

# U.S. Customs and Border Protection



## REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A KNIT SWEATSHIRT STYLE JACKET

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

**ACTION:** Revocation of a ruling letter and Revocation of treatment relating to the tariff classification of a knit sweatshirt style jacket.

**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 one ruling letter concerning the tariff classification of a knit sweatshirt style jacket under the Harmonized Tariff Schedule of the United States (“HTSUS”). Notice of the proposed action was published on June 9, 2010, in Volume 44, Number 24, of the *Customs Bulletin*. CBP did not receive any comments during the notice period.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 29, 2010.

**FOR FURTHER INFORMATION CONTACT:** Robert Shervette, Office of International Trade Regulations and Rulings, at 202.325.0274

### 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”), become 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, notice proposing to revoke one ruling letter pertaining to the tariff classification of knit sweatshirt style jackets was published in the June 9, 2010, *Customs Bulletin*, Volume 44, Number 24. No comments were received during the notice period.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, 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 notice period.

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

In NY N003933, CBP classified a knit sweatshirt style jacket under heading 6101, HTSUS, which provides for: "[m]en's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6103." Upon our review of NY N003933, we determined that the merchandise described in that ruling is properly classified under heading 6102, HTSUS, which provides for: "[w]omen's or girls' over-

coats, carcoats, capes, cloaks, anoraks (including ski-jackets), wind-breakers and similar articles, knitted or crocheted, other than those of heading 6104.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N003933 and revoking or modifying any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (“HQ”) H022174, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: September 7, 2010

KELLY HERMAN

*for*

MYLES B. HARMON, DIRECTOR

*Commercial and Trade Facilitation Division*

Attachment

HQ H022174

September 7, 2010

CLA-2 OT: RR: CTF: TCM H022174 RES

CATEGORY: Classification

TARIFF NO.: 6102.20.0020

ROBERT RYAN

DIVERSIFIED FREIGHT LOGISTICS, INC.

P.O. BOX 610629

DALLAS FORT WORTH AIRPORT, TX 75261-0629

**RE :** Classification of a knit sweatshirt style jacket from Pakistan. Revocation of NY N003933, dated December 5, 2006.

DEAR MR. RYAN:

This is in response to your letter dated December 18, 2007, on behalf of your client Williamson Dickie Manufacturing Company (“Williamson-Dickie”), for reconsideration of New York Ruling Letter (“NY”) N003933 issued on December 5, 2006. In NY N003933, U.S. Customs and Border Protection (“CBP”) classified a knit sweatshirt style jacket as a men’s or boy’s jacket under heading 6101, Harmonized Tariff Schedule of the United States (“HTSUS”). CBP has determined that NY N003933 is incorrect.

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 of the proposed action was published on June 9, 2010, in Volume 44, Number 24, of the *Customs Bulletin*. CBP did not receive any comments during the notice period.

**FACTS:**

The subject jacket, style number KW901, is composed of 80% cotton and 20% polyester, has a full front zipper opening, a hood, two side entry pockets, rib knit cuffs, and a rib knit waistband. It comes in the colors dark navy blue, black, and hunter green and in sizes from XS/4 up to XL/18–20.

**ISSUE:**

Whether the fleece jacket at issue is classified under heading 6101, HTSUS, as boys’ wear or under heading 6102, HTSUS, as girls’ wear?

**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 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 2 through 6 may be applied in order.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the HTSUS at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

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

- |      |   |
|------|---|
| 6101 | Men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6103:    |
| 6102 | Women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6103: |

General Note ("GN") 9 to Chapter 61 states in relevant part that "[g]arments which cannot be identified as either men's or boys' garments or as women's or girls' garments are to be classified in the headings covering women's or girls' garments."

In determining whether garments are identifiable as men's or boys' or as women's or girls', CBP considers the following factors: (1) sizing, (2) construction, (3) styling, and (4) other factors such as packaging, labeling, etc. See HQ 952241, dated October 25, 1992, (*citing Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories* ("Textile Guidelines"), 53 Fed. Reg. 52564 (Dec. 28, 1988)). Other factors may be considered and any factor may be determinative by itself or in combination with one or more factors. *Id.* Other factors to consider include examining how an article is marketed and advertised. See *St. Eve International, Inc. v. United States*, 11 C.I.T. 224 (1987) (determining the classification of a garment based on an analysis of how it was advertised, marketed, and on an examination of the garment itself); *Mast Industries, Inc. v. United States*, 9 C.I.T. 549, 552 (1985), *aff'd* 786 F.2d 144 (Fed. Cir. 1986), (classifying a garment based on an analysis of an examination of the garment, witness testimony, and marketing and advertising materials). See also HQ967185, dated October 8, 2004, (stating that CBP's policy is to carefully examine the physical characteristics of the garments in question and when that is not substantially helpful, to also consider other extrinsic evidence, such as marketing materials, packaging, labeling, and invoices associated with the article).

(1) *Sizing* : According to the *Dickies 2007 Buyer's Guide* ("Buyer's Guide"), the fleece jacket is sold in sizes XS/4 up to XL/18–20. The sample provided is a size XL/18–20. In the Buyer's Guide, Williamson-Dickie sells a variety of both boys' and girls' clothing in the XS/4 up to XL/18–20 scale of sizes. For example, boys' polo shirts and oxford shirts and girls' polo shirts and blouses come in this size scale. Additionally, because girls and boys from ages 5 until about 13 are similar in stature and weight, it is logical to assume that these sizes apply to both boys and girls and thus not indicative of being reserved for one sex over the other.<sup>1</sup> Also noted is that in the Buyer's Guide two out of the other three kid's school uniform outerwear garments that are marketed as unisex are sold in the same size scale as the subject fleece jacket with the exception being the kid's Eisenhower Jacket, which does not come in

<sup>1</sup> Although, starting at around age 11, girls on average are slightly taller and weigh more than boys up to around age 13. See [http://www.cdc.gov/growthcharts/clinical\\_charts.htm#Set1](http://www.cdc.gov/growthcharts/clinical_charts.htm#Set1) (last visited Jan. 29, 2010). See Also [http://www.walmart.com/cservice/contextual\\_help\\_popup.gsp?modId=1061624#girls\\_regular](http://www.walmart.com/cservice/contextual_help_popup.gsp?modId=1061624#girls_regular) (last visited Jan. 29, 2010).

XL/18–20 but comes in all the smaller sizes. Thus, because the size scale that the fleece jacket comes in covers both boys and girls, the factor of sizing weighs in favor of finding that the fleece jacket is a unisex garment and not simply boys' wear.

(2) *Construction*: The fleece jacket material is 80% cotton and 20% polyester, which upon visual and tactile inspection has a medium weight and thickness. The zipper that runs the length of the front of the jacket is a basic copper colored zipper that is neither heavy duty nor delicate. The jacket has elastic around the hood, the cuffs of the arms, and around the waistband, which is not particularly tight. Overall, the jacket is sturdy and is neither feminine nor masculine in construction. There is nothing about the construction of the fleece jacket that would place it in either the boys' or girls' category of clothing. Instead, the construction of the jacket is neutral in regards to gender categorization. Therefore, because the factor of construction does not favor labeling the garment in any one gender category over the other, this factor supports finding that the fleece jacket is of a unisex construction.

(3) *Styling*: The sample provided is dark navy blue. An examination of the fleece jacket reveals that when zipped up and laid flat on a table, the elastic on the bottom of the jacket causes it to taper slightly toward the waist. There are no markings, graphics, or tags on the outside of the jacket. It is simply plain with a full zipper, a hood, and side seam pockets. There are no prominent masculine or feminine features on the jacket. Therefore, in consideration of the shape and design of the fleece jacket, the style factor weighs in favor of its intended use as being a unisex garment.

(4) *Other factors*: Other factors include things like how an article is marketed, advertised, and labeled. The fleece jacket is being marketed and advertised as a unisex garment in the *Dickies 2007 Buyer's Guide* as outerwear for a line of school uniform clothing. Williamson-Dickie does sell separate lines of basic pieces, e.g., shirts, pants, skirts, for boys and girls uniforms. However, Williamson-Dickie markets and advertises their "kid's school uniform outerwear" as unisex and does not have separate lines based on gender for any type of kids' school outerwear. Additionally, the colors that Williamson-Dickie markets the jacket in are not reserved for boys only. In the Buyer's Guide, both the boys and girls school uniform clothing articles are sold in dark navy blue and black. There are no girls' clothes in hunter green. The outerwear colors of navy blue, black, and hunter green match the navy blue, white, and khaki colors of the girls' shorts, shirts, skirts, and pants as well as the boys' trousers and shirts.

Additionally, the sizing, construction, styling, colors, and marketing of the Williamson-Dickie fleece jacket is similar to the Lands' End Thermacheck Hoodie that CBP classified in NY N044979, dated November 25, 2008, as a unisex jacket<sup>2</sup>. The Thermacheck Hoodie comes in the same range of sizes as the fleece jacket, has the same styling, and is marketed as unisex outerwear for kids' uniforms.

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<sup>2</sup> For comparison, see [http://www.landsend.com/pp/UniformZipfrontHoodedJacket-171686\\_7.html?bcc=y&action=order\\_more&sku\\_0::EVE&CM\\_MERCH=IDX\\_00013\\_0000000690&origin=index](http://www.landsend.com/pp/UniformZipfrontHoodedJacket-171686_7.html?bcc=y&action=order_more&sku_0::EVE&CM_MERCH=IDX_00013_0000000690&origin=index) (last visited March 12, 2010)

Therefore, these other factors, the way the fleece jacket is marketed and advertised, weigh in favor of finding that the garment is intended to be used by both boys and girls and hence is a unisex article of clothing.

Overall, an analysis of the factors provided in the Textile Guidelines and used in HQ952241—the sizing, construction, styling, advertising and marketing of the garment—along with how CBP has classified other similar articles of clothing, weigh in favor of finding that the fleece jacket is intended to be used by both girls and boys as part of a line of school uniforms and, hence, is identifiable as a unisex garment. Pursuant to GN 9 to Chapter 61 of the HTSUS, the fleece jacket is classified in heading 6102, HTSUS, as “Women’s or girls’ overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6104.”

**HOLDING:**

Pursuant to GRI 1 and GN 9 to Chapter 61, the knit sweatshirt style jacket, style number KW901, is classified under subheading 6102.20.0020, HTSUSA, which provides for “Women’s or girls’ overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6104: Of cotton: Girls.” The 2010 column one rate of duty is 15.9% and the visa category is 335.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since quota categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, we suggest your client check the *Textile Status Report for Absolute Quotas* at [www.cbp.gov](http://www.cbp.gov) close to the time of shipment to obtain the most current information available.

**EFFECT ON OTHER RULINGS:**

NY N003933, dated December 5, 2006, is hereby REVOKED.

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

*Sincerely,*

KELLY HERMAN

*for*

MYLES B. HARMON, DIRECTOR  
*Commercial and Trade Facilitation Division*

**REVOCATION OF RULING LETTER AND REVOCATION OF  
TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF A CERTAIN COMBINATION HAND  
CART AND FOLD-OUT STEPLADDER**

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

**ACTION:** Notice of revocation of a ruling letter and revocation of treatment relating to tariff classification of a combination hand cart and fold-out stepladder.

**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) (“Title VI”), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) is revoking one ruling letter relating to the tariff classification of a combination hand cart and fold-out stepladder under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 44, No. 24, on June 9, 2010. No comments were received in response to this notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 29, 2010.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Title VI came into effect on December 8, 1993. 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) of the Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke one ruling letter pertaining to the tariff classification of a combination hand cart and fold-out stepladder was published in the *Customs Bulletin*, Vol. 44, No. 24, on June 9, 2010. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during 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 N021149, a combination hand cart and fold-out stepladder was classified in subheading 8716.80.5010, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for "Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Other vehicles: Other: Industrial hand trucks." Since the issuance of that ruling, CBP has reviewed the classification of the combination hand cart and fold-out stepladder and determined that the cited ruling is in error.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N021149 in order to reflect the proper classification of the subject combination hand cart and fold-out ladder according to the analysis contained in Headquarters Ruling Letter ("HQ") H037541, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: September 3, 2010

IEVA K. O'ROURKE

*for*

MYLES B. HARMON, DIRECTOR

*Commercial and Trade Facilitation Division*

Attachment

HQ H037541

September 3, 2010

OT: RR: CTF: TCM: H037541 TNA

CATEGORY: Classification

TARIFF NO.: 8716.80.5090

JOHN DEMILT, ASSOCIATE COUNSEL  
CONAIR CORPORATION  
1 CUMMINGS POINT ROAD  
STAMFORD, CT 06904

RE: Classification of Stepladder/Hand Truck Combination from China; NY N021149 Revoked

DEAR MR. DEMILT:

This is in response to your August 11, 2008 request for reconsideration of New York Ruling Letter (“NY”) N021149, made on behalf of Conair Corporation (“Conair”). The National Commodity Specialist Division of U.S. Customs and Border Protection (“CBP”) issued NY N021149 to Conair on January 9, 2008.

The issues addressed by this ruling originated in a request for a ruling made by Conair on December 19, 2007 on the tariff classification of the Flat Folding, Heavy-Duty Stepladder/Full-Utility Hand Truck (Model TSM-31LHT)<sup>1</sup> (“LadderKart”) from China. In NY N021149, CBP classified the LadderKart under subheading 8716.80.5010 of the Harmonized Tariff Schedule of the United States (HTSUS) which provides for “Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Other vehicles: Other, Industrial hand trucks.”

You indicate that Conair believes that the correct tariff classification of the LadderKart is subheading 7616.99.5030, HTSUS which provides for “Other articles of aluminum: Other: Other: Other, Ladders” and request reconsideration of NY N021149.

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 N018967 was published on June 9, 2010, in Volume 44, Number 24, of the *Customs Bulletin*. CBP received no comments in response to this notice.

## FACTS:

The LadderKart is a hand cart combined with a fold-out stepladder made of aluminum and weighing approximately 14 pounds. The stepladder configuration has a 300 pound weight capacity and is equipped with three polypropylene steps measuring 11 inches wide by 9 inches deep. The hand cart configuration has a 250 pound weight capacity and rolls on wheels of 4 inches in diameter.

The LadderKart is marketed on the Conair website as a travel cart and its marketing materials indicate, among other things, that it is a “[g]reat value as a 2-for-1 item.”<sup>2</sup> Various online vendors note that the LadderKart could be particularly useful for homeowners, contractors and photographers. Specifically, online vendors describe the LadderKart as a “Contractor Grade

<sup>1</sup> Conair has indicated that Model TSM-31LHT is the same product as Model TS-31LHT.

<sup>2</sup> Conair, <http://www.conair.com/travel-smart-ladderkart-professional-grade-stepladder-hand-cart-p-540.html>

Stepladder & Folding Luggage Cart/Hand Truck Combination,”<sup>3</sup> indicate that the LadderKart is “Fabulous For The Homeowner As Well As The Contractor,”<sup>4</sup> and market the LadderKart as a “dual purpose solution for ... [photographers’] various hauling and shooting needs.”<sup>5</sup>

## ISSUE:

What is the classification of the LadderKart under the HTSUS?

## LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes.” If the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied, in order. The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level (for the four digit headings and the six digit subheadings) and facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs. 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).

In classifying the merchandise, we bear in mind that a product’s classification is determined by first looking to the headings and section or chapter notes. See *Orlando Food Corp. v. United States*, 140 F.3d 1437 (Fed. Cir. 1998). Only after determining that a product is classifiable under the heading should one look to the subheadings to find the correct classification for the merchandise. *Id.* We also keep in mind that absent contrary definitions in the HTSUS or legislative history, we construe HTSUS terms according to their common and commercial meanings. See *Medline Indus. Inc. v. United States*, 62 F.3d 1407 (Fed. Cir. 1995); See also *Len-Ron Mfg. Co., Inc. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003).

In NY N021149, CBP classified the merchandise at issue under subheading 8716.80.5010, HTSUS. Conair asserts that the merchandise is classified under subheading 7616.99.5030, HTSUS. Before turning to classification of the LadderKart at the subheading levels, it is necessary to resolve classification of the product at the heading level. Heading 8716, HTSUS, provides for: “Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof” while heading 7616, HTSUS provides for: “Other articles of aluminum.”

The ENs to heading 8716 state, in pertinent part:

This heading covers a group of **non-mechanically** propelled vehicles

<sup>3</sup> Amazon, <http://www.amazon.com/Ladderkart-Step-Ladder-Hand-Truck/dp/B000GD3K5I>

<sup>4</sup> *Id.*

<sup>5</sup> B&H Photo, Video, Pro Audio, [http://www.bhphotovideo.com/c/product/620515-REG/Travel\\_Smart\\_by\\_Conair\\_TS31LHT\\_Travel\\_Smart\\_LadderKart\\_Combination.html](http://www.bhphotovideo.com/c/product/620515-REG/Travel_Smart_by_Conair_TS31LHT_Travel_Smart_LadderKart_Combination.html)

(**other than** those of the preceding headings) equipped with one or more wheels and constructed for the transport of goods or persons.

\* \* \* \* \*

The vehicles of this heading are designed to be towed by other vehicles (tractors, lorries, trucks, motorcycles, bicycles, etc.), to be pushed or pulled by hand, to be pushed by foot or to be drawn by animals.

This heading includes:

\* \* \* \* \*

(B) **Hand- or foot-propelled vehicles.**

\* \* \* \* \*

(2) Wheelbarrows, luggage-trucks, hopper-trucks and tipping-trucks.

\* \* \* \* \*

(4) Hand-carts, e.g., for waste disposal.

Meanwhile, the ENs to heading 7616 state, in pertinent part:

This heading covers all articles of aluminum **other than** those covered by the preceding heading of this Chapter, or by Note 1 to Section XV, or articles specified or included in **Chapter 82** or **83**, or more specifically covered elsewhere in the Nomenclature.

The LadderKart is in part a hand cart and in part a stepladder made of aluminum. Because headings 8716 and 7616, HTSUS both describe the LadderKart in part, those parts of the product are *prima facie* classifiable under headings 8716 and 7616, HTSUS. However, the LadderKart as a whole is not *prima facie* classifiable under either heading. As a result, the LadderKart cannot be classified pursuant to GRI 1 and it is necessary to consider the succeeding GRIs in numerical order.

GRI 2(a) provides guidance for the classification of incomplete or unfinished products. Because the LadderKart is a finished article, GRI 2(a) is inapplicable. GRI 2(b) provides, in pertinent part, that the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3. The LadderKart consists of more than one substance inasmuch as it is comprised of a hand cart and a stepladder both made primarily of aluminum. Consequently, we turn to GRI 3.

GRI 3 provides that when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows: (a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods; (b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable; and (c) when goods cannot be classified by reference to

3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

You contend that pursuant to GRI 3(a), the LadderKart should be classified under heading 7616, HTSUS, because the LadderKart is primarily a stepladder whose hand cart feature is secondary to its principle use. In support of this assertion, you state that (1) the hand cart function is ill-suited to serve as an industrial hand cart because its tubular frame cannot slide under heavy objects and cannot carry a load of greater than 250 pounds; (2) Conair does not market the LadderKart for industrial uses; (3) the LadderKart is frequently stocked with other ladders; and (4) internet retailers emphasize the stepladder functions.

Your first and second points imply that while the LadderKart is a hand cart, it should not be classified under heading 8716, HTSUS because it is not “industrial.” We emphasize that whether the LadderKart is “industrial” has no bearing on its classification at the heading level and only affects its classification at the statistical (10-digit) level.

GRI 3(a) is inapplicable here because that GRI only “comes into play when a good, as a whole, is *prima facie* classifiable under two or more headings.” *Conair Corp. v. United States*, 29 Ct. Int’l Trade 888, 894 (2005) (citing *Bauer Nike Hockey USA, Inc. v. United States*, 393 F.3d 1246, 1252 (Fed. Cir. 2004)). Here, headings 7616 and 8716, HTSUS each only describe the product in part.

In applying GRI 3(b), we must determine which component is indispensable to the merchandise in order to determine the essential character of this composite good. *See Oak Laminates Div. of Oak Materials Group v. United States*, 8 Ct. Int’l Trade 175, 628 F. Supp. 1577, 1581 (1984). Essential character can be determined based upon a variety of factors including the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Here, we find that no material or component imparts essential character to the LadderKart. You contend that the LadderKart’s principle function is as a stepladder because the LadderKart is frequently stocked in stores with other ladders and because internet retailers emphasize the stepladder functions. However, Conair itself includes the LadderKart in the “travel carts” section of its website which indicates that the hand cart aspect of the merchandise is just as important as that of the stepladder.

Similarly, both Conair and online vendors emphasize the dual use of the LadderKart as a stepladder and hand cart. The complete name of the LadderKart consistently includes the phrase “Stepladder/Hand Cart” calling attention to the product’s dual uses. In addition, Conair and online vendors provide detailed specifications for both the stepladder and hand cart uses including the weight capacity of each without suggesting that either element of the product is more useful than the other. The fact that some stores may stock the LadderKart in the ladder department does not indicate that its principle function is that of a stepladder; stocking decisions may be made on criteria other than an item’s principle function and the LadderKart’s marketing consistently highlights its dual use.

Consequently, neither the stepladder nor the hand cart function constitutes the essential character of the overall product and the LadderKart cannot be classified pursuant to GRI 3(b).

As a result, we progress to GRI 3(c), by which the LadderKart is classified under heading 8716, HTSUS, as it occurs last in numerical order when compared to heading 7616, HTSUS.

To resolve classification of the merchandise at the subheading level, we turn to GRI 6, which provides in pertinent part:

[f]or 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 [GRI 1 to 5], on the understanding that only subheadings at the same level are comparable.

Pursuant to GRI 6, the classification principles enunciated in GRIs 1 through 5 apply to the subheadings of heading 8716, HTSUS. By application of GRI 1, the first subheading within heading 8716, HTSUS to accurately describe the hand cart portion<sup>6</sup> of the LadderKart is subheading 8716.80.50 providing for “Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof. Other vehicles: Other.” Consequently, at the ten-digit classification level, we must determine whether the hand cart portion of the LadderKart is classified under subheading 8716.80.5010, HTSUS providing for industrial hand trucks, subheading 8716.80.5020, HTSUS providing for portable luggage carts, or 8716.80.5090, HTSUS providing for all other merchandise.

Beginning with subheading 8716.80.5010, HTSUS, you contend that the LadderKart is not suited for industrial use because its tubular frame cannot slide under heavy objects and cannot carry a load of great than 250 pounds. The term “industrial” is not defined in the HTSUS or in the ENs and therefore must be construed in accordance with its common and commercial meaning. *Nippon Kogaku (USA) Inc. v. United States*, 69 CCPA 89, 92, 673 F.2d 380, 382 (1982). Conair’s website indicates that the stepladder’s 300 pound weight capacity is rated “industrial heavy”<sup>7</sup> but the hand cart, with a 250 pound weight capacity, is not rated for industrial use. Because the hand cart portion of the LadderKart is not rated for industrial use, in accordance with the commercial meaning of the term “industrial,” we find that the LadderKart is not an “industrial hand truck” and, therefore, does not meet the terms of subheading 8716.80.5010, HTSUS.

Subheading 8716.80.5020, HTSUS provides for portable luggage carts. Although Conair markets the LadderKart as a “travel cart,” it is also marketed for use by homeowners, contractors, and photographers. Consequently, the entire hand cart portion of the LadderKart cannot be

<sup>6</sup> At the subheading level of classification we are solely concerned with determining the classification of the hand cart portion of the LadderKart because the merchandise as a whole is classified under heading 8716, HTSUS pursuant to GRI 3(c).

<sup>7</sup> Conair, <http://www.conair.com/travel-smart-ladderkart-professional-grade-stepladder-hand-cart-p-540.html>

classified as a portable luggage cart. Having exhausted all other subheadings, we now turn to subheading 8716.80.5090, HTSUS which provides for other items and under which the LadderKart is classified.<sup>8</sup>

### **HOLDING:**

By application of GRI 3(c), the LadderKart is classified under heading 8716, HTSUS and by application of GRI 1 applied *mutatis mutandis* through GRI 6, it is specifically classified under subheading 8716.80.5090, HTSUS, which provides for: “Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Other vehicles: Other, Other: Other.” The column one, general rate of duty is 3.2 percent *ad valorem*.

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

### **EFFECT ON OTHER RULINGS:**

NY N021149, dated January 9, 2008, is hereby REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

*Sincerely,*

IEVA K. O’ROURKE  
*for*

MYLES B. HARMON, DIRECTOR  
*Commercial and Trade Facilitation Division*

## **GENERAL NOTICE**

### **19 C.F.R. PART 177**

#### **REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT CONCERNING THE CLASSIFICATION OF WAFER PROBE CARDS**

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

**ACTION:** Notice of revocation of two ruling letters and revocation of treatment relating to the tariff classification of certain wafer probe cards.

**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 inter-

<sup>8</sup> We note that NY K86887 (June 22, 2004) classified a very similar item under the same subheading.

ested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters relating to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of wafer probe cards. CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published on July 7, 2010, in the *Customs Bulletin*, Volume 44, No. 28. No comments were received in response to the notice.

**DATES:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 29, 2010.

**FOR FURTHER INFORMATION CONTACT:** Richard Mojica, Tariff Classification and Marking Branch, at (202) 325-0032.

**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 revoking two ruling letters relating to the tariff classification of certain wafer probe cards. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) K89734, dated October 12, 2004, and NY K82192, dated January 22, 2004, 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

In NY K89734 and NY K82192, CBP classified the probe cards in subheading 8536.90.80, HTSUS, as “Electrical apparatus ... for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V: Other apparatus: Other.” After review, we now believe that the merchandise is properly classified in subheading 8536.90.40, HTSUS, as “Electrical apparatus ... for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V: Other apparatus: ... wafer probers.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY K89734, NY K82192, and any other ruling not specifically identified to reflect the correct classification of the probe cards, pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) H011054 (Attachment A) and HQ H011056 (Attachment B). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the *Customs Bulletin*.

Dated: September 9, 2010

DWAYNE RAWLINGS

*for*

MYLES B. HARMON, DIRECTOR

*Commercial and Trade Facilitation Division*

Attachments

[ATTACHMENT A]

HQ H011054

September 9, 2010

CLA-2 OT:RR:CTF:TCM H011054 RM

CATEGORY: Classification

TARIFF NO.: 8536.90.40

Ms. BARI WOLFSON

MANAGER, U.S. TRADE COMPLIANCE

KULICKE & SOFFA  
2101 BLAIR MILL RD.  
WILLOW GROVE, PA 19090

RE: Revocation of New York Ruling Letter K89734, Classification of Wafer Probe Cards

DEAR Ms. WOLFSON:

This is in reference to New York Ruling Letter (“NY”) K89734, dated September 20, 2004, issued to you on behalf of K&S Interconnect, Inc. (“K&S”). In that ruling, U.S. Customs and Border Protection (“CBP”) determined that a certain wafer probe cards were classified under heading 8536, Harmonized Tariff Schedule of the United States (“HTSUS”), specifically in subheading 8536.90.80, which provides in relevant part for “Electrical apparatus ... for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V: Other apparatus: Other.” For the reasons set forth below, CBP is revoking K89734.

Pursuant to section 625©, Tariff Act of 1930 (19 U.S.C. §1625©), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on July 7, 2010, in the *Customs Bulletin*, Volume 44, No. 28. No comments were received in response to this notice.

**FACTS:**

At issue are the K&S Cantilever (part No. 145), DuraPlus (part No. 121), and Vertical (part No. 124) probe cards; hardware devices used to test the electrical properties of the integrated circuits (“Ics”) etched on a semiconductor wafer. They consist of a printed circuit board, probe needles, and a ring to which the probe needles are attached. The probe cards provide an interface between automatic test equipment (“ATE”), which sends electrical signals to the Ics and analyzes their response, and the wafer. When in use, the cards’ probes make contact with the bonding pads of the wafer to measure the electric characteristics of the Ics.

**ISSUE:**

Are the probe cards classified in subheading 8536.90.40, HTSUS, as wafer probers, or in subheading 8536.90.80, HTSUS, as other apparatus for making connections to or in electrical circuits?

**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.

The 2010 HTSUS provisions under consideration are as follows:

8536	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes) for a voltage not exceeding 1,000 V; connectors for optical fibers, optical fiber bundles or cables:
8536.90	Other apparatus:
<b>8536.90.40</b>	Terminals, electrical splices and electrical couplings; wafer probers ...
<b>8536.90.80</b>	Other ...

At issue is the classification of the probe cards at the eight-digit national tariff rate subheading level. GRI 6 provides, in pertinent part:

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.

The tariff does not define the term “wafer probers.” When, as in this instance, a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). (“To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials’ (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271 (Fed. Cir. 1982))).

The *Oxford English Dictionary* defines the term “wafer” in relevant part as “4: a very thin slice of semiconductor crystal used in solid-state circuitry,” and the term “probe” (verb) as “1: to physically explore or examine. 2: to enquire into closely.”<sup>1</sup> Similarly, the *SEMATECH Dictionary of Semiconductor Terms* defines the term “wafer” as “in semiconductor technology, a thin slice with parallel faces cut from a semiconductor crystal.”<sup>2</sup> The term “prober” is defined as “a piece of hardware that allows a collection of probes to be brought into contact with the die on a wafer for the purpose of testing an integrated circuit.”<sup>3</sup>

Based on the foregoing, and in keeping with the text of heading 8536, HTSUS, we conclude that “wafer probers” are devices which enable an electrical connection between a machine that tests semiconductor wafers, and a wafer, by way of probing (i.e., physically exploring or examining) the wafer. As explained above, the instant probe cards function as electrical intercon-

<sup>1</sup> <http://www.oed.com>

<sup>2</sup> <http://www.sematech.org/publications/dictionary.htm>

<sup>3</sup> *Id.*

nects between the ATE and the Ics on a wafer. The electrical connection is established when the cards' probe needles make contact with the wafer's Ics.

We conclude, therefore, that the cards are classified under heading 8536, HTSUS, specifically in subheading 8536.90.40, as wafer probers.<sup>4</sup>

**HOLDING:**

By application of GRIs 1 and 6, the probe cards are classified under heading 8536, HTSUS, specifically in subheading 8536.90.40, which provides for "Electrical apparatus ... for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V: Other apparatus: ... wafer probers." The 2010 column one, general rate of duty is: 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 the Internet at [www.usits.gov/tata/hts/](http://www.usits.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY K89734, dated October 12, 2004, is hereby revoked. In accordance with 19 U.S.C. § 1625©, this action will become effective 60 days after publication in the *Customs Bulletin*.

*Sincerely,*

DWAYNE RAWLINGS

*for*

MYLES B. HARMON, DIRECTOR

*Commercial and Trade Facilitation Division*

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<sup>4</sup> Subheading 8536.90.40, HTSUS, was included in the HTSUS after the U.S. entered into the Information Technology Agreement ("ITA"), which went into effect on July 1, 1997, pursuant to Presidential Proclamation No. 7011 (62 FR 35909 (July 2, 1997)). The amendments set forth in said Proclamation are based on the framework established in the Declaration on Trade in Information Technology Products, which, together with its Annex, constitute the ITA. The Annex is comprised of two attachments. Attachment A, Section 1 lists the Harmonized System ("HS") headings and subheadings covered by the ITA. Attachment A, Section 2, lists certain semiconductor manufacturing and testing equipment and parts thereof to be covered by the ITA. Attachment B is a positive list of specific products to be covered by the ITA wherever they are classified in the HS.

[ATTACHMENT B]

HQ H011056

September 9, 2010

CLA-2 OT:RR:CTF:TCM H011056 RM

CATEGORY: Classification

TARIFF NO.: 8536.90.40

Ms. JOYCE FORD  
INFINEON TECHNOLOGIES  
6000 TECHNOLOGY BLVD.  
SANDSTON, VA 23150

RE: Revocation of New York Ruling Letter K82192, Classification of a Wafer Probe Card

DEAR Ms. FORD:

This is in reference to New York Ruling Letter (“NY”) K82192, dated January 22, 2004, issued to you on behalf of Infineon Technologies. In that ruling, U.S. Customs and Border Protection (“CBP”) determined that a certain wafer probe card was classified under heading 8536, Harmonized Tariff Schedule of the United States (“HTSUS”), specifically in subheading 8536.90.80, which provides in relevant part for “Electrical apparatus ... for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V: Other apparatus: Other.” For the reasons set forth below, CBP is revoking NY K82192.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on July 7, 2010, in the *Customs Bulletin*, Volume 44, No. 28. No comments were received in response to this notice.

**FACTS:**

The merchandise at issue is a probe card; a hardware device used to test the electrical properties of the integrated circuits (“ICs”) etched on a semiconductor wafer. It consists of a printed circuit board, probe needles, and a ring to which the probe needles are attached. The probe card provides an interface between automatic test equipment (“ATE”), which sends electrical signals to the ICs and analyzes their response, and the wafer. When in use, the card’s probes make contact with the bonding pads of the wafers to measure the electric characteristics of the ICs.

**ISSUE:**

Is the probe card classified in subheading 8536.90.40, HTSUS, as a wafer prober, or in subheading 8536.90.80, HTSUS, as other apparatus for making connections to or in electrical circuits?

**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.

The 2010 HTSUS provisions under consideration are as follows:

8536	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes) for a voltage not exceeding 1,000 V; connectors for optical fibers, optical fiber bundles or cables:
8536.90	Other apparatus:
<b>8536.90.40</b>	Terminals, electrical splices and electrical couplings; wafer probers ...
<b>8536.90.80</b>	Other ...

At issue is the classification of the probe card at the eight-digit national tariff rate subheading level. GRI 6 provides, in pertinent part:

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.

The tariff does not define the term “wafer probers.” When, as in this instance, a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). (“To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials’ (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271 (Fed. Cir. 1982))).

The *Oxford English Dictionary* defines the term “wafer” in relevant part as “4: a very thin slice of semiconductor crystal used in solid-state circuitry,” and the term “probe” (verb) as “1: to physically explore or examine. 2: to enquire into closely.”<sup>1</sup> Similarly, the *SEMATECH Dictionary of Semiconductor Terms* defines the term “wafer” as “in semiconductor technology, a thin slice with parallel faces cut from a semiconductor crystal.”<sup>2</sup> The term “prober” is defined as “a piece of hardware that allows a collection of probes to be brought into contact with the die on a wafer for the purpose of testing an integrated circuit.”<sup>3</sup>

Based on the foregoing, and in keeping with the text of heading 8536, HTSUS, we conclude that “wafer probers” are devices which enable an electric connection between a machine that tests semiconductor wafers, and a wafer, by way of probing (i.e., physically exploring or examining) the wafer. As explained above, the instant probe card functions as an electrical interconnect between the ATE and the ICs on a wafer. The electrical connection is established when the card’s probe needles make contact with the wafer’s

<sup>1</sup> <http://www.oed.com>

<sup>2</sup> <http://www.sematech.org/publications/dictionary.htm>

<sup>3</sup> *Id.*

ICs. We conclude, therefore, that the card is classified under heading 8536, HTSUS, specifically in subheading 8536.90.40, as a wafer prober.<sup>4</sup>

**HOLDING:**

By application of GRIs 1 and 6, the probe card is classified under heading 8536, HTSUS, specifically in subheading 8536.90.40, which provides for “Electrical apparatus ... for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V: Other apparatus: ... wafer probers.” The 2010 column one, general rate of duty is: 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 the Internet at [www.usits.gov/tata/hts/](http://www.usits.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY K82192, dated January 22, 2004, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the *Customs Bulletin*.

*Sincerely,*

DWAYNE RAWLINGS

*for*

MYLES B. HARMON, DIRECTOR

*Commercial and Trade Facilitation Division*

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<sup>4</sup> Subheading 8536.90.40, HTSUS, was included in the HTSUS after the U.S. entered into the Information Technology Agreement (“ITA”), which went into effect on July 1, 1997, pursuant to Presidential Proclamation No. 7011 (62 FR 35909 (July 2, 1997)). The amendments set forth in said Proclamation are based on the framework established in the Declaration on Trade in Information Technology Products, which, together with its Annex, constitute the ITA. The Annex is comprised of two attachments. Attachment A, Section 1 lists the Harmonized System (“HS”) headings and subheadings covered by the ITA. Attachment A, Section 2, lists certain semiconductor manufacturing and testing equipment and parts thereof to be covered by the ITA. Attachment B is a positive list of specific products to be covered by the ITA wherever they are classified in the HS.