

# U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

CBP Dec. 14-01

RIN 1515-AD95

## IMPORT RESTRICTIONS IMPOSED ON CERTAIN ARCHAEOLOGICAL AND ECCLESIASTICAL ETHNOLOGICAL MATERIAL FROM BULGARIA

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the U.S. Customs and Border Protection (CBP) regulations to reflect the imposition of import restrictions on certain archaeological and ecclesiastical ethnological material from the Republic of Bulgaria. These restrictions are being imposed pursuant to an agreement between the United States and Bulgaria that has been entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The final rule amends CBP regulations by adding Bulgaria to the list of countries for which a bilateral agreement has been entered into for imposing cultural property import restrictions. The final rule also contains the designated list that describes the types of archaeological and ecclesiastical ethnological material to which the restrictions apply.

**DATES:** Effective January 15, 2014.

**FOR FURTHER INFORMATION CONTACT:** For legal aspects, George Frederick McCray, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of International Trade, (202) 325-0082. For operational aspects:

Virginia McPherson, Chief, Interagency Requirements Branch, Trade Policy and Programs, Office of International Trade, (202) 863-6563.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The United States shares in the international concern for the need to protect endangered cultural property. The appearance in the United States of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the United States to join with other countries to control illegal trafficking of such articles in international commerce.

The United States joined international efforts and actively participated in deliberations resulting in the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the "Convention on Cultural Property Implementation Act" (Pub. L. 97-446, 19 U.S.C. 2601 *et seq.*) (the Act). This was done to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance to the nations from where they originate and contribute to greater international understanding of our common heritage.

Since the Act entered into force, import restrictions have been imposed on the archaeological and ethnological materials of a number of State Parties to the 1970 UNESCO Convention. These restrictions have been imposed as a result of requests for protection received from those nations. More information on import restrictions can be found on the Cultural Property Protection Web site (<http://eca.state.gov/cultural-heritage-center/international-cultural-property-protection>).

This rule announces that import restrictions are now being imposed on certain archaeological and ecclesiastical ethnological materials from Bulgaria.

### **Determinations**

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On November 20, 2012, the Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State, made the determinations required under the statute with respect to certain archaeological and ecclesiastical ethnological materials originating in Bulgaria that are described in the designated list set forth below in this document. These determinations include the following:

(1) That the cultural patrimony of Bulgaria is in jeopardy from the pillage of (a) archaeological material representing Bulgaria's cultural heritage dating from the Neolithic period (7500 B.C.) through approximately 1750 A. D. and (b) ecclesiastical ethnological material representing Bulgaria's Middle Ages (681 A.D.) through approximately 1750 A.D. (19 U.S.C. 2602(a)(1)(A)); (2) that the Bulgarian government has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage, and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Assistant Secretary also found that the material described in the determinations meet the statutory definitions of "archaeological material of the state party" and "ethnological material of the state party" (19 U.S.C. 2601(2)).

### **The Agreement**

The United States and Bulgaria entered into a bilateral agreement pursuant to the provisions of 19 U.S.C. 2602(a)(2). The agreement enables the promulgation of import restrictions on categories of archaeological material representing Bulgaria's cultural heritage dating from the Neolithic period (7500 B.C.) through approximately 1750 A. D. and ecclesiastical ethnological material representing Bulgaria's Middle Ages (681 A.D.) through approximately 1750 A.D. A list of the categories of archaeological and ecclesiastical ethnological material subject to the import restrictions is set forth later in this document.

## Restrictions and Amendment to the Regulations

In accordance with the Agreement, importation of material designated below is subject to the restrictions of 19 U.S.C. 2606 and § 12.104g(a) of the CBP regulations (19 CFR 12.104g(a)) and will be restricted from entry into the United States unless the conditions set forth in 19 U.S.C. 2606 and § 12.104c of the CBP regulations (19 CFR 12.104c) are met. CBP is amending § 12.104g(a) of the CBP Regulations (19 CFR 12.104g(a)) to indicate that these import restrictions have been imposed.

## Designated List of Archaeological and Ecclesiastical Ethnological Material of Bulgaria

The bilateral agreement between the United States and Bulgaria includes, but is not limited to, the categories of objects described in the designated list set forth below. These categories of objects are subject to the import restrictions set forth above, in accordance with the above explained applicable law and the regulation amended in this document (19 CFR 12.104(g)(a)).

The import restrictions include complete examples of objects and fragments thereof.

The archaeological materials represent the following periods and cultures: Neolithic, Chalcolithic, Bronze Age, Iron Age, Thracian, Hellenistic, Roman, Middle Ages, First Bulgarian Empire, Byzantine, Second Bulgarian Empire, and Ottoman. The ecclesiastical ethnological materials represent the following periods and cultures: Middle Ages, First Bulgarian Empire, Byzantine, Second Bulgarian Empire, and Ottoman. Ancient place-names associated with the region of Bulgaria include Odrysian Kingdom, Thrace, Thracia, Moesia Inferior, Moesia Superior, Coastal Dacia, Inner Dacia, Rhodope, Haemimontus, Europa, Bulgaria, and Eyalet of Rumeli.

### *I. Archaeological Material*

#### A. Stone

##### 1. Sculpture

a. *Architectural Elements*—In marble, limestone, gypsum, and other kinds of stone. Types include acroterion, antefix, architrave, base, capital, caryatid, coffer, column, crowning, fountain, frieze, pediment, pilaster, mask, metope, mosaic and inlay, jamb, tile, triglyph, tympanum, basin, wellhead. Approximate date: First millennium B.C. to 1750 A.D.

b. *Monuments*—In marble, limestone, granite, sandstone, and other kinds of stone. Types include but are not limited to votive statues,

funerary, documentary, votive stelae, military columns, herms, stone blocks, bases, and base revetments. These may be painted, carved with borders, carry relief sculpture, and/or carry dedicatory, documentary, official, or funerary inscriptions, written in various languages including Thracian, Proto-Bulgarian, Greek, Latin, Hebrew, Turkish, and Bulgarian. Approximate date: First millennium B.C. through 1750 A. D.

c. *Sarcophagi and ossuaries*—In marble, limestone, and other kinds of stone. Some have figural scenes painted on them, others have figural scenes carved in relief, and some are plain or just have decorative moldings. Approximate date: Third millennium through 1750 A. D.

d. *Large Statuary*—Primarily in marble, also in limestone and sandstone. Subject matter includes human and animal figures and groups of figures in the round. Common types are large-scale, free-standing statuary from approximately 1 m to 2.5 m in height and life-size busts (head and shoulders of an individual). Approximate date: Third millennium B.C. through 1750 A. D.

e. *Small Statuary and Figurines*—In marble and other stone. Subject matter includes human and animal figures and groups of figures in the round. These range from approximately 10 cm to 1 m in height. Approximate date: Neolithic through 1750 A. D.

f. *Reliefs*—In marble and other stone. Types include carved relief vases and slabs carved with subject matter such as a horseman, vegetative, floral, or decorative motifs, sometimes inscribed. Used for architectural decoration, funerary, votive, or commemorative monuments. Approximate date: Third millennium B.C. through 1750 A. D.

g. *Furniture*—In marble and other stone. Types include tables, thrones, and beds. Approximate date: Third millennium B.C. through 1750 A. D.

2. *Vessels*—In marble, steatite, rock crystal, and other stone. These may belong to conventional shapes such as bowls, cups, jars, jugs, and lamps, or may occur in the shape of a human or animal, or part of human or animal. Approximate date: Neolithic through 1750 A. D.

3. *Tools, Instruments, and Weapons*—In flint, quartz, obsidian, and other hard stones. Types of stone tools include large and small blades, borers, scrapers, sickles, awls, harpoons, cores, loom weights, and arrow heads. Ground stone types include grinders (e.g., mortars, pestles, millstones, whetstones), choppers, axes, hammers, moulds, and mace heads. Approximate date: Neolithic through 1750 A. D.

4. *Seals and beads*—In marble, limestone, and various semiprecious stones including rock crystal, amethyst, jasper, agate, steatite,

and carnelian. May be incised or cut as gems or cameos. Approximate date: Neolithic through 1750 A. D.

## B. Metal

### 1. Sculpture

a. *Large Statuary*—Primarily in bronze, including fragments of statues. Subject matter includes human and animal figures, and groups of figures in the round. Common types are large-scale, free-standing statuary from approximately 1 m to 2.5 m in height and life-size busts (head and shoulders of an individual). Approximate date: Fifth millennium through 1750 A.D.

b. *Small Statuary and Figurines*—Subject matter includes human and animal figures, groups of figures in the round, masks, plaques, and bronze hands of Sabazios. These range from approximately 10 cm to 1 m in height. Approximate date: First millennium B.C. through Roman.

c. *Reliefs*—In gold, bronze, or lead. Types include burial masks, leaves, and appliqué with images of gods, mythical creatures, etc. First millennium B.C. through Roman.

d. *Inscribed or Decorated Sheet Metal*—In bronze or lead. Engraved inscriptions, “military diplomas,” and thin metal sheets with engraved or impressed designs often used as attachments to furniture. Approximate date: First millennium B.C. through 1750 A.D.

2. *Vessels*—In bronze, gold, and silver. Bronze may be gilded or silver-plated. These may belong to conventional shapes such as bowls, cups, jars, jugs, strainers, cauldrons, candelabras, and lamps, or may occur in the shape of a human or animal or part of a human or animal. Approximate date: Fifth millennium B.C. through 1750 A.D.

3. *Personal Ornaments*—In copper, bronze, gold, and silver. Bronze may be gilded or silver-plated. Types include torques, rings, beads, pendants, belts, belt buckles, belt ends/appliqués, earrings, ear caps, diadems, spangles, straight and safety pins, necklaces, mirrors, wreaths, cuffs, pectoral crosses, and beads. Approximate date: Fifth millennium B.C. through 1750 A.D.

4. *Tools*—In copper, bronze and iron. Types include knives, hooks, weights, axes, scrapers, (strigils), trowels, keys, dies for making coins, and the tools of physicians and artisans such as carpenters, masons and metal smiths. Approximate date: Fifth millennium B.C. through 1750 A.D.

5. *Weapons and Armor*—In copper, bronze and iron. Types include both launching weapons (harpoons, spears and javelins) and weapons for hand-to-hand combat (swords, daggers, battle axes, rapiers, maces etc.). Armor includes body armor, such as helmets, cuirasses,

shin guards, and shields, and horse armor/chariot decorations often decorated with elaborate engraved, embossed, or perforated designs. Approximate date: Fifth millennium B.C. through 1750 A.D.

6. *Seals*—In lead, tin, copper, bronze, silver, and gold. Types include rings, amulets, stamps, and seals with shank. They pertain to individuals, kings, emperors, patriarchs, and other spiritual leaders. Approximate date: Bronze Age through 1750 A.D.

7. *Coins*—In copper, bronze, silver and gold. Many of the listed coins with inscriptions in Greek can be found in B. Head, *Historia Numorum: A Manual of Greek Numismatics* (London, 1911) and C.M. Kraay, *Archaic and Classical Greek Coins* (London, 1976). Many of the Roman provincial mints in modern Bulgaria are covered in I. Varbanov, *Greek Imperial Coins I: Dacia, Moesia Superior, Moesia Inferior* (Bourgas, 2005), id., *Greek Imperial Coins II: Thrace (from Abdera to Pautalia)* (Bourgas, 2005), id., *Greek Imperial Coins III: Thrace (from Perinthus to Trajanopolis), Chersonesos Thraciae, Insula Thraciae, Macedonia* (Bourgas 2007). A non-exclusive list of pre-Roman and Roman mints include Mesembria (modern Nesembar), Dionysopolis (Balchik), Marcianopolis (Devnya), Nicopolis ad Istrum (near Veliko Tarnovo), Odessus (Varna), Anchialus (Pomorie), Apollonia Pontica (Sozopol), Cabyle (Kabile), Deultum (Debelt), Nicopolis ad Nestum (Garmen), Pautalia (Kyustendil), Philippopolis (Plovdiv), Serdica (Sofia), and Augusta Traiana (Stara Zagora). Later coins may be found in A. Radushev and G. Zhekov, *Catalogue of Bulgarian Medieval Coins IX–XV c.* (Sofia 1999) and J. Youroukova and V. Penchev, *Bulgarian Medieval Coins and Seals* (Sofia 1990).

a. Pre-monetary media of exchange including “arrow money,” bells, and bracelets. Approximate date: 13th century B.C. through 6th century B.C.

b. Thracian and Hellenistic coins struck in gold, silver, and bronze by city-states and kingdoms that operated in the territory of the modern Bulgarian state. This designation includes official coinages of Greek-using city-states and kingdoms, Sycthian and Celtic coinage, and local imitations of official issues. Also included are Greek coins from nearby regions that are found in Bulgaria. Approximate date: 6th century BC through the 1st century B.C.

c. *Roman provincial coins*—Locally produced coins usually struck in bronze or copper at mints in the territory of the modern state of Bulgaria. May also be silver, silver plate, or gold. Approximate date: 1st century BC through the 4th century A.D.

d. *Coinage of the First and Second Bulgarian Empires and Byzantine Empire*—Struck in gold, silver, and bronze by Bulgarian and

Byzantine emperors at mints within the modern state of Bulgaria. Approximate date: 4th century A.D. through A.D. 1396.

e. *Ottoman coins*—Struck at mints within the modern state of Bulgaria. Approximate date: A.D. 1396 through A.D. 1750.

## C. Ceramic

### 1. *Sculpture*

a. *Architectural Elements*—Baked clay (terracotta) elements used to decorate buildings. Elements include tiles, acroteria, antefixes, painted and relief plaques, metopes, cornices, roof tiles, pipes, and revetments. May be painted as icons. Also included are wall and floor plaster decorations. Approximate date: First millennium through 1750 A.D.

b. *Large Statuary*—Subject matter includes human and animal figures and groups of figures in the round. Common types are large-scale, free-standing statuary from approximately 1 m to 2.5 m in height and life-size busts (head and shoulders of an individual). Approximate date: Neolithic through 6th century A.D.

c. *Small Statuary*—Subject matter is varied and includes human and animal figures, human body parts, groups of figures in the round, shrines, houses, and chariots. These range from approximately 10 cm to 1 m in height. Approximate date: Neolithic through 6th century A.D.

### 2. Vessels

a. *Neolithic and Chalcolithic Pottery*—Handmade, decorated with appliqué and/or incision, sometimes decorated with a lustrous burnish or added paint. These come in a variety of shapes from simple bowls and vases with three or four legs, anthropomorphic and zoomorphic vessels, to handled scoops and large storage jars.

b. *Bronze Age through Thracian Pottery*—Handmade and wheel-made pottery in shapes for tableware, serving, storing, and processing, with lustrous burnished, matte, appliqué, incised, and painted decoration.

c. *Black Figure and Red Figure Pottery*—These are made in a specific set of shapes (e.g. amphorae, kraters, hydriae, oinochoi, kylikes) decorated with black painted figures on a clear clay ground (Black Figure), decorative elements in reserve with background fired black (Red Figure), and multi-colored figures painted on a white ground (White Ground). Approximate date: First millennium B.C.

d. *Terra sigillata*—Is a high quality table ware made of red to reddish brown clay, and covered with a glossy slip. Approximate date: Roman.

e. *Seals*—On the handles and necks of bottles (amphorae). First millennium B.C. through Middle Ages.

f. *Middle Ages*—Includes undecorated plain wares, utilitarian wares, tableware, serving and storage jars, and special containers such as pilgrim flasks. These can be matte painted or glazed, including incised as “sgraffitto,” stamped, and with elaborate polychrome decorations using floral, geometric, human, and animal motifs.

#### D. Bone, Ivory, Horn, and Other Organics

1. *Small Statuary and figurines*—Subject matter includes human and animal figures and groups of figures in the round. These range from approximately 10 cm to 1 m in height. Approximate date: Neolithic through Middle Ages.

2. *Personal Ornaments*—In bone, ivory, and spondylus shell. Types include amulets, combs, pins, spoons, small containers, bracelets, buckles, and beads. Approximate date: Neolithic through Middle Ages.

3. *Seals and Stamps*—Small devices with at least one side engraved with a design for stamping or sealing; they can be discoid, cuboid, conoid, or in the shape of animals or fantastic creatures (e.g., a scarab). Approximate date: Neolithic through Middle Ages.

4. *Tools and Weapons*—In bone and horn. Needles, awls, chisels, axes, hoes, picks, harpoons. Approximate date: Neolithic through Middle Ages.

#### E. Glass and Faience

1. *Vessels*—Shapes include small jars, bowls, animal shaped, goblet, spherical, candle holders, perfume jars (unguentaria). Approximate date: First millennium B.C. through 1750 A.D.

2. *Beads*—Globular and relief beads. Approximate date: Bronze Age through Middle Ages.

#### F. Paintings

1. *Domestic and Public Wall Painting*—These are painted on mud-plaster, lime plaster (wet—*buon fresco*—and dry—*secco fresco*); types include simple applied color, bands and borders, landscapes, scenes of people and/or animals in natural or built settings. Approximate date: First millennium B.C. through 1750 A.D.

2. *Tomb Paintings*—Paintings on plaster or stone, sometimes geometric or floral but usually depicting gods, goddesses, or funerary scenes. Approximate date: First millennium B.C. through 6th century A.D.

G. *Mosaics*—Floor mosaics including landscapes, scenes of humans or gods, and activities such as hunting and fishing. There may also be vegetative, floral, or decorative motifs. Approximate date: First millennium B.C. through 1750 A.D.

## II. *Ecclesiastical Ethnological Material*

The categories of Bulgarian ecclesiastical ethnological objects on which import restrictions are imposed were made from the beginning of the 4th century A.D. through approximately 1750 A. D.

### A. Stone

1. *Architectural elements*—In marble and other stone, including thrones, upright “closure” slabs, circular marking slabs omphalion, altar partitions, and altar tables which may be decorated with crosses, human, or animal figures.

2. *Monuments*—In marble and other stone; types such as ritual crosses, funerary inscriptions.

3. *Vessels*—Containers for holy water.

4. *Reliefs*—In steatite or other stones, carved as icons in which religious figures predominate in the figural decoration.

### B. Metal

1. *Reliefs*—Cast as icons in which religious figures predominate in the figural decoration.

2. *Boxes*—Containers of gold and silver, used as reliquaries for sacred human remains.

3. *Vessels*—Containers of lead, which carried aromatic oils and are called “pilgrim flasks.”

4. *Ceremonial paraphernalia*—In bronze, silver, and gold including censers (incense burners), book covers, processional crosses, liturgical crosses, archbishop’s crowns, buckles, and chests. These are often decorated with molded or incised geometric motifs or scenes from the Bible, and encrusted with semi-precious or precious stones. The gems themselves may be engraved with religious figures or inscriptions. Ecclesiastical treasure may include all of the above, as well as rings, earrings, and necklaces (some decorated with ecclesiastical themes) and other implements (e.g., spoons, baptism vessels, chalices).

C. *Ceramic*—Vessels which carried aromatic oils and are called “pilgrim flasks.”

D. *Bone And Ivory Objects*—Ceremonial paraphernalia including boxes, reliquaries (and their contents) plaques, pendants, candelabra, stamp rings, crosses. Carved and engraved decoration includes religious figures, scenes from the Bible, and floral and geometric designs.

E. *Wood*—Wooden objects include architectural elements such as painted wood screens (iconostases), carved doors, crosses, painted wooden beams from churches or monasteries, furniture such as thrones, chests and other objects, including musical instruments. Religious figures predominate in the painted and carved figural decoration. Ecclesiastical furniture and architectural elements may also be decorated with geometric or floral designs.

F. *Glass*—Vessels of glass include lamps and candle sticks.

G. *Textile*—Robes, vestments and altar clothes are often of a fine fabric and richly embroidered in silver and gold. Embroidered designs include religious motifs and floral and geometric designs.

H. *Parchment*—Documents such as illuminated ritual manuscripts occur in single leaves or bound as a book or “codex” and are written or painted on animal skins (cattle, sheep/goat, camel) known as parchment.

## I. Painting

1. *Wall paintings*—On various kinds of plaster and which generally portray religious images and scenes of Biblical events. Surrounding paintings may contain animal, floral, or geometric designs, including borders and bands.

2. *Panel Paintings (Icons)*—Smaller versions of the scenes on wall paintings, and may be partially covered with gold or silver, sometimes encrusted with semi-precious or precious stones and are usually painted on a wooden panel, often for inclusion in a wooden screen (iconostasis). May also be painted on ceramic.

J. *Mosaics*—Wall mosaics generally portray religious images and scenes of Biblical events.

Surrounding panels may contain animal, floral, or geometric designs. They are made from stone and glass cut into small bits (tesserae) and laid into a plaster matrix.

## **Inapplicability of Notice and Delayed Effective Date**

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

## **Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

**Executive Order 12866**

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866.

**Signing Authority**

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

**List of Subjects in 19 CFR Part 12**

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

**Amendment to CBP Regulations**

For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR Part 12), is amended as set forth below:

**PART 12—SPECIAL CLASSES OF MERCHANDISE**

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

\* \* \* \* \*

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

\* \* \* \* \*

■ 2. In § 12.104g, paragraph (a), the table is amended by adding the Republic of Bulgaria to the list in appropriate alphabetical order as follows:

**§ 12.104g Specific items or categories designated by agreements or emergency actions.**

(a) \* \* \*

State party	Cultural property	Decision No.
* * * * *		
Bulgaria .....	Archaeological material representing Bulgaria's cultural heritage from Neolithic period (7500 B.C.) through approximately 1750 A. D. and ecclesiastical ethnological material representing Bulgaria's Middle Ages (681 A. D.) through approximately 1750 A. D.	CBP Dec. 14-01
* * * * *		

\* \* \* \* \*

THOMAS S. WINKOWSKI,  
*Acting Commissioner,*  
*U.S. Customs and Border Protection.*

Dated: January 8, 2014.

TIMOTHY E. SKUD,  
*Deputy Assistant Secretary of the Treasury.*

[Published in the Federal Register, January 16, 2014 (79 FR 2781)]

**DEPARTMENT OF THE TREASURY**  
**19 CFR Part 12**  
**CBP Dec. 14-02**

**RIN 1515-AD99**

**EXTENSION OF IMPORT RESTRICTIONS IMPOSED ON  
CERTAIN ARCHAEOLOGICAL MATERIAL FROM CHINA**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the U.S. Customs and Border Protection (CBP) regulations to reflect the extension of import restrictions on certain archaeological material from the People's Republic of China (China) and makes a technical change to the regulations to clarify that the restriction to monumental sculpture and wall art at least 250 years old should be calculated as of January 14, 2009, the date the Memorandum of Understanding (MOU) became effective. These restrictions, which were originally imposed by CBP Dec. 09-03, are due to expire on January 14, 2014, unless extended.

The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has determined that conditions continue to warrant the imposition of import restrictions on the archaeological materials from China. Accordingly, the restrictions will remain in effect for an additional five years, and the CBP regulations are being amended to indicate this further extension through January 14, 2019. Additionally, the Designated List of cultural property described in CBP Dec. 09-03 is revised in this document to clarify that the agreement applies to monumental sculpture and wall art at least 250 years old as of January 14, 2009. These restrictions are being extended pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing

the Illicit Import, Export and Transfer of Ownership of Cultural Property. CBP Dec. 09–03 contains the Designated List of archaeological materials that describes the articles to which the restrictions apply.

**EFFECTIVE DATE:** January 14, 2014.

**FOR FURTHER INFORMATION CONTACT:** For legal aspects, Lisa Burley, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of International Trade, (202) 325–0215. For operational aspects, William R. Scopa, Chief, Partner Government Agencies Branch, Trade Policy and Programs, Office of International Trade, (202) 863–6554.

**SUPPLEMENTARY INFORMATION:**

**Background**

Pursuant to the provisions of the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*) (hereafter, the “Cultural Property Implementation Act” or the “Act”), signatory nations (State Parties) may enter into bilateral or multilateral agreements to impose import restrictions on eligible archaeological and ethnological materials under procedures and requirements prescribed by the Act. Under the Act and applicable CBP regulations (19 CFR 12.104g), the restrictions are effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States (19 U.S.C. 2602(b)). This period may be extended for additional periods, each such period not to exceed five years, where it is determined that the factors justifying the initial agreement still pertain and no cause for suspension of the agreement exists (19 U.S.C. 2602(e); 19 CFR 12.104g(a)).

On January 14, 2009, the United States entered into a bilateral agreement with the People’s Republic of China (China), concerning the imposition of import restrictions on certain archaeological materials representing China’s cultural heritage from the Paleolithic Period (c. 75,000 B.C.) through the end of the Tang Period (A.D. 907) and monumental sculpture and wall art at least 250 years old. On January 16, 2009, CBP published CBP Dec. 09–03 in the **Federal Register** (74 FR 2838), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions.

Import restrictions listed in 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the agreement

enters into force with respect to the United States. This period can be extended for additional periods not to exceed five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists. (19 CFR 12.104g(a)).

On April 1, 2013, by publication in the **Federal Register** (78 FR 19565), the United States Department of State proposed to extend the MOU between the U.S. and China concerning the imposition of import restrictions on archaeological material from the Paleolithic Period through the Tang Period and monumental sculpture and wall art at least 250 years old.

On August 1, 2013, after reviewing the findings and recommendations of the Cultural Property Advisory Committee, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, concluding that the cultural heritage of China continues to be in jeopardy from pillage of certain archaeological materials, made the necessary determination to extend the import restrictions for an additional five years. On January 8, 2014, diplomatic notes were exchanged reflecting the extension of the restrictions for an additional five-year period as described in this document.

By request of China, and pursuant to the statutory and decision-making process, the Designated List of materials covered by the restrictions is being amended to clarify that the agreement applies to monumental sculpture and wall art that was at least 250 years old as of January 14, 2009, the date the MOU first entered into force. Thus, CBP is amending 19 CFR 12.104g(a) accordingly to reflect the extension of the import restrictions and the intention of the parties to cover monumental sculpture and wall art that was at least 250 years old as of January 14, 2009, through January 14, 2019, in accordance with the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c.

In this document, the Designated List of articles that was published in CBP Dec. 09–03 (*see* 74 FR 2838, dated January 16, 2009) is amended to clarify that the intentions of both parties is to include monumental sculpture and wall art that was at least 250 years old as of January 14, 2009.

### *Designated List*

This Designated List, amended as set forth in this document, includes archaeological materials representing China's cultural heritage from the Paleolithic Period (c. 75,000 B.C.) through the end of the Tang Period (A.D. 907) and monumental sculpture and wall art at least 250 years old as of January 14, 2009. The Designated List and additional information about the agreement may also be found at the

following Internet Web site address: <http://eca.state.gov/cultural-heritage-center/international-cultural-property-protection/bilateral-agreements/china>.

## **Designated List of Archaeological Material of China**

### *Simplified Chronology*

Paleolithic period (c. 75,000–10,000 BC).

Neolithic period (c. 10,000–2000 BC).

Erlitou and other Early Bronze Age cultures (c. 2000–1600 BC).

Shang Dynasty and other Bronze Age Cultures (c. 1600–1100 BC).

Zhou Dynasty (c. 1100–256 BC).

Qin Dynasty (221–206 BC).

Han Dynasty (206 BC–AD 220).

Three Kingdoms (AD 220–280).

Jin Dynasty (AD 265–420).

Southern and Northern Dynasties (AD 420–589).

Sui Dynasty (AD 581–618).

Tang Dynasty (AD 618–907).

## **I. Ceramic**

The ceramic tradition in China extends back to at least the 6th millennium B.C. and encompasses a tremendous variety of shapes, pastes, and decorations. Chinese ceramics include earthenwares, stonewares and porcelains, and these may be unglazed, glazed, underglazed, painted, carved, impressed with designs, decorated with applied designs or a combination of all of these. Only the most distinctive are listed here. Vessels are the most numerous and varied types of ceramics. Ceramic sculptures include human, animal, mythic subjects, and models of scenes of daily life. Architectural elements include decorated bricks, baked clay tiles with different glaze colors, and acroteria (ridge pole decorations).

### *A. Vessels*

#### **1. Neolithic Period**

Archaeological work over the past thirty years has identified numerous cultures of the Neolithic period from every part of China, all producing distinctive ceramics. Early Neolithic cultures (c. 7500–5000 BC) include such cultures as Pengtoushan (northern Hunan Province), Peiligang (Henan Province), Cishan (Hebei Province), Houli (Shandong Province), Xinglongwa (eastern Inner Mongolia and Liaoning Province), Dadiwan and Laoguantai (Gansu and Shaanxi Province), Xinle (Liaodong peninsula, Liaoning Province),

among others. Examples of Middle Neolithic cultures (c. 5000–3000 BC) include Yangshao (Shaanxi, Shanxi, and Henan Provinces), Daxi (eastern Sichuan and western Hubei Provinces), Hemudu (lower Yangzi River valley, Zhejiang Province), Majiabang (Lake Tai/Taihu area to Hangzhou Bay, Zhejiang and southern Jiangsu Provinces), Hongshan (eastern Inner Mongolia, Liaoning, and northern Hebei Provinces), and Dawenkou (Shandong Province), among others. Later Neolithic cultures (c. 3500–2000 BC) include Liangzhu (lower Yangzi River Valley), Longshan (Shandong and Henan Provinces), Taosi (southern Shanxi Province), Qujialing (middle Yangzi River valley in Hubei and Hunan Provinces), Baodun (Chengdu Plain, Sichuan Province), Shijiahe (western Hubei Province), and Shixia (Guangdong Province), among many others.

Neolithic vessels are sometimes inscribed with pictographs. When present, they are often single incised marks on vessels of the Neolithic period, and multiple incised marks (sometimes around the rim) on late Neolithic vessels.

a. *Yangshao*: The “classic” form of Neolithic culture, c. 5000–3000 BC in Shanxi, Shaanxi, Gansu, Henan, and adjacent areas. Hand-made, red paste painted with black, sometimes white motifs, that are abstract and depict plants, animals, and humans. Forms include bulbous jars with lug handles, usually with a broad shoulder and narrow tapered base, bowls, open mouth vases, and flasks (usually undecorated) with two lug handles and a pointed base.

b. *Shandong Longshan*: Vessels are wheel-made, black, very thin-walled, and highly polished, sometimes with open cut-out decoration. Forms include tall stemmed cups (*dou*), tripods (*li* and *ding*), cauldrons, flasks, and containers for water or other liquids.

## 2. Erlitou, Shang, and Zhou Vessels

a. Vessels are mostly utilitarian gray paste cooking tripod basins, cooking and storage jars, wide mouth containers, pan circular dishes with flat base, and broad three legged version of pan. The latter also appear in fine gray and black pastes. The forms of these include the kettle with lid (*he*), tripod liquid heating vessel with pouring spout (*jue*), tripod cooking pot (*ding*), goblet or beaker (*gu*), tripod water heater without pouring spout (*jia*).

b. *Shang and Zhou*: Vessels may be wheel-made or coiled. Vessels can be utilitarian gray paste cooking vessels, often cord-impressed, or more highly decorated types. Surfaces can be impressed and glazed yellow to brown to dark green. White porcelain-like vessels also occur. Forms include those of the Erlitou plus wide-mouth containers and variously shaped jars and serving vessels.

### 3. Qin Through Southern and Northern Vessels

Most vessels are wheel-made. The main developments are in glazing. Earthenwares may have a lead-based shiny green glaze. Grey stonewares with an olive color are called Yue ware.

### 4. Sui and Tang Vessels

**Note:** Most vessels are wheel-made.

a. *Sui*: Pottery is plain or stamped.

b. *Tang*: A three-color glazing technique is introduced for earthenwares (*sancai*). Green, yellow, brown, and sometimes blue glazes are used together on the same vessel. For stoneware, the olive glaze remains typical.

### B. Sculpture

1. *Neolithic*: Occasional small figurines of animals or humans. From the Hongshan culture come human figures, some of which appear pregnant, and human faces ranging from small to life size, as well as life-size and larger fragments of human body parts (ears, belly, hands, and others).

2. *Shang through Eastern Zhou*: Ceramic models and molds for use in the piece-mold bronze casting process. Examples include frontal animal mask (*taotie*), birds, dragons, spirals, and other decorative motifs.

3. *Eastern Zhou, Qin and Han*: Figures are life-size or smaller. They are hand- and mold-made, and may be unpainted, painted, or glazed. Figures commonly represent warriors on foot or horseback, servants, acrobats, and others. Very large numbers date to the Han Dynasty. In some cases, the ceramic male and female figurines are anatomically accurate, nude, and lack arms (in these cases, the figures were originally clad in clothes and had wooden arms that have not been preserved). Other ceramic objects, originally combined to make scenes, take many forms including buildings, courtyards, ships, wells, and pig pens.

4. *Tang*: Figures depicting Chinese people, foreigners, and animals may be glazed or unglazed with added paint. Approximately 15 cm to 150 cm high.

### C. Architectural Decoration and Molds

1. *Han*: Bricks having a molded surface with geometric or figural design. These depict scenes of daily life, mythic and historical stories, gods, or demons.

2. *Three Kingdoms through Tang*: Bricks may be stamped or painted with the same kinds of scenes as in the Han Dynasty.

3. *Han through Tang*: Roof tiles may have a corded design. Eaves tiles with antefixes have Chinese characters or geometric designs. Glazed acroteria (ridge pole decorations) in owl tail shape.

## II. Stone

### A. Jade

Ancient Chinese jade is, for the most part, the mineral nephrite. It should be noted, however, that many varieties of hard stone are sometimes called “jad” (yu) in Chinese. True nephrite jade can range in color from white to black, and from the familiar shades of green to almost any other color. Jade has been valued in China since the Neolithic period. Types commonly encountered include ornaments, amulets, jewelry, weapons, insignia, and vessels.

#### 1. Ornaments and Jewelry

a. *Neolithic (Hongshan)*: Types are mostly hair cylinders or pendant ornamental animal forms such as turtles, fish-hawks, cicadas, and dragons. One common variety is the so-called “pigdragon” (*zhulong*), a circular ring form with a head having wrinkled snout (the “pig”) and long dragon-like body.

b. *Neolithic (Liangzhu)*: Types include awl-shaped pendants, three-prong attachments, openwork crown-shapes, beads, birds, fishes, frogs.

c. *Neolithic (Shandong Longshan) and Erlitou*: Ornaments for body and clothing such as stick pins and beads.

d. *Shang and Zhou*: Earrings, necklaces, pectorals, hair stickpins, ornaments, sometimes in the shape of small animals, dragons, or other forms; belt buckles, and garment hooks. During the Zhou Dynasty, there appear elaborate pectorals made of jade links, and jade inlay on bronze.

e. *Qin, Han and Three Kingdoms*: Pectoral ornaments and small-scale pendants continue to be produced. Types include pectoral slit earrings, large disks (*bi*), openwork disks (*bi*), openwork plaques showing a mythic bird (*feng*), and various types of rings. Entire burial suits of jade occur during the Han Dynasty. More frequently occurring are Han Dynasty belthooks, decorated with dragons, and garment hooks

#### 2. Weapons, Tools, and Insignia

a. *Neolithic (Liangzhu)*: Types include weapons such as broad-

bladed axes (*yue*), long rectangular or trapezoidal blades (*zhang*), often with holes along the back (non-sharpened) edge for hafting; tools such as hoe, adze, knife blades.

b. *Neolithic (Shandong Longshan) and Erlitou*: Broad axe (*yue*) and halberd or “dagger axe” (*ge*).

c. *Shang and Zhou*: Broad axes (*yue*) and halberd (*ge*) may be attached to turquoise inlaid bronze shafts.

d. *Neolithic (Liangzhu) to Zhou*: Tool types include hoe, adze, knife blades.

e. *Neolithic (Shandong Longshan) to Zhou*: Insignia blades based on tool shapes such as long hoe, flat adze, and knife.

### 3. Ceremonial Paraphernalia

*Neolithic—Han*: Types include flat circular disks (*bi*) with a cut-out central hole and prismatic cylindrical tubes (*cong*), usually square on the outside with a circular hole through its length, often with surface carving that segments the outer surface into three or more registers. The *cong* tubes are often decorated with a motif on each corner of each register showing abstract pairs of eyes, animal and/or human faces. *Cong* tubes, while most closely linked with the Liangzhu culture, were widely distributed among the many late Neolithic cultures of China.

### 4. Vessels

a. *Shang through Han*: Types include eared cups and other tableware.

b. *Qin through Tang*: Tableware forms such as cups, saucers, bowls, vases, and inkstones.

### 5. Other

Chimes from all eras may be rectangular or disk-shaped.

#### B. Amber

Amber is used for small ornaments from the Neolithic through Tang dynasties.

#### C. Other Stone

##### 1. Tools and Weapons

a. *Paleolithic and later eras*: Chipped lithics from the Paleolithic and later eras including axes, blades, scrapers, arrowheads, and cores.

b. *Neolithic and later eras*: Ground stone including hoes, sickles, spades, axes, adzes, pestles, and grinders.

c. *Erlitou through Zhou*: As with jade, weapon types include blades, broad axes (*yue*), and halberds (*ge*).

## 2. Sculpture

Stone becomes a medium for large-scale images in the Qin and Han. It is put to many uses in tombs. It also plays a major role in representing personages associated with Buddhism, Daoism, and Confucianism.

### a. Sculpture in the round.

**Note:** This section includes monumental sculpture at least 250 years old as of January 14, 2009.

i. *Shang*: Sculpture includes humans, often kneeling with hands on knees, sometimes with highly decorated incised robes, owls, buffalo, and other animals. The Jinsha site near Chengdu, Sichuan, dating to the late Shang Dynasty, has yielded numerous examples of stone figurines in a kneeling position, with carefully depicted hair parted in the center, and with hands bound behind their back.

ii. *Han to Qing*: The sculpture for tombs includes human figures such as warriors, court attendants, and foreigners. Animals include horse, tiger, pig, bull, sheep, elephant, and fish, among many others.

iii. The sculpture associated with Buddhism is usually made of limestone, sandstone, schist and white marble. These be covered with clay, plaster, and then painted. Figures commonly represented are the Buddha and disciples in different poses and garments.

iv. The sculpture associated with Daoism is usually sandstone and limestone which may be covered and painted. Figures commonly represented are Laozi or a Daoist priest.

v. The sculpture associated with Confucianism represents Confucius and his disciples.

### b. Relief Sculpture.

i. *Han*: Relief sculpture is used for all elements of tombs including sarcophagi, tomb walls, and monumental towers. Images include hunting, banqueting, historical events, processions, scenes of daily life, fantastic creatures, and animals.

ii. *Tang*: Tomb imagery now includes landscapes framed by vegetal motifs.

### c. Art of cave or grotto temples.

*Han—Qing*: Note that this section includes monumental sculpture at least 250 years old as of January 14, 2009. These temples, mostly Buddhist, combine relief sculpture, sculpture in the round, and some-

times mural painting. The sculptures in the round may be stone or composites of stone, wood, and clay and are painted with bright colors.

d. Stelae.

*Han—Qing*: Note that this section includes monumental sculpture at least 250 years old as of January 14, 2009. Tall stone slabs set vertically, usually on a tortoise-shaped base and with a crown in the form of intertwining dragons. Stelae range in size from around 0.60m to 3m. Some include relief sculpture consisting of Buddhist imagery and inscription, and others are secular memorials with long memorial inscription on front and back faces.

3. Architectural Elements

a. *Erlitou through Zhou*: Marble or other stone is used as a support for wooden columns and other architectural or furniture fixtures.

b. *Qing*: Note that this section includes monumental sculpture at least 250 years old as of January 14, 2009. Sculpture is an integral part of Qing Dynasty architecture. Bridges, archways, columns, staircases and terraces throughout China are decorated with reliefs. Colored stones may be used, including small bright red, green, yellow and black ones. Statue bases are draped with imitations of embroidered cloths. Stone parapets are carved with small, elaborately adorned fabulous beasts.

4. Musical Instruments

*Neolithic through Han, and later*: Chimestones, chipped and/or ground from limestone and other resonant rock. They may be highly polished, carved with images of animals or other motifs, and bear inscriptions in Chinese characters. They usually have a chipped or ground hole to facilitate suspension from a rack.

### III. Metal

The most important metal in traditional Chinese culture is bronze (an alloy of copper, tin and lead), and it is used most frequently to cast vessels, weapons, and other military hardware. Iron artifacts are not as common, although iron was used beginning in the middle of the Zhou Dynasty to cast agricultural tool types, vessels, weapons and measuring utensils. As with ceramics, only the most distinctive are listed here.

A. *Bronze*

1. Vessels

**Note:** Almost any bronze vessel may have an inscription in archaic Chinese characters.

a. *Erlitou*: Types include variations on pots for cooking, serving and eating food including such vessels as the cooking pot (*ding*), liquid heating vessel with open spout (*jue*), or with tubular spout (*he*), and water heater without spout (*jia*).

b. *Shang*: Bronze vessels and implements include variations on the ceramic posts used for cooking, serving, and eating including but not limited to the tripod or quadripod cooking pot (*ding*), water container (*hu*), and goblet (*gu*). Animal-shaped vessels include the owl, mythic bird, tiger, ram, buffalo, deer, and occasionally elephant and rhinoceros. Most types are decorated with symbolic images of a frontal animal mask (*taotie*) flanked by mythical birds and dragons, or with simpler images of dragons or birds, profile cicadas, and geometric motifs, including a background “cloud and thunder” pattern of fine squared spirals.

c. *Zhou*: Types include those of previous eras. Sets begin to be made with individual vessels having similar designs. Late innovations are made to surface treatment: Relief decorations of intertwined dragons and feline appendages; inlay with precious stones and gems; inlay with other metals such as gold and silver; gilding; pictorial narratives featuring fighting, feasting and rituals; and various geometric designs.

d. *Qin and Han*: All vessel types and styles popularized of the immediately preceding era continue.

## 2. Sculpture

a. *Shang and other Bronze Age Cultures through Zhou*: Wide variety of cast human and animal sculptures. Particularly distinctive are the bronze sculptures from the Sanxingdui Culture in Sichuan which include life-sized human heads (often with fantastic features and sometimes overlaid with gold leaf) and standing or kneeling figurines ranging in size from 5cm to more than 2 meters; tree-shaped assemblages; birds, dragons, and other real and fantastic animals. Bronze sculpture from Chu and related cultures include supports for drums and bell sets (often in the shape of guardian figures, fantastic animals, or intertwined snakes).

b. *Qin and Han*: Decorative bronze types include statues of horses, lamps in the shape of female servants, screen supports in the shape of winged immortals, incense burners in the shape of mountains, mirrors, and inlaid cosmetic boxes.

c. *Buddhist*: In the Han there first appear small portable images of Sakyamuni Buddha. During the next historical eras, such images proliferate and become more varied in terms of size and imagery.

Most of these are free-standing, depicting such subjects as the historical Buddha Sakyamuni, Buddhas associated with paradises, Buddha's disciples, and scenes from the *Lotus Sutra*. Gilt bronzes are made from the Han to Tang.

### 3. Coins

a. *Zhou Media of Exchange and Tool-shaped Coins*: Early media of exchange include bronze spades, bronze knives, and cowrie shells. During the 6th century BC, flat, simplified, and standardized cast bronze versions of spades appear and these constitute China's first coins. Other coin shapes appear in bronze including knives and cowrie shells. These early coins may bear inscriptions.

b. Later, tool-shaped coins began to be replaced by disc-shaped ones which are also cast in bronze and marked with inscriptions. These coins have a central round or square hole.

c. *Qin*: In the reign of Qin Shi Huangdi (221–210 BC) the square-holed round coins become the norm. The new Qin coin is inscribed simply with its weight, expressed in two Chinese characters *ban liang*. These are written in small seal script and are placed symmetrically to the right and left of the central hole.

d. *Han through Sui*: Inscriptions become longer, and may indicate that inscribed object is a coin, its value in relation to other coins, or its size. Later, the period of issue, name of the mint, and numerals representing dates may also appear on obverse or reverse. A new script, clerical (*lishu*), comes into use in the Jin.

e. *Tang*: The clerical script becomes the norm until 959, when coins with regular script (*kaishu*) also begin to be issued.

### 4. Musical Instruments

a. *Shang*: Instruments include individual clapper-less bells (*nao*), singly and in sets. Barrel drums lay horizontally, have a saddle on top, and rest on four legs.

b. *Zhou through Tang*: Bells and bell sets continue to be important. The bells vary considerably in size in shape. Other instruments include mouth organs (*hulu sheng*), gongs, cymbals, and a variety of types of drums, including drums (*chunyu*) and large "kettledrums" from south and southwest China.

### 5. Tools and Weapons

Tools and implements of all eras include needles, spoons, ladles, lifting poles, axes, and knives. Weapons and military gear include the broad axe, dagger axe, knives, spear points, arrowheads, helmets,

chariot fittings, combination of spear and dagger (*ji*), cross-bow, and horse frontlets.

## 6. Miscellaneous

Other bronze items include but are not limited to mirrors, furniture parts, and utensils such as belt buckles, garment hooks, weights, measuring implements, incense burners, lamps, spirit trees, tallies, seals, rings, bells, and cosmetic containers.

### *B. Iron*

Iron is used for such utilitarian objects as axes, hammers, chisels, and spades. At the end of the Zhou, steel swords with multi-faceted metal inlay are produced.

1. *Zhou through Han*: Bimetallic weapons such as iron-bladed swords and knives with a bronze hilt.

2. *Three Kingdoms through Sui*: Small scale Buddhist images are cast.

3. *Tang*: Large scale castings include Buddhist statues, bells, lions, dragons, human figures, and pagodas.

### *C. Gold and Silver*

During the Shang and Zhou Dynasties, gold is used to produce jewelry and a limited number of vessel types, and as gilding, gold leaf, or inlay on bronze. Gold and silver become widely used in the Han Dynasty and remain so through the Tang Dynasty. Objects include vessels such as cups, ewers, jars, bowls; utensils such as lamps, containers, jewelry, liturgical wares, furniture parts; and Buddhist sculpture such as images of Buddha and reliquaries.

## **IV. Bone, Ivory, Horn, and Shell**

*Neolithic through Tang*: The most important uses of these materials is for vessels, seals, small-scale sculptures, and personal ornaments. In the Neolithic period, Erlitou culture, and Shang Dynasty bone (bovine scapula and tortoise plastrons, or lower shells) is used for divination: A carefully prepared bone or shell was thinned by drilling series of holes almost through the bone, to which heat was applied to make the bone crack. In some cases from the Late Shang Dynasty, the bones carry inscriptions revealing the date and nature of the question asked and, occasionally, the outcome of the event. The cowrie shells used as money in the Shang Dynasty and later periods show signs of use. Worked shell imitations of cowries are also known. Ivory and

horn are used to craft tableware utensils such as cups and containers as early as the Shang Dynasty; these are sometimes inlaid with turquoise or other stones.

## **V. Silks and Textiles**

*Neolithic through Tang:* Silk worms are domesticated in China as early as the Neolithic. Silk cloth is preserved as garments and parts thereof, as a covering for furniture, and as painted or embroidered banners. Techniques include flat weave, moiré, damask, gauze, quilting, and embroidery.

## **VI. Lacquer and Wood**

*Neolithic through Tang:* Lacquer is a transparent sap collected from the lac tree. When dissolved, it may be repeatedly applied to a wood or fabric form. The resulting product is sturdy and light. Lacquer vessels first appear in the Neolithic period, and become highly sophisticated and numerous by the middle Zhou through Han Dynasties. In the Sui and Tang Dynasties the practice is invented of creating a hard, thick surface of lacquer with the application of many thin layers. The resulting object may be carved and or inlaid before it hardens completely. Common colors for lacquer are red and black. Object types include: Vessels such as bowls, dishes, and goblets; military gear such shields and armor; musical instruments such as zithers (*qin*) and drums, related supports for drums and for bell sets; and boxes and baskets with painted or carved lids.

Wooden objects from this era are mainly preserved when painted with lacquer. These include architectural elements, utensils, coffins, musical instruments, and wood sculptures.

## **VII. Bamboo and Paper**

*Zhou through Tang:* Types include texts on bamboo and wooden slips, and on paper. The slips may be found singly, or in groups numbering into the thousands. Some Buddhist sutras were printed with movable wooden type.

## **VIII. Glass**

*Zhou through Tang:* Glass types include mostly tablewares, such as cups, plates, saucers.

## **IX. Painting and Calligraphy**

### *A. Wall Painting*

Note that this section includes wall art at least 250 years old as of January 14, 2009. The painted bricks of the Han through Tang tomb

walls have already been mentioned. That tradition is partially concurrent with a fresco tradition that runs from the Han through Qing Dynasties. Temples including those in caves or grottos have wall paintings with Buddhist, Confucian, and Daoist themes.

### *B. Other Painting*

*Han through Tang:* Paintings, dating to as early as the Southern and Northern, are on such media as banners, hand-scrolls, and fans. Subjects are drawn from Buddhism, Confucianism, and Daoism. Other subjects include landscapes and hunting scenes.

### **Inapplicability of Notice and Delayed Effective Date**

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure or a delayed effective date (5 U.S.C. 553(a)(1)).

### *Regulatory Flexibility Act*

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

### *Executive Order 12866*

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866.

### *Signing Authority*

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

### **List of Subjects in 19 CFR Part 12**

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

### **Amendment to CBP Regulations**

For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

### **PART 12—SPECIAL CLASSES OF MERCHANDISE**

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

\* \* \* \* \*

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

\* \* \* \* \*

■ 2. In § 12.104g, the table of the list of agreements imposing import restrictions on described articles of cultural property of State parties is amended in the entry for the People’s Republic of China in the column headed “Cultural Property” by adding the words “as of January 14, 2009” after the word “old”; and in the column headed “Decision No.” by adding “extended by CBP Dec. 14–02” immediately after “CBP Dec. 09–03”.

THOMAS S. WINKOWSKI,  
*Acting Commissioner,*  
*U.S. Customs and Border Protection.*

Dated: January 8, 2014.

TIMOTHY E. SKUD,  
*Deputy Assistant Secretary of the Treasury.*

[Published in the Federal Register, January 13, 2014 (79 FR 2088)]



**DEPARTMENT OF THE TREASURY**  
**19 CFR Parts 7, 163, and 178**

**[Docket No. USCBP–2014–0001]**

**RIN 1515–AD97**

**DOCUMENTATION RELATED TO GOODS IMPORTED  
FROM U.S. INSULAR POSSESSIONS**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations to eliminate the requirement that a customs official at the port of export verify and sign CBP Form 3229, Certificate of Origin for U.S. Insular Possessions, and to require only that the importer present this form, upon CBP’s request, rather than with each entry as is currently required. CBP believes that these amendments will serve to streamline the certification process and modernize the entry process by making it more efficient, as it will reduce the overall administrative burden on the importing trade as well as on CBP. The importer is still required to maintain CBP Form 3229 in its possession or may be subject to the assessment of a recordkeeping penalty if it cannot be produced.

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

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

- *Federal eRulemaking Portal at <http://www.regulations.gov>.* Follow the instructions for submitting comments via Docket No. USCBP-2014-0001.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. 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 be inspected during 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, Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC 20229-1177. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Seth Mazze, Trade Agreements Branch, Trade Policy and Programs, Office of International Trade, (202) 863-6567, [seth.mazze@cbp.dhs.gov](mailto:seth.mazze@cbp.dhs.gov).

## **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. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rulemaking. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rulemaking, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See **ADDRESSES** above for information on how to submit comments.

## Background

Goods imported into the customs territory of the United States from an insular possession may be eligible for duty-free treatment under the provisions of General Note 3(a)(iv) of the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202). In addition to the specific requirements set forth in General Note 3(a)(iv), HTSUS, the CBP regulations at part 7 of title 19 of the Code of Federal Regulations (19 CFR part 7) address insular possessions. Insular possessions of the United States are defined as American territories outside the customs territory of the United States and include the U.S. Virgin Islands, Guam, American Samoa, Wake Island, Midway Islands, and Johnston Atoll. *See* 19 CFR 7.2(a). In addition, goods imported from the Commonwealth of the Northern Mariana Islands are entitled to the same tariff treatment as imports from Guam and also subject to the provisions of section 7.3. *See* 19 CFR 7.2(a).

Section 7.3 of the CBP regulations (19 CFR 7.3) governs the duty-free treatment of goods imported from insular possessions of the United States, other than Puerto Rico. Puerto Rico is excluded from this definition because it is part of the customs territory of the United States. Currently, to receive duty-free treatment on imports from U.S. insular possessions, the importer is required by section 7.3(f) to file a signed certificate of origin on CBP Form 3229 with each entry. Section 7.3(f) also requires that CBP Form 3229 be signed by the chief or assistant chief customs officer or other official responsible for customs administration at the port of shipment. CBP Form 3229 is unique in this regard as no other CBP certificate of origin requires verification and signature by a local customs officer at the port of export. In practice, obtaining the customs officer's signature requires the shipper to deliver CBP Form 3229 to the customs officer and either wait for a signature or leave the form to be signed and retrieved at a later time.

In order to align this certification process to CBP's post-importation verification process that is used for other certificates of origin required under the various free trade agreements or trade preference programs and to ease the administrative burden on shippers as well as importers seeking duty-free treatment of goods from U.S. insular possessions by making the entry process more efficient, this document proposes to amend section 7.3(f) of the CBP regulations (19 CFR 7.3(f)) by removing the signature and date requirement of a customs official from the documentation. In addition, the proposed rule would require only that the importer present the form signed by the shipper upon CBP's request, rather than with each entry as is currently required. Under the proposed rule, the importer must have in his

possession, at the time of entry or entry summary, a completed CBP Form 3229 and must present the form upon request by the Port Director or his delegate. These regulatory amendments would allow CBP to simplify CBP Form 3229 by removing the data field for the “Verification of CBP Officer” including block 25, “Signature of CBP Officer”. CBP also proposes to add block 22a “Shipper Email” and re-designate the “Date” block 24 to block 23a on CBP Form 3229. These amendments would help to relieve the administrative burden on the shipper, by eliminating the need for the shipper to deliver CBP Form 3229 to a customs officer for signature and verification of the originating status of the goods; on CBP, by removing this task from the customs officer’s duties; and on the importer, by removing the requirement that the form be presented with each entry.

Importers filing CBP Form 3229 are subject to the recordkeeping requirements and procedures governing the maintenance, production, inspection, and examination of records set forth in part 163 of the CBP regulations. *See* 19 U.S.C. 1508 and 1509. In general, any record required to be made, kept, and rendered for examination and inspection by CBP must be kept for five (5) years from the date of entry. 19 CFR 163.4. Failure to comply with a lawful demand for the production of an entry record, including CBP Form 3229, may result in the assessment of a recordkeeping penalty pursuant to 19 U.S.C. 1509(g). *See also* 19 CFR 163.6(b).

Lastly, CBP plans to adopt non-substantive, editorial amendments to the regulations. CBP proposes to update the outdated name of the Form which appears in the list of records and information required for the entry of merchandise in the Appendix to part 163 (commonly referred to as the “(a)(1)(A)” list) by amending the listing within section IV for section 7.3(f) to reflect the current name of the form from “CF 3229” to “CBP Form 3229”. CBP also proposes to make editorial changes to the sample declarations made by the shipper in the insular possession and by the importer in the United States by updating the year from the 20th Century, “19\_\_.” to the 21st Century, “20\_\_” in 19 CFR 7.3(f)(2).

### **Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flex-

ibility. This rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation.

### Regulatory Flexibility Act

This section examines the impact on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

As discussed above, if promulgated, the proposed rule will remove the requirement that an importer present a completed CBP Form 3229 with each shipment from an insular possession, and the importer will only be required to present a completed CBP Form 3229 upon CBP’s request.<sup>1</sup> Additionally, this rule will remove the requirement that the shipper of a good from an insular possession obtain a customs official’s signature and date of signature in order to complete a CBP Form 3229.

Using internal databases, CBP has identified that over the last six fiscal years, on average there have been approximately 3,545 shipments of goods each year, imported by approximately 135 importers, from insular possessions (see Table 1). Any importer that imports goods from an insular possession would need to comply with this rule. Therefore, CBP believes that this rule has an impact on a substantial number of small importers. Although this rule may have an effect on a substantial number of importers, CBP believes that the economic impact of this rule will not be significant. Because importers will be required to present a completed CBP Form 3229 to CBP only upon request by a CBP officer rather than with each shipment from an insular possession, CBP estimates that an average importer may, at a maximum, print approximately 26 fewer CBP Form 3229s annually. While this would be a positive economic impact, CBP believes that this maximum benefit realized will be negligible.

TABLE 1—COMPLETED CBP FORMS 3229

Fiscal year	Importers	Completed 3229s
2007 .....	191	7,258

<sup>1</sup> The importer will still be required to maintain a completed CBP Form 3229 in its records in accordance to applicable record keeping requirements.

Fiscal year	Importers	Completed 3229s
2008 .....	188	4,980
2009 .....	136	3,210
2010 .....	97	2,183
2011 .....	110	1,897
2012 .....	89	1,744
<i>Average</i> .....	<i>135</i>	<i>3,545</i>

Source: Internal CBP databases.

As noted previously, CBP has identified that over the last six fiscal years, there have been an average of 3,545 shipments a year of goods to the United States from insular possessions (see Table 1). Due to data limitations, however, CBP is unable to identify the number of shippers that ship these shipments to the United States. Any shipper that ships goods to the United States from an insular possession would need to comply with this rule. Therefore, CBP believes this rule has an impact on a substantial number of small shippers shipping goods from insular possessions. Although CBP believes this rule may affect a substantial number of shippers, CBP does not believe that this rule will have a significant impact on shippers. CBP estimates that it takes a shipper, on average, approximately one hour to obtain a customs official's signature and date of signature, in order to complete CBP Form 3229.<sup>2</sup> If this rule is promulgated, CBP estimates that shippers shipping goods from an insular possession, including any small entities, will realize time burden reduction (i.e. time savings) of one hour per shipment. CBP estimates the average wage of a shipper's employee who is responsible for the form to be approximately \$45.10 per hour. Thus, CBP estimates that each shipper, including any small entities, will save approximately \$45.10 per shipment. CBP does not believe a savings of \$45.10 per shipment to be a significant economic impact.

Although CBP believes that a substantial number of small entities, both importers and shippers, may be affected by this rule, CBP does not believe that the economic impacts will be significant. CBP certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

### **Paperwork Reduction Act**

The collections of information in this document will be submitted for OMB review in accordance with the requirements of the Paper-

<sup>2</sup> This time burden differs from Paperwork Reduction Act (PRA) burden because the PRA burden is for completing the form and does not account for travel time.

work Reduction Act (44 U.S.C. 3507) under control number 1651–0016. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collections of information in these regulations are contained in 19 CFR 7.3(f) and currently set forth in CBP Form 3229, Certificate of Origin. This information is required at the time of entry and is used by CBP to verify the goods are eligible for duty-free treatment under General Note 3(a)(iv), HTSUS.

The proposed regulations and changes to CBP Form 3229 would reduce the estimated time burden on shippers by two minutes per completed form. Shippers currently spend an estimated 22 minutes completing CBP Form 3229, Certificate of Origin. The proposed regulations and new draft of CBP Form 3229 would reduce this time to an estimated 20 minutes to complete the form. The anticipated time savings comes as a result of the elimination of the customs officer signature requirement on the form.

The likely respondents are businesses which import from U.S. insular possessions. Such imports are almost exclusively petroleum, refined in St. Croix, U.S. Virgin Islands. Other such imports include tuna fish, watches, organic chemicals, and alcohol. The proposed burden hours for information collection 1651–0016 are as follows:

- Number of Respondents: 113.
- Number of Annual Responses: 2,260.
- Time per Response: 20 minutes.
- Total Annual Burden Hours: 746.

This reflects a decrease of 68 burden hours.

Comments concerning the collections of information should be directed to the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC 20229–1177. The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs).

## Signing Authority

This proposed regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

## List of Subjects

### *19 CFR Part 7*

American Samoa, Customs duties and inspection, Guam, Midway Islands, Puerto Rico, Wake Island.

### *19 CFR Part 163*

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

### *19 CFR Part 178*

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

## Proposed Amendments to the CBP Regulations

For the reasons set forth in the preamble, 19 CFR parts 7, 163, and 178 are proposed to be amended as set forth below.

## **PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION**

■ 1. The general and specific authority citations for part 7 continue to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

### **§ 7.3 [Amended]**

■ 2. In §7.3:

■ a. Paragraphs (b) introductory text, (d) introductory text, (e)(1) introductory text, and (e)(2) are amended by removing the word “shall” and adding, in its place, the word “will”.

■ b. Paragraph (f)(1) is revised.

■ c. Paragraph (f)(2) introductory text is amended by removing the word “shall” and adding, in its place, the word “must.”; and

■ d. Paragraphs (f)(2)(i) and (ii) are amended by removing the year designation “19\_\_” wherever it appears, and replacing it with the year designation “20\_\_”.

The revision reads as follows:

**§ 7.3 Duty-free treatment of goods imported from insular possessions of the United States other than Puerto Rico.**

\* \* \* \* \*

(f) *Documentation.* (1) When goods are sought to be admitted free of duty as provided in paragraph (a)(1) of this section, an importer must have in his possession at the time of entry or entry summary a completed certificate of origin on CBP Form 3229, showing that the goods comply with the requirements for duty-free entry set forth in paragraph (a)(1) of this section. The importer must provide CBP Form 3229 upon request by the port director or his delegate. Except in the case of goods which incorporate a material described in paragraph (c)(3)(ii) of this section, a certificate of origin will not be required for any shipment eligible for informal entry under § 143.21 of this chapter or in any case where the port director is otherwise satisfied that the goods qualify for duty-free treatment under paragraph (a)(1) of this section.

\* \* \* \* \*

**PART 163—RECORDKEEPING**

■ 3. The authority citation for part 163 continues to read as follows:  
**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624. \* \* \* \* \*

**Appendix to Part 163 [Amended]**

■ 4. In the Appendix to part 163, within section IV, the listing for § 7.3(f) is amended by removing the abbreviation “CF” and adding, in its place, the words “CBP Form”.

**PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS**

■ 5. The authority citation for part 178 continues to read as follows:  
**Authority:** 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

**§ 178.2 [Amended]**

■ 6. In § 178.2, the table is amended by revising the listings for § 7.3 to read as follows:

**§ 178.2 Listing of OMB control numbers.**

19 CFR Section	Description	OMB control No.
* * * * *		
§ 7.3 .....	Claim for duty-free entry of goods imported from U.S. insular possessions .....	1651-0116

19 CFR Section	Description	OMB control No.
* * * * *		

THOMAS S. WINKOWSKI,  
*Acting Commissioner,*  
*U.S. Customs and Border Protection.*

Dated: January 8, 2014.

TIMOTHY E. SKUD,  
*Deputy Assistant Secretary of the Treasury.*

[Published in the Federal Register, January 14, 2014 (79 FR 2395)]

**REVOCATION OF FIVE RULING LETTERS AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF AQUADOODLE PRODUCTS**

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

**ACTION:** Notice of revocation of five ruling letters and revocation of treatment relating to the tariff classification of Aquadoodle products.

**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 five ruling letters relating to the tariff classification of Aquadoodle products 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. 47, No. 28, on July 3, 2013. No comments were received in response to the notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 31, 2014.

**FOR FURTHER INFORMATION CONTACT:** Beth Jenior, Tariff Classification and Marking Branch: (202) 325–0347.

## 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, a notice was published in the *Customs Bulletin*, Volume 47, No. 28, on July 3, 2013, proposing to revoke Headquarters Ruling Letter (HQ) W968020, dated May 31, 2006, HQ H050118, dated July 13, 2010, New York Ruling Letter (NY) N091640, dated January 26, 2010, NY R03958, dated June 15, 2006, and NY L88572, dated November 15, 2005, in which CBP determined that Aquadoodle products were classified in heading 6307, HTSUS, as made up articles of textiles. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. 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 the comment period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should

have advised CBP during 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 this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ W968020, HQ H050118, NY N091640, NY R03958 and NY L88572, in order to reflect the proper classification of Aquadoodle products as toys of heading 9503, HTSUS, according to the analysis contained in HQ H236028, 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: January 7, 2014

IEVA K. O'ROURKE  
*for*  
*Myles B. Harmon,*  
*Director*  
*Commercial and Trade Facilitation Division*

Attachment

HQ H236028

December 31, 2013

CLA-2 OT:RR:CTF:TCM H236028 EGJ

CATEGORY: Classification

TARIFF NO.: 9503.00.00

DENNIS A. MORSE

BDP INTERNATIONAL

2929 WALKER NW

GRAND RAPIDS, MI 49544

RE: Revocation of HQ W968020, HQ H050118, NY N091640, NY R03958  
and NY L88572: Classification of Aquadoodle Products

DEAR MR. MORSE:

This is in reference to Headquarters Ruling Letter (HQ) W968020, dated May 31, 2006, issued to you concerning the tariff classification of the Aquadoodle Draw and Doodle Mat, Item number 70678. In HQ W968020, U.S. Customs and Border Protection (CBP) classified the subject merchandise in heading 6307, HTSUS, which provides for "Other made up articles, including dress patterns ..." We have reviewed HQ W968020 and find it to be in error. For the reasons set forth below, we hereby revoke HQ W968020 and four other rulings with substantially similar Aquadoodle products: HQ H050118, dated July 13, 2010, New York Ruling Letter (NY) N091640, dated January 26, 2010, NY R03958, dated June 15, 2006, and NY L88572, dated November 15, 2005.

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 revocation was published on July 3, 2013, in the *Customs Bulletin*, Volume 47, No. 28. CBP received no comments in response to this notice.

**FACTS:**

The subject merchandise is the Aquadoodle Draw and Doodle Mat. It is a textile fabric mat packaged with two pens that are intended to be filled with water. The mat is intended for use by children. The mat measures 32 inches by 32 inches with a four inch red border. The center of the mat consists of a surface washable material incorporating a hydrochromatic ink. When the water-filled pens touch the mat, the water causes the mat to change color so that a child can write or draw on the mat. When the water dries, the marks on the mat disappear and the child can draw on a clean mat again.

All Aquadoodle products include either a mat or a different material with hydrochromatic ink. They are all sold with at least one plastic water pen. Aquadoodle products are sold in toy stores or in the toy department of stores. Aquadoodle products have also won many toy industry awards.

**ISSUE:**

Is the Aquadoodle Draw and Doodle Mat classified as a toy of heading 9503, HTSUS, or as a made-up textile article of heading 6307, HTSUS?

**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 HTSUS headings under consideration are the following:

6307	Other made up articles, including dress patterns ...
	*           *           *
9503	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof...
	*           *           *

Note 1(t) to Section XI, which includes Chapter 63, states that:

1. This section does not cover:

(t) Articles of chapter 95 (for example, furniture, bedding, lamps and lighting fittings) ...

\*           \*           \*

Note 3 to Chapter 95 states that:

3. Subject to note 1 above, parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles ...

\*           \*           \*

Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that:

1. In the absence of special language or context which otherwise requires:

(a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

\*           \*           \*

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings at the international level. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 95.03(D) states, in pertinent part:

D) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults)....

\*           \*           \*

Note 1(t) to Section XI excludes articles of Chapter 95 from classification in Section XI. Section XI includes Chapter 63. If the Aquadoodle Mat is

classifiable in Chapter 95, it cannot be classified in Chapter 63. Furthermore, under Note 3 to Chapter 95, if the water pens are parts or accessories of the Aquadoodle Mat, the entire good is classified as a toy of heading 9503, HTSUS. As such, we will first determine whether the mat can be classified in heading 9503, HTSUS, as a toy.

Heading 9503 provides, in pertinent part, for “other toys.” In *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (Ct. Int’l Trade 2000) (*Minnetonka*), the U.S. Court of International Trade (CIT) determined that a toy must be designed and used principally for amusement and should not serve a utilitarian purpose. Thus, the CIT concluded that heading 9503, HTSUS, is a “principal use” provision within the meaning of Additional U.S. Rule of Interpretation 1(a) (AUSR 1(a)), HTSUS. *Id.*

Applying AUSR 1(a), the Aquadoodle Mat must belong to the same class or kind of goods which have amusement as a principal use, i.e. toys. In *United States v. Carborundum Co.*, 536 F.2d 373, 377 (1976), the U.S. Court of Customs and Patent Appeals stated that in order to determine whether an article is included in a particular class or kind of merchandise, the court must consider a variety of factors, including: (1) the general physical characteristics of the merchandise; (2) the channels, class or kind of trade in which the merchandise moves (where the merchandise is sold); (3) the expectation of the ultimate purchasers; (4) the environment of the sale (i.e., accompanying accessories and marketing); (5) usage, if any, in the same manner as merchandise which defines the class; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *Id.* While these factors were developed under the Tariff Schedule of the United States (predecessor to the HTSUS), the courts have also applied them under the HTSUS. *See, e.g. Minnetonka*, 110 F. Supp. 2d 1020, 1027; *see also Aromont USA, Inc. v. United States*, 671 F.3d 1310 (Fed. Cir. 2012), *Essex Manufacturing, Inc. v. United States*, 30 C.I.T. 1 (2006). Accordingly, CBP has applied these factors to determine the class or kind of goods for principal use provisions under the HTSUS. *See, e.g.*, HQ H220856, dated January 30, 2013, HQ H155796, dated August 15, 2012, and HQ 082780, dated December 18, 1989.

First, we will examine the physical characteristics of the merchandise. We note that the Aquadoodle Mat is a drawing surface that produces disappearing drawings. Next, we note the environment of sale includes the product’s packaging. The Aquadoodle Mat’s packaging explains that any doodles or drawings made with the water pens will evaporate as the water dries. As such, the consumer’s expectations are that doodles or drawings on the mat are temporary. The Aquadoodle Mat does not create lasting drawings, nor does it teach the consumer how to draw. The consumer will most likely purchase the Aquadoodle Mat for its amusement value because it creates disappearing drawings.

CBP has issued rulings on products similar to the Aquadoodle Mat. In HQ 956778, dated September 29, 1994, CBP classified the “Magic Drawing Board” under heading 9503, HTSUS, as a toy. The Magic Drawing Board consisted of a plastic drawing board with a luminous surface, and a specially-shaped, plastic stylus. The stylus left an impression when it was pressed and moved upon the surface of the board. When the luminous surface flap was lifted, any writing or drawing would disappear, rendering the surface clear

for repeat usage. In NY N056979, dated April 27, 2009, CBP classified the “Glow Station on the Go” as a toy under heading 9503, HTSUS. It consisted of a Glow Station tablet, light wand, stencil sheet, six stencil tracer shapes and a texture sheet. In a darkened room, children could create luminous freehand drawings or else use the stencils by pressing the battery-operated light wand on the surface of the Glow Station tablet. The drawings would eventually disappear from the tablet to allow repetitive use of the item. *See also* NY N177438, dated August 12, 2011, NY N108366, dated June 18, 2010, NY L89724, dated January 17, 2006, and NY A86068, dated August 20, 1996.

Additionally, Aquadoodle products are sold by toy stores and in the toy department of stores. They have won several toy industry awards, which indicates that the toy industry recognizes Aquadoodle products as toys. After applying the *Carborundum* factors, we find that the Aquadoodle Mat is in the same class or kind of goods as other toys. 536 F.2d at 377. As such, the Aquadoodle Mat is classified as a toy under heading 9503, HTSUS.

Next, we must determine the tariff classification of the two water pens. Note 3 to Chapter 95 states that parts and accessories which are suitable for use solely or principally with a toy of heading 9503, HTSUS, are to be classified together with the toy. Therefore, we will first look to whether the water pens are “parts” of the Aquadoodle Mat.

The courts have considered the nature of “parts” under the HTSUS and two distinct though not inconsistent tests have resulted. *See Bauerhin Techs. Ltd. P’ship. v. United States (Bauerhin)*, 110 F. 3d 774 (Fed. Cir. 1997). The first, articulated in *United States v. Willoughby Camera Stores, Inc. (Willoughby)*, 21 C.C.P.A. 322, 324 (1933), requires a determination of whether the imported item is an “integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” *Bauerhin*, 110 F.3d at 778 (quoting *Willoughby*, 21 C.C.P.A. 322 at 324). The second, set forth in *United States v. Pompeo (Pompeo)*, 43 C.C.P.A. 9, 14 (1955), states that an “imported item dedicated solely for use with another article is a ‘part’ of that article within the meaning of the HTSUS.” *Id.* at 779 (citing *Pompeo*, 43 C.C.P.A. 9 at 13). Under either line of cases, an imported item is not a part if it is “a separate and distinct commercial entity.” *Bauerhin*, 110 F. 3d at 779.

More recently, the Court of International Trade applied the *Willoughby* and *Pompeo* tests when it addressed the issue of whether two vase-shaped glass structures were classifiable as glassware in heading 7013, HTSUS, or as parts of lamps in heading 9405, HTSUS. *Pomeroy Collection, Ltd., v. United States*, 783 F. Supp. 2d 1257, No. 11–78 (Ct. Int’l Trade 2011). In applying *Willoughby* to the first article, the court ruled that “[w]hen imported, the claimed article is dedicated solely for use in such article, and, when applied to that use, the claimed part meets the *Willoughby* test.” *Ibid.* at 1261–1262. In *Pomeroy*, the court found that first article satisfied the *Willoughby* test because the hurricane lamp “clearly could not function without the first article in question” since the lamp relied upon the glass structure to hang upon. *Id.* at 1262. The court found that the second glass structure satisfied *Pompeo* because the evidence showed that the glass structure contained the flame and enabled the candles to remain lit and to prevent open flames. Thus,

the court also found that the second article at issue also satisfied the *Wiloughby* precedent because “when applied to that use” the lamp could not function without the glass structures. *Id.* In other words, to satisfy the *Pompeo* test, two prongs must be satisfied: (1) the article must be solely dedicated for use with the product it claimed to be a part of and, (2) when applied to that use, the article cannot function without the article at issue.

The Aquadoodle Mat is marketed as a doodling toy. The purpose of the Aquadoodle Mat is amusement, which is achieved by drawing pictures with the water pens and watching the pictures vanish as the water evaporates. Like the stylus for the Magic Drawing Board and the glow wand for the Glow Tablet, the water pens have no use other than drawing on the Aquadoodle Mat. Moreover, the Aquadoodle Mat cannot function without the water pens; the water pens are the only instruments which can create vanishing drawings. As such, the water pens are parts dedicated solely for use with the Aquadoodle Mat. Under Note 3 to Chapter 95, the water pens are classified under heading 9503, HTSUS, together with the Aquadoodle Mat.

As the Aquadoodle Mat and water pens are classified under heading 9503, HTSUS, as toys, Note 1(t) to Section XI precludes them from classification in Chapter 63. For all of these reasons, we find that the Aquadoodle Mat and water pens are properly classified together as a toy of heading 9503, HTSUS.

#### **HOLDING:**

By operation of GRI 1 (Note 1(t) to Section XI and Note 3 to Chapter 95) and AUSR 1(a), the Aquadoodle Mat and its water pens are classified in subheading 9503.00.00, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof...” The 2013 column one, general rate of duty is free.

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

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

HQ W968020, dated May 31, 2006, HQ H050118, dated July 13, 2010, NY N091640, dated January 26, 2010, NY R03958, dated June 15, 2006, and NY L88572, dated November 15, 2005 are 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*

**MODIFICATION OF TWO RULING LETTERS AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF CERTAIN PUMP  
ASSEMBLIES**

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

**ACTION:** Notice of modification of two ruling letters and revocation of treatment relating to the tariff classification of certain pump assemblies.

**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 modifying two ruling letters relating to the tariff classification of certain pump assemblies 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. 47, No. 37, on September 4, 2013. No comments were received in response to the notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 31, 2014.

**FOR FURTHER INFORMATION CONTACT:** Beth Jenior, Tariff Classification and Marking Branch: (202) 325–0347.

**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, a notice was published in the *Customs Bulletin*, Volume 47, No. 37, on September 4, 2013, proposing to modify Headquarters Ruling Letter (HQ) 088500, dated April 4, 1991, and New York Ruling Letter (NY) D82549, dated September 28, 1998, in which CBP determined that certain pump assemblies were classified as mechanical appliances for dispersing liquids of heading 8424, HTSUS. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. 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 the comment period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during 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 this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying HQ 088500 and NY D82549, in order to reflect the proper classification of the pump assemblies as pumps for liquids of heading 8413, HTSUS, according to the analysis contained in HQ H237855, 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: January 7, 2014

IEVA K. O'ROURKE  
*for*  
MYLES B. HARMON,  
*Director*  
*Commercial and Trade Facilitation Division*

Attachment

HQ H237855

December 31, 2013

CLA-2 OT:RR:CTF:TCM H237855 EGJ

CATEGORY: Classification

TARIFF NO.: 8413.20.00

M. SEREDINSKY

IMPORT MANAGER

SCAC TRANSPORT (USA), INC.

BUILDING 75 NORTH HANGAR ROAD

JFK INTERNATIONAL AIRPORT

JAMAICA, NY 11430

RE: Modification of HQ 088500 and NY D82549: Classification of Hand Pumps

DEAR MR. SEREDINSKY:

This is in reference to Headquarters Ruling Letter (HQ) 088500, dated April 4, 1991, issued to you concerning the tariff classification of two different models of tops for bottles of cosmetic and medicinal preparations: the VP series and the "Piston Pump SP 30" series. The VP series has a sprayer head and the SP 30 series has an actuator head. This letter only addresses the SP 30 series bottle tops.

In HQ 088500, U.S. Customs and Border Protection (CBP) classified the SP 30 series in subheading 8424.89.00, HTSUS, which provides, in pertinent part, for "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders .... other appliances: other ...". We have reviewed HQ 088500 and find it to be in error. For the reasons set forth below, we hereby modify HQ 088500 and one other ruling on substantially similar merchandise: New York Ruling Letter (NY) D82549, dated September 28, 1998, issued to Avon Products, Inc.<sup>1</sup>

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 revocation was published on September 4, 2013, in the *Customs Bulletin*, Volume 47, No. 37. CBP received no comments in response to this notice.

**FACTS:**

The SP 30 series of tops dispenses cosmetic gels and emulsions. The tops have three main components: a long plastic feed tube, a spring-loaded piston pump, and an actuator head. After importation, the tops will be incorporated onto bottles and tubes. The long plastic feed tube will extend into the bottle's reservoir, the pump will send the solution up the tube and the actuator head will dispense the liquid onto the consumer's hand or body in a measured quantity. You state that the tops act as "liquid elevators" to bring the liquid to the top of the bottle or tube. The tops vary in size and design.

---

<sup>1</sup> In NY D82549, CBP issued both a tariff classification and a country of origin marking determination. This letter only modifies the tariff classification determination in that ruling.

**ISSUE:**

Are the SP 30 series of tops classified as pumps for liquids under heading 8413, HTSUS, or as mechanical appliances for projecting, dispersing or spraying liquids under heading 8424, HTSUS?

**LAW AND ANALYSIS:**

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

The HTSUS provisions at issue are as follows:

8413	Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; part thereof:
8413.20.00	Hand pumps, other than those of subheading 8413.11 or 8413.19 ...
	* * *
8424	Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof:
8424.90	Parts:
8424.90.90	Other ...
	* * *

Note 2 to Section XVI (Chapters 84–85) states that:

Subject to note 1 to this section, note 1 to chapter 84 and note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

(a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517 ...

\* \* \*

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

international level. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 84.24 states, in pertinent part:

### PARTS

**Subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading includes parts for the appliances and machines of this heading. Parts falling in this heading thus include, *inter alia*, reservoirs for sprayers, spray nozzles, lances and turbulent sprayer heads not of a kind described in **heading 84.81**.

\*            \*            \*

Applying GRI 1, the first issue is whether HQ 088500 properly classified the Series 30 tops under heading 8424, HTSUS, as mechanical appliances for projecting or dispersing liquids. In *Trumpf Medical Systems, Inc. v. United States*, 753 F.Supp. 2d 1297, 1307 (CIT 2010), the U.S. Court of International Trade (CIT) defined “appliances” as follows:

These dictionary definitions indicate that an “appliance” constitutes a “device, apparatus or instrument for performing or facilitating the performance of a particular function.” *Dorland’s Illustrated Medical Dictionary* 116 (27th ed. 1988). See also 1 *Oxford English Dictionary* 575 (“[A] thing applied as a means to an end” or an “apparatus”); *Academic Press Dictionary of Science and Technology* 140 (“[I]n general, any tool or machine that is used to carry out a specific task or produce a desired result.”).

CBP has classified finished hand pump soap and lotion dispensers in heading 8424, HTSUS. See, e.g. HQ H012731, dated March 27, 2008, HQ 956530, dated August 29, 1994, and HQ 956529, dated August 29, 1994. However, in their condition as imported, the tops are not finished appliances for projecting or dispersing liquids. The tops cannot perform the specific function of projecting or dispersing a liquid because they lack reservoirs to hold the liquid.

EN 84.24 lists goods which are considered parts of mechanical appliances for projecting or dispersing liquids. EN 84.24 lists examples such as reservoirs for sprayers, spray nozzles and sprayer heads. The Series 30 tops are similar to these examples of parts. As such, we find that the tops are parts of goods of heading 8424, HTSUS.

Under Note 2(a) to Section XVI, parts which are goods included in any of the headings of chapter 84 or 85 are in all cases to be classified in their respective headings. Only when a part is not a good in its own right is it classified with the machine of which it is a part. See Note 2(b) to Section XVI. Heading 8413, HTSUS, provides for pumps for liquids. In *Hancock Gross, Inc. v. United States*, 64 Cust. Ct. 97, 100–101 (1970) (*Hancock Gross*), the U.S. Customs Court (predecessor to the CIT) interpreted the scope of Tariff Schedules of the United States (TSUS) item 660.90, which provided for pumps for liquids. The U.S. Customs Court provided the following definition of “pumps”:

A pump may be defined as a mechanical device or machine designed for elevating or conveying liquids against the action of gravity \* \* \*. A pump for liquids may be intended primarily for elevating the liquid from a source of supply below the pump up to the pump, or the principal purpose may be to force the liquid either to a much higher level or to some distant point by connecting the pump with suitable pipes. *Id. citing Engineering Encyclopedia* 1010 (2d Ed.).

Decisions by the courts interpreting nomenclature under the HTSUS' predecessor tariff code, the TSUS, are not deemed dispositive under the HTSUS. However, on a case-by-case basis, such decisions should be deemed instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, Aug. 23, 1988, 102 Stat. 1107, 1147; H.R. Rep. No. 576, 100th Cong., 2d Sess. 549-550 (1988); 1988 U.S.C.C.A.N. 1547, 1582-1583. In this instance, we find instructive the court's definition of pumps in *Hancock Gross*, 64 Cust. Ct. at 100-101.

In *Hancock Gross*, the subject merchandise was a plumbing apparatus called the "Drain or Fill." *Id.* at 99. It included a female-threaded connector designed to screw onto a male-threaded water faucet. *Id.* The apparatus raised fluid coming out of the water faucet against the action of gravity by suction. *Id.* If the water faucet was turned off, no suction was produced, and the "Drain or Fill" could not pump water. *Id.* The U.S. Customs Court found that the "Drain or Fill" was classifiable as a pump for liquids because it raised liquids against the action of gravity. *Id.* at 103-104.

Like the "Drain or Fill," the Series 30 tops are not attached to reservoirs, faucets or other sources of liquids. They consist of a long plastic feed tube, a spring-loaded piston pump and an actuator head. Once attached to a reservoir, the tops are designed to raise liquids against the action of gravity. As such, we find that the Series 30 tops are *prima facie* classifiable as pumps for liquids under heading 8413, HTSUS.

This determination is consistent with prior CBP rulings which classified similar pump assemblies under heading 8413, HTSUS. *See* NY N099836, dated April 28, 2010, and NY L89330, dated February 8, 2006. By application of Note 2(a) to Section XVI, the Series 30 tops cannot be classified as parts of mechanical appliance of heading 8424, HTSUS, because they are classifiable as pumps of heading 8413, HTSUS.

#### **HOLDING:**

By application of GRI 1 and Note 2(a) to Section XVI, the "Piston Pump SP 30" series tops in HQ 088500, dated April 4, 1991, are classified under heading 8413, HTSUS. Specifically, they are classified under subheading 8413.20.00, HTSUS, which provides, in pertinent part, for "Pumps for liquids ...: Hand pumps, other than those of subheading 8413.11 or 8413.19..." The 2013 column one, general rate of duty is free.

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

**EFFECT ON OTHER RULINGS:**

HQ 088500, dated April 4, 1991, is hereby modified with regard to the “Piston Pump SP 30” series of tops.

NY D82549, dated September 28, 1998, is hereby modified with regard to the tariff classification of the plastic lotion dispensers.

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*

**REVOCAION OF ONE RULING LETTER AND  
REVOCAION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF A HOLE SAW KIT**

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

**ACTION:** Notice of revocation of one ruling letter and revocation of treatment relating to the tariff classification of a hole saw kit.

**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 hole saw kit. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 46, No. 35, on August 22, 2012. One comment was received in support of the notice.

**DATES:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 31, 2014.

**FOR FURTHER INFORMATION CONTACT:** Laurance W. Frierson, Tariff Classification and Marking Branch, at (202) 325–0371.

**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) (“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 U.S. Customs and Border Protection (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 public and CBP share responsibility in carrying out import require-

ments. 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 a ruling letter pertaining to the classification of a hole saw kit. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (“NY”) N090938, dated February 10, 2010, this notice covers any rulings on this merchandise that may exist, but that 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.

CBP received one comment, dated August 24, 2012, in support of the notice of proposed action. The commenter asserted that NY J82340, dated March 25, 2003, concerns the classification of two door lock installation kits that are substantially similar to the merchandise at issue in NY N090938 and requested that CBP also revoke NY J82340 as it applies to the two kits. Upon review of NY J82340, CBP finds that the ruling does not involve merchandise that is substantially similar to the instant hole saw kit. Unlike the instant kit which contains six metal hole saws and one mandrel, each of the door lock installation kits discussed in NY J82340 only contain two metal hole saw and one mandrel. Additionally, as NY J82340 does not contain a material or value breakdown of the door lock installation kit components, CBP is unable to determine the essential character of the kits or conclude that the kits are substantially similar to the instant merchandise. CBP notes that should an interested party believe NY J82340 to be issued in error, they may request reconsideration of that ruling as prescribed by 19 C.F.R. Part 177.

Pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during 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 N090938, set forth as Attachment A to this document, CBP classified a hole saw kit in subheading 8207.50.20, Harmonized Trade Schedule of the United States (HTSUS), which provides for “Interchangeable tools for handtools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw-driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools; base metal parts thereof: Tools for drilling, other than for rock drilling, and parts thereof: With cutting part containing by weight over 0.2 percent of chromium, molybdenum, or tungsten or over 0.1 percent of vanadium.” It is now CBP’s position that the merchandise involved in NY N090938 is properly classified, by operation of GRI 1, in heading 8202, HTSUS, which provides, in pertinent part, for “Handsaws, and metal parts thereof; blades for saws of all kinds (including slitting, slotting or toothless saw blades), and base metal parts thereof.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N090938, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (“HQ”) H097658, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: January 7, 2014

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

Attachment

## [ATTACHMENT A]

N090938

February 10, 2010

CLA-2-82:OT:RR:NC:1:104

CATEGORY: Classification

TARIFF NO.: 8207.50.2055; 8202.99.0000

Ms. JAMARA ROSS  
CENTRAL PURCHASING, LLC.  
3491 MISSION OAKS BLVD.  
CAMARILLO, CA 93011

RE: The tariff classification of a bi-metal hole saw kit from China.

DEAR Ms. ROSS:

In your letter dated January 13, 2010, you requested a tariff classification ruling.

The item subject to this ruling request is referred to as a bi-metal hole saw kit (SKU# 93421). You state that the kit includes six 3/4" to 2 1/2" steel hole saws, two 1/4" and 7/16" mandrels with steel pilot drills, one threaded mandrel adaptor and a fitted carry case. The mandrels are attached to and inseparable from the pilot drills. The mandrels are simply used to fit the hole saws to the pilot drill bits. As such, the mandrels are essentially extensions to the bits. The pilot drills are twist drills. The cutting parts of the hole saws and the pilot drills are made from M3 High Speed Steel. The kit is used to cut holes through drywall, wood, plastic and metal. While used predominately with power hand drills, the kit can also be used with drill presses. In your letter, you request the classification of (1) the kit is imported packaged for retail sale and (2) hole saws and mandrels with pilot drills when imported separately.

General Rule of Interpretation (GRI) 1, HTSUSA, states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes. Goods that are, *prima facie*, classifiable under two or more headings, are classifiable in accordance with GRI 3, HTSUSA. GRI 3(a) states in part that when two or more headings each refer to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific, even if one heading gives a more precise description of the good.

The instant tool kit consists of at least two different articles that are, *prima facie*, classifiable in different subheadings. It consists of articles put up together to carry out a specific activity (i.e., drilling). Finally, the articles are put up in a manner suitable for sale directly to users without repacking. Therefore, the kit in question is within the term "goods put up in sets for retail sale." GRI 3(b) states in part that goods put up in sets for retail sale, which cannot be classified by reference to 3(a), are to be classified as if they consisted of the component which gives them their essential character. It is this office's opinion that the hole saws and the mandrels/pilot drills equally impart to the set its essential character. Inasmuch as no essential character can be determined, GRI 3(b) does not apply. GRI 3(c) says that, if neither GRI 3(a) nor GRI 3(b) applies, merchandise shall be classified in the heading which occurs last in numerical order among those equally meriting consideration.

The applicable subheading for the complete bi-metal hole saw kit (SKU# 93421) and the separately imported mandrels with pilot drills will be 8207.50.2055, Harmonized Tariff Schedule of the United States (HTSUS), which provides for which provides for Interchangeable tools for hand tools, whether or not power operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screwdriving), including dies for drawing or extruding metal, and rock drilling or earth boring tools; base metal parts thereof: Tools for drilling, other than for rock drilling, and parts thereof: With cutting part containing by weight over 0.2 percent of chromium, molybdenum, or tungsten or over 0.1 percent of vanadium: Twist drills: Other. The rate of duty will be 5 percent ad valorem.

The applicable subheading for the hole saws, when separately imported, will be 8202.99.0000, HTSUS, which provides for which provides for Other saw blades, and parts thereof: Other (including parts). The rate of duty will be free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patricia O'Donnell at (646) 733-3011.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H097658

December 31, 2013

CLA-2 OT:RR:CTF:TCM H097658 LWF

CATEGORY: Classification

TARIFF NO.: 8202.99.00

MR. HEIDAR NURISTANI  
CENTRAL PURCHASING, INC.  
3491 MISSION OAKS BLVD.  
CAMARILLO, CA 93012

RE: Revocation of New York Ruling Letter (“NY”) N090938; Classification of a hole saw kit from China

DEAR MR. NURISTANI:

This letter is in response to your request, dated March 1, 2010, for the reconsideration of New York Ruling Letter (“NY”) N090938, dated February 10, 2010, concerning the classification of a bi-metal hole saw kit (SKU #93421) from China. In NY N090938, U.S. Customs and Border Protection (CBP) classified the kit in subheading 8207.50.20, Harmonized Trade Schedule of the United States (HTSUS), which provides for “Interchangeable tools for handtools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screwdriving), including dies for drawing or extruding metal, and rock drilling or earth boring tools; base metal parts thereof. Tools for drilling, other than for rock drilling, and parts thereof. With cutting part containing by weight over 0.2 percent of chromium, molybdenum, or tungsten or over 0.1 percent of vanadium.” CBP has reviewed NY N090938 and finds the ruling to be incorrect. Accordingly, for the reasons set forth below, we hereby revoke that ruling.

Notice of the proposed revocation was published in the *Customs Bulletin*, Vol. 46, No. 35, on August 22, 2012. CBP received one comment, dated August 24, 2012, in support of the notice of proposed action. The commenter asserted that NY J82340, dated March 25, 2003, concerns the classification of two door lock installation kits that are substantially similar to the merchandise at issue in NY N090938 and requested that CBP also revoke NY J82340 as it applies to the two kits. Upon review of NY J82340, CBP finds that the ruling does not involve merchandise that is substantially similar to the instant hole saw kit. Unlike the instant kit which contains six metal hole saws and one mandrel, each of the door lock installation kits discussed in NY J82340 only contain two metal hole saw and one mandrel. Additionally, as NY J82340 does not contain a material or value breakdown of the door lock installation kit components, CBP is unable to determine the essential character of the kits or conclude that the kits are substantially similar to the instant merchandise.

**FACTS:**

The merchandise at issue consists of a bi-metal hole saw kit (SKU #93421) (the “hole saw kit”) used to cut holes through drywall, wood, plastic, and metal. The hole saw kit includes six 3/4” to 2 1/2” steel hole saws, two 1/4”

and 7/8" mandrels permanently attached to steel pilot drills, and one threaded mandrel adapter. Each kit is imported in a hard-plastic carrying case that is designed to transport and protect the kit components.

You state that the value and material breakdown of the hole saw kit consists of the following: six steel hole saws (61% of value and 0.845kg); two mandrels with steel pilot drills (26% of value and 0.255kg).

### ISSUE:

Whether the hole saw kit is classifiable at GRI 3(b) in heading 8202, HTSUS, as parts of saws, or at GRI 3(c) in heading 8207, HTSUS, as tools for power-operated handtools?

### LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, 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 heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 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. While not legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

GRI 3 provides, in relevant part:

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

...

- (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.

\* \* \* \* \*

The 2011 HTSUS subheadings under consideration are as follows:

8202	Handsaws, and metal parts thereof; blades for saws of all kinds (including slitting, slotting or toothless saw blades), and base metal parts thereof:
	Other saw blades, and parts thereof:
8202.99.00	Other (including parts)...
	* * * * *

8207	Interchangeable tools for handtools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screwdriving), including dies for drawing or extruding metal, and rock drilling or earth boring tools; base metal parts thereof:
8207.50	Tools for drilling, other than for rock drilling, and parts thereof:
8207.50.20	With cutting part containing by weight over 0.2 percent of chromium, molybdenum, or tungsten or over 0.1 percent of vanadium...
	*            *            *            *            *

The hole saw kit is classified as a “set” pursuant to GRI 3(b). GRI 3(b) states that “[g]oods put up in sets for retail sale shall be classified as if they consisted of the material or component which gives them their essential character.” See EN (X) to GRI 3(b).<sup>1</sup> There is no dispute that the hole saws and mandrels are classifiable in different headings. The six hole saws are appropriately classified in heading 8202, HTSUS, as saw blades; and the two mandrels are appropriately classified in heading 8207, HTSUS, as tools for drilling. Furthermore, the kit is “put up together” to enable a user to carry out the specific activity of cutting holes through drywall, wood, plastic, and metal. Lastly, it is imported ready for retail sale, that is, in a hard-plastic carrying case designed to transport and protect the kit components. As such, the hole saw kit shall be classified as if it consisted of the material or component which gives the kit its essential character.

The “essential character” of an article is “that which is indispensable to the structure, core or condition of the article, *i.e.*, what it is.” *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int’l Trade 2005). EN VIII to GRI 3(b) explains that “[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.” Recent court decisions on the essential character for GRI 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the goods. See *Estee Lauder, Inc. v. United States*, No. 07–00217, 2012 Ct. Int’l Trade LEXIS 23, \*17–18; *Structural Industries*, 360 F. Supp. 2d 1330; *Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278 (Ct. Int’l Trade 2006), *aff’d* 491 F.3d 1334 (Fed. Cir. 2007).

<sup>1</sup> EN (X) to GRI 3(b) provides, in relevant part:

For the purpose of this Rule, the term ‘goods put up in sets for retail sale’ shall be taken to mean goods which

- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings . . . ;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The instant merchandise consists of six hole saws and two mandrels. As imported, the hole saws predominate in quantity, value, and bulk of the kit. Whereas the mandrels account for 26% of the value of the kit and weigh 0.225kg, the six hole saws account for 61% of the value of the kit and weigh approximately three times as much as the mandrels. Additionally, the primary purpose of the hole saw kit is to cut holes through drywall, wood, plastic, and metal. Inasmuch as the hole saws are integral to the activity of cutting, the hole saws are indispensable to the condition of the merchandise. Consequently, we find that the components which impart the essential character of the hole saw kit are the hole saws.

The specially shaped, hard-plastic carrying case in which the hole saw kit is imported is classifiable in accordance with GRI 5(a).<sup>2</sup> Accordingly, the case is classified with the hole saw kits.

We note that our decision is distinguishable from Headquarters Ruling Letter (“HQ”) 963775, dated November 21, 2000. In HQ 963775, CBP addressed the classification of a lock installation kit consisting of a hole saw for cutting a hole for the lock mechanism, a wood spade bit for cutting a hole for the latch mechanism, and a mandrel pilot drill bit. As CBP was unable to determine whether the hole saw, wood spade bit, or mandrel imparted the lock installation kit with its essential character, CBP applied GRI 3(c) and classified the kit in heading 8207, HTSUS, that heading which comes last in numerical order amongst those headings that merit equal consideration. By contrast, the instant hole saw kit is put up for sale for the exclusive purpose of cutting holes and does not contain a wood spade bit to be used for boring or drilling. As discussed *supra*, the hole saws impart the kit with its essential character, and the hole saw kit is properly classified under heading 8202, HTSUS.

### **HOLDING:**

By application of GRI 1, GRI 3(b), and GRI 5(a), the hole saw kit and carrying case is classified under heading 8202, HTSUS, specifically subheading 8202.99.00, HTSUS, which provides for “Handsaws, and metal parts thereof; blades for saws of all kinds (including slitting, slotting or toothless saw blades), and base metal parts thereof: Other saw blades, and parts thereof: Other (including parts).” The column one, general rate of duty under this provision in 2012 is free.

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

---

<sup>2</sup> GRI 5(a) provides as follows:

In addition to the foregoing provisions, the following rules shall apply in respect of the good referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument case, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character.

**EFFECT ON OTHER RULINGS:**

In accordance with the above analysis, NY N090938, dated February 10, 2010, is hereby REVOKED.

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial Trade and Facilitation Division*

**PROPOSED REVOCATION OF RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF A MINK FEEDING  
VEHICLE**

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

**ACTION:** Notice of revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of the “Minkomatic” mink feeding vehicle.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke New York Ruling Letter (NY) 849985, dated March 5, 1990, with regard to the tariff classification of the “Minkomatic” mink feeding vehicle under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

**DATES:** Comments must be received on or before February 28, 2014.

**ADDRESSES:** Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St. N.E., 10th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at Customs and Border Protection, 90 K St. N.E., Washington, D.C. 20229 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

**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, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of the “Minkomatic” mink feeding vehicle. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter 849985, dated March 5, 1990 (Attachment A), 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 advise CBP during this notice period.

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

In NY 849985, CBP determined that three models of the “Minkomatic” mink feeding vehicle were classified in heading 8704, which provides for “Motor vehicles for the transport of goods.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY 849985, and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the Minkomatic in heading 8436, HTSUS, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H183882, set forth as Attachment B 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, consideration will be given to any written comments timely received.

Dated: January 7, 2014

IEVA K. O'ROURKE  
*for*  
*Myles B. Harmon,*  
*Director*  
*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

NY 849985

March 5, 1990

CLA-2-87:S:N:N1:101-849985

CATEGORY: Classification

TARIFF NO.: 8704.21.0000

Ms. DONA M. SCHUETTE  
NORCAR INC.  
1336 RUSSET COURT  
GREEN BAY, WI 54213

RE: The tariff classification of Minkomatic vehicles from Finland

DEAR Ms. SCHUETTE:

In your letter dated February 23, 1990 you requested a tariff classification ruling. This request is a follow-up to your letter dated January 10, 1990. You have submitted additional information.

The Minkomatic is a motor vehicle used to transport premixed feed from the feed kitchen to the animals in their pens. The vehicle serves no other function than to carry food; the machine does not mix, prepare or aerate food.

You have presented literature describing three models of the Minkomatic.

The Minkomatic 810 DLA 4-WD is an articulated vehicle with six wheels that is designed for use on large scale fur farms. This model is powered by a 4 cylinder, 4-stroke, water cooled diesel engine and a variable hydrostatic transmission. Other features include hydrostatic chassis steering, an adjustable driver's seat, adjustable foot pedals, feed pump, and easy to read gauges. The model 810 has a stainless steel feed tank that is located behind the driver and is situated on the rear portion of the articulated chassis. The tank holds 2,450 pounds of feed (or 3,150 pounds of feed). This vehicle (larger tank model) measures 11 feet 4 inches long, 5 feet wide, 35 inches wide, and weighs 2,150 pounds.

The Minkomatic 450 DLA is a vehicle with four wheels designed for use on fur farms. This model is powered by a Kubota 16 HP, 3-cylinder diesel engine and a stepless fully hydrostatic transmission. The engine is mounted in a heavy rubber cushion and is completely vibration free. Other features include an adjustable driver's seat, adjustable foot pedals, a start safety clutch, feed pump, and easy to read gauges. The model 450 has a food tank located in front of the driver. The tank holds 850 pounds of feed (or 1,050 pounds of feed). This vehicle (larger tank model) measures 7 feet 8 inches wide, 34 inches wide, and weighs 1,075 pounds.

The Minkomatic 409 DLA is a vehicle with four wheels designed for use on large mink and fox farms. This model is powered by a 14 HP diesel engine and an automatic transmission. The model 409 has a food tank located in front of the driver. The tank holds 360 liters. The vehicle measures approximately 76 inches long, 29.25 inches wide and weighs 946 pounds.

The applicable subheading for the Minkomatic vehicles will be 8704.21.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for motor vehicles for the transport of goods, with GVW not exceeding 5 metric tons. The rate of duty will be 25 percent ad valorem (in subheading 9903.87.00, HTS).

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

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

*Sincerely,*

JEAN F. MAGUIRE  
*Area Director*  
*New York Seaport*

## [ATTACHMENT B]

HQ H183882

December 19, 2013

CLA-2 RR:CTF:TCM H183882 CKG

CATEGORY: Classification

TARIFF NO: 8436.80.00

RE: Proposed revocation of NY 849985; classification of minkomatic

Ms. DONA M. SCHUETTE

NORCAR INC.

1336 RUSSET COURT

GREEN BAY, WI 54213

DEAR Ms. SCHUETTE,

This is in reference to New York Ruling Letter (NY) 849985, which U.S. Customs and Border Protection (CBP) issued to Norcar, Inc. on March 5, 1990, classifying three models of the Minkomatic vehicle in heading 8704, HTSUS, as a motor vehicle for the transport of goods. For the reasons set forth below, we have determined that the classification of the Minkomatic in heading 8704, HTSUS was incorrect.

**FACTS:**

NY 849985 described the vehicles at issue as follows:

The Minkomatic is a motor vehicle used to transport premixed feed from the feed kitchen to the animals in their pens. The vehicle serves no other function than to carry food; the machine does not mix, prepare or aerate food.

The Minkomatic 810 DLA 4-WD is an articulated vehicle with six wheels that is designed for use on large scale fur farms. This model is powered by a 4 cylinder, 4-stroke, water cooled diesel engine and a variable hydrostatic transmission. Other features include hydrostatic chassis steering, an adjustable driver's seat, adjustable foot pedals, feed pump, and easy to read gauges. The model 810 has a stainless steel feed tank that is located behind the driver and is situated on the rear portion of the articulated chassis. The tank holds 2,450 pounds of feed (or 3,150 pounds of feed). This vehicle (larger tank model) measures 11 feet 4 inches long, 5 feet wide, 35 inches wide, and weighs 2,150 pounds.

The Minkomatic 450 DLA is a vehicle with four wheels designed for use on fur farms. This model is powered by a Kubota l6 HP, 3-cylinder diesel engine and a stepless fully hydrostatic transmission. The engine is mounted in a heavy rubber cushion and is completely vibration free. Other features include an adjustable driver's seat, adjustable foot pedals, a start safety clutch, feed pump, and easy to read gauges. The model 450 has a food tank located in front of the driver. The tank holds 850 pounds of feed (or 1,050 pounds of feed). This vehicle (larger tank model) measures 7 feet 8 inches wide, 34 inches wide, and weighs 1,075 pounds.

The Minkomatic 409 DLA is a vehicle with four wheels designed for use on large mink and fox farms. This model is powered by a 14 HP diesel engine and an automatic transmission. The model 409 has a food tank

located in front of the driver. The tank holds 360 liters. The vehicle measures approximately 76 inches long, 29.25 inches wide and weighs 946 pounds.

### ISSUE:

Whether the Minkomatic is classified in heading 8704, HTSUS, as a motor vehicle for the transport of goods, or heading 8436, HTSUS, as other agricultural machinery.

### LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

8436:	Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders; parts thereof: * * * * *
8704:	Motor vehicles for the transport of goods: * * * * *
8709:	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; ...; parts of the foregoing vehicles...: * * * * *

Legal Note 1(l) to Section XVI provides as follows:

1. This section does not cover:

(l) Articles of section XVII

\* \* \* \* \*

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 87.04 provides, in pertinent part, as follows:

This heading covers in particular:

Ordinary lorries (trucks) and vans (flat, tarpaulin-covered, closed, etc.); delivery trucks and vans of all kinds, removal vans; lorries (trucks) with automatic discharging devices (tipping lorries (trucks), etc.); tankers (whether or not fitted with pumps); refrigerated or insulated lorries (trucks); multi-floored lorries (trucks) for the transport of acid in carboys, cylinders of butane, etc.; dropframe heavy-duty lorries (trucks) with load-

ing ramps for the transport of tanks, lifting or excavating machinery, electrical transformers, etc.; lorries (trucks) specially constructed for the transport of fresh concrete, **other than** concrete-mixer lorries (trucks) of **heading 87.05**; refuse collectors whether or not fitted with loading, compressing, damping, etc., devices.

The EN for heading 8709 states:

This heading covers a group of self-propelled vehicles of the types used in factories, warehouses, dock areas or airports for the short distance transport of various loads (goods or containers) or, on railway station platforms, to haul small trailers.

Such vehicles are of many types and sizes. They may be driven either by an electric motor with current supplied by accumulators or by an internal combustion piston engine or other engine.

The main features common to the vehicles of this heading which generally distinguish them from the vehicles of heading 87.01, 87.03 or 87.04 may be summarised as follows:

- (1) Their construction and, as a rule, their special design features, make them unsuitable for the transport of passengers or for the transport of goods by road or other public ways.
- (2) Their top speed when laden is generally not more than 30 to 35 km/h.
- (3) Their turning radius is approximately equal to the length of the vehicle itself.

\* \* \* \* \*

NY 849985 classified the three Minkomatic models in heading 8704, HTSUS, as a motor vehicle for the transport of goods. Classification in heading 8709, HTSUS, as a works truck, has also been suggested. However, the Minkomatic is not classified in either headings 8704 or 8709, HTSUS, because it is not principally used for the transport of goods. Headings 8704 and 8709, HTSUS, are provisions governed by "use." *Group Italglass v. United States*, 17 CIT 226 (1993). Additional U.S. Rule of Interpretation 1(b). As such, it is the principal use of the class or kind of vehicles to which the Micro Truk belongs that governs classification here. In this context, principal use is that use which exceeds any other single use of the merchandise. In *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), *cert. denied*, 429 U.S. 979 (1976), the court set forth factors considered pertinent in determining whether imported merchandise falls within a particular class or kind. These include the general physical characteristics of the merchandise, the expectation of the ultimate purchasers, the channels, class or kind of trade in which the merchandise moves, the environment of sale (i.e., accompanying accessories and the manner in which the merchandise is advertised and displayed), the use, if any, in the same manner as merchandise which defines the class, the economic practicality of so using the import and the recognition in the trade of this use.

Vehicles of headings 8709 and 8704, HTSUS, are principally used only for transport. The principal use of a good in this context is that use which exceeds any other single use of the merchandise. The Minkomatic, however, has two equally important functions: transport and mink feeding. The

Minkomatic is a composite machine incorporating both a vehicle and animal feeder. Its physical characteristics are therefore of a dual-use device, designed both to transport and deliver mink feed to the the minks. The remaining Carborundum factors in fact indicate a greater emphasis on the use of the Minkomatic as an agricultural machine; it is advertised and sold to farms for the purpose of mink feeding, and categorized as a farm product by the importer. See <http://www.norcar.com/en/farm-products/feeding>. The transport function of the Minkomatic thus does not exceed its use as an animal feeder; to the contrary, the Carborundum factors, while not conclusive in this case, suggest the opposite conclusion. Headings 8704 and 8709, HTSUS, only cover the transport function of the Minkomatic; as such, the Minkomatic is beyond the scope of 8709 or 8704 because it has no single principal use.

Furthermore, heading 8709, HTSUS, only covers vehicles of a kind used in the environments specified in the heading text. The Minkomatic is not used in the type of environments listed in the text of heading 8709, HTSUS—i.e., dock areas, factories, warehouses and airports. These environments are likely to feature smooth, paved surfaces. The Minkomatic is designed only for off-road, farm use, which also precludes it from classification in heading 8704, HTSUS, as a motor vehicle for the transport of goods. Heading 8704, HTSUS, primarily describes vehicles for on-road use. The Minkomatic lacks the features that would even legally allow it to be used on roads and other public ways, such as rear hazard lights, mirrors, road tires, turn signals, seat belts, doors, or enclosed cab.

Because the Minkomatic is not classified in heading 8704 or heading 8709, HTSUS, it is not an article of Section XVII, and classification in Section XVI is not precluded by Note 1(l) to Section XVI.

The Minkomatic can equally be described as a vehicle for the transport of goods and as an animal feeder. Both of these functions are captured, at GRI 1, by heading 8436, HTSUS. Heading 8436, HTSUS, provides for “Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders; parts thereof.” EN 84.36 notes that “The heading covers machinery, not falling in headings 84.32 to 84.35, which is of the type used on farms (including agricultural schools, co-operatives or testing stations), in forestry, market gardens, or poultry-keeping or bee-keeping farms or the like.”

*The Merriam Webster Dictionary Online* defines “Agriculture” as “the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products: *farming*.” Wikipedia defines livestock as “one or more *domesticated animals* raised in an agricultural setting to produce *commodities* such as *food, fiber* and *labor* ... On a broader view, livestock refers to any breed or population of animal kept by humans for a useful, commercial purpose.” See <http://en.wikipedia.org/wiki/Livestock>. *The Merriam-Webster Dictionary Online* similarly defines livestock as “: animals kept or raised for use or pleasure; *especially* : farm animals kept for use and profit.” See <http://www.merriam-webster.com/dictionary/livestock>. *The Oxford English Dictionary Online* concurs, defining “livestock” as: “Domestic animals kept on a farm for use or profit; *esp.* cattle, sheep, and pigs.

[http://www.oed.com/view/Entry/10934\\_9?redirectedFrom=livestock#eid](http://www.oed.com/view/Entry/10934_9?redirectedFrom=livestock#eid).

The vehicles in question are used on mink farms, which raise minks for their fur, i.e., for a commercial purpose. As a machine used on a farm, for the purpose of raising livestock, which is not described by headings 8432 to 8435, HTSUS, the Minkomatic falls under heading 8436, HTSUS. Furthermore, heading 8436, HTSUS, also encompasses the transport function of the Minkomatic; vehicles used in agricultural applications are still classified in the various headings covering agricultural machinery, such as headings 8432 and 8436, HTSUS.

This conclusion is consistent with prior CBP rulings. CBP has classified automatic feeding devices in 8436, HTSUS. See HQ 954551, dated August 26, 1993, NY L85882, dated July 14, 2005, NY G82691, dated October 2, 2000. These feeders were stationary and not integrated into a truck; however, trucks performing other agricultural tasks such as spreading, spraying, composting, etc. are also classified as agricultural or forestry machinery. See e.g., HQ 087703, dated January 18 1991; NY F87871, dated June 7, 2000; and NY N030782, dated June 23, 2008. Any agricultural or forestry vehicle can be said to transport its cargo, be it fertilizer, seeds, logs, etc. between locations. The transport function in such machinery is generally treated as subsidiary to the agricultural function.

The Minkomatic is thus described at GRI 1 by heading 8436, HTSUS.

#### **HOLDING:**

By application of GRI 1, the Minkomatic 810, 450 and 409 are classified in heading 8436, HTSUS, specifically subheading 8436.80.00, HTSUS, which provides for “Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders; parts thereof: Other machinery.” The 2013 column one, general rate of duty is Free.

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

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

NY 849985, dated March 5, 1990, is hereby revoked.

*Sincerely,*

IEVA K. O’ROURKE

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED REVOCATION OF RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF ASSEMBLED  
MULTI-DIE PRODUCTS**

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

**ACTION:** Notice of revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of assembled multi-die products.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke Headquarters Ruling Letter (HQ) H013678, dated June 1, 2009, with regard to the tariff classification of electronic circuits under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

**DATES:** Comments must be received on or before February 28, 2014.

**ADDRESSES:** Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St. N.E., 10th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at Customs and Border Protection, 90 K St. N.E., Washington, D.C. 20229 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

**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.

Tile 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, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of electronic circuits. Although in this notice, CBP is specifically referring to the revocation of HQ H013678, dated June 1, 2009, (Attachment A), 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 advise CBP during this notice period.

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

In HQ H013678, CBP determined that certain electronic circuits, referred to as assembled multi-die products, were classified in heading 8543, HTSUS, which provides for “other electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke HQ H013678, and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject electronic devices in heading 9031, HTSUS, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H240792, set forth as Attachment B 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, consideration will be given to any written comments timely received.

Dated: January 7, 2014

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

Attachments

## [ATTACHMENT A]

HQ H013678

June 1, 2009

CLA-2-OT:RR:CTF:TCM H013678 IOR

CATEGORY: Classification

Tariff No.: 8543.89.9695, 9802.00.80

AREA PORT DIRECTOR  
CUSTOMS AND BORDER PROTECTION  
605 W. 4TH AVE., STE. 230  
ANCHORAGE, AK 99501  
ATTN: HELENE MIKES, SIS

Re: Protest AFR No. 3195-07-100098; assembled multi-die products

DEAR PORT DIRECTOR:

This is our decision on the application for further review (AFR) of protest no. 3195-07-100098, filed against your classification of assembled multi-die products, under the Harmonized Tariff Schedule of the United States (HTSUS).

**FACTS:**

The twelve protested entries of assembled multi-die products were made from June 8 through August 25, 2005, by Kionix, Inc. (“Kionix”). The merchandise was entered under subheading 8542.29.00, HTSUS, as “other” electronic integrated circuits and microassemblies. The entries were liquidated under subheading 8543.89.96, HTSUS as “other” electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter, from September 1 through September 8, 2006. A timely protest was filed by Kionix February 27, 2007. The protestant asserts that the assembled multi-die products should have been classified under subheading 8542.60.00 HTSUS as hybrid integrated circuits. The protestant also asserts that the multi-die products qualified for partial duty exemption under subheading 9802.00.80, HTSUS. For some entries covered by this protest, no claim under subheading 9802.00.80, HTSUS, was made. However, your office notes that proper documentation was provided for all of the entries and does not dispute the claim for partial duty exemption under subheading 9802.00.80, HTSUS.

The protestant describes the assembled multi-die products as follows:

Each Kionix hybrid integrated circuit contains a silicon sensor chip that responds to acceleration (an accelerometer) or rotation (a gyroscope), in addition to a separate silicon integrated circuit chip (an ASIC). The integrated circuit converts signals from the sensor chip and translates them into usable electrical signals from the outside world. When imported back into the U.S., the two chips are contained in an overmolded plastic package and connected by miniature wires.

Kionix ships unpackaged fabricated sensor and circuit chips to Asia, where they are assembled on a single leadframe or single laminate, encapsulated with plastic, and shipped back for testing. The Kionix sensor, which is created by thin-film technology, and ASIC die are mounted on a single leadframe substrate or a single laminate substrate.

When the hybrid integrated circuits return from Asia to the U.S., they are uncalibrated and the motion response is not characterized, therefore they are not finished products and unusable by the customers. Kionix then performs a calibration on each part before directly shipping to a customer or intermediary.

The Kionix hybrid integrated circuit is always part of a larger engineering system, which performs a function based on the output of the chip. It is impossible to use the output of the Kionix chip to serve the function (i.e. navigation, disk drive protection, pedometer, gaming interface) without interpreting the signals coming from the sensor using a separate micro-processor or circuit board. The Kionix circuits are not entered with either of those articles.

....

The Kionix devices conform to the description of hybrid integrated circuits. They have an integrated circuit chip (an active element) and a sensor chip (which can be considered a passive chip, *manufactured by thin film methods*, but not having any active circuits). The Kionix sensor and ASIC die are mounted on a single leadframe substrate or a single laminate substrate. (Emphasis in original).

The components, sensor chip and integrated circuit, are combined to all intents and purposes, indivisibly. This means that although either in theory could be replaced or removed, it would be a complex, time-consuming and prohibitively expensive task. That is the case here, and any such removal would physically damage and destroy the value of Kionix's hybrid integrated circuit. Kionix is willing to provide more information on this if necessary.

#### **ISSUE:**

- 1) Whether the assembled multi-die products are classified under heading 8542, HTSUS, as "electronic integrated circuits and microassemblies," or heading 8543, HTSUS, as "electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter."
- 2) Whether the multi-die products qualify for the partial duty exemption under subheading 9802.00.80, HTSUS, when imported into the United States.

#### **LAW AND ANALYSIS:**

##### *I. Classification*

Initially we note that the matter protested is protestable under 19 U.S.C. §1514(a)(2) as a decision on classification, and the protest was timely filed, within 180 days of the liquidation of the entries.

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, 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 2005 HTSUS subheadings under consideration are as follows:

8542	Electronic integrated circuits and microassemblies; parts thereof:
8542.60.00	Hybrid integrated circuits .....
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	Other machines and apparatus:
8543.89	Other:
	Other:
	Other:
	Other.....

Note 5(b)(ii) to Chapter 85, HTSUS, for purposes of heading 8542, HTSUS, defines hybrid integrated circuits (HICs) as follows:

Hybrid integrated circuits in which passive elements (resistors, capacitors, interconnections, etc.) obtained by thin- or thick-film technology and active elements (diodes, transistors, monolithic integrated circuits, etc.) obtained by semiconductor technology, are combined to all intents and purposes indivisibly, on a single insulating substrate (glass, ceramic, etc.). These circuits may also include discrete components;

Note 5 further provides that “[f]or the classification of articles defined in this note, headings 8541 and 8542 shall take precedence over any other heading in the tariff schedule which might cover them by reference to, in particular, their function.”

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The 2005 ENs 85.42, in (I) (2) describe HICs as follows:

These are microcircuits built up on an insulating substrate on which a thin or thick film circuit has been formed. This process allows certain passive elements (resistors, capacitors, interconnections, etc.) to be produced at the same time. However, to become a hybrid integrated circuit of this heading, semiconductors must be incorporated and mounted on the surface, either in the form of chips, whether or not encased, or as encased semiconductors (e.g., in specially designed miniature casings). Hybrid integrated circuits may also contain separately produced passive elements which are incorporated into the basic film circuit in the same way as the semiconductors. Usually these passive elements are components such as capacitors, resistors or inductors in the form of chips.

Substrates made up of several layers, generally ceramic, heat-bonded together to form a compact assembly, are to be taken to form a single substrate within the meaning of Note 5 (B) (b) to this Chapter.

The components forming a hybrid integrated circuit must be combined to **all intents and purposes indivisibly**, i.e., though some of the elements

could theoretically be removed and replaced, this would be a long and delicate task which would be uneconomic under normal manufacturing conditions.

In support of its protest, Kionix cites to the CBP decisions in HQ 963150, dated March 29, 2002, and NY I82633, June 26, 2002, for the proposition that the instant merchandise is an HIC. In HQ 963150, we classified a combination of components described as “chip technology ... laid on top of film technology” in heading 8542, HTSUS. In NY I82633, the “product was developed by creating a resistor, a passive element, directly on a glass insulating substrate using thin film technology to which an application specific integrated circuit (ASIC), an active element that was obtained through semiconductor technology, was mounted on the substrate.” In both of those cases, the product was manufactured by placing one chip onto the substrate upon which the first chip had been “built up on”. Moreover, in HQ 961050, dated May 1, 2000, CBP explained that “we interpret the Harmonized System’s definition of an HIC as formed by layering a thin or thick film circuit, in the mass (nondiscrete) on top of the substrate,” to which separately produced semiconductors must be incorporated. That is not the case here. In contrast, the Kionix silicon sensor chip was separately produced, and was not incorporated into the base film circuit, and together with the IC (ASIC) chip was mounted onto a lead-frame or laminate substrate. Therefore, the instant merchandise cannot be classified in heading 8542, HTSUS.

The EN 85.42, supports this conclusion. It defines HICs as “microcircuits built up on an insulating substrate on which a thin or thick film circuit has been formed ... [h]owever to become a hybrid integrated circuit of this heading, semiconductors must be incorporated and mounted on the surface.” The semiconductor must be mounted on the same surface as the one upon which the other chip was built.

Therefore, we find that the assembled multi-die products are not HICs within the meaning of the HTSUS. The protestant argues that the elements are “combined to all intents and purposes indivisibly.” As we conclude that the assembled multi-die products are not manufactured in the same manner as HICs, we do not need to address the issue of whether they are “combined to all intents and purposes indivisibly.”

Kionix also argues that the principle of *ejusdem generis* is applicable. Specifically, Kionix asserts that “[i]f [CBP] believes that the term ‘hybrid integrated circuit’ does not apply to Kionix’s chips at issue, then it must apply *ejusdem generis* to determine if the chips are of the same class or kind as a hybrid integrated circuit or electronic integrated circuit.” We disagree. As cited by the protestant, the principle of *ejusdem generis* applies “where an enumeration of specific things is followed by a general word or phrase.” *Totes, Incorporated v. United States*, 69 F.3d 495, 498 (Fed. Cir.1995). In this case neither the heading text of 8542, HTSUS, nor Chapter 85 Note 5(b) to Chapter 85 contains an enumeration of specific things followed by a general word or phrase. Note 5(a) to Chapter 85 refers to “diodes, transistors and similar semiconductor devices” however the protestant does not argue that the subject assembled multi-die products are semiconductor devices similar to diodes and transistors.<sup>1</sup>

<sup>1</sup> We note that as of February 3, 2007, multichip integrated circuits are classifiable in heading 8542, HTSUS.

The subject articles are classifiable under heading 8543, HTSUS, specifically subheading 8543.89.96, HTSUS, as “[e]lectrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other....” The articles meet the terms of the heading text.<sup>2</sup>

Insofar as the assembled multi-die products are not described by heading 8542, HTSUS, the last paragraph of Note 5 to Chapter 85 does not apply. With respect to Kionix’s argument that the correct classification of an article is in Heading 8542, HTSUS if that heading *might* cover the good, this is a misstatement of Note 5 to Chapter 85. Note 5 to Chapter 85 refers to any heading *other* than 8541 or 8542 that *might* cover the article in question. In fact, the terms of heading 8543, HTSUS describe the goods and they are classified there.

## II. 9802

The protestant also makes a claim for partial duty exemption under 9802.00.80, HTSUS. Subheading 9802.00.80, HTSUS, provides a partial duty exemption for:

[a]rticles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process, such as cleaning, lubricating and painting.

Your office agrees that protestant has a valid claim for entry under subheading 9802.00.80, HTSUS. You note that documentation and a spreadsheet were submitted. We have reviewed that information and agree with your conclusion.

### **HOLDING:**

1) By application of GRI 1, the assembled multi-die products are classified in heading 8543, HTSUS, specifically subheading 8543.89.9695, HTSUSA (annotated), as “[e]lectrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other...Other,” with a column one, general duty rate of 2.6% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at [www.usits.gov/tata/hts/](http://www.usits.gov/tata/hts/).

2) We find that allowances in duty under subheading 9802.00.80, HTSUS, may be made for the assembled multi-die products that were imported into the U.S.

The protest should be DENIED in part and ALLOWED in part. In accordance with Sections IV and VI of the CBP Protest/Petition Processing Handbook (HB 3500–08A, December 2007, pp. 24 and 26), you are to mail this decision, together with the Customs Form 19, to the protestant no later than

<sup>2</sup> The submission from Kionix refers to “the output of the Kionix chip.” This refers to the function of the chip itself.

60 days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to mailing of the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will make the decision available to CBP personnel, and to the public on the CBP Home Page on the World Wide Web at [www.cbp.gov](http://www.cbp.gov), by means of the Freedom of Information Act, and other methods of public distribution.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## [ATTACHMENT B]

HQ H240792  
CLA-2 OT:RR:CTF:TCM H240792 CKG  
CATEGORY: Classification  
TARIFF NO.: 9031.80.80

PORT DIRECTOR  
U.S. CUSTOMS AND BORDER PROTECTION  
*PORT OF ANCHORAGE*  
605 W. 4TH AVE. SUITE 230  
ANCHORAGE, AK 99501  
ATTN: CAROL TAKAKI, IMPORT SPECIALIST

Re: Revocation of HQ H013678; assembled multi-die products

DEAR PORT DIRECTOR:

This is in reference to Headquarters Ruling Letter (HQ) H013678, issued to the Port Director in Anchorage, Alaska, on June 1, 2009, with regard to Protest # 3195-07-100098, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of electronic circuits. The articles were classified in heading 8543 of the Harmonized Tariff Schedule of the United States (HTSUS), as “other” electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter. Since the issuance of that ruling, Customs and Border Protection (CBP) has reviewed the classification of these items and has determined that the classification of these circuits in heading 8543, HTSUS, was incorrect. We have also taken into consideration counsel’s submissions filed on behalf of the original protestant, Kionix, Inc., in a related Application for Further Review for Protest No. 3195-10-100291, on the same merchandise.

HQ H013678 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, Customs 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 H013678 when notice of disposition 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 3195-07-100098, but will be applicable to any entries of similar merchandise made 60 days after publication of the final notice of revocation in the CUSTOMS BULLETIN.

**FACTS:**

At issue in HQ H013678 was the classification of electrical circuits imported by Kionix, Inc. Each Kionix circuit contains a silicon sensor chip that

responds to acceleration (an accelerometer) or rotation (a gyroscope), in addition to a separate silicon integrated circuit chip (an ASIC). The sensor chip is a summation of many different capacitors each consisting of many different movable silicon beams. The silicon beams move in response to simple changes in motion, causing a change in capacitance which the ASIC chip then interprets and translates into usable electrical signals from the outside world. The sensor chip is separately produced via thin film technology.

Kionix ships the unpackaged fabricated sensor and circuit chips to Asia, where they are assembled on a single leadframe or single laminate, encapsulated with plastic, and shipped back for testing. The Kionix sensor and ASIC die are mounted on a single leadframe substrate or a single laminate substrate. When imported back into the U.S., the two chips are contained in an overmolded plastic package and connected by miniature wires.

#### ISSUE:

Whether the assembled electronic circuits are classified under heading 8542, HTSUS, as “electronic integrated circuits and microassemblies,” heading 8543, HTSUS, as “electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter,” or heading 9031, as “measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter.”

#### LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

8542	Electronic integrated circuits and microassemblies; parts thereof:
8542.39.00	Other...
	* * *
8544	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	Other machines and apparatus:
8543.89	Other:
	Other:
	Other:
8543.89.96	Other...
	* * *
9031	Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter:
9031.80	Other instruments, appliances and machines:
9031.80.80	Other...
	* * *

Note 1(m) to Section XVI provides:

1. This section does not cover:

(m) Articles of chapter 90;

Note 8(b) to Chapter 85, for purposes of heading 8542, HTSUS, defines integrated circuits (HICs) as follows:

(b) “Electronic integrated circuits” are:

- (i) Monolithic integrated circuits in which the circuit elements (diodes, transistors, resistors, capacitors, inductances, etc.) are created in the mass (essentially) and on the surface of a semiconductor or compound semiconductor material (for example, doped silicon, gallium arsenide, silicon germanium, iridium phosphide) and are inseparably associated;
- (ii) Hybrid integrated circuits in which passive elements (resistors, capacitors, inductances, etc.), obtained by thin- or thick-film technology, and active elements (diodes, transistors, monolithic integrated circuits, etc.), obtained by semiconductor technology, are combined to all intents and purposes indivisibly, by interconnections of interconnecting cables, on a single insulating substrate (glass, ceramic, etc.). These circuits may also include discrete components;
- (iii) Multichip integrated circuits consisting of two or more interconnected monolithic integrated circuits combined to all intents and purposes indivisibly, whether or not on one or more insulating substrates, with or without leadframes, but with no other active or passive circuit elements.

Note 8 further provides that “[f]or the classification of articles defined in this note, headings 8541 and 8542 shall take precedence over any other heading in the tariff schedule which might cover them by reference to, in particular, their function.”

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The 2012 Explanatory Notes to heading 8542, HTSUS, provide as follows:

The articles of this heading are defined in Note 8 (b) to the Chapter.

Electronic integrated circuits are devices having a high passive and active element or component density, which are regarded as single units (see Explanatory Note to heading 85.34, first paragraph concerning elements or components to be regarded as “passive” or “active”). However, electronic circuits containing only passive elements are **excluded** from this heading.

Unlike electronic integrated circuits, discrete components may have a single active electrical function (semiconductor devices defined by Note 8 (a) to Chapter 85) or a single passive electrical function (resistors, capacitors, inductances, etc.). Discrete components are indivisible and are the basic electronic construction components in a system.

However, components consisting of several electric circuit elements and having multiple electrical functions, such as integrated circuits, are not considered as discrete components.

Electronic integrated circuits include memories (e.g., DRAMS, SRAMs, PROMS, EPROMS, EEPROMS (or E<sup>2</sup>PROMS)), microcontrollers, control circuits, logic circuits, gate arrays, interface circuits, etc.

Electronic integrated circuits include :

(I) **Monolithic integrated circuits.**

These are microcircuits in which the circuit elements (diodes, transistors, resistors, capacitors, inductances, etc.) are created in the mass (essentially) and on the surface of a semiconductor material (doped silicon, for example) and are therefore inseparably associated. Monolithic integrated circuits may be digital, linear (analogue) or digital-analogue.

(II) **Hybrid integrated circuits.**

These are microcircuits built up on an insulating substrate on which a thin or thick film circuit has been formed. This process allows certain passive elements (resistors, capacitors, inductances, etc.) to be produced at the same time. However, to become a hybrid integrated circuit of this heading, semiconductors must be incorporated and mounted on the surface, either in the form of chips, whether or not encased, or as encased semiconductors (e.g., in specially designed miniature casings). Hybrid integrated circuits **may also** contain separately produced passive elements which are incorporated into the basic film circuit in the same way as the semiconductors. Usually these passive elements are components such as capacitors, resistors or inductors in the form of chips.

Substrates made up of several layers, generally ceramic, heat-bonded together to form a compact assembly, are to be taken to form a single substrate within the meaning of Note 8 (b) (ii) to this Chapter.

The components forming a hybrid integrated circuit must be combined **to all intents and purposes indivisibly**, i.e., though some of the elements could theoretically be removed and replaced, this would be a long and delicate task which would be uneconomic under normal manufacturing conditions.

(III) **Multichip integrated circuits.**

These consist of two or more interconnected monolithic integrated circuits combined to all intents and purposes indivisibly, whether or not on one or more insulating substrates, with or without leadframes, but with no other active or passive circuit elements.

Multichip integrated circuits generally come in the following configurations:

- Two or more monolithic integrated circuits mounted side by side;
- Two or more monolithic integrated circuits stacked one upon the other;
- Combinations of the configurations above consisting of three or more monolithic integrated circuits.

These monolithic integrated circuits are combined and interconnected into a single body and may be packaged through encapsulation or otherwise. They are combined to all intents and purposes indivisibly, i.e., though some of the elements could theoretically be removed and replaced, this would be a long and delicate task which would be uneconomic under normal manufacturing conditions.

Insulating substrates of the multichip integrated circuits may incorporate electrically conductive regions. These regions may be composed of specific materials or formed in specific shapes to provide passive functions by means other than discrete circuit elements. Where conductive regions are present in the substrate, they are typically relied upon as a means by which the monolithic integrated circuits are interconnected.

\* \* \* \* \*

In Headquarters Ruling Letter (HQ) H013678, dated June 1, 2009, CBP determined that the Kionix devices at issue were classified in heading 8543, HTSUS, as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85. Kionix argues that this conclusion is incorrect, and that the Kionix multi-die products are classified in heading 8542, HTSUS, as hybrid integrated circuits, or alternatively, as multichip integrated circuits.

CBP has consistently interpreted Note 8 to Chapter 85 (previously Note 5) to require that hybrid integrated circuits contain passive nondiscrete components, built up on the substrate. In HQ H013678, CBP concluded that the instant Kionix devices were not classifiable as hybrid integrated circuits of heading 8542, HTSUS, because no circuit was built up on the substrate. The Kionix electronic circuit contains no nondiscrete components, passive or active. The sensor chip (a passive element) is a discrete component and is not built up on the surface of the same substrate to which the ASIC chip is mounted.

Kionix argues that legal note 8 and EN 85.42(II) require only that hybrid integrated circuits contain elements obtained by film technology, whether discrete or built up on the substrate. Stated conversely, counsel does not believe that elements must be produced through film technology directly on the substrate of the hybrid integrated circuit, in the mass, before the semiconductors and discrete passive components are added to the substrate. These arguments have already been extensively addressed in prior CBP rulings, in which CBP concluded that hybrid integrated circuits must contain non-discrete passive elements produced by film technology directly on (in the mass of) the insulating substrate on which active elements produced via semiconductor technology are incorporated. *See, e.g.*, HQ 951926, dated September 18, 1992; HQ 962750, dated January 10, 2000; HQ 961050, dated May 1, 2000; HQ 964606, dated May 2, 2002; HQ H013678, dated June 1, 2009; NY I82633, dated June 26, 2002; NY N086783, dated January 6, 2010; and NY N216102, dated February 17, 2012. As the instant products have only discrete passive components which are not produced directly on the insulating substrate to which the semiconductor chip is added, they are not hybrid integrated circuits of heading 8542, HTSUS.

Kionix further contends that HQ H013678 is inconsistent with another CBP ruling on substantially similar merchandise, HQ 963150, in which CBP classified certain acceleration sensors in heading 8542, HTSUS, as hybrid

integrated circuits. Counsel claims that the instant Kionix electronic circuits are identical in function to the sensors at issue in HQ 963150, and thus the Kionix devices should also be classified in the same heading. HQ 963150, however, does not specify whether the passive elements of the integrated circuit at issue were created in the mass of the same substrate upon which the semiconductor devices and other discrete components were added, but the ruling does note that its conclusion is consistent with the interpretation of Note 8 and EN 85.42 articulated in HQ 961050 (i.e., that hybrid integrated circuits must contain non-discrete passive elements formed by film technology in the mass of the same insulating substrate upon which active elements formed by semiconductor technology are incorporated). Furthermore, we note that classification in heading 8542, HTSUS, is not based on the function of the product, but rather the method of manufacture. If a circuit is manufactured in a way that meets the requirements of the legal text and the ENs for heading 8542, HTSUS, the function of the device is considered in classification at the subheading level under heading 8542, HTSUS.

In the alternative, Kionix contends that the instant products are multichip integrated circuits of heading 8542, HTSUS, because the ASCIS and the sensor chip are both monolithic integrated circuits pursuant to EN 85.42. Note 8(b) to Chapter 85 defines monolithic integrated circuits as “integrated circuits in which the circuit elements (diodes, transistors, resistors, capacitors, inductances, etc.) are created in the mass (essentially) and on the surface of a semiconductor or compound semiconductor material (for example, doped silicon, gallium arsenide, silicon germanium, iridium phosphide) and are inseparably associated.” In support of this argument, Kionix notes that the sensor chip is created in the mass of a silicon wafer via film technology identical to that used in conventional monolithic circuit manufacturing, and that the components are inseparably associated. However, a monolithic circuit must have both passive and active components. The Kionix devices contain one monolithic integrated circuit—the ASIC chip—and one passive component—the sensor chip. Thus, the instant devices are not multichip integrated circuits, because they contain only one monolithic integrated circuit. Kionix argues that the sensor chip should be considered a monolithic circuit in and of itself, because the capacitors in the sensor chip change capacitance upon movement or acceleration and thus are not fully passive elements. However, the fact that the capacitance of a capacitor can change does not transform it from a passive to an active element. Capacitors are considered passive elements, but they do not have to produce a fixed output. In any case, even if we considered the capacitors in the sensor chip to be an active element, the sensor chip still would not have both the passive and active components necessary to constitute a monolithic integrated circuit in its own right. Because the sensor chip is not a monolithic integrated circuit, the combination of the ASIC and the sensor would have only one monolithic circuit and thus cannot be considered a multichip integrated circuit.

Finally, the merchandise at issue was examined by the CBP Laboratory in San Francisco, and was determined not to constitute an integrated circuit because the sensor chip was separately produced.

Counsel argues, in the alternative, that if CBP does not consider the Kionix electronic circuits to be classified in heading 8542, HTSUS, as integrated circuits, that they should be classified in heading 9027, HTSUS, instruments and apparatus for physical or chemical analysis, or heading 9031, HTSUS, as

measuring or checking instruments. Heading 9027, HTSUS, however, is limited to devices which, in addition to simply measuring a substance or force, interpret or analyze the measured data. *See e.g.*, HQ 955445 dated January 19, 1994, which classified a particle spectrometer under heading 9031, HTSUS. Classification under heading 9027, HTSUS, was determined to be incorrect because the instrument measured the size, distribution and shape of the particles without performing any actual analysis of the particles. *See also*, HQ 967082, dated June 04, 2004, which classified two distinct types of gas detectors in heading 9027, HTSUS, and 8531, HTSUS. All models of the gas detectors contained a sensor which measured the parts per million (ppm) of a gas in a general area, and electronics that determined when that gas level went beyond a designated range. However, some models also contained additional electronics that analyzed and displayed the gas level data. These were classified in heading 9027, HTSUS, while the gas detectors with only alarm and no display/analysis capabilities were classified in heading 8531, HTSUS.

The Kionix accelerometers, like the devices discussed above, do not identify or provide a measurement of a particular property. They simply detect changes in motion via displacement of the silicon beams in the sensor chip, which causes a change in capacitance, and interpret or translate the resulting signal via the ASIC chip. In this manner, the Kionix accelerometers are similar to the MEMS accelerometers at issue in NY F82413, dated March 3, 2000, which were classified by CBP in heading 9031, HTSUS. Like the instant merchandise, the MEMS accelerometers at issue in NY F82413 measured lateral acceleration via the displacement of movable silicon elements, causing a change in electrical capacitance. The Kionix accelerometers are similarly classified in heading 9031, HTSUS, as measuring or checking instruments.

Because the Kionix accelerometers are classified in Chapter 90, they are excluded from classification in heading 8543, HTSUS, pursuant to Note 1(m) to Section XVI.

#### **HOLDING:**

The Kionix accelerometers are classified in heading 9031, HTSUS, specifically subheading 9031.80.80, HTSUS, which provides for “Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof: Other instruments, appliances and machines: Other.” The 2013 general, column one rate of duty is 1.7% 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 online at [www.usitc.gov/tata/hts](http://www.usitc.gov/tata/hts).

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

HQ H013678, dated June 1, 2009, is hereby revoked

*Sincerely,*

MYLES B. HARMON,

*Director,*

*Commercial and Trade Facilitation Division*

**MODIFICATION OF RULING LETTER AND REVOCATION  
OF TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF BRUSSELS SPROUTS WITH BUTTER  
SAUCE**

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

**ACTION:** Notice of modification of ruling letter and revocation of treatment relating to tariff classification of Brussels sprouts with butter sauce.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying one ruling letter relating to the tariff classification of Brussels sprouts with butter sauce under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 47, No. 37, on September 4, 2013. One comment was received in response to this notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 31, 2014.

**FOR FURTHER INFORMATION CONTACT:** Karen Greene, Valuation & Special Programs Branch: (202) 325–0041.

**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, as amended (19 U.S.C. 1625 (c)(1)), a notice was published in the *Customs Bulletin*, Vol. 47, No. 37, on September 4, 2013, proposing to modify New York Ruling Letter (NY) N202500, dated March 1, 2012, in which CBP determined that the subject merchandise was classified under heading 0710, HTSUS, which provides for: vegetables (uncooked or cooked by steaming or boiling in water), frozen.” It is now CBP’s position that the subject Brussels sprouts are properly classified under heading 2004, HTSUS, which provides for: “Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006.” Further, CBP concludes that pursuant to GN 12(s)(ii), the imported Brussels sprouts with butter sauce chips are not an originating good under the NAFTA. The country of origin for marking purposes is Belgium.

One comment was received in response to the notice. This comment argued that GN 12(s)(ii) is not applicable because the Brussels sprouts were imported into Mexico in a frozen condition and also, because the Brussels sprouts were combined with butter sauce chips in a pouch in Mexico. We find that neither of these arguments have any merit. GN 12(s)(ii) is applicable to imported vegetable preparations of chapter 20, HTSUS, such as the frozen Brussels sprouts with butter sauce chips.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. 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 the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer’s failure to advise CBP of substantially identical transactions or of a specific

ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this final decision. Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N202500 to reflect the proper tariff classification of this merchandise under heading 2004, HTSUS, which provides for: “Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006” pursuant to the analysis set forth in HQ H212286, which is attached 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: January 7, 2014

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

Attachment

HQ H212286

January 7, 2014

CLA-2 OT:RR:CTF:VS H212286 KSG

CATEGORY: Classification; NAFTA; Marking

MARIA E. CELIS  
NEVILLE PETERSON LLP  
17 STATE STREET, 19TH FLOOR  
NEW YORK, NY 10004

Re: Modification of NY N202500; classification, NAFTA eligibility, and country of origin marking requirements of frozen Brussels sprout

DEAR MS. CELIS:

This letter is in response to your request dated March 22, 2012, on behalf of General Mills, Inc., for reconsideration of New York Ruling Letter (“NY”) N202500, dated March 1, 2012, which classified frozen Brussels sprouts in butter sauce in heading 0710 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Upon review of NY N202500, CBP has determined that the portion of the ruling related to the tariff classification of the Brussels sprouts is incorrect as set forth below. Accordingly, for the reasons set forth below, we are modifying that ruling.

Notice of the proposed modification was published in the Customs Bulletin, Vol. 47, No. 37, on September 4, 2013. One comment was received in response to the notice.

**FACTS:**

This case involves imported frozen Brussels sprouts and frozen butter sauce chips packaged together and sold as Green Giant brand “baby Brussels sprouts & butter sauce.” The butter sauce chips are made from 82% water, 5% sugar, 5% modified butter, 3% salt, 2% corn starch, 1.5% gelatin and small percentages of additional ingredients. You state that the Brussels sprouts and butter sauce chips are packaged together in the weights necessary for the specified dish to be created when the product is microwaved. The Brussels sprouts are products of Belgium and the butter sauce chips are a product of the U.S. In Mexico, the frozen Brussels sprouts and butter sauce chips are packaged together in a microwave bag. The finished product can either be microwaved or cooked in a saucepan or on a stovetop.

CBP ruled in NY N202500 that the Brussels sprouts with butter sauce were classified in heading 0710, HTSUS, and not in subheading 2004.90, HTSUS. CBP also ruled that the imported Brussels sprouts with butter sauce were not eligible to be treated as an originating good under the NAFTA. In your request for reconsideration, you contend that NY N202500 was incorrect on both issues.

One comment was submitted in response to the proposed modification by your client. In the comment submitted, you state that the Brussels sprouts are frozen in Belgium, shipped to Mexico and combined with NAFTA-originating butter sauce chips in a pouch, and that this process is not merely freezing. Therefore, you argue that since the Brussels sprouts are frozen and not imported into Mexico as a fresh good, the GN 12(s) rule does not apply.

**ISSUE:**

I. Whether the imported Brussels sprouts and frozen butter sauce chips should be classified in heading 0710, HTSUS, as “vegetables (uncooked or cooked by steaming or boiling in water), frozen” or heading 2004, HTSUS, as “Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006”?

II. Whether the imported Brussels sprouts are eligible for preferential tariff treatment under the NAFTA?

III. What are the country of origin marking requirements for the instant Brussels sprouts with butter sauce?

**LAW AND ANALYSIS:***I. Classification*

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (“GRI”). GRI 1 provides that classification shall be determined according to the terms of 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’s may then be applied in order.

The headings at issue are as follows:

0710	Vegetables (uncooked or cooked by steaming or boiling in water), frozen
2004	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006

The Harmonized Commodity Description and Coding System Explanatory Notes (“EN’s”) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN’s provide a commentary on the scope of each heading of the Harmonized System and thus are useful in ascertaining the classification of merchandise under the system. CBP believes the EN’s should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The EN Heading 07.10 states, in pertinent part:

Vegetables to which salt or sugar has been added before freezing remain classified in this heading, as do vegetables which have been cooked by steaming or boiling in water before freezing. However, the heading excludes vegetables cooked by other processes (Chapter 20) or prepared with other ingredients, such as prepared meals (Section IV).

EN Heading 20.04 states, in pertinent part:

Examples of commonly traded products which fall in the heading are:

...(2) Frozen sweet corn, on the cob or in grains, carrots, peas etc. whether or not pre-cooked, put up with butter or other sauce in an airtight container (e.g., in a plastic bag).

Heading 2004, HTSUS, provides for “other vegetables, prepared or preserved.” The terms “prepared” and “preserved” are not defined in the HTSUS. In *Crawfish Processors Alliance v. United States*, 431 F. Supp. 2d 1342 (CIT 2006), the court discussed the definition of “prepared.” The court stated

that “the word prepared, in a tariff sense, means, ordinarily, that a commodity has been so processed as to be advanced in condition and made more valuable for its intended use. However, the Federal Circuit has held that the term “prepared” “suggests, but does not require, the addition of incidental ingredients that do not affect the essential character of the product.” *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1440 (Fed Cir. 1998).

On this issue, we agree with you that Headquarters Ruling Letter (HQ) 967900, dated February 27, 2006, is instructive. The case involved the classification of three flavors of microwave popcorn consisting of popcorn, partially hydrogenated vegetable oil, salt, natural flavoring (in two of the flavors), and achiote. All three products were found to fall under the scope of heading 2008, HTSUS, which provides for, in pertinent part, “...other edible parts of plants, otherwise prepared or preserved...” In so doing, CBP distinguished the microwave popcorn from other matters involving food products packaged together and classified as “sets” per GRI 3(b) by pointing out that, in contrast to “sets” of different food products, the microwave popcorn ingredients were mixed together in the same packaging, thus constituting a preparation. This rationale was supported by the Federal Circuit’s decision in *Orlando Food*, supra, where the Federal Circuit held that the addition of salt, citric acid and a basil leaf caused canned tomato products to be classified as goods that have the character of preparations for sauces, rather than tomatoes.

In this case, the butter sauce has been added to the Brussels sprouts in the same packaging. That it is frozen in the form of chips does not result in a finding that the combination is not a “preparation” in its condition as imported. In this respect, the analogy with the microwave popcorn from HQ 967900 is particularly apt. The physical state of the popcorn would need to be altered in order for it to complete the dish and allow the vegetable oil, salt, etc. to mix with the kernels just as the physical state of the frozen butter sauce would need to be altered for it to be combined with the Brussels sprouts in the manner intended. In both cases, the subject products constitute preparations despite the fact that they were not imported ready for consumption because, in their condition as imported, they consisted of ingredients that were already mixed together in the proportions necessary for the specified dish. This is supported by exemplar (2) in EN 20.04, supra, which indicates that frozen vegetables put up with butter or other sauce in an airtight container fall under the scope of heading 2004, HTSUS. Accordingly, we find that frozen Brussels sprouts with butter sauce chips would be classified in heading 2004, HTSUS.

## *II. Eligibility for NAFTA Tariff Preference*

General Note 12, HTSUS, incorporates Article 401 of NAFTA into the HTSUS.

General Note 12(a)(ii) provides, in pertinent part:

(ii) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Mexico under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the

“Special” subcolumn followed by the symbol “MX” in parentheses, are eligible for such duty rate, in accordance with section 201 of the NAFTA Implementation Act.

Accordingly, the imported product will be eligible for the “Special” “MX” rate of duty provided it is a NAFTA “originating” good under GN 12(b), HTSUS, and qualifies to be marked as a product of Mexico under the NAFTA Marking Rules.

General Note 12(b), HTSUS, provides, in pertinent part:

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as goods originating in the territory of a NAFTA party only if—

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials.

Since the Brussels sprouts are from Belgium, the imported product is not wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States. Therefore, we would generally examine whether the non-originating material (Brussels sprouts) had undergone a change in tariff classification. However, GN 12(s), HTSUS, provides exceptions to the change in tariff classification rules.

GN 12(s)(ii) provides that:

Fruit, nut and vegetable preparations of Chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as an originating good only if the fresh good were wholly produced or obtained entirely in the territory of one or more of the NAFTA parties.

In HQ 561749, dated November 8, 2000, CBP held that imported mushrooms grown in Chile, preserved in brine and canned in Canada and classified in subheading 2003.10, HTSUS, were not originating under the NAFTA pursuant to GN 12(s), specifically the Chapter 20 rule set forth in GN 12(s)(ii).

This case is similar to HQ 561749, in that the imported Chapter 20 good would not be considered originating based on the application of GN 12(s)(ii). In this case, the fresh good, i.e. the Brussels sprouts, are not wholly produced or obtained entirely in the territory of one or more of the NAFTA parties.

Therefore, the imported Brussels sprouts with butter sauce chips are not treated as originating goods under the NAFTA.

The country of origin marking was also at issue in HQ 561749. CBP held that the imported mushrooms would be marked as a product of Chile based on the application of 19 CFR 102.11(a)(3) and the Chapter 20 Note in 19 CFR 102.20 which is applicable to the tariff shift rule for goods of Chapter 20.

In the comment that you submitted, you contend that combining the Brussels sprouts with NAFTA-originating butter sauce chips in a pouch in Mexico is processing beyond freezing and hence, the Brussels sprouts are not “merely frozen.” Therefore, you argue that since the Brussels sprouts are frozen and not imported into Mexico as a fresh good, the GN 12(s) rule does not apply. You also look to the classification portion of proposed H212286, noting that the finished good is a “preparation,” despite the fact that it is not imported ready for consumption, because the good consists of ingredients that are already mixed together in the proportions necessary for the dish.

We do not agree that GN 12(s)(ii) is not applicable. The fact that the Brussels sprouts are already frozen when they arrive in Mexico does not change that the Brussels sprouts are prepared by packing in brine or natural juices, including processing incidental to such packing. To find otherwise would mean that less than freezing may be done on a particular good, and that good could still receive preferential tariff treatment. Here, the butter sauce chips are akin to a natural juice and any extra preservative ingredients that are added are incidental packing processes. In addition, the entire finished good (Brussels sprouts and butter sauce chips) is frozen together. Further, with regard to the classification analogy, as noted in *Orlando Food*, supra, “prepared” suggests but does not require the addition of incidental ingredients that do not affect the essential character of the products, which is the situation in this case. The Brussels sprouts have undergone no more than packing with butter sauce chips. Accordingly, we find GN 12(s)(ii) to be applicable and that the Brussels sprouts are not originating goods under the NAFTA.

### *III. Country of Origin Marking Requirements*

The country of origin marking of the imported Brussels sprouts with butter sauce would be decided under the NAFTA Marking Rules, which are set forth in 19 CFR Part 102. The hierarchy set forth in 19 CFR 102.11 is applicable to determine the country of origin marking of goods produced in countries that are a party to the NAFTA. Pursuant to 102.11, the country of origin for non-textile goods is determined to be the country in which:

- (a)(1) The good is wholly obtained or produced;
- (a)(2) The good is produced exclusively from domestic materials;
- (a)(3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

The applicable tariff shift rule for heading 2004 is as follows:

2001–2007..... A change to heading 2001 through 2007 from any other chapter.

The Chapter 20 note in 19 CFR 102.20 provides: “Notwithstanding the specific Rules of this chapter, fruit, nut and vegetable preparations of Chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as a good of the country in which the fresh good was produced.”

The imported good is neither wholly obtained nor produced in countries that are a party to the NAFTA or produced exclusively from domestic materials. Therefore, we must apply the requirement set forth in 19 CFR 102.11(a)(3). In this case, the imported Brussels sprouts meet the applicable tariff shift rule set forth in 19 CFR 102.20, as they change from heading 0710 to heading 2004, but they do not meet the Chapter 20 Note. Since the vegetables have been prepared merely by freezing, by packing in water, brine, or natural juices including processing incidental to freezing and packing, and the fresh good was produced in Belgium, the country of origin for marking purposes under 19 CFR 102.20 is Belgium.

**HOLDING:**

By application of GRIs 1 and 6, the imported Brussels sprouts with butter sauce chips are classified in heading 2004, HTSUS, and specifically provided for in subheading 2004.90.85, HTSUS, as “Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006: Other....”

The imported Brussels sprouts with butter sauce are not treated as an originating good under the NAFTA. The country of origin marking under the NAFTA Marking Rules for the imported good is Belgium.

**EFFECT ON OTHER RULINGS:**

NY N202500 is hereby MODIFIED to classify the goods under heading 2004, HTSUS, but it is affirmed to the extent that the good is not originating under the NAFTA. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial & Trade Facilitation Division*

**19 CFR PART 177****MODIFICATION OF A RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO  
CLASSIFICATION OF REAGENT KIT IM1579 RIA FREE T3**

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

**ACTION:** Notice of modification of a ruling letter and revocation of treatment relating to the classification of Reagent kit IM1579 RIA Free T3.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CPB”) is revoking a ruling concerning the classification of Reagent kit IM1579 RIA Free T3 under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed modification was published on February 27, 2013, in Volume 47, Number 10, of the CUSTOMS BULLETIN. No comments were received in response to the proposed notice.

**EFFECTIVE DATE:** This modification is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 31, 2014.

**FOR FURTHER INFORMATION CONTACT:** Allyson Mattanah, Tariff Classification and Marking Branch (202) 325–0029.

**SUPPLEMENTARY INFORMATION:****Background**

On December 8, 1993, Title VI (CBP 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 commu-

nity'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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published on February 27, 2013, in Volume 47, Number 10, of the CUSTOMS BULLETIN, proposing to modify New York Ruling Letter (NY) N019762, dated December 10, 2007, and proposing to revoke any treatment accorded to substantially identical transactions. No comments were received in response to the proposed notice.

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

In NY N019762, CBP ruled that the Reagent kit is classified in subheading 3002.10.01, HTSUS, which provides for "Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes: Other." The rate of duty is free. The referenced ruling is incorrect because the good which gives the kit its essential character is classified by its isotope component in Chapter 28, HTSUS, rather than its monoclonal antibody component, in Chapter 30, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N019762, and is revoking or modifying any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) H035574, 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: January 7, 2014

IEVA K. O'ROURK  
*for*  
MYLES B. HARMON,  
*Director*  
*Commercial and Trade Facilitation Division*

Attachment

HQ H035574

December 12, 2013

CLA-2 OT:RR:CTF:TCM H035574 ARM

CATEGORY: Classification

TARIFF NO: 2844.40.00

MS. HELEN MESTAS  
BECKMAN COULTER INC.  
4300 HARBOR BLVD.  
FULLERTON, CA 92835

RE: Modification of New York Ruling Letter N019762; Classification of Reagent kit IM1579 RIA Free T3

DEAR MS. MESTAS:

This is in reply to your electronic request, of July 2, 2008, for reconsideration of New York Ruling Letter (NY) N019762, dated December 10, 2007, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of Reagent kit IM1579 RIA Free T3. In NY N019762, Customs and Border Protection (“CBP”) classified the Reagent kit in subheading 3002.10.01, HTSUS, which provides for “Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes.” The rate of duty is free. You state that you have received a copy of a ruling issued by the Australian Customs Service that classifies the product in heading 2844, of its Tariff, and ask that we reconsider our ruling. Your request has been forwarded to this office for reply. We have reviewed NY N019762 and find it to be an error with respect to Reagent kit IM1579 RIA Free T3.

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), a notice was published on February 27, 2013, in Volume 47, Number 10, of the CUSTOMS BULLETIN, proposing to revoke NY N019762, dated December 10, 2007, and proposing to revoke any treatment accorded to substantially identical transactions. No comments were received in response to the proposed notice.

**FACTS:**

NY N019762 describes the instant merchandise as follows:

Reagent Kit IM 1579 RIA Free T3, is intended for *in vitro* diagnostic use. This kit contains Ligand coated tubes and is radioactive labeled monoclonal antibody in bovine serum albumin and dye. It is used for the quantitative determination of triiodothyronine (T3) in human serum by the principle of the competitive protein binding analysis.

A page entitled “Direction for Use” is submitted with your request. It states, in pertinent part, the following:

1. Principle of the Assay

The radioimmunoassay of free triiodothyronin (T3) is a competition assay based on the principle of labeled antibody. Samples and calibrators are incubated with <sup>125</sup>I-labeled monoclonal antibody specific for T3, as tracer, in tubes coated with an analog of T3 (ligand). There is competition between the free triiodothyronine of the sample and the ligand for the

binding to the labeled antibody. After incubation, the content of tubes is aspirated and bound radioactivity is measured. A calibration curve is established and unknown values are determined by interpolation from the curve.

## 2. Reagents Provided

### 2.1 Kit for determination of free T3, 100 tubes (Cat #1579)

2.1.1 Ligand-coated tubes: 2x50 tubes (ready-to-use)

2.1.2 <sup>125</sup>I-labeled monoclonal antibody: one 45 ml vial (ready-to-use)

The vial contains 225 kBq, at the date time of manufacture, of <sup>125</sup>I-labeled immunoglobulins in liquid form with bovine serum albumin and sodium azide (parenthetical omitted) and a dye.

2.1.3 Calibrators: five 1 ml vials (ready-to-use)

The calibrator vials contain from 0 to 44pM of free T3 in human serum. . . 2.1.4 Control serum: one 1 ml vial (ready-to-use) . . .

## ISSUE:

Whether the vial of <sup>125</sup>I-labeled monoclonal antibody, bovine serum albumin, sodium azide and a dye in the Reagent Kit IM1579 RIA Free T3 is classified as a monoclonal antibody reagent of heading 3002, HTSUS, or as a chemically undefined organic compound of Iodine contained in a solution of heading 2844, HTSUS.

## 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 GRIs may then be applied. When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs and Border Protection (CBP) believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

GRI 2(b) requires that goods consisting of different materials be classified according to the principles of GRI 3. GRI 3(a) requires that amongst competing headings, the most specific heading be used, but headings which refer to part only of the goods are equally specific. GRI 3(b), provides that sets put up for retail sale and composite goods consisting of different materials or made up of different components, shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. Explanatory Note 3(b)(VIII) to GRI 3(b) states that essential character may be determined by “the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.” Explanatory Note (X) (page 5) to GRI 3(b) states that the term “goods put up in sets for retail sale” means goods which:

- (a) consist of at least two different articles which are, prima facie, classifiable in different headings;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking.

The Section VI Notes state, in pertinent part, the following:

- 1. (a) Goods . . . answering to a description in heading 2844 or 2845 are to be classified in those headings and in no other heading of the tariff schedule.

\* \* \* \*

- 3. Goods put up in sets consisting of two or more separate constituents, some or all of which fall in this section and are intended to be mixed together to obtain a product of section VI or VII, are to be classified in the heading appropriate to that product, provided that the constituents are:

- (a) Having regard to the manner in which they are put up, clearly identifiable as being intended to be used together without first being repacked;
- (b) Entered together; and
- (c) Identifiable, whether by their nature or by the relative proportions in which they are present, as being complementary one to another.

Chapter 28 note 6 states:

- 6. Heading 2844 applies only to:
  - (a) Technetium (atomic No. 43), promethium (atomic No. 61), polonium (atomic No. 84) and all elements with an atomic number greater than 84;
  - (b) Natural or artificial radioactive isotopes (including those of the precious metals or of the base metals of sections XIV and XV), whether or not mixed together;
  - (c) Compounds, inorganic or organic, of these elements or isotopes, whether or not chemically defined, whether or not mixed together;
  - (d) Alloys, dispersions (including cermets), ceramic products and mixtures containing these elements or isotopes or inorganic or organic compounds thereof and having a specific radioactivity exceeding 74 becquerels per gram (0.002 microcurie per gram);
  - (e) Spent (irradiated) fuel elements (cartridges) of nuclear reactors;
  - (f) Radioactive residues whether or not usable.

The term "isotopes", for the purposes of this note and of the wording of headings 2844 and 2845, refers to:

- (i) Individual nuclides, excluding, however, those existing in nature in the monoisotopic state;

- (ii) Mixtures of isotopes of one and the same element, enriched in one or several of the said isotopes, that is, elements of which the natural isotopic composition has been artificially modified.

Chapter 30 note 2 provides that “For the purposes of heading 3002, the expression “modified immunological products” applies only to monoclonal antibodies (MABs), antibody fragments, antibody conjugates and antibody fragment conjugates.”

The following HTSUS provisions are relevant to the classification of this product:

2844:	Radioactive chemical elements and radioactive isotopes (including the fissile or fertile chemical elements and isotopes) and their compounds; mixtures and residues containing these products:
2844.40.00	Radioactive elements and isotopes and compounds other than those of subheadings 2844.10, 2844.20, and 2844.30; alloys, dispersions (including cermets), ceramic products and mixtures containing these elements, isotopes or compounds; radioactive residues
*	* * * * *
3002	Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products:
3002.10.01	Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes.
*	* * * * *

The contents of the Reagent Kit IM1579 RIA Free T3 meets the definition of a set under GRI 3(b) as it consists of articles classified in different headings, put up in packings for the end user (laboratory personnel), intended to be used together for the particular activity of determining the level of free T3 in a blood sample. The article of the kit which imparts the kit with its essential character is the vial of <sup>125</sup>I-labeled monoclonal antibody, bovine serum albumin, sodium azide and a dye. This vial and its contents constitute a composite good under GRI 3(b). The item that imparts the contents of the vial with its essential character is the <sup>125</sup>I-labeled monoclonal antibody. These statements are not in dispute.

The classification of the <sup>125</sup>I-labeled monoclonal antibody is at issue. A monoclonal antibody is a modified immunological product classified in heading 3002, HTSUS, by note 2 to Chapter 30. A “labeled” monoclonal antibody is a new chemical compound that is not chemically defined, however, the monoclonal antibody remains intact. The “label”, in this case <sup>125</sup>Iodine, is a radioactive isotope of iodine. Hence, the <sup>125</sup>I-labeled monoclonal antibody at issue is included in Chapter 28 under note (c) to the chapter. It is contained in a dispersion of bovine serum albumin, sodium azide and a dye having a specific radioactivity exceeding 74 becquerels per gram, which meets the terms of Chapter 28 note 6(d). Therefore, under Section VI, note (a), the merchandise must remain classified in Chapter 28, specifically in heading 2844, HTSUS, as a mixture containing a compound of a radioactive isotope.

**HOLDING:**

By application of GRIs 1 and 3, the classification of the Reagent kit IM1579 RIA Free T3 is in heading 2844, HTSUS, specifically in subheading 2844.40.00, HTSUS, which provides for: “Radioactive chemical elements and radioactive isotopes (including the fissile or fertile chemical elements and isotopes) and their compounds; mixtures and residues containing these products: Radioactive elements and isotopes and compounds other than those of subheadings 2844.10, 2844.20, and 2844.30; alloys, dispersions (including cermet), ceramic products and mixtures containing these elements, isotopes or compounds; radioactive residues.” The 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 World Wide Web at *www.usitc.gov*.

**EFFECT ON OTHER RULINGS:**

This ruling modifies NY N019762, dated December 10, 2007, with respect to the classification of the Reagent kit IM1579 RIA Free T3. The classification of Rubella IgG 34430, TBIL reagent 442745, IgG reagent 446400, and GenomeLab™ GeXP Human MetastasisPlex Kit A32712 remains unchanged.

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**REVOCAION OF RULING LETTER AND REVOCAION OF  
TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF POLYURETHANE COATED GLOVES**

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

**ACTION:** Notice of revocation of one ruling letter and revocation of treatment relating to the tariff classification of polyurethane coated gloves.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking New York Ruling Letter (NY) N238691, dated February 26, 2013, with regard to the tariff classification of polyurethane coated gloves under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* Vol. 46, No. 35, on August 22, 2012. Two comments were received in opposition to this notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 31, 2014.

**FOR FURTHER INFORMATION CONTACT:** Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

**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, notice proposing to revoke one ruling letter pertaining to the tariff classification of polyurethane coated gloves was published on August 22, 2012, in Volume 46, Number 35 of the *Customs Bulletin*. Two comments were received in response to this notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. 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 the comment period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during 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 this final decision.

In NY N238691, CBP determined that one style of polyurethane coated gloves was classified in heading 3926, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N238691 in order to reflect the proper classification of the polyurethane coated gloves in heading 6116, HTSUS, according to the analysis contained in Headquarters Ruling Letter (HQ) *H246529*, which is attached 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.

Dated: January 7, 2014

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

Attachment

HQ *H220278*

December 20, 2013

CLA-2 RR:CTF:TCM *H220278* CKG

CATEGORY: Classification

TARIFF NO: 6116.10.55

RE: Revocation of NY *N013115* and modification of NY *N042821*; classification of polyurethane coated gloves

Ms. JUNG PATTON

SHOWA Co. (U.S.A.), INC. 575 ANDOVER PARK WEST

SUITE 105

SEATTLE, WA 98188

DEAR Ms. PATTON:

This is in reference to New York Ruling Letter (NY) *N013115*, issued to you on July 19, 2007, as well as NY *N042821*, issued to Performance Fabrics on November 21, 2008. NY *N013115* and NY *N042821* classified three styles of polyurethane coated gloves in heading 3926, HTSUS, as articles of plastic. For the reasons set forth below, we have determined that the classification of these gloves in heading 3926, HTSUS, was 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 proposing to revoke NY *N013115* and modify NY *N042821* was published on August 22, 2012, in Volume 46, Number 35, of the *Customs Bulletin*. Two comments were received in opposition to this Notice, and are addressed in this decision.

**FACTS:**

NY *N013115* described the styles 540 and 541 as follows:

Style #540 (HPPE Palm Fit Glove) and #541 (HPPE Palm Plus Glove), are 100% High Performance Polyethylene Fiber (HPPE) string knit gloves featuring a polyurethane palm coating on the outer surface of the palms, from fingertips to wrist, which also overlaps the backside fingertips. A polyurethane coating has also been applied to the underside fabric of the palms. The gloves are used for assembly operations where cut resistance and dexterity is desired. NY *N042821* correctly classified two styles of gloves, 9010 and 9004, in heading 6116, HTSUS, and incorrectly classified one style, 9003, in heading 3926, HTSUS. The subject styles are described as follows:

Style 9010 is a string-knit work glove with a polyurethane coating, which covers the entire palm as well as a portion of the palmside cuff, and overlaps the backside fingertips and sides of the wearer's hands and fingers. You have indicated that the weight of the coating is less than 50% of the weight of the glove. The glove features an inner lining on the palmside, which you state is constructed of a resin coated 100% polyester crepe woven fabric. The glove also features a ribbed knit wrist with an overlock stitch finish at the bottom cuff and the "HEXAMOR" trademark located on the center backside of the glove. You state that the fiber content of the gloves is 100% Taeki5 (an ultra-high molecular weight polyethylene man-made fabric).

Style 9004 is a string-knit work glove with a rubber (nitrile) dip coating, which covers the entire palm as well as a portion of the palmside cuff, and overlaps the backside fingertips and sides of the wearer's hands and fingers. You have indicated that the weight of the coating is less than 50% of the weight of the glove. The glove features an inner lining on the palmside, which you state is constructed of a resin dot coated 100% polyester crepe woven fabric. The glove also features a ribbed knit wrist with an overlock stitch finish at the bottom cuff and the "HEXAMOR" trademark located on the center backside of the glove. You state that the fiber content of the gloves is 100% nylon.

Style 9003 is a string-knit work glove with a complete palmside, from fingertips to wrist made of a textile fabric that has been completely coated on both sides with a polyurethane plastic. Polyurethane plastic also covers a portion of the palmside cuff, and overlaps the backside fingertips and sides of the wearer's hands and fingers. You have indicated that the weight of the coating is less than 50% of the weight of the glove. The glove features an inner lining on the palmside, which you state is constructed of a resin coated 100% polyester crepe woven fabric. The glove also features a ribbed knit wrist with an overlock stitch finish at the bottom cuff, the "HEXAMOR" trademark located on the center backside of the glove and a label sewn onto the backside cuff bottom that states "Armor Inside!" You state that the fiber content of the gloves is 100% Taeki5 (an ultra-high molecular weight polyethylene man-made fabric).

#### ISSUE:

Whether the subject gloves are classified in heading 3926, HTSUS, as other articles of plastic, or heading 6116, HTSUS, as gloves.

#### LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

3926:	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.20:	Articles of apparel and clothing accessories (including gloves, mittens and mitts):
	Gloves, mittens and mitts:
3926.20.10:	Seamless . . .
	*            *            *            *            *
6116:	Gloves, mittens and mitts, knitted or crocheted:
6116.10:	Impregnated, coated or covered with plastics or rubber:
	Other:
	Without fourchettes:

Other:

6116.10.55:	Containing 50 percent or more by weight of cotton, man-made fibers or other textile fibers, or any combination thereof . . . .
*        *        *        *        *	

Legal Note 1 to Section XI provides, in pertinent part:

1. This section does not cover:

(h) Woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of chapter 39;

Note 2 to Chapter 39 provides as follows:

2. This chapter does not cover:

(p) Goods of section XI (textiles and textile articles);

Note 2 to Chapter 59 provides, in pertinent part:

2. Heading 5903 applies to:

(a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), **other than** (emphasis added):

...

(3) Products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of color (chapter 39);

...

(5) Plates, sheets or strip of cellular plastics combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 39).

\*        \*        \*        \*        \*

NY *N013115* and NY *N042821* classified three styles of polyurethane coated gloves in heading 3926, HTSUS, as articles of plastic. For the reasons set forth below, we believe that these gloves (style nos. 540, 541, and 9003) were incorrectly classified in heading 3926, HTSUS, and that they are correctly classified in heading 6116, HTSUS.

Note 2(p) to Chapter 39, HTSUS, states that the Chapter does not cover goods of Section XI (textiles and textile articles). Note 1(h) to Section XI, however, excludes, *inter alia*, articles of knitted or crocheted fabrics coated, covered, impregnated or laminated with plastics, of Chapter 39. Although these notes would appear to conflict, Note 2 to Chapter 59, HTSUS, clarifies the scope of Chapter 39 with regard to textiles coated with plastics and sets out definitive criteria for the determination of which fabrics that have been impregnated, coated, covered, or laminated with plastics are classifiable in Chapter 39, HTSUS, at GRI 1, and thus excluded from Section XI.

Note 2(a)(3) to Chapter 59 directs the classification of textile articles in which the textile fabric is either “completely” embedded or “entirely coated or covered on both sides” by plastics to Chapter 39. The instant gloves are covered only on the inside and outside of the palmside, not including the wrist cuff, and on a portion of the backside fingers (inside and outside). The remainder of the gloves, including the entire back side, are composed of non-coated textile fabric. Thus, the gloves are only partially covered or coated with plastic and are not described by Note 2(a)(3) to Chapter 59 or heading 3926, HTSUS.

You state that the textile material of the instant gloves is present only for reinforcing purposes, and that the gloves should therefore be classified in Chapter 39 pursuant to Note 2(a)(5) to Chapter 39. The instant gloves are not subject to Note 2(a)(5) because they are not combined with cellular plastic. They are governed instead by Note 2(a)(3) to Chapter 59, HTSUS. *See e.g.*, HQ *H021883*, dated January 5, 2009. In any case, however, the textile component of the instant gloves is present for more than mere reinforcement. The plastic coating may be said to reinforce the textile because it makes the textile substrate less permeable and more resistant to cuts or abrasions. However, it is meaningless to say that the textile fabric is reinforcing the plastic coating. The substrate of the gloves is entirely constructed of textile. The textile gives the gloves their form and shape, thickness, strength, etc. The textile material also provides stretch and give to the gloves, allowing them to be put on, used and removed without difficulty. In addition, the textile material, being more permeable than plastic, permits the gloves to be worn more comfortably, because it traps less perspiration than the plastic material. *See e.g.*, HQ 955193, dated April 19, 1994; HQ 953768, dated July 23, 1993; HQ 086358, dated June 19, 1991.

Heading 6116, HTSUS, provides for gloves. Although heading 6116, HTSUS, is in Section XI, it is only the heading text which controls, not the Chapter or Section titles. Thus, heading 6116, HTSUS, is not limited to textile gloves only. Indeed, the heading text does not limit the classification of gloves of that heading by the material of their construction, only the method of construction (i.e., the glove must be knitted or crocheted). Thus, heading 6116, HTSUS, includes gloves of textiles and plastics, or textiles coated with plastics. The instant glove is made entirely of a knit textile material which is subsequently coated with plastic. At GRI 1, heading 6116, HTSUS therefore captures the merchandise in its entirety.

Even if the gloves were not excluded from Chapter 39 on the basis of Note 2(p) to that Chapter, the EN to heading 3926, HTSUS, indicates that the heading includes only plastic articles not described more specifically elsewhere in the tariff schedule. Heading 6116, HTSUS, provides for “gloves”, a considerably more specific description of the merchandise than “other article of plastic.” As the subject gloves are more specifically provided for in heading 6116, HTSUS, they are precluded from classification in heading 3926, HTSUS.

We further note that although subheading 3926.20, HTSUS, also provides for gloves of plastic, the instant articles must first meet the terms of the heading before we can consider the application of the accompanying subheadings. As the subject merchandise is not properly classifiable at the four digit level in heading 3926, HTSUS, it is improper to invoke subheading 3926.20, as only the four digit headings are comparable. Furthermore, subheading

6116.10, HTSUS, also provides for gloves impregnated or coated with plastics. It is therefore clear that gloves impregnated with plastics are not automatically or even primarily classified in heading 3926, HTSUS. The relevant chapter, section and explanatory notes clarify when it is appropriate to classify such merchandise in heading 3926, HTSUS—e.g., when they are coated entirely on both sides by plastic, or when the textile material is merely present for reinforcement.

Finally, CBP has classified textile gloves similarly coated, covered, and dipped in plastic material in heading 6116, HTSUS, in multiple rulings. See *HQ 955193*, dated April 19, 1994; *HQ 086331*, dated April 20, 1990; *HQ 086358*, dated June 19, 1991; *HQ 088539*, dated June 6, 1991; *HQ 088794*, dated July 1, 1991; *HQ 953768*, dated July 23, 1993; *HQ 955193*, dated April 19, 1994; *HQ 963632*, dated September 24, 2002; *HQ H021883*, dated January 5, 2009; *NY N229716*, dated September 4, 2012; *NY N229595*, dated August 14, 2012; *NY D81376*, dated September 25, 1998; and *NY D81931*, dated August 28, 1998; *NY 808945*, dated May 3, 1995; and *NY 870145*, dated January 22, 1992.

In contrast, the following rulings have classified gloves composed entirely or primarily of plastic in heading 3926, HTSUS: *NY N188017*, dated November 7, 2011; *NY L85718*, dated July 15, 2005; *NY K89356*, dated September 21, 2004; *NY J89922*, dated October 23, 2003; *NY H88929*, dated March 20, 2002; *NY 808945*, dated May 3, 1995; *NY 883923*, dated April 13, 1993; *NY 870145*, dated January 22, 1992; and *PD C80478*, dated November 4, 1997.

Moreover, in all of the rulings cited above, CBP based the classification of gloves composed of only textile fabrics with plastic coating solely on GRI 1, noting that some prior rulings had erroneously utilized GRI 3(b) to classify similar merchandise without first considering GRI 1. In *HQ 086358*, CBP further noted that classification based on GRI 3(b) was appropriate when classifying gloves composed of what the HTSUS would consider to be two or more separate and distinct materials, but that textile gloves which are merely coated with plastic are considered to be made of one material, in which case classification will be according to GRI 1. *HQ 088539* is an example of the former scenario. In *HQ 088539*, CBP determined that the classification of gloves of textile coated or impregnated with plastics is determined at GRI 1 by Note 2 to Chapter 59, but GRI 3(b) would apply when considering the leather pieces of the golf glove at issue. Thus, the classification of the instant gloves, which are knit gloves coated, covered or dipped in plastic, is governed, at GRI 1, by the legal notes to Chapters 39, 59 and Section XI. See e.g., *HQ 088539*, supra (“Accordingly, as between the plastics and the textile fabric, GRI 1 would require classification under Heading 6116”). See also *HQ 086358*, and *HQ 953768*, supra.

Both commenters cite to *HQ 967658*, dated October 13, 2005, as support for classification in heading 3926, HTSUS, based on a GRI 3(b) analysis. First, we note that *HQ 967658* classified a similar plastic-coated textile glove in heading 6116, HTSUS. *HQ 967658* thus supports classification of the instant gloves in heading 6116, HTSUS. We further note that *HQ 967658* applied GRI 3(b) to determine classification at the 8-digit subheading level between subheading 6116.10.75, HTSUS (gloves containing 50% or more by weight of

cotton), and subheading 6116.93.94, HTSUS (gloves of synthetic fibers). GRI 3(b) was not used in HQ 967658 to determine classification at the 4-digit level.

One comment noted that textile gloves dipped in polyurethane were not coated, impregnated or covered pursuant to Note 2 to Chapter 59 and Note 1 to Section XI. We do not concur. Regardless of how the plastic material is applied, the glove is covered or coated with plastic pursuant to the above legal notes, and pursuant to the description of the glove provided by the importer. The commenter cites HQ 085863, dated January 19, 1990, in support of this argument. We note that the gloves discussed in *HQ 085863* were excluded from heading 5903, HTSUS, by application of Note 2(a)(5) to Chapter 59, HTSUS, because they had a cellular plastic shell and a textile backing for reinforcing purposes. As discussed above, the instant gloves are constructed entirely of textile which is covered with plastic.

Another comment notes that other CBP rulings have classified only gloves coated on one side in heading 6116, HTSUS. As noted above, CBP has classified gloves submerged or dipped in plastic in a similar manner as the gloves at issue in heading 6116, HTSUS. That the instant gloves have plastic on both sides, however, is irrelevant, because they are made of textile material which is neither completely embedded nor entirely coated or covered on both sides with plastic, and the textile material is present for more than mere reinforcement. Stating that merely coating the fabric on both sides is sufficient to render the fabric “completely embedded” or “entirely coated or covered” pursuant to Note 2(a)(3) to Chapter 59 when the coating does not cover the entire fabric is contrary to the plain language of Note 2(a)(3).

We further note that the samples provided for CBP’s examination by the commenter and images of the gloves classified in NY N013115 show that the plastic coating on the inside of the glove is less extensive and consistent than on the outside; the coating is significantly less thick, and the knit textile fabric is clearly visible. Nevertheless, even if, as argued in the comment, both sides of the palmside of the glove were determined to be equally evenly coated, we would not consider the textile fabric of the glove to be “completely” embedded or “entirely coated or covered on both sides” by plastics, as there remains uncoated textile portions of the glove. Style 9003 in NY N042821 was described as having a palmside, from fingertips to wrist, completely coated with plastic. In accordance with the foregoing, we do not consider that to be “completely embedded” or “entirely coated or covered” for purposes of Note 2(a)(3) to Chapter 59.

The glove styles 540 and 541 (NY *N013115*) and 9003 (NY N042821) were incorrectly classified as articles of plastic of heading 3926, HTSUS. They are correctly classified in heading 6116, HTSUS, as gloves. NY *N013115* is thus hereby revoked, and NY N042821 is modified with respect to the classification of style 9003.

#### **HOLDING:**

Styles 540, 541 and 9003 are classified in heading 6116, HTSUS, specifically subheading 6116.10.55, HTSUS, which provides for “Gloves, mittens and mitts, knitted or crocheted: Impregnated, coated or covered with plastics or rubber: Other: Without fourchettes: Other: Containing 50 percent or more by weight of cotton, man-made fibers or other textile fibers, or any combination thereof.” The 2013 general, column one rate of duty is 13.2%.

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/>.

**EFFECT ON OTHER RULINGS:**

NY *N013115* is hereby revoked, and NY *N042821* is hereby modified with respect to the classification of style 9003.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## ACCREDITATION OF ST LABORATORIES GROUP, LLC, AS A COMMERCIAL LABORATORY

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

**ACTION:** Notice of accreditation and approval of ST Laboratories Group, LLC, as a commercial laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that ST Laboratories Group, LLC, has been accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of September 12, 2013.

**EFFECTIVE DATE:** The accreditation and approval of ST Laboratories Group, LLC, as commercial laboratory became effective on September 12, 2013. The next triennial inspection date will be scheduled for September 2016.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 that ST Laboratories Group, LLC, 1404 S. Houston Rd., Pasadena, TX 77502, has been accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12. ST Laboratories Group, LLC is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-01	D287	API Gravity of crude Petroleum and Petroleum products (Hydrometer Method).
27-04	D95	Standard test method for water in petroleum products and bituminous materials by distillation.
27-05	D4928-89	Standard test method for water in crude oils by Coulometric Karl Fischer Titration.

CBPL No.	ASTM	Title
27-06	D473	Standard Test method for sediment in crude oils and fuel oils by extraction method.
27-07	D4807	Standard test method for sediment in crude oil by membrane filtration.
27-08	D86	Standard Test method for distillation of petroleum products.
27-11	D445	Standard Test method of kinematic viscosity of transparent and opaque liquids.
27-13	D4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27-48	D4052	Standard test method for density and relative density of liquids by digital density meter.
27-50	D93	Standard test method for flash point by Pensky Martin Closed Cup Tester.
29-01	D3797	Test method for analysis of o-Xylene by Gas Chromatography.
29-02	D3798	Test method for Analysis of p-Xylene by Gas Chromatography.

Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific tests this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/linkhandler/cgov/trade/basic\\_trade/labs\\_scientific\\_svcs/commercial\\_gaugers/gaulist.ctt/gaulist.pdf](http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf)

Dated: January 3, 2014.

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

[Published in the Federal Register, January 15, 2014 (79 FR 2680)]

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

**AGENCY:** U.S. 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, 2014, the interest rates for overpayments will be 2 percent for corporations and 3 percent for non-corporations, and the interest rate for underpayments will be 3 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

**EFFECTIVE DATE:** January 1, 2014.

**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, Public Law 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 2013-25, the IRS determined the rates of interest for the calendar quarter beginning January 1, 2014, and ending on March 31, 2014. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus two percent-

age points (2%) for a total of three percent (3%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (1%) plus one percentage point (1%) for a total of two percent (2%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). These interest rates are subject to change for the calendar quarter beginning April 1, 2014, and ending June 30, 2014.

For the convenience of the importing public and U.S. 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.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (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	

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (Eff. 1-1-99) (percent)
070196	033198	9	8	
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
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	033114	3	3	2

Dated: January 10, 2014.

THOMAS S. WINKOWSKI,  
*Acting Commissioner.*

[Published in the Federal Register, January 15, 2014 (79 FR 2681)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Vessel Entrance or Clearance Statement**

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

**ACTION:** 30-Day Notice and request for comments; Extension of an existing collection of information: 1651-0019.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Vessel Entrance or Clearance Statement (CBP Form 1300). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 39114) on October 29, 2013, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before February 10, 2014 to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira\_submission@omb.eop.gov* or faxed to (202) 395-5806.

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

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

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

**Title:** Vessel Entrance or Clearance Statement.

**OMB Number:** 1651-0019.

**Form Number:** CBP Form 1300.

**Abstract:** CBP Form 1300, *Vessel Entrance or Clearance Statement*, is used to collect essential commercial vessel data at time of formal entrance and clearance in U.S. ports. The form allows the master to attest to the truthfulness of all CBP forms associated with the manifest package, and collects detailed information on the vessel, cargo, purpose of entrance, certificate numbers and expiration for various certificates. It also serves as a record of fees and tonnage tax payments in order to prevent overpayments. CBP Form 1300 was developed through agreement by the United Nations Intergovernmental Maritime Consultative Organization (IMCO) in conjunction with the United States and various other countries. The form was developed as a single form to replace the numerous other forms used by various countries for the entrance and clearance of vessels. CBP Form 1300 is authorized by 19 U.S.C. 1431, 1433, and 1434, and provided for by 19 CFR 4.7-4.9. This form is accessible at [http://forms.cbp.gov/pdf/CBP\\_Form\\_1300.pdf](http://forms.cbp.gov/pdf/CBP_Form_1300.pdf).

**Current Actions:** CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 12,000.

**Estimated Number of Responses per Respondent:** 22.

**Estimated Total Annual Responses:** 264,000.

**Estimated Time per Response:** 30 minutes.

**Estimated Total Annual Burden Hours:** 132,000.

Dated: January 6, 2014.

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