation coils and columns, Raschig rings for petroleum fractionating apparatus; grinding apparatus and balls, etc., for grinding mills; thread guides for textile machinery and dies for extruding man-made textiles; plates, sticks, tips and the like, for tools.

The ceramic substrates are suitable for use solely or principally with the motor vehicles of chapter 87, HTSUS. However, Additional U.S. Rule of Interpretation (AUSR) 1(c) provides:

A provision for parts of an article covers products solely or principally used as a part of such articles, but a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part or accessory[.]

At importation, the substrates at issue are clearly identifiable as ceramic articles. Heading 6909, HTSUS, which provides for “Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods” is more specific than heading 8708, HTSUS, which provides for “Parts and accessories of the motor vehicles of headings 8701 to 8705.” Heading 6909, HTSUS, most narrowly and definitely describes the ceramic substrate and has the requirements that are the most difficult to satisfy. See Additional U.S. Rule of Interpretation 1(c). Numerous court cases have held that an *eo nomine* designation will prevail over a provision of general description. See Sharp Microelectronics Technology, Inc., v. United States, 122 F.3d 1446 (Sept. 2, 1997). It logically follows, therefore, that a provision which names a good, heading 6909, HTSUS, in this case, must prevail over a heading that provides for parts, but which does not identify any particular article. Accordingly, the ceramic substrates are classified in heading 6909, HTSUS.

Subheading 6909.11, HTSUS, provides for . . . ceramic wares for laboratory, chemical or other technical uses: of porcelain or china.

Subheading 6909.12, HTSUS, provides forceramic wares for laboratory, chemical or other technical uses: articles having a hardness equivalent to 9 or more on the Mohs scale. The Mohs measurement of the subject ceramic substrates is not specified. Therefore, the proper subheading for the ceramic substrates cannot be determined at this time.

HOLDING:

Pursuant to GRI 1 and Additional U.S. Rule of Interpretation 1(c), the catalytic converter ceramic substrates are classified in heading 6909, HTSUS. It is provided for in subheading 6909.11.20, HTSUS, which provides for “Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods: Ceramic wares for laboratory, chemical or other technical uses: Of porcelain or china: Machinery parts” if the ceramic substrate does

not have a hardness equivalent to 9 or more on the Mohs scale. The column one, general rate of duty is Free. If the ceramic substrate has a hardness equivalent to 9 or more on the Mohs scale, the applicable subheading is 6909.12.00, HTSUS, which provides for "Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods: Ceramic wares for laboratory, chemical or other technical uses: Articles having a hardness equivalent to 9 or more on the Mohs scale." The column one, general rate of duty is 4% *ad valorem*.

EFFECT ON OTHER RULINGS:

HQ 954365, dated September 14, 1993, is hereby revoked.

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

