

# U.S. Customs and Border Protection



## GENERAL NOTICE

### 19 CFR PART 177

#### **PROPOSED REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF SMALL GLASS YARD STAKES**

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

**ACTION:** Notice of proposed revocation of a ruling letter and revocation of treatment related to the classification of certain small glass yard stakes.

**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 proposing to revoke a ruling concerning the classification of small glass yard stakes under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is proposing to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before May 22, 2015.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade—Regulation and Rulings, Attn: Mr. Joseph Clark, 90 K Street, N.E., Washington D.C. 20229–1179. Comments submitted may be inspected at 90 K St. N.E. 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:** Lynne O. Robinson, Tariff Classification and Marking Branch (202) 325-0067.

**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 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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke one ruling pertaining to the classification of small glass yard stakes. Although in this notice CBP is specifically referring to New York Ruling letter (NY) N248093 (Attachment "A"), dated December 12, 2013, 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 data bases 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 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing

to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In the 2013 ruling, CBP classified small glass yard stakes under subheading 7013.99.50, which provides for: "[G]lassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): Other: Valued over \$0.30 but not over \$3 each." We have determined that NY N248093 is in error and that the imported merchandise is properly classified in subheading 8306.29.00, HTSUS, which provides for: "[B]ells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY N248093, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H251139. (Attachment "B"). 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: April 6, 2015

IEVA K. O'ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

## [ATTACHMENT A]

N248093

December 12, 2013

CLA-2-OT:RR:NC:2:226

CATEGORY: Classification

TARIFF NO.: 7013.99.5000

Ms. TONJA DAVENPORT  
DOLLAR GENERAL CORP.  
100 MISSION RIDGE  
GOODLETTSVILLE, TN 37072-2170

RE: The tariff classification of decorative articles consisting of glass figures on metal stakes

DEAR Ms. DAVENPORT:

In your letter, dated November 4, 2013, you requested a tariff classification ruling regarding decorative garden articles consisting of glass figures on metal stakes – SKU number 1361901.

Samples were submitted with your ruling request. In accordance with your request, the samples will be returned to you.

There are four styles of this product, each consisting of a brightly colored glass figure hanging from a metal stake. The glass figures include a bird, tulip, bee and ladybug. Each metal stake has the form of a plant.

In your letter you indicated that the colors on the glass portion of each article are not inserted prior to solidification; rather, color is simply painted onto the surface of the glass.

Your letter indicates that the unit value of each article is over thirty cents but not over three dollars.

The essential character of each article is imparted by the glass figure, not the metal stake.

The applicable subheading for the decorative glass articles on metal stakes (SKU number 136191) will be 7013.99.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes... other glassware: other: other: other: valued over thirty cents but not over three dollars each. The rate of duty will be 30 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on 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 Jacob Bunin at 646-733-3027.

*Sincerely,*

GWENN KLEIN KIRSCHNER

*Acting Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H251139  
CLA-2 OT:RR:CTF:TCM H251139 LOR  
CATEGORY: Classification  
TARIFF NO.: 8306.29.00

Ms. TONYA DAVENPORT  
CUSTOMS SENIOR ANALYST  
*DOLLAR GENERAL CORPORATION, LLC*  
*100 MISSION RIDGE*  
*GOODLETTSVILLE, TN*

RE: Revocation of New York Ruling (NY) N248093; Small Yard Stakes

DEAR Ms. DAVENPORT:

The following is our decision regarding the request for reconsideration of New York Ruling N248039 that Dollar General Corporation, LLC (“Dollar General”) filed with us on December 12, 2013. In NY N248039, U.S. Customs and Border Protection classified certain yard stakes consisting of glass figures on metal stakes, under subheading 7013.99.50 of the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed the ruling and find it to be in error.

**FACTS:**

The instant merchandise consists of yard stakes in the form of a flower and made from iron. Measuring approximately 22 inches, the yard stakes are coated in green paint. One end of the stake is curved and has an iron-backed glass article in the shape of a flower, or a bee, or a bird, or a lady bug affixed to it by means of a small metal ring. Three pieces of metal in the form of petals with two metal flowers are welded at the midpoint of each stake. The ornamental flower, bee, bird or lady bug are covered in broken glass and then painted in assorted colors, depending upon the specific item.<sup>1</sup>

You have requested classification under subheading 8306.29.00, HTSUS, which provides for ornaments of metal in accordance with GRI 3(b)(VIII). You claim that the essential character of the garden stakes is imparted by the iron. You described the imported articles as “Small Glass Yard Stake – 4 Styles Asst” in your submission. To support classification under heading 8306, HTSUS, you contend that based on the percentage of glass by weight (9%) and the value (11%) compared to the percentage of iron by weight (91%) and the value (89%), the essential character of the yard stake is imparted by the iron. According to the invoice<sup>2</sup> that you submitted, the material weight of the glass is 8 grams and the material weight of the iron is 77 grams. Using the invoice values, the total weight of the imported small glass stakes is 85

<sup>1</sup> In the samples provided, the metal-backed glass flower is pink and the two smaller flowers on the stem are a paler pink; the metal backed glass bee is gold with black stripes and the two smaller flowers on the stake are blue with yellow embellishment; the metal-backed glass bird is a golden yellow with pink highlights and the two smaller flowers on the stake are a redish-pink with a yellow stamen; and, the metal-backed lady bug is red with black dots and the two smaller flowers on the stake are purple with yellow stamen.

<sup>2</sup> In addition to the glass and the iron content, the invoice provides the material weight and cost of the paper display stand. The paper, however, is not considered in the classification of the small glass yard stakes.

grams. The dollar values and weights are 10% of the dollar value and 9.412% for the glass component and 90% of the dollar value and 90.59% for the iron component.

### ISSUE:

Whether the garden stakes are classified as ornamental articles of glass under heading 7013, HTSUS, or as articles of metal under heading 8306, HTSUS.

### LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise. The GRIs are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 2(b) provides the following:

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

GRI 3 provides the following:

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

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
- (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

The HTSUS provisions under consideration are as follows:

7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
* * * * *	
8306	Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof:
* * * * *	

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

The EN for heading 7013, HTSUS, provides, in pertinent part, the following:

Articles of glass combined with other materials (base metal, wood, etc.), are classified in this heading only if the glass gives the whole the character of glass articles.

The EN for heading 8306, provides the following, in pertinent part:

**(B) STATUETTES AND OTHER ORNAMENTS**

This group comprises a wide range of ornaments of base metal (whether or not incorporating subsidiary non-metallic parts) of a kind designed essentially for decoration, e.g., in homes, offices, assembly rooms, places of religious worship, gardens.

It should be noted that the group does not include articles of more specific headings of the Nomenclature, even if those articles are suited by their nature or finish as ornaments.

The group covers articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to contain or support other decorative articles or to add to their decorative effect, for example:

- (1) Busts, statuettes and other decorative figures; ornaments (including those forming parts of clock sets) for mantelpieces, shelves, etc. (animals, symbolic or allegorical figures, etc.); sporting or art trophies (cups, etc.); wall ornaments incorporating fittings for hanging (plaques, trays, plates, medallions other than those for personal adornment); artificial flowers, rosettes and similar ornamental goods of cast or forged metal (usually of wrought iron); knick-knacks for shelves or domestic display cabinets.

EN (VIII) for GRI 3(b) provides, in pertinent part, the following:

In all these cases the goods are to 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 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.” Court decisions on essential character for GRI 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the good. See *Better Home Plastics Corp. v. U.S.*, 915 F. Supp. 1265 (CIT 1996), aff’d 119 F. 3d 969 (Fed. Cir. 1997) (“Better Home Plastics”); *Mita Copystar America, Inc. v. U.S.*, 966 F. Supp. 1245 (CIT 1997), rehear’g denied, 994 F. Supp. 393 (1998); *Vista Int’l Packing Co. v. U.S.*, 890 F. Supp. 1095 (CIT 1995). See also *Pillowtex Corp. v. U.S.*, 893 F. Supp. 188 (CIT 1997), aff’d 171 F. 3d 1370 (CAFC 1999); *Avenues in Leather, Inc. v. U.S.*, 2004 Ct. Int’l Trade LEXIS 39, aff’d 2005 U.S. App. LEXIS 19816 (Fed. Cir. 2005).

In *The Home Depot, U.S.A., Inc., v. United States*, 2006 Ct. Int’l Trade, LEXIS 40, aff’d 2007 (CAFC), the Court relied upon the EN for GRI 3(b) (VIII) and case law for guidance in determining what factors constitute essential character. The Court specifically referenced *United China & Glass Co. v. United States*, 61 Cust. Ct. 386, C.D. 3637, 293 F. Supp. 734 (1968) and *A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, C.D. 4218 (1971). Factors considered in *United China* reflected the article’s “name ... other recognized names ... invoices and catalogue descriptions ... size, primary function, uses ... and ordinary common sense.” Id. At 389. Emphasis added. In *A.N. Deringer*, the court noted that “[t]he character of an article is that attribute which strongly marks or serves to distinguish what it is. It’s the essential character that which is indispensable to the structure, core or condition of the article, i.e., what it is.” Id. at 383. The Court stressed, however, that in an essential character determination, “the situation must be reviewed as a whole.” Id. at 384 (citation omitted).

In *Home Depot*, the CIT found that the glass in certain light fixtures reflected the imported articles name and had a much greater visible surface area and weighed much more than the metal component as the factor “materials’ role in the relation to the use of the good” as listed in GRI 3(b). When considering the “materials” role for certain light fixtures, however, the Court found the metal components were the most important for design and structure, but also that because it was an exterior fixture, that the glass component was the most important for function and use.

With regard to the iron yard stakes bearing glass-plated ornaments, these articles are composite goods that cannot be classified at GRI 1 because there is no heading that describes the complete good. At GRI 3(b), CBP has considered that the essential character of decorative articles that are composite goods is given by the component which imparts the visual impact in accordance with use of the goods as items of decoration. For instance, in HQ H044562, dated June 1, 2009, CBP determined that certain insect decorative garden stakes, made from metal wire dipped in epoxy with plastic beads added for accent on insects, were composite goods which were classifiable in accordance to GRI 3(b) under heading 3926, HTSUS.

Here, the imported article is a yard stake, made of iron, painted green and bearing metal petals and metal flowers, and also bearing a glass ornament that is backed by iron. The name of the imported article is reflected in the yard stake as opposed to the glass ornament. In considering the ‘materials’

role in the essential character analysis, we note that the metal stake and the glass ornament are imported as one unit. Based upon the documentary evidence and using the values that you have provided the metal content weighs nearly 10 times more than the glass content of the imported article. The dollar value of the metal content in the stake is also several times more than the value of the glass content of the imported article. In considering the samples that were submitted, we note that the material which provides the most significant visual impact and consumer appeal of the yard stakes rests primarily in the painted broken glass. However, the painted metal stake bearing metal petals and flowers also provides significant visual impact, color and consumer appeal.

In HQ H044562, we found that the material that provided the visual impact, color, consumer appeal and nature of certain metal garden stakes was the plastic beads which gave color and detail to the insect and its wings. We noted that “[A]lthough the insect itself may include a thin wire to hold its shape, the wire and the stake were of lesser importance in relation to the use of this good for solely ornamental purposes.” Moreover, in NY N005494, dated May 9, 2007, we noted that the essential character of the article was imparted by the glass ornament. In NY N189576, dated November 14, 2011, we found that the red “light-up” glass ball was the focus of one’s attention on the article as opposed to the stake. Lastly, in N246035, dated December 4, 2013 we determined that the thin metal rod (garden stake) was less significant than the glass component.

Unlike the articles discussed in HQ H044562 and in NY N005494, NY N189576, and NY N246035, the decorative metal content of the garden stake at issue, including the iron mounting the back of each glass component and the metal ornamentation welded to the metal stake, is significantly greater than the glass content. Although you describe the article as a “small glass yard stake, the metal component most accurately describes the imported article inasmuch as it provides the overall design and structure to the imported article. In addition, the metal stake provides substantial visual impact, thus imparting a decorative presence to the imported article. Lastly, whereas the iron stake is substantial enough to drive into the ground, to serve as a boundary marker, or to support a plant, it does more than merely support the glass component – it enables the stake to function as a decorative yard stake.

Whereas the painted metal stake reflects the imported article’s function and use, imparts the greatest material content and material value of the imported article, and provides a significant part of the visual impact of the imported article, we are of the opinion that the metal content provides the essential character of the imported article. Therefore, it is to be classified under heading 8306, HTSUS.

This decision is consistent with several rulings issued in 2013 where the metal component was found to impart the essential character for certain metal garden stakes incorporating non-metal components. See, NY N246384, dated October 17, 2013, involving certain metal garden stakes with a butterfly and/or a dragon fly with four sections of colorful glass inserts within the wing of each insect; NY N245426, dated September 10, 2013, involving certain metal garden stakes with ornamental figures of base metal and glass or base metal and acrylic; and lastly, NY N237957, dated February 11, 2013, involving certain metal garden stakes with an owl with a glass body, a sun flower with a glass center surrounded by metal flowers, and/or a pumpkin

with a glass center surround by a metal border, stems and a leaf on a metal sign. We classified the merchandise in each of these cases under subheading 8306.29.00, HTSUS.

**HOLDING:**

At GRI 3(b), the instant decorative garden stakes are classified in heading 8306, HTSUS. Specifically, at GRI 6, the merchandise is classified in subheading 8306.29.00, HTSUS, which provides for: “Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof: Other.” The column one, general rate of duty is free.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



**GENERAL NOTICE**

**19 CFR PART 177**

**REVOCATION OF ONE RULING LETTER, MODIFICATION  
OF ONE RULING LETTER AND REVOCATION OF  
TREATMENT RELATING TO THE CLASSIFICATION OF  
DVDS AND BLU- RAY DISCS**

**AGENCY:** U.S. Customs and Border Protection (“CBP”), Department of Homeland Security.

**ACTION:** Revocation of one ruling letter, modification of ruling letter and revocation of treatment relating to the classification of DVDs and Blu-ray discs.

**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 CBP is revoking one ruling letter and modifying one ruling letter concerning the classification of DVDs and Blu-ray discs 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. 49, No. 1, on January 1, 2015. CBP received no comments in response to this notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 22, 2015.

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

**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 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), notice proposing to revoke New York Ruling Letter (NY) N058455, dated April 29, 2009, and modify HQ H083275, dated June 17, 2010, was published on January 1, 2015, in Volume 49, Number 1, of the Customs Bulletin. CBP received no comments in response to this notice.

Although in this notice CBP is specifically referring to NY N058455 and HQ H083275, 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 data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who

has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's failure to have advised 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.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N058455 and modifying HQ H083275 in order to reflect the proper classification of this merchandise pursuant to the analysis set forth in Headquarters Ruling Letter ("HQ") H236026, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 30, 2015

ALLYSON MATTANAH  
*For*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H236026

March 27, 2015

CLA-2 OT:RR:CTF:TCM H236026 TNA

CATEGORY: Classification

TARIFF NO.: 8523.49.40

MR. CHINGYU TSOI  
8840 COSTA VERDE BLVD.  
APT. 3356  
SAN DIEGO, CA 92122

**Re:** Revocation of NY N058455; Modification of HQ H083275; Classification of DVDs and Blu-Ray Discs

DEAR MR. TSOI:

This letter is in reference to New York Ruling Letter (“NY”) N058455, issued to you on April 29, 2009, concerning the tariff classification of blu-ray discs with movies on them. There, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 8523.49.50, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Discs, tapes, solid-state non-volatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37: Optical media: Recorded optical media: Other: Other.”<sup>1</sup> We have reviewed this ruling and found it to be in error.

This ruling letter also concerns HQ H083275, dated June 17, 2010, classifying similar merchandise in subheading 8523.49.40, HTSUS, of the 2010 tariff, as other recorded media capable of being manipulated by an ADP machine. Although we adhere to the conclusion set forth in HQ H083275, we have reviewed this ruling and have found its analysis to be incorrect. For the reasons set forth below, we hereby revoke NY N058455 and modify HQ H083275.

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 N058455 and modify HQ H083275 was published on January 1, 2015, in Vol. 49, No. 1, of the Customs Bulletin. CBP received no comments in response to this notice.

**FACTS:**

NY N058455 classified Blu-ray discs that were prerecorded with movies on them in digital form. A Blu-ray disc is an optical disc storage medium. Blu-ray discs are plastic discs that are 120 mm in diameter and 1.2 mm thick, the same size as DVDs and CDs. The format of Blu-ray discs allows their movies to be played on both televisions and computers.

Blu-ray discs also contain a comprehensive content management system designed to protect the material on the discs from piracy- i.e., the sale of unauthorized copies of pre-recorded media. This system contains three primary components: Advanced Access Content System (AACS); “BD Plus”;

<sup>1</sup> We note that NY N058455 classified its merchandise in subheading 8523.40.50, HTSUS. Subheadings 8523.40.40 and 8523.40.50 have become subheadings 8523.49.40 and 8523.49.50, respectively, under the 2012 (and 2014) tariff. This ruling will apply the 2014 subheadings throughout.

and ROM Mark. AACS allows the user to manage copies in an authorized and secure manner. ROM Mark embeds a unique and undetectable identifier in pre-recorded BD-ROM media such as movies, music and games. The ROM Mark is invisible to consumers and can only be mastered with equipment available to licensed BD-ROM manufacturers, essentially preventing unauthorized copies of a disc. “BD Plus”, sometimes called “BD+”, is a Blu-ray-specific content protection. Instead of preventing the discs themselves from being copied, it checks the player to *see* if it has been hacked and then locks down the media.

Content that is recorded on DVDs, such as movies, contain a similar system of content protection as do the subject Blu-ray discs. In addition, movies that are recorded on the subject DVDs are done so within a restricted system of licensing and authorization. Companies that seek to duplicate these movies, as well as manufacturers that produce conforming movie players that de-scramble the encrypted data file content, are required to obtain a license to the material. The DVDs that are duplicated in this manner are protected from further duplication by a copy prevention system encoded in the data, which protects the intellectual property rights of the studios. Furthermore, DVDs, like Blu-ray discs, are encoded in such a way so that they can only be played in certain regions of the world, as both DVDs and Blu-ray discs are formatted differently for different regions. This encryption and regional formatting have become standard features on DVDs, and are now present whether the DVDs contain motion pictures or the types of instructional videos contained on the subject DVDs.

NY N058455 classified the subject merchandise in subheading 8523.49.50, HTSUS, as “Discs, tapes, solid-state non-volatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37: Optical media: Recorded optical media: Other: Other.” HQ H083275 classified media optical discs for Wii machines that contain Wii software in subheading 8523.49.40, HTSUS, which provides for: “Discs, tapes, solid-state non-volatile storage devices, ‘smart cards’ and other media for the recording of sound or of other phenomena, whether or not recorded...: Optical media: Recorded optical media: Other: ... proprietary format recorded discs.”

#### **ISSUE:**

Do the subject Blu-ray discs and DVDs constitute proprietary format recorded discs of subheading 8523.49.40, HTSUS?

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

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related sub-heading notes and, *mutatis mutandis*, to the GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

- 8523 Discs, tapes, solid-state non-volatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37
- 8523.49 Optical media:
- Recorded optical media:
- Other:
- 8523.49.40 For reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded discs
- 8523.49.50 Other

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

It is not in dispute that the subject merchandise is classified in heading 8523, HTSUS, as discs for the recording of sound or of other phenomena, excluding products of Chapter 37, HTSUS. It is also not in dispute that the subject merchandise is described by the terms of subheading 8523.49, HTSUS, as other optical media. Rather, the dispute is at the eight-digit level.

While we agree with the reasoning in HQ 968124, dated June 19, 2006, declining to classify such discs in subheading 8523.49.40, HTSUS, as “capable of being manipulated by an ADP machine,” we neglected to analyze possible classification, in any of CBP’s rulings of substantially similar merchandise, as “proprietary format discs” of the same subheading.

The term “proprietary format” is not defined in the tariff or the ENs. As a result, CBP is permitted to consult dictionaries and other lexicographic materials to determine the term’s common meaning. *See, e.g., Lonza, Inc. v. United States*, 46 F.3d 1098 (Fed. Cir. 1995). The term in question is then construed in accordance with its common and commercial meanings, which are presumed to be the same. *See, e.g., Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982); *Toyota Motor Sales, Inc. v. United States*, 7 C.I.T. 178 (Ct. Int’l Trade 1984); *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375 (Fed. Cir. 1999); *Lonza*, 46 F.3d 1098.

Technical sources state that:

a file format is proprietary if the mode of presentation of its data is opaque and its specification is not publicly available. Proprietary formats are developed by software companies in order to encode data produced by their applications: only the software produced by a company who owns the specification of the file format will be able to read correctly and completely the data contained in this file. Proprietary formats can be

further protected through the use of patents and the owner of the patent can ask for royalties for the use or implementation of the forms in third-party's software.

See [www.openformats.org/en1](http://www.openformats.org/en1).

Other lexicographic sources note that:

a file format defines the structure and type of data stored in a file... A file format also defines whether the data is stored in a plain text or binary format.... Some file formats are proprietary, while others are universal, or open formats. Proprietary file formats can only be opened by one or more related programs. For example, a compressed StuffIt X (.SITX) archive can only be opened by StuffIt Deluxe or StuffIt Expander. If you try to open a StuffIt X archive with WinZip or another file decompression tool, the file will not be recognized. Conversely, open file formats are publicly available and are recognized by multiple programs. For example, StuffIt Deluxe can also save compressed archives in a standard zipped (.ZIP) format, which can be opened by nearly all decompression utilities.

See [www.techterms.com/definition/file\\_format](http://www.techterms.com/definition/file_format). See also <http://warp.povusers.org/grrr/proprietaryvideoforformats.html> ("closed proprietary format... means that officially they can only be played with one player (provided by the owner of the format). There exist other players which also can play them, but only using third-party hacks."); [http://en.wikipedia.org/wiki/Proprietary\\_format](http://en.wikipedia.org/wiki/Proprietary_format) ("A proprietary format is a file format of a company, organization, or individual that contains data that is ordered and stored according to a particular encoding-scheme, designed by the company or organization to be secret, such that the decoding and interpretation of this stored data is only easily accomplished with particular software or hardware that the company itself has developed. The specification of the data encoding format is not released, or underlies non-disclosure agreements.")

Furthermore, while courts have not examined this issue in the context of tariff classification, courts that have examined DVDs in copyright cases have studied the factors that make them proprietary format. *Universal City Studios v. Reimerdes*, 111 F. Supp. 2d 294 (S.D.N.Y. 2000), for example, involved the decryption of DVDs with movies on them that are substantially the same merchandise at issue here. See *Universal City Studios*, 111 F.Supp.2d 294, 303–304. There, the court noted that the DVDs at issue were five-inch wide disks capable of storing more than 4.7 GB of data, whose relevant application to this case was that they were used to hold full-length motion pictures in digital form. *Id.* at 307. In addition, they were protected by CSS, an encryption program that involved two layers. First, CSS encrypted the digital sound and graphics files on a DVD that, together, constituted a motion picture; this encryption was according to a specific encryption algorithm. Secondly, a CSS-protected DVD can only be decrypted by an appropriate decryption algorithm that employs a series of keys stored both on the DVD and the DVD player. Thus, only players and drives containing the appropriate keys are able to decrypt DVD files and thereby play movies stored on DVDs. *Id.* at 309–310. The technology necessary to configure DVD players and drives to play CSS-protected DVDs must be licensed to manufacturers

before they can produce compliant DVD players and drives; hundreds of manufacturers in the United States and around the world have received this license. *Id.* at 308.

Hence, “proprietary format” is encrypted in such a way that it can only read data if the devices with which the media are used contain a decryption algorithm that is not publicly available. We note that the question of whether merchandise is “proprietary format” is not necessarily tied to the content of the merchandise, which, like the movies on the subject DVDs and Blu-Ray discs, can be copyrighted. Copyright is a form of content protection, and the tariff term at issue is “proprietary format” rather than “proprietary content.”

This characterization of “proprietary format” is consistent with descriptions found in international agreements on similar merchandise. The Ministerial Declaration on Trade in Information Technology Products (“ITA”), which was concluded in December 1996 and to which the U.S. is a party, states that specific products are covered by this agreement, wherever they are classified in the HTS. This list includes “proprietary format storage devices, including media therefore for automatic data processing machines, with or without removable media and whether magnetic, optical or other technology, including Bernouli Box, Syquest, or Zipdrive cartridge storage units.” See Ministerial Declaration on Trade in Information Technology Products, December 1996, at Annex B. The Bernouli Box, Syquest, or Zipdrive, all technologies that were prevalent at the time this agreement was signed, are storage devices whose data is stored and read in a certain way that can only be read by devices that specifically contained the algorithm to decode the data. This decoding ability was unique to these devices and therefore was not publicly available.

In the present case, the subject DVDs and Blu-ray discs contain data in the form of full-length feature films, which is encrypted in such a manner that the DVDs can only be played by a DVD player, computer, or Blu-ray player that contains the decryption algorithm to decode the data. These machines must be specifically encoded so as to be able to read the data properly. In fact, Blu-Ray discs can only be read by a Blu-Ray player. Thus, many devices, such as Wii stations or X-boxes, cannot read these discs because they lack the decryption algorithm for both Blu-Ray discs and encoded DVDs. Even most personal computers cannot play a Blu-ray disc without special software being installed. Furthermore, the encryption system is such that it is region-specific. As such, DVDs and Blu-ray discs that are formatted for use in North America could not be played in other regions of the world, as the encryption system differs abroad. DVD and Blu-ray disc players are similarly formatted with region-specific decryption algorithms whose manufacturers must be licensed in order to produce players with the algorithm on them. As a result, we find that the subject DVDs and Blu-ray discs are “proprietary format recorded discs” within the meaning of subheading 8523.49.40, HTSUS. This conclusion is consistent with *Universal City Studios, supra*.

These DVDs and Blu-Ray discs are in contrast to the instructional DVDs of rulings such as HQ 968124, NY N060016, dated May 20, 2009, NY N030310, dated July 9, 2008, NY N016372, dated September 12, 2007, NY N065586, dated July 15, 2009, and NY N075356, dated October 2, 2009. As imported, these instructional DVDs were not encrypted and could be played by computers and other media players regardless of whether those players contained a licensed decryption algorithm. As a result, we distinguish HQ

968124, NY N060016, NY N030310, NY N016372, NY N065586, and NY N075356 on this basis. The merchandise of these rulings were properly classified in subheading 8523.49.50, HTSUS, as other recorded optical media.

Lastly, HQ H083275 classified media optical discs containing Wii software that could only be used with Wii game consoles and not with PCs or other gaming machines as proprietary format discs of subheading 8523.49.40, HTSUS. While we affirm this classification, we modify the ruling's reasoning. In HQ H083275, we explained why optical discs containing proprietary software were classified in heading 8523, HTSUS. However, we did not explain why, pursuant to HQ 968124, the discs did not meet the definition of "interactivity" and "capable of being manipulated" as those terms appear in subheading 8523.49.40, HTSUS. Applying the reasoning in HQ 968124, we now find that the media optical discs of HQ H083275 do not meet these terms for the same reasons that the DVDs and Blu-ray discs discussed above do not meet them. Furthermore, as stated in HQ H083275, and for the same reasons as the DVDs and Blu-ray discs discussed above meet these definitions, the subject media optical discs meet the definition of the term "proprietary" of subheading 8523.49.40, HTSUS.

**HOLDING:**

By application of GRI 1, the subject DVDs, Blu-ray discs, and media optical discs with Wii software are classified under heading 8523, HTSUS. They are specifically provided for under subheading 8523.49.40, HTSUS, which provides for: "Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37: Optical media: Recorded optical media: Other:... proprietary format recorded discs." The general, column one, rate of duty is free.

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

**EFFECT ON OTHER RULINGS:**

NY N058455 is REVOKED.

HQ H083275 is MODIFIED with respect to its analysis, while the classification of its merchandise remains the same.

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

*Sincerely,*

ALLYSON MATTANAH

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED REVOCATION OF TWO RULING LETTERS,  
PROPOSED MODIFICATION OF ONE RULING LETTER,  
AND REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF CAT TOYS**

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

**ACTION:** Notice of proposed revocation of two rulings and proposed modification of one ruling letter and proposed revocation of treatment relating to the classification of cat toys.

**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”) intends to revoke two rulings concerning the classification of the “Play-N-Squeak “Tail Spin” cat toy and the “Crazy Mouse” cat toy, as well as modify one ruling concerning the classification of the “Cat Catch” cat toy, under the Harmonized Tariff Schedule of the United States (“HTSUS”). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before May 22, 2015.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street NE, 10th Floor, Washington, D.C. 20229–1177. Submitted comments may be inspected at the above address 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:** Anthony L. Shurn, Tariff Classification and Marking Branch (202) 325–0218.

**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 intends to revoke two ruling letters and modify one ruling letter pertaining to the tariff classification of cat toys. Although in this Notice, CBP is specifically referring to the revocation of CBP Ruling Letters NY N056253 (April 20, 2009) (Attachment A) and NY D83727 (November 18, 1998) (Attachment B), as well as the modification of CBP Ruling Letter NY M87177 (October 27, 2006) (Attachment C), 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 those identified herein. 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 N056253, NY D83727, and NY M87177, CBP ruled that cat toys are to be classified under HTSUS heading 8543, which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof...”

The referenced rulings are incorrect because as machines with a primarily mechanical function the cat toys ruled upon therein do not meet the description of an “electrical machine” of heading 8543 and thus more appropriately fall within the description of machines classified under heading 8479. As machines that are not otherwise classifiable anywhere else within the HTSUS and are not excluded from either Section XVI in general or Chapter 84 specifically, the cat toys ruled upon in NY N056253, NY D83727, and NY M87177 are properly classifiable under HTSUS heading 8479 as machines “having individual functions, not specified or included elsewhere in [Chapter 84]; parts thereof...”

CBP, pursuant to 19 U.S.C. 1625(c)(1), proposes to revoke N056253 and NY D83727 and any other ruling not specifically identified, as well as modify NY M87177 and other appropriate ruling not identified, to reflect the proper classification of cat toys pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H259644 (Attachment D). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends 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: April 6, 2015

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

Attachments

## [ATTACHMENT A]

N056253

April 20, 2009

CLA-2-85:OT:RR:NC:N1:112

CATEGORY: Classification

TARIFF NO.: 8543.70.9650

MR. TERRY PILANT

CHB MANAGER

*GLOBAL TRANSPORTATION SERVICES, INC**1930 SIXTH AVENUE SOUTH, SUITE 401**SEATTLE, WA 98134*

RE: The tariff classification of the Play-N-Squeak pet toy from China

DEAR MR. PILANT:

In your letter dated March 24, 2009, you requested a tariff classification ruling on behalf of your client Virtu Co., dba Our Pets.

The merchandise subject to this ruling is the Play-N-Squeak "Tail Spin" cat toy. This item is comprised of a plastic housing in the shape of a tree stump. It measures approximately 4 ½ inches in height x 4 ½ inches in width. On the side of the tree stump is a small branch which contains an "On/Off" button. There are two openings located on the side of the tree stump. One opening contains a textile plush "mouse" which is suspended by a small spring; the other opening contains a simulated mouse tail that moves via a small electronic motor which is incorporated within this item. When the toy is activated, this device emits an electronic mouse squeak, while the artificial tail randomly emerges from the tree stump, enticing the cat to chase the tail and play with the mouse. In addition, this item features a sisal top for cats to scratch on. The toy operates on two "AA" batteries and contains replaceable mouse tail material.

You suggest that the correct classification of this item is in subheading 6307.90.7500, HTSUS, which provides for toys for pets, of textile materials. This item is a composite good composed of textile, plastic, and electrical components. The textile materials do not impart the essential character. The electrical components impart the essential character. General Rule of Interpretation 3(b), HTSUS, noted.

The applicable subheading for the Play N Squeak "Tail Spin" will be 8543.70.9650, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Electrical machines and apparatus...: Other machines and apparatus: Other: Other: Other: Other". The rate of duty will be 2.6%.

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 Steve Pollichino at 646-733-3008.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

NY D83727

November 16, 1998

CLA-2-85:RR:NC:1:112 D83727

CATEGORY: Classification

TARIFF NO.: 8543.89.9695

MS. MACHELLE BLAIR  
WAL-MART STORES, INC.  
702 SW 8 STREET  
BENTONVILLE, AK 72716-8023

RE: The tariff classification of a "Crazy Mouse" from China

DEAR MS. BLAIR:

In your letter dated October 15, 1998 you requested a tariff classification ruling.

As indicated by the submitted sample, the "Crazy Mouse" is a battery operated representation of a mouse and is intended as a toy for use by a cat. When activated, the mouse moves back and forth in a circular motion by means of three built-in plastic wheels on its underside.

The applicable subheading for the "Crazy Mouse" will be 8543.89.9695, Harmonized Tariff Schedule of the United States (HTS), which provides for other electrical machines and apparatus, ..., not specified or included elsewhere in Chapter 85, HTS. The rate of duty will be 2.9 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist David Curran at 212-466-5680.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT C]

NY M87177

October 27, 2006

CLA-2-39:RR:NC:SP:221 M87177

CATEGORY: Classification

TARIFF NO.: 3924.90.5500; 6307.90.7500;  
8543.89.9795

MR. NICHOLAS D'ANDREA

DELMAR GROUP

147-55 175TH STREET

JAMAICA, NY 11434

RE: The tariff classification of cat toys from China.

DEAR MR. D'ANDREA:

In your letter dated October 2, 2006, on behalf of Hartz Mountain Corporation, you requested a tariff classification ruling.

Four samples were provided with your letter. The "Cat Catch" cat toy (item #3270002273) is a battery operated cat toy with a plastic base on which a 12" inch wand with a feather at the end is perched. The wand and feather spin, enticing the cat to chase the moving feather. The base also contains a free rolling plastic ball that rotates inside the open chamber to make a rattling sound.

The "Pop Up Fun" cat toy (item #3270002278) is a two-part plastic ball. When the ball is batted or spun to a position where a button on the side touches the floor, the two halves of the ball spring apart to form a pop-up playset, revealing two arms with feathers at the end of each. The weighted base keeps the toy upright as the cat bats at the feather "birdies."

The "Gone Fishin" cat toy (item #3270088538) consists of a plastic wand that fits into a plastic suction cup. Connected to the plastic wand is an elastic nylon string with a textile pompon and bell at the end.

The "Birds of a Tether" (item #3270002223) cat toy consists of a plastic ball into which a plastic wand with a feather can be inserted. The wand can be wound up by spring action so that it rotates, enticing the cat to chase the feather. The toy can also be used simply as a ball.

The samples are being returned as you requested.

The applicable subheading for the Pop Up Fun cat toy (item #3270002278) and Birds of a Tether cat toy (item #3270002223) will be 3924.90.5500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for tableware, kitchenware, other household articles and toilet articles, of plastics: other. The rate of duty will be 3.4 percent ad valorem.

The applicable subheading for the Gone Fishin cat toy (item #3270088538) will be 6307.90.7500, HTSUS, which provides for other made up textile articles, pet toys. The rate of duty will be 4.3% ad valorem.

The applicable subheading for the Cat Catch (item #3270002273) cat toy will be 8543.89.9795, HTSUS, which provides for electrical machines and apparatus, having individual functions, not specified or included elsewhere: other machines and apparatus: other: other. The rate of duty will be 2.6 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on 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).

Pursuant to title 19 United States Code, Section 3005, The Harmonized Tariff Schedule of the United States is expected to be amended effective 1/1/07. The amendments are expected to affect the classification of your merchandise. Pursuant to Section 3005 c, the report recommending those changes has been sent to the President for proclamation of the changes. Upon the expiration of sixty legislative days, in the absence of Congressional action, the recommended changes will become law. Accordingly, based on that recommendation, it is anticipated that the Pop Up Fun cat toy (item #3270002278) and the Birds of a Tether cat toy (item #3270002223) will be classified in subheading 3924.90.5600 under the 2007 Harmonized Tariff Schedule. Under the circumstances, this classification under the 2007 tariff is advisory only.

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 Joan Mazzola at 646-733-3023.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT D]

HQ H259644  
CLA-2 OT:RR:CTF:TCM H259644 ALS  
CATEGORY: Classification  
TARIFF NO.: 8479.89.98

Ms. MARY COMPTON  
CHB MANAGER  
GLOBAL TRANSPORTATION SERVICES, INC.  
18209 80TH AVE SOUTH, SUITE A,  
KENT, WASHINGTON 98032

**RE :** Revocation of CBP Ruling Letters NY N056253 (April 20, 2009) and NY D83727 (November 16, 1998); Modification of CBP Ruling Letter NY M87177 (October 27, 2006); Revocation of Treatment Relating to the Classification of Cat Toys

DEAR Ms. COMPTON:

This letter revokes CBP Ruling NY N056253 (Attachment A), in which U.S. Customs and Border Protection (CBP) classified the Play-N-Squeak “Tail Spin” cat toy under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 8543.70.96 as an electrical apparatus with individual functions. We issued N056253 to your company on April 20, 2009.

This letter also revokes CBP Ruling NY D83727 (November 16, 1998) (Attachment B), which classified the “Crazy Mouse” cat toy<sup>1</sup>, and modifies CBP Ruling NY M87177 (October 27, 2006) (Attachment C), which classified the “Cat Catch” cat toy<sup>2</sup> Both of those rulings classified the respective cat toys under heading 8543, HTSUS, as electrical apparatus with individual functions.

**FACTS:**

The article at issue is the Play-N-Squeak “Tail Spin” cat toy, which is a device for the entertainment of cats. NY N056253 states, in pertinent part, the following:

The merchandise subject to this ruling is the Play-N-Squeak “Tail Spin” cat toy. This item is comprised of a plastic housing in the shape of a tree stump. It measures approximately 4 ½ inches in height x 4½ inches in width. On the side of the tree stump is a small branch which contains an “On/Off” button. There are two openings located on the side of the tree

<sup>1</sup> The “Crazy Mouse” cat toy was classified under the 1998 Supplement 1 edition of the HTSUS, under which subheading 8543.89.96 read as follows: “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other: Other.....” The “Crazy Mouse” cat toy was described in NY D83727 as follows: ...the “Crazy Mouse” is a battery operated representation of a mouse and is intended as a toy for use by a cat. When activated, the mouse moves back and forth in a circular motion by means of three built-in plastic wheels on its underside.

<sup>2</sup> The “Cat Catch” cat toy was classified under the 2006 Supplement 1, Revision 2 edition of the HTSUS, under which subheading 8543.89.97 read as follows: “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other: Other.....” The “Cat Catch” cat toy was described in NY M87177 as follows: The “Cat Catch” cat toy (item #3270002273) is a battery operated cat toy with a plastic base on which a 12” inch wand with a feather at the end is perched. The wand and feather spin, enticing the cat to chase the moving feather. The base also contains a free rolling plastic ball that rotates inside the open chamber to make a rattling sound.

stump. One opening contains a textile plush “mouse” which is suspended by a small spring; the other opening contains a simulated mouse tail that moves via a small electronic motor which is incorporated within this item. When the toy is activated, this device emits an electronic mouse squeak, while the artificial tail randomly emerges from the tree stump, enticing the cat to chase the tail and play with the mouse. In addition, this item features a sisal top for cats to scratch on. The toy operates on two “AA” batteries and contains replaceable mouse tail material. You suggest that the correct classification of this item is in subheading 6307.90.7500, HTSUS, which provides for toys for pets, of textile materials. This item is a composite good composed of textile, plastic, and electrical components. The textile materials do not impart the essential character. The electrical components impart the essential character. General Rule of Interpretation 3(b), HTSUS, noted.

**ISSUE:**

Is the mechanical function of the subject cat toy a primary function and therefore classifiable under HTSUS chapter 84 or is it subsidiary to the electrical function and therefore classifiable under HTSUS chapter 85?

**LAW AND ANALYSIS:**

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation (“GRI”) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation (“ARI”). GRI 1 provides that the classification of goods shall be “determined according to the terms of the headings and any relative section or chapter notes.” In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, GRIs 2 through 6 may be applied in order. The HTSUS provisions at issue are the following:<sup>3</sup>

8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
8543.70	Other machines and apparatus:
8543.70.96	Other .....
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:
8479.89	Other:
8479.89.98	Other .....

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89.80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). The ENs to heading 84.79 state that this heading is restricted to machinery having individual functions which:

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<sup>3</sup> Note 5 to Chapter 95 of the HTSUS specifically excludes “pet toys” from classification in that chapter.

- (a) Is not excluded from this Chapter by the operation of any Section or Chapter Note, and
- (b) Is not covered more specifically by a heading in any other Chapter of the Nomenclature, and
- (c) Cannot be classified in any other particular heading of this Chapter since:
  - (i) No other heading covers it by reference to its method of functioning, description or type, and
  - (ii) No other heading covers it by reference to its use or to the industry in which it is employed, or
  - (iii) It could fall equally well into two (or more) other such headings (general purpose machines).

The EN for heading 8543 specifically states that “the heading also includes electrical goods incorporating mechanical features **provided** that such features are subsidiary to the electrical function of the machine or appliance.” (**Emphasis** in original.)

The cat toys at issue herein and each case noted above have moving parts that work when given power from its battery source. The mechanical function of each cat toy is the movement of a featured part, whether it be the simulated mouse tail of the “Tail Spin,” the wand with a feather at its end of the “Cat Catch, or the replica mouse itself that comprises the “Crazy Mouse.” It is the moving part that the cat chases. The electrical function is each case, supplying power to the moving parts, actually supports the mechanical function of each toy, not the other way around. In fact, the articles noted in the exceptions listed in the EN for 8543 bear no resemblance to the cat toys at issue here. Thus, the mechanical functions in each case are not subsidiary to the electrical functions, thereby disqualifying each cat toy from being classified under heading 8543.

As machinery that is not otherwise classifiable anywhere else within the HTSUS and is not excluded from either Section XVI in general or Chapter 84 specifically, the Play-N-Squeak “Tail Spin” is properly classifiable under HTSUS subheading 8479.89.98 as an apparatus “having individual functions, not specified or included elsewhere in [Chapter 84]... Other: Other.” Likewise, the “Crazy Mouse” cat toy of NY D83727 and the “Cat Catch” cat toy of NY M87177 are also properly classifiable under HTSUS subheading 8479.89.98.

#### **HOLDING:**

The subject Play-N-Squeak “Tail Spin” cat toy, the “Crazy Mouse” cat toy of NY D83727, and the “Cat Catch” cat toy of NY M87177 are properly classified under HTSUS subheading 8479.89.98 as machines “having individual functions, not specified or included elsewhere in [Chapter 84];... Other: Other.”

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

CBP Ruling NY N056253 (April 20, 2009) is hereby REVOKED.

CBP Ruling NY D83727 (November 16, 2008) is hereby REVOKED.

CBP Ruling NY M87177 (October 27, 2006) is hereby MODIFIED only with respect to the tariff classification of the “Cat Catch” cat toy.

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

cc: Legal Department  
Wal-Mart, Inc.  
702 SW 8<sup>th</sup> Street  
Bensonville, AR 72716–0215  
Ms. Cathy Walsh  
Delmar International, Inc.  
1 Cross Island Plaza #115  
Rosedale, NY 11422



## GENERAL NOTICE

### 19 CFR PART 177

#### **PROPOSED REVOCATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF A MULTI-CHANNEL MEASUREMENT DEVICE**

**AGENCY:** U.S. Customs and Border Protection (“CBP”), Department of Homeland Security.

**ACTION:** Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to the classification of a multi-channel measurement device.

**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 CBP proposes to revoke one ruling letter concerning the classification of a multi-channel measurement device under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before May 22, 2015.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial

Regulations Branch, 90 K Street, N.E.—10th Floor, Washington, DC 20229–1179. Comments submitted may be inspected at 90 K Street, N.E. 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:** Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

## **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 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), this notice advises interested parties that CBP proposes to revoke one ruling letter pertaining to the classification of a multi-channel measurement device. Although in this notice CBP is specifically referring to New York Ruling Letter (“NY”) N184613, dated October 13, 2011 (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 data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been spe-

cifically identified. 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 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, 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 his agents for importations of merchandise subsequent to this notice.

In NY N184613, CBP classified a multi-channel measurement device in subheading 9033.00.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90." Given that this device performs steps in the process of measuring, we now believe that it meets the definition of a measuring instrument, appliance or machine and is properly classified in 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."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N184613, and any other ruling not specifically identified, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H244110 (see Attachment "B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes 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: April 6, 2015

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

## [ATTACHMENT A]

N184613

October 13, 2011

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

CATEGORY: Classification

TARIFF NO.: 9033.00.0000

KATIE JENKINS

MULLER-BBM VIBROAUSTIK SYSTEME, INC.

455 E EISENHOWER PARKWAY, SUITE 210

ANN ARBOR, MI 48108

RE: The tariff classification of a multi-channel measurement accessory from South Africa

DEAR MS. JENKINS:

In your letter dated September 14, 2011, you requested a tariff classification ruling. No samples were provided, but you submitted several dozen pages of descriptions relating to your import.

You describe your import as a “Multi-channel measuring system for vibration and acoustical analysis”. You indicate that the article consists of an aluminum outer casing with insert-able electronic cards that record measurement data via a cable connected to it and the individual’s data collection source (microphone, accelerometer, etc).

From your description and the attached literature, we take it that your import will not include any measuring instruments. Rather it will receive the output from various instruments (depending on the user’s needs) and provide signal conditioning, temporary storage, etc, for the incoming signals.

You propose classification in HTSUS 9027.80.8090 as parts or accessories of instruments and appliances of heading 9027. However, the measuring instruments that will send their output to your item are, per se, classified throughout Chapter 90 (e.g., pressure transducers of 9026, accelerometers of 9031, RPM measurers of 9029) and even some in other Chapters.

We believe that your imports are suitable for use primarily with the apparatus and instruments of Chapter 90. See Note 2(c) to HTSUS Chapter 90.

The applicable subheading for your multi-channel measurement accessory will be 9033.00.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90. The rate of duty will be 4.4% ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist J. Sheridan at (646) 733-3012.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H244110  
CLA-2 OT:RR:CTF:TCM H244110 TNA  
CATEGORY: Classification  
TARIFF No: 9031.80.80

PAUL M. LAURENZA, Esq.  
DYKEMA GOSSET PLLC  
*FRANKLIN SQUARE, THIRD FLOOR WEST*  
*1300 I STREET N.W.*  
*WASHINGTON, DC 20005*

**RE:** Revocation of NY N184613; Classification of the PAK MKII multi-channel measurement system device

DEAR MR. LAURENZA:

This is in reference to your request for reconsideration, dated June 17, 2013, of New York Ruling Letter (“NY”) N184613, dated October 13, 2011, on behalf of Muller-BBM VibroAkustik Systeme, Inc (“Muller”). NY N184613 concerned the classification of a mobile multi-channel measurement system device under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N184613 and found it to be incorrect. For the reasons set forth below, we hereby revoke NY N184613.

**FACTS:**

The subject merchandise consists of the PAK MKII, a compact mobile multi-channel measurement system device that is used for a wide range of vibration, acoustical, and other analyses. It consists of an aluminum outer casing with insertable electronic cards that record measurement data via a cable connected to the device and the data collection’s source, such as a microphone, accelerometer, pressure transducers, etc.

The PAK MKII records electronic signal data in a variety of measuring and acquisition applications, such as acoustic and vibration measuring. After recording these signals, the subject merchandise translates the signals into readable data and sends them to additional equipment, usually a computer, to interpret the data. The subject merchandise is connected to these computers via Ethernet or wireless means. Depending on what type of measurement sensor to which the subject merchandise is connected, the PAK MKII can process and record data such as acceleration, strain, displacement, rotational speed, force, sound, pressure, and temperature.

The PAK MKII can be used with a single data source or with multiple data sources. It is used primarily (though not exclusively) in automotive and aerospace applications. In the industry, this merchandise is known as a measuring “front end” that work with a variety of sensors as part of an overall measurement system. The PAK MKII can be universally configured for use with almost any common sensors; as a result, it is adaptable to a wide range of measurement-related applications. Pictures of the subject merchandise submitted with this request for reconsideration show the subject PAK MKII as a square device positioned outside an automobile. In these pictures, PAK MKII is receiving signals from that automobile with data from such devices as accelerometers, microphones, etc. and transmitting them to a computer.

**ISSUE:**

Whether the PAK MKII is classifiable under subheading 9030.84.00, HTSUS, as "... other instruments and apparatus for measuring or checking electrical quantities... Other instruments and apparatus: Other, with a recording device"; under subheading 9031.80.80, HTSUS, as "Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter... Other instruments, appliances and machines: Other"; or under subheading 9033.00.00, HTSUS, as "Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90?"

**LAW AND ANALYSIS:**

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

The HTSUS provisions under consideration are as follows:

9030	Oscilloscopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof.
9030.84	Other instruments and apparatus:
9030.84.00	Other, with a recording device.
* * *	
9031	Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof:
9031.80	Other instruments, appliances and machines:
9031.80.80	Other.
* * *	
9033.00.00	Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90.

Note 2 to Chapter 90, HTSUS, states the following:

Subject to note 1 above, parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

- (a) Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings;
- (b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading

(including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind;

(c) All other parts and accessories are to be classified in heading 9033.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the Harmonized System 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 the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to heading 9030, HTSUS, states, in pertinent part, the following:

**(B) OSCILLOSCOPES, SPECTRUM ANALYSERS AND OTHER INSTRUMENTS AND APPARATUS FOR MEASURING OR CHECKING ELECTRICAL QUANTITIES**

Instruments and apparatus for measuring or checking electrical quantities may be indicating or recording types...

The main types of electrical measurements are:

(I) Measurement of electric currents. This is carried out, in particular, by means of galvanometers or amperemeters (ammeters).

The EN to heading 9031, HTSUS, states, in pertinent part, the following:

In addition to profile projectors, this heading covers measuring or checking instruments, appliances and machines, whether or not optical...

**(I) MEASURING OR CHECKING INSTRUMENTS, APPLIANCES AND MACHINES  
(A)**

These include:...

(18) Apparatus for measuring or detecting vibrations, expansion, shock or jarring, used on machines, bridges, dams, etc...

(29) Special electrical instruments for measuring stress and strain. They are based, for example, on the following principles:

(i) Variations in the resistance of a wire when subjected to stress (strain gauges). However, electrical resistors known as "strain gauges" fall in heading 85.33.

(ii) Variations of capacity between specially constructed electrodes.

(iii) Electric potentials produced by quartz or similar crystals when subjected to pressure.

This group also includes dynamometers, used to measure the compression or tractive force of hydraulic presses, rolling mills, material testing machines, etc., and also for load tests (aircraft). They usually consist of a metal body (cylinder, ring, etc.) to which stress is applied, and of a measuring apparatus, graduated in units of weight, which records any change in the shape of the metal body.

However, dynamometers for testing the properties of materials are excluded (heading 90.24).

The EN to heading 9033, HTSUS, states, in pertinent part, the following:

This heading covers all parts and accessories for machines, appliances, instruments or apparatus of this Chapter, **other than**:

- (1) Those mentioned in Chapter Note 1...
- (2) Those covered by Chapter Note 2(a), which constitute in **themselves** machines, appliance, instruments or apparatus of any particular heading of **Chapter 90** or of **Chapter 84, 85** or **91 (other than** the residual headings 84.87, 85.48 or 90.33). It therefore follows that separately presented articles of this type must be classified in their respective headings...
- (3) Those identifiable as suitable for use solely or principally with a particular kind of machine, appliance, instrument or apparatus, or with a number of machines, appliances instruments or apparatus of the same heading of this Chapter; these are classifiable, by application of Chapter Note 2(b), in the same heading as the relevant machines, appliances, instruments or apparatus.

NY N184613 classified the subject merchandise in heading 9033, HTSUS, as “Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90.” However, Note 2 to Chapter 90, HTSUS, requires that if parts and accessories for the merchandise of this chapter are described by any of the headings of Chapters 84, 85, 90 or 91, HTSUS, then they must be classified in their respective headings. *See* Note 2 to Chapter 90, HTSUS. Therefore, a part or accessory of a machine which by itself is a good of any of these headings must be classified in that heading rather than as a part or accessory of the larger machine. As a result, we first examine classification in these headings.

Heading 9031, HTSUS, provides for “Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof.” The terms “measuring” and “checking” of heading 9031, HTSUS, are not defined in the HTSUS or in the ENs. In *United States v. Corning Glass Works*, 66 CCPA 25, 27 (1978), however, the court defined the term “check” as “to inspect and ascertain the condition of, especially in order to determine that the condition is satisfactory; ... investigate and insure accuracy, authenticity, reliability, safety, or satisfactory performance of ...; to investigate and make sure about conditions or circumstances....” *See United States v. Corning Glass Works*, 66 CCPA 25, 27 (1978) (“*Corning Glass Works*”). The court further stated that the provision for “checking instruments” clearly and unambiguously encompasses machines that carry out steps in a process for inspecting. *Id.* at 27.

Adhering to this interpretation, CBP has consistently held that equipment that is principally used in the process of measuring or checking is classifiable under that provision, even if it does not actually perform the measuring or checking operation itself. *See, e.g.*, HQ 089391, dated February 6, 1992; HQ 953382, dated April 15, 1993; and HQ H009364, dated November 23, 2009. Furthermore, CBP has defined the term “measure” as “[t]o ascertain the quantity, mass, extent, or degree of in terms of a standard unit or fixed amount ...; measure the dimensions of; take the measurements of ...; to compute the size of ... from dimensional measurements.” *See Webster’s Third*

New International Dictionary, 1400 (1971). *See also* HQ H163998, dated May 15, 2012; HQ H009364, dated November 23, 2009; HQ 965639, dated September 12, 2002; HQ 954682, July 14, 1994.

Furthermore, heading 9031, HTSUS, includes apparatus for measuring or detecting vibrations, expansions, shock or jarring; such apparatus are used on machines, bridges, dams, etc. *See* EN 90.31. The heading also covers special electrical instruments for measuring stress and strain. *See* EN 90.31. The subject merchandise records electronic signal data on many variables, including vibrations, strain, acoustics, rotational speed, temperature, etc. It then sends these data to a computer for analysis. Thus, although the subject PAK MKII does not measure these variables on its own, it performs steps in the process of measuring. As a result, the subject merchandise meets the cited definition of “measuring,” and it comports with the exemplars of heading 9031, HTSUS. As such, the PAK MKII is classified in heading 9031, HTSUS.

Thus, by application of Note 2 to Chapter 90, HTSUS, the subject merchandise is classified as a measuring instrument of heading 9031, HTSUS, rather than as a part and accessory of heading 9033, HTSUS. This classification is consistent with prior rulings that classify nearly identical merchandise, including independent and free-standing data recorders, in heading 9031, HTSUS. *See, e.g.*, HQ H112722, dated September 30, 2010; HQ H009364, dated November 23, 2009; HQ 954194, dated June 7, 1993; HQ 952235, dated November 4, 1992; HQ 089391, dated February 6, 1992; HQ 961096, dated June 15, 1998.

Lastly, we note that prior CBP rulings have considered heading 9030, HTSUS, which provides for “...other instruments and apparatus for measuring or checking electrical quantities” when classifying similar merchandise. *See, e.g.*, HQ H112722. However, the subject PAK MKII records electronic signals in a variety of measuring applications, such as acoustic and vibration, but it also displays data relating to temperature, pressure, displacement, and other processing factors. Given that the PAK MKII is a measuring instrument for more than just electrical quantities, it is precluded from heading 9030, HTSUS.

#### **HOLDING:**

Under the authority of GRI 1, the subject PAK MKII is classified in heading 9031, HTSUS. It is specifically classified in 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 column one general 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 on the internet at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY N184613, dated October 13, 2011, is REVOKED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

  
**PROPOSED REVOCATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF DATA RECORDERS**

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

**ACTION:** Notice of proposed revocation of a ruling letter and treatment relating to tariff classification of data recorders.

**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) proposes to revoke a ruling relating to the tariff classification of data recorders 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 actions.

**DATES:** Comments must be received on or before May 22, 2015.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street NE, 10<sup>th</sup> Floor, Washington, D.C. 20229–1177. Submitted comments may be inspected at the above address 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:** 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, as amended (19 U.S.C. §1625 (c)(1)), this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of data recorders. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) 861163, dated April 5, 1991, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., 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 861163, CBP determined that the subject data recorders were classified in heading 9033, HTSUS, which provides for: “Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90...”. It is now CBP’s position that the subject data recorders are properly classified under subheading 9031.80.80, HTSUS, which provides for “Measuring or checking instruments ... not specified or included elsewhere in this chapter...; other instruments, appliances and machines: other...”

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY 861163, and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of data recorders according to the analysis contained in proposed HQ H126636, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially similar transactions.

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

Dated: April 6, 2015

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

Attachments

## [ATTACHMENT A]

NY 861163

APR 5 1991

CLA-2-90:S:N:N1:102 861163

CATEGORY: Classification

TARIFF NO.: 9033.00.0000

MR. PAUL S. FOLLETT  
ATLANTEK INC.  
HS RECORDER DIVISION  
10 HIGH STREET  
WAKEFIELD, RI 02879

RE: The tariff classification of digital strip chart recorders from the United Kingdom

DEAR MR. FOLLETT:

In your letter dated March 1, 1991 you requested a tariff classification ruling. The merchandise at hand are your RS and HS series digital strip chart recorders. These are microprocessor-driven thermal print units which contain an integral, DC motor-driven paper transport. They accept data in both ASCII format for alphanumeric character printing, and in graphical or analog binary formats for waveform or graphical image printing. These are not stand-alone printers. Rather, they are designed to be component equipment installed in other instruments. You state that their primary use is in medical, scientific and industrial applications such as electrocardiographs, thermographs, Dataloggers, and small text data terminals. While they do have usable applications in the computer and office equipment fields, it is our opinion that their primary use is with scientific, medical and analytical equipment.

The applicable subheading for the RS and HS series digital strip chart recorders will be 9033.00.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for parts and accessories, not specified or included elsewhere in this chapter, for machines, appliances, instruments or apparatus of chapter 90. The rate of duty will be 4.9 percent ad valorem.

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 H126636  
CLA-2 OT:RR:CTF:TCM H126636 EGJ  
CATEGORY: Classification  
TARIFF NO.: 9031.80.80

MR. PAUL S. FOLLETT  
ATLANTEK INC.  
10 HIGH STREET  
WAKEFIELD, RI 02879

**RE:** Revocation of NY 861163, dated April 5, 1991; Classification of Data Recorders

DEAR MR. FOLLETT:

This is in reference to New York Ruling Letter (NY) 861163, dated April 5, 1991, issued to Atlantek, Inc. (Atlantek), concerning the tariff classification of data recorders under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) classified the subject merchandise in heading 9033, HTSUS, which provides for parts and accessories for machines of Chapter 90. We have reviewed NY 861163 and find it to be in error. For the reasons set forth below, we hereby revoke NY 861163.

**FACTS:**

The subject articles are Atlantek's RS and HS series digital strip data recorders (data recorders). They are microprocessor-driven thermal print units with motor-driven paper transport. These are not stand-alone printers. At importation, the data recorders are designed to be component equipment installed in larger machines. According to Atlantek, the primary use for the data recorders is in medical, scientific and industrial applications such as electrocardiographs, thermographs, data-loggers and small text data terminals.

The data recorders can accept data in different formats for waveform or graphical image printing. Once installed, the data recorders provide paper printouts of data received from the larger machine. Consumers trained to read these printouts can interpret the output from the electrocardiographs, thermographs and data-loggers. Depending upon the application of the larger machine, the output can provide information ranging from electrical activity in the human heart to changes in weather temperature. Below is a picture of a typical strip data recorder<sup>1</sup>:

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<sup>1</sup> We do not have supporting documentation from the original ruling request. All NY ruling files were destroyed in the events of September 11, 2001.



### ISSUE:

Are the data recorders classifiable under heading 9031, HTSUS as measuring or checking instruments, or under heading 9033, HTSUS, as parts (not specified or included elsewhere) for machines, appliances, instruments or apparatus of chapter 90?

### 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:

- |      |   |
|------|---|
| 9031 | Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof... |
| *    | *   |
| 9033 | Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90...                       |
| *    | *   |

Note 2 to Chapter 90 states that:

Subject to note 1 [of this chapter], parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

- (a) Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings;
- (b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind.
- (c) All other parts and accessories are to be classified in heading 9033.

\* \* \*

Heading 9031, HTSUS, covers measuring and checking instruments. The term “checking” is not defined in the HTSUS. To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (C.C.P.A. 1982).

In *United States v. Corning Glass Works*, the U.S. Court of Customs and Patent Appeals (CCPA) (predecessor to the U.S. Court of Appeals for the Federal Circuit) defined the terms of “optical measuring or checking instruments,” which was the superior heading to items 710.86–710.90 of the Tariff Schedule of the United States (TSUS)(predecessor to the HTSUS). 66 C.C.P.A. 25 (1978). The CCPA stated that the term “check” meant “to inspect and ascertain the condition of especially in order to determine that the condition is satisfactory.” *Id.* at 27 (citing *Webster’s Third New International Dictionary* 381 (1971)). The CCPA further stated that “applying that definition, ‘checking instruments’ clearly and unambiguously encompasses machines...that carry out steps in a process for inspecting... ‘Checking’ ... [is] broad enough to include egg candling (i.e., viewing eggs against a light to detect staleness, blood clots, fertility, and growth) machines.” *Id.* at 27 (citing *Bruce Duncan Co., Inc., a/c Staalkat of America, Inc. v. United States*, 67 Cust. Ct. 430 (1971)).

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 discussion of the court in *United States v. Corning Glass Works* on the meaning of the term “checking instruments.”

As stated above, heading 9031, HTSUS, provides for measuring or checking instruments. The data recorders’ print-outs, which display the information for different types of devices, allow a person to inspect the data from these devices. The data recorders print out information from devices such as electrocardiographs, thermographs, and data-loggers. Electrocardiograph devices provide data on the electrical activity of the human heart. A hospital worker can check a patient’s heart activity by reading the data recorder’s print-out. Thermographs measure and record temperature. A meteorologist can check the temperature by reading the data recorder’s print-out from a thermograph. Data loggers are electronic devices which collect data through internal or external sensors for numerous applications, such as weather, gas pressure, road traffic counting and tank level monitoring. A factory employee can check the levels of gas in industrial gas tanks by reading the data recorder’s print-out. The data recorders, therefore, carry out steps in a process for inspecting.

As such, the data recorders satisfy the definition of checking instruments set forth in *Corning Glass Works. Id.* at 27. Furthermore, CBP has consistently classified independent and free-standing data recorders under heading 9031, HTSUS. See HQ 089391, dated February 6, 1992, HQ 961096, dated June 15, 1998, and HQ H112722, dated September 30, 2010.

While the data recorders satisfy the definition of checking instruments, they are imported as components of larger machines. Heading 9033, HTSUS, provides for parts and accessories of machines classified in Chapter 90. However, Note 2(a) to Chapter 90 states that “Parts and accessories which are goods included in any of the headings of this chapter . . . are in all cases to be classified in their respective headings.” Therefore, a part or accessory of a machine which is described by a heading must be classified in that heading rather than as a part or accessory of the larger machine.

The subject data recorders are smaller components of electrocardiographs, thermographs and data-loggers. However, they are also machines that carry out steps in a process for inspecting. Since the data recorders are specifically described in heading 9031, HTSUS, Note 2(a) to Chapter 90 precludes them from classification under heading 9033, HTSUS, as parts and accessories. For all of the aforementioned reasons, the subject data recorders are classifiable under heading 9031, HTSUS.

#### **HOLDING:**

By application of GRI 1 (Note 2 to Chapter 90), the data recorders of NY 861163 are classifiable under heading 9031, HTSUS. Specifically, they are classifiable under 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 2015 column one, general rate of duty is 1.7% *ad valorem*.

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:**

NY 861163, dated April 5, 1991, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



### **PROPOSED REVOCATION OF THREE RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF COMPONENTS OF DATA RECORDERS**

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

**ACTION:** Notice of proposed revocation of three ruling letters and treatment relating to the tariff classification of components of data recorders.

**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) proposes to revoke three ruling letters relating to the tariff classification of components of data recorders under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially similar transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before May 22, 2015.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street NE, 10th Floor, Washington, D.C. 20229–1177. Submitted comments may be inspected at the above address 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:** 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, as amended (19 U.S.C. §1625 (c)(1)), this notice advises interested parties that CBP intends to revoke three ruling letters pertaining to the tariff classification of components of data recorders. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 952499, dated March 26, 1993 (Attachment A), New York Ruling Letter (NY) 881722, dated January 26, 1993 (Attachment B), and NY H80308, dated June 5, 2001 (Attachment C), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., 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 952499, NY 881722 and NY H80308, CBP determined that the subject components of data recorders were classified in heading 9033, HTSUS, which provides for, in pertinent part: "Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90...". It is now CBP's position that the components of data recorders are properly classified under subheading 9031.90.90, HTSUS, which provides for: "Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter ... parts and accessories thereof: parts and accessories: other: other ..."

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke HQ 952499, NY 881722 and NY H80308, and revoke or modify any other

ruling not specifically identified, in order to reflect the proper classification of components of data recorders according to the analysis contained in proposed HQ H219316, set forth as Attachment D to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends 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: April 6, 2015

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

Attachments

## [ATTACHMENT A]

HQ 952499

March 26, 1993

CLA-2 CO:R:C:M 952499 LTO

CATEGORY: Classification

TARIFF NO.: 9033.00.00

MR. DENNIS J. RILEY  
ELLIOTT, BRAY & RILEY  
1225 I STREET, NW  
SUITE 400  
WASHINGTON, D.C. 20005-3914

RE: Chart Drive Assemblies; HQ 088743 (IA 11/91); HQ 950834; heading 8501; EN 85.01; heading 9025; heading 9026; NY 881722; Note 2 to chapter 90

DEAR MR. RILEY:

This is in response to your letter of August 31, 1992, on behalf of Sonceboz Corporation (Sonceboz), requesting the classification of chart drive assemblies under the Harmonized Tariff Schedule of the United States (HTSUS).

**FACTS:**

The articles in question are two types of drive assemblies for use in data recording instruments. The first, the CDS 820, is a circular drive assembly that consists of an electric motor, microprocessor-based control circuit, plastic housing, mounting plate, hub, chart paper mounting plate and circular chart paper. The second, the 420, is a strip drive assembly that consists of a metal housing on which rests a flat, rectangular metal plate, as well as two plastic spools, on either end, which hold graphic recording paper.

The assemblies are mounted into various pen-based recording instruments used to monitor variable factors, such as, temperature, pressure, flow rate, etc. They can be inserted into barographs, hydrographs, medical apparatus and other such measuring instruments. There are four classes of drive assemblies: (1) spring wound drives; (2) pneumatic drives; (3) battery quartz-electric drives; and (4) A.C. electric drives.

**ISSUE:**

Whether drive assemblies used on data recording instruments should be classified as electric motors under heading 8501, HTSUS.

**LAW AND ANALYSIS:**

The General Rules of Interpretation (GRI's) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states in pertinent part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes . . . ."

In HQ 088743, dated May 10, 1991 (IA 11/91), certain drive assemblies were classified under heading 8501, HTSUS, which provides for electric motors. You contend that the holding in HQ 088743 is erroneous, and argue that the assemblies should be classified in one of the following Chapter 90 headings:

9025	Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments; parts and accessories thereof
* * * * *	* * * * *
9026	Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases (for example, flow meters, level gauges, manometers, heat meters), . . . parts and accessories thereof
* * * * *	* * * * *
9033	Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the Customs Co-operation Council's official interpretation of the Harmonized System. While not legally binding, the ENs provide a commentary on the scope of each heading of the Harmonized System, and are generally indicative of the proper interpretation of these headings.

EN 85.01, pg 1333, states that “[e]lectric motors are machines for transforming electrical energy into mechanical power.” Of the four classes of drive assemblies, two, the pneumatic and spring wound assemblies, do not contain electric motors or any electrical components. As such, these assemblies cannot be classified under heading 8501, HTSUS.

As for the remaining drive assemblies, this office stated, in HQ 950834, dated March 6, 1992, “[t]he Explanatory Notes and the rulings interpreting Heading 8501, HTSUS, make it clear that electric motors equipped with additional components, remain classifiable in this heading, even if those components are ‘quite substantial.’” We then held that “an electric motor is classifiable under Heading 8501, HTSUS, even when imported with additional components (other than those listed in EN 85.01) if:

- (1) those additional components complement the function of the motor...;
- (2) those additional components are devices which motors are commonly equipped...;
- (3) those additional components serve merely to transmit the power the motors produce . . . [emphasis in original].”

The additional components of the circular (e.g., chart paper mounting plate, circular chart paper) and strip drive (e.g., plastic spools, graphic recording paper) assemblies do not serve merely to complement the function of the motor, nor do they serve merely to transmit the power the motor produces. Rather, the drive assemblies contain the actual mechanism or device the motors serve to power. Moreover, the additional components are not devices which motors are commonly equipped. For these reasons, the electrically powered assemblies in question are not classifiable under heading 8501, HTSUS.

The holding in HQ 088743 does not control the classification of every article described as a “chart drive” or “chart drive assembly.” Rather, it controls the classification of those chart drives described as “gear motors specifically designed for installation in measurement recording instruments.” The assemblies in question have been advanced beyond simple “gear motors.”

You claim that the drive assemblies that will be incorporated into temperature recorders upon importation are classifiable under heading 9025, HT-

SUS, and that the drive assemblies that will be incorporated into pressure recorders are classifiable under heading 9026, HTSUS.

Note 2 to chapter 90 states that parts and accessories for articles of this chapter are to be classified as follows:

- (a) Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 . . . are in all cases to be classified in their respective headings;
- (b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading . . . are to be classified with the machines, instruments or apparatus of that kind;
- (c) All other parts and accessories are to be classified in heading 9033 [emphasis added].

Since the assemblies in question are incorporated into systems that measure temperature, pressure, flow and other such variables not covered by a single heading, as well as being used in certain medical apparatus, they cannot be classified as instruments of heading 9025 or 9026, HTSUS. Further, the assemblies are not “goods included” in any other heading of chapter 84, 85, 90 or 91, nor are they suitable for use solely or principally with a particular instrument, or number of instruments, of a single heading. Thus, according to note 2(c) to chapter 90, the circular and strip assemblies are classifiable in the “basket” provision for parts of chapter 90 under subheading 9033.00.00, HTSUS. *See* NY 881722.

**HOLDING:**

The circular and strip drive assemblies are classifiable under subheading 9033.00.00, HTSUS, which provides for “[p]arts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90.” The corresponding rate of duty for articles of this subheading is 4.9% ad valorem.

*Sincerely,*  
JOHN DURANT,  
*Director*  
*Commercial Rulings Division*

## [ATTACHMENT B]

January 26, 1993  
CLA-2-90:S:N:N3:102 881722  
CATEGORY: Classification  
TARIFF NO.: 9033.00.0000

MR. JOHN DI FRANCES  
DI FRANCES COMPANY  
P.O. BOX 310  
WALES, WI 53183-0310

RE: The tariff classification of a circular recorder subassembly from Switzerland

DEAR MR. DI FRANCES:

In your letter dated December 31, 1992 you requested a tariff classification ruling.

The item in question is a battery-operated drive assembly for use in data recording instruments. The unit consists of an electric motor, microprocessor-based control circuit, plastic housing with battery compartment, mounting plate, hub, chart paper mounting plate and circular chart paper. The recorder assembly is mounted into various pen-based recording instruments used to monitor variable factors such as temperature, pressure, flow rate, etc. It can be inserted into barographs, hydrographs, medical apparatus, and other such measuring instruments.

The applicable subheading for the circular recorder subassembly will be 9033.00.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for parts and accessories (not specified elsewhere in Chapter 90) for machines, appliances, instruments or apparatus of chapter 90. The rate of duty will be 4.9 percent ad valorem.

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 C]

NY H80308

June 5, 2001

CLA-2-90:RR:NC:MM:105 H80308

CATEGORY: Classification

TARIFF NO.: 9033.00.0000

MR. ED KWAS  
EXPEDITORS TRADEWIN, LLC  
1015 THIRD AVENUE, 12TH FLOOR  
SEATTLE, WA 98104

RE: The tariff classification of parts (used in chart recorders) from China and Hong Kong

DEAR MR. KWAS:

In your letter dated May 2, 2001, on behalf of Honeywell Incorporated Industrial Automation & Control, you requested a tariff classification ruling. No samples were submitted. No information was supplied concerning the makers, suppliers, or any of the interested parties other than the importer.

You request the classification of a listing of approximately fifty separate part numbers with descriptions, e.g., a "12 PTA/I CARD". You state that each part's actual use will be in one of five groups of Honeywell chart recorders (with an unknown number of total models). Some of the chart recorders will be designed by Honeywell to receive electrical input from measuring devices in one Harmonized Tariff Schedule of the United States (HTS) heading, while others will be made capable of receiving input from measuring devices in several different HTS headings. All the chart recorders will use mechanical means to produce a hard copy chart showing the variations over time of the electrical input from measuring devices.

Per the information submitted, these chart recorders may use measuring devices supplied by the purchaser, or Honeywell will sell to the purchaser the compatible measuring devices needed for a complete system. The complete system may use devices for measuring temperature, pressure, flow, liquid level and relative humidity, and for charting.

You attached Headquarters Ruling Letter (HRL) 089391-AJS dated February 6, 1992, and HRL 961096-PH dated June 15, 1998, which classified in HTS subheading 9031.80 complete process recorders, which electrically stored on magnetic tape the output of various measuring devices. You believe that those HRLs indicate that HTS subheading 9031.90.90 should apply to all of your items.

However, HRL 952499-LTO dated March 26, 1993, classified in HTS subheading 9033.00.00 chart drive assemblies which moved the paper within chart recorders that would be used in "systems that measure temperature, pressure, flow, and other such variables not covered by a single heading." New York Ruling Letter (NYRL) 861163-102 dated April 5, 1991, classified strip chart recorders in HTS heading 9033. We find those to be closer precedents than the ones you cite. We also note that HRL 962893-KBR dated March 5 1991, rejected a claim of classification in HTS heading 9031 for a complete, tunable, laser diode source used exclusively "in the design and testing of photonic network telecommunications systems." That ruling noted the distinction in the testing and checking context between the Explanatory Notes (EN) for HTS heading 9030 and those for headings 9027 and 9031,

which is at issue here. That item was not classified as testing apparatus, even though it was necessary for the actual testing, unlike your imports, that are used in chart recorders, which are optional additions to a minority of the measuring devices in use.

There is sufficient information from the drawing submitted to determine that the “plastic housings” for the chart recorders are identifiable as part of same and are not excluded from HTS chapter 90 by being covered either by the listing in its Note 1 nor by the ranges of HTS headings in its Note 2-a.

Regarding the other parts, we are returning your request and any related samples, exhibits, etc., because we need additional information in order to issue a ruling. You assume that all items imported for use as a part of a given device is classified in the parts provision for the complete device. That assumption is not true. Please submit the additional information indicated below:

Samples, photographs, drawings or other pictorial representations of each item.

Descriptive literature or a detailed explanation on the use of each item.

Descriptive literature or a detailed explanation on how each item operates/functions.

Please limit your ruling request to a maximum of 5 items of the same class or kind.

For each item, what physical characteristics, if any, identify it as a part of a chart recorder or of, in general, the apparatus in the headings of HTS chapter 90? Note General EN III to HTS chapter 90 and Court of Appeals for the Federal Circuit (CAFC) Decision 00–1263 dated April 19, 2001.

Specifically regarding the “PCB assemblies”, the information should enable us to establish whether or not they are hybrid integrated circuits or electronic microassemblies of HTS heading 8542.

Specifically regarding the “motor assemblies”, the information should enable us to distinguish between assemblies which remain within “electric motors” in HTS heading 8501 and those which do not, noting CAFC 95–1010 dated October 18, 1995.

Please include a statement as to whether classification advice has been sought from a Customs officer; and if so, from whom, and what advice was rendered, if any.

In addition, as required by New York Pipeline Number 1688 dated December 19, 1988, please provide the following:

1. Two additional copies of this and any later submission.
2. The names and addresses of all interested parties, such as makers and/or suppliers.
3. The projected ports of entry of the commercial shipments of the products(s).

When this information is available, you may wish to consider resubmission of your request regarding the parts other than the plastic housings. If you decide to resubmit your request, please include all of the material that we have returned to you and mail your request to U.S. Customs, Customs Information Exchange, Room 437, 6 World Trade Center, New York, NY 10048, attn: Binding Rulings Section.

The applicable subheading for the plastic housings will be 9033.00.0000, HTS, which provides for parts and accessories (not specified or included

elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90. The general rate of duty will be 4.4 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist James Sheridan at 212-637-7037.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT D]

HQ H219316  
CLA-2 OT:RR:CTF:TCM H219316 EGJ  
CATEGORY: Classification  
TARIFF NO.: 9031.90.90

MR. DENNIS J. RILEY  
ELLIOTT, BRAY & RILEY  
1225 I STREET NW  
SUITE 400  
WASHINGTON, D.C. 20005-3914

**RE:** Revocation of HQ 952499, dated March 26, 1993, NY 881722, dated January 26, 1993, and NY H80308, dated June 5, 2001; Classification of Components for Data Recorders

DEAR MR. RILEY:

This is in reference to Headquarters Ruling Letter (HQ) 952499, dated March 26, 1993, issued to Sonceboz Corporation (Sonceboz), concerning the tariff classification of two types of drive assemblies for use in data recorders under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) classified the subject merchandise in heading 9033, HTSUS, which provides for parts and accessories for machines of Chapter 90. We have reviewed HQ 952499 and find it to be in error. For the reasons set forth below, we hereby revoke HQ 952499 and two other rulings with substantially similar merchandise: New York Ruling Letter (NY) 881722, dated January 26, 1993, and NY H80308, dated June 5, 2001.

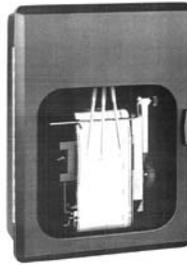
**FACTS:**

The articles in question are two types of drive assemblies for use in data recording instruments. The first, the CDS 820, is a circular drive assembly that consists of an electric motor, microprocessor-based control circuit, plastic housing, mounting plate, hub, chart paper mounting plate and circular chart paper. The second, the 420, is a strip drive assembly that consists of a metal housing on which rests a flat, rectangular metal plate, as well as two plastic spools, on either end, which hold graphic recording paper.

The assemblies are mounted into various pen-based recording instruments used to monitor variable factors, such as, temperature, pressure, flow rate, etc. They can be inserted into data recorders within barographs, hydrographs, medical apparatus and other such measuring instruments. A barograph measures atmospheric pressure and a hydrograph records seasonal variation changes in a body of water. There are four classes of drive assemblies: (1) spring wound drives; (2) pneumatic drives; (3) battery quartz-electric drives; and (4) A.C. electric drives. Below are pictures of the data recorders into which the chart drive assemblies will be installed after importation:



**Strip Chart Drive  
420**



**ISSUE:**

Are these components of data recorders classifiable under heading 9031, HTSUS, as parts of measuring or checking instruments, or under heading 9033, HTSUS, as parts (not specified or included elsewhere) for machines, appliances, instruments or apparatus of chapter 90?

**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:

9031	Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof..
* * *	
9033	Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90...
* * *	

Note 2 to Chapter 90 states that:

Subject to note 1 [of this chapter], parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

- (a) Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings;
- (b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind.
- (c) All other parts and accessories are to be classified in heading 9033.

\* \* \*

Heading 9031, HTSUS, covers measuring and checking instruments. The term “checking” is not defined in the HTSUS. To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (C.C.P.A. 1982).

In *United States v. Corning Glass Works*, the U.S. Court of Customs and Patent Appeals (CCPA) (predecessor to the U.S. Court of Appeals for the Federal Circuit) defined the terms of “optical measuring or checking instruments,” which was the superior heading to items 710.86–710.90 of the Tariff Schedule of the United States (TSUS)(predecessor to the HTSUS). 66 C.C.P.A. 25 (1978). The CCPA stated that the term “check” meant “to inspect and ascertain the condition of especially in order to determine that the condition is satisfactory.” *Id.* at 27 (citing *Webster’s Third New International Dictionary* 381 (1971)). The CCPA further stated that “applying that definition, ‘checking instruments’ clearly and unambiguously encompasses machines...that carry out steps in a process for inspecting... ‘Checking’ ... [is] broad enough to include egg candling (i.e., viewing eggs against a light to detect staleness, blood clots, fertility, and growth) machines.” *Id.* at 27 (citing *Bruce Duncan Co., Inc., a/c Staalkat of America, Inc. v. United States*, 67 Cust. Ct. 430 (1971)).

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 discussion of the court in *United States v. Corning Glass Works* on the meaning of the term “checking instruments.”

As stated above, heading 9031, HTSUS, provides for measuring or checking instruments. Data recorders print out information for different types of devices. The printouts enable a person to inspect the data from these devices. The data recorders into which the subject chart drive assemblies will be installed include barographs and hydrographs. Barographs provide information on atmospheric pressure; its data recorder prints out readings of atmospheric pressure for inspection. Hydrographs provide information on seasonal variations in levels in a body of water; its data recorder prints out this information for inspection. The data recorders into which these chart drive assemblies will be installed, therefore, carry out steps in a process for inspecting.

As such, these data recorders satisfy the definition of checking instruments set forth in *Corning Glass Works*. *Id.* at 27. Furthermore, CBP has consistently classified independent and free-standing data recorders under heading 9031, HTSUS. *See* HQ 089391, dated February 6, 1992, HQ 961096, dated June 15, 1998, and HQ H112722, dated September 30, 2010.

Heading 9031, HTSUS, provides for parts and accessories of measuring or checking instruments, while heading 9033, HTSUS, provides for parts and accessories of machines classified in Chapter 90. Note 2(b) to Chapter 90 states that “parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus ... (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind.”

The data recorder drive assemblies are solely used with data recorders. Data recorders are classified as measuring or checking instruments under heading 9031, HTSUS. Therefore, by application of Note 2(b) to Chapter 90, parts of data recorders must be classified together with data recorders under heading 9031, HTSUS. CBP has consistently classified parts solely or principally used with measuring or checking equipment under subheading 9031.90.90, HTSUS. *See, e.g.* NY L85928, dated July 25, 2005 (parts of a machinery fault detection system classified in 9031.90.90, HTSUS), NY R03598, dated April 7, 2006 (parts of pasteurization monitoring apparatus classified in 9031.90.90, HTSUS), and NY M85264, dated August 9, 2006 (parts of filter monitoring apparatus classified under 9031.90.90, HTSUS).

#### **HOLDING:**

By application of GRI 1 (Note 2(b) to Chapter 90), the data recorder drive assemblies of HQ 952499 are classified under heading 9031, HTSUS. Specifically, they are classified under subheading 9031.90.90, HTSUS, which provides, in pertinent part, for “Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter ... parts and accessories thereof: parts and accessories: other: other ...” The 2015 column one, general rate of duty is 1.7% *ad valorem*.

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 952499, dated March 26, 1993, NY 881722, dated January 26, 1993, and NY H80308, dated June 5, 2001, are hereby revoked.

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



## ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS TO U.S. CUSTOMS AND BORDER PROTECTION (COAC)

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

**SUMMARY:** The Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) will meet on April 24, 2015, in Washington, DC. The meeting will be open to the public.

**DATES:** The Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) will meet on Friday, April 24, 2015, from 9:00 a.m. to 12:30 p.m. EDT. Please note that the meeting may close early if the committee has completed its business.

*Pre-Registration:* Meeting participants may attend either in person or via webinar after pre-registering using a method indicated below:

- For members of the public who plan to attend the meeting in person, please register either online at [https://apps.cbp.gov/te\\_reg/index.asp?w=39](https://apps.cbp.gov/te_reg/index.asp?w=39); by email to [tradeevents@dhs.gov](mailto:tradeevents@dhs.gov); or by fax to (202) 325–4290 by 5:00p.m. EDT on April 21, 2015. You must register prior to the meeting in order to attend the meeting in person.
- For members of the public who plan to participate via webinar, please register online at [https://1apps.cbp.gov/te\\_reg/index.asp?w=40](https://1apps.cbp.gov/te_reg/index.asp?w=40) by 5:00p.m. EDT on April 21, 2015.

Feel free to share this information with other interested members of your organization or association.

Members of the public who are preregistered and later require cancellation, please do so in advance of the meeting by accessing one (1) of the following links: [https://apps.cbp.gov/te\\_reg/cancel.asp?w=39](https://apps.cbp.gov/te_reg/cancel.asp?w=39) to cancel an in person registration, or [https://apps.cbp.gov/te\\_reg/cancel.asp?w=40](https://apps.cbp.gov/te_reg/cancel.asp?w=40) to cancel a webinar registration.

**ADDRESSES:** The meeting will be held at the International Trade Commission in the Main Hearing Room 101, 500 E Street SW., Washington, DC 20436.

All visitors to the International Trade Commission Building must show a state-issued ID or Passport to proceed through the security checkpoint for admittance to the building. There will be signage posted directing visitors to the location of the Main Hearing Room.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection at (202) 344-1661 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee prior to the formulation of recommendations as listed in the “Agenda” section below.

Comments must be submitted in writing no later than April 15, 2015, and must be identified by Docket No. USCBP-2015-0011, and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [Tradeevents@dhs.gov](mailto:Tradeevents@dhs.gov). Include the docket number in the subject line of the message.
- *Fax:* (202) 325-4290
- *Mail:* Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229.

*Instructions:* All submissions received must include the words “Department of Homeland Security” and the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided. Do not submit personal information to this docket.

*Docket:* For access to the docket or to read background documents or comments, go to <http://www.regulations.gov> and search for Docket Number USCBP-2015-0011. To submit a comment, *see* the link on the Regulations.gov Web site for “How do I submit a comment?” located on the right hand side of the main site page.

There will be multiple public comment periods held during the meeting on April 24, 2015. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Contact the individual listed below to register as a speaker. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP Web page, <http://www.cbp.gov/trade/stakeholder-engagement/coac>, at the time of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone (202) 344-1440; facsimile (202) 3254290.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the *Federal Advisory Committee Act*, 5 U.S.C. Appendix 2. The Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within Department of Homeland Security and the Department of the Treasury.

### Agenda

The Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) will hear from the following subcommittees on the topics listed below and then will review, deliberate, provide observations, and formulate recommendations on how to proceed on those topics:

1. The One U.S. Government Subcommittee will discuss the Automated Commercial Environment, Partner Government Agencies and International Interoperability (World Customs Organization).

2. The Exports Subcommittee will address policy and a strategic approach regarding exports. The subcommittee will work in close collaboration with One U.S. Government Subcommittee.

3. The Trade Enforcement Subcommittee will discuss policy to include metrics and implementation through Centers of Excellence and Expertise.

4. The Global Supply Chain Subcommittee will discuss CustomsTrade Partnership Against Terrorism, Land ports of entry (Canada and Mexico), Ocean Cargo, In-Transit and Air Cargo Advance Screening.

5. The Trusted Trader Subcommittee will start work once the pilot has advanced to the implementation phase for testing U.S. Customs and Border Protection and Partner Government Agency trade benefits.

6. The Trade Modernization Subcommittee will discuss International Strategy (World Trade Organization Trade Facilitation Agreement, Trans Pacific Partnership, and World Customs Organization), Trade Expertise and Revenue Modernization.

Dated: April 1, 2015.

MARIA LUISA BOYCE,  
*Senior Advisor for Private Sector  
Engagement,  
Office of Trade Relations.*

[Published in the Federal Register, April 6, 2015 (80 FR 18430)]

**GENERAL NOTICE 19 CFR PART 177**

**PROPOSED MODIFICATION OF ONE RULING LETTER  
AND REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF CERTAIN ICE HOCKEY  
MEMORABILIA**

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

**ACTION:** Notice of proposed modification of a ruling letter and revocation of treatment concerning the tariff classification of certain ice hockey memorabilia sweaters.

**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 CBP intends to modify one ruling letter pertaining to the tariff classification of two hockey memorabilia sweaters under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.

**DATES:** Comments must be received on or before May 22, 2015.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 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:** Emily Beline, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 325–7799.

**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 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 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 intends to modify one ruling letter pertaining to the tariff classification of two of three hockey sweaters under consideration therein, as “collector’s pieces”. Although in this notice CBP is specifically referring to New York Ruling Letter(NY) N198401, dated January 27, 2012 (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 intends to revoke any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or CBP’s previous interpreta-

tion of the HTSUS. 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 N198401, CBP classified two of three hockey sweaters, (Item number 1, a "Jacques Plante circa 1957 Canadiens Montreal Wool Sweater" and item number 3, a "1926 Detroit Cougars #7 wool sweater") under heading 6110, HTSUS, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted."

It is now CBP's position that the two sweaters are collector's pieces of historical interest, and are properly classified under subheading 9705.00.0070, HTSUS, as "Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest: Archaeological, historical, or ethnographic pieces." The classification of item number 2, the "Ken Morrow 1980 U.S.A. Olympic Hockey Team Game Worn Jersey" under subheading 9705.00.0070, HTSUS, remains intact.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY N198401, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling (HQ) H213716, (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: March 31, 2015

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

Attachments

N198401

January 27, 2012

CLA-2-97:0T:RR:NC:N4:433

CATEGORY: Classification

TARIFF NO.: 6110.11.0015; 6110.11.0070;  
9705.00.0070

JOHN M. PETERSON  
NEVILLE PETERSON LLP  
COUNSELLORS AT LAW  
17 STATE STREET, 19TH FLOOR  
NEW YORK, NY 10004

RE: The tariff classification of hockey sweaters and jerseys being collectors' pieces.

DEAR MR. PETERSON:

In your letter dated December 21, 2011, on behalf of Classic Auctions Inc., you requested a tariff classification ruling. The country of origins of the sweaters and jerseys are unspecified.

Item 1 is described as "Jacques Plante circa 1957 Montreal Canadiens Wool Sweater." Plante played for the Montreal Canadiens from 1953 to 1963 during which time his team won the Stanley Cup six times, including five consecutive wins. Plante was a Canadian professional ice hockey goaltender. His career spanned from 1947 through 1975 playing for teams like the Montreal Canadiens, the St. Louis Blues, the Toronto Maple Leafs, and the Boston Bruins, with a short stint as coach and general manager for the Quebec Nordiques from 1973 through 1974. Plante was inducted into the Hockey Hall of Fame in 1978, and was chosen as the goaltender of the Canadiens' alltime "Dream Team" in 1985. Plante was awarded the Vezina Trophy. The Canadiens retired Plante's number 1 jersey in 1995.

The background of the item as described by Counsel indicates: (1) the item in question is Plante's red, white and blue #1 hockey sweater worn during his tenure with the Canadiens, circa 1957, in the midst of Les Habitantes' (Montreal Canadiens) record Stanley Cup streak, (2) there is no Plante Canadiens' jersey on display at the Hockey Hall of Fame in Toronto, (3) Plante gave the sweater to a Montreal sports reporter, who preserved it in his personal collection and considered it a prized family possession, and (4) Plante's game-worn 1957 Montreal Canadiens sweater is a highly desirable museum piece, which might fetch \$100,000 or more at auction.

Item 2 is described as "Ken Morrow's 1980 U.S.A. Olympic Hockey Team Game Worn Jersey." Morrow played for the New York Islanders from 1980 through 1989, and played 550 regular season games in the National Hockey League (NHL). Morrow was an American professional ice hockey defenseman. Prior to playing for the New York Islanders, Morrow played for the 1980 USA Olympic hockey team that won the gold medal in an event known as the "Miracle on Ice." The Miracle on Ice was the name given in America to a medal-round in men's ice hockey during the 1980 Winter Olympics at Lake Placid. Team USA went on to win the gold medal, by winning its last match over Finland, but it was Team USA's prior victory over the Soviet team, with its amateurs and collegiate players versus seasoned Soviet players, that

derived the name – Miracle on Ice. Morrow was inducted into the United States Hockey Hall of Fame in 1995, and won the Lester Patrick Trophy in 1996.

The background of the item as described by Counsel indicates: (1) the item in question is Morrow's USA Olympic hockey team sweater during the Miracle on Ice game, (2) the United States team, in an upset for the ages, defeated the prohibitively-favored Soviets, and then proceeded to clinch the Olympic Gold Medal in the final game against Finland, (3) Morrow was on the ice as the crucial final seconds ticked off, clearing the puck across the blue line, and assuring the American team of the historic victory, (4) Morrow helped the Islanders to win its first Stanley Cup Championship in 1980, making him the first player to win the Olympic Gold and an NHL championship in one season, (5) Morrow was an integral member of the Islanders' for an additional three consecutive Stanley Cup Championship teams: 1981, 1982 and 1983, (6) Morrow's USA jersey has been owned by him since the Olympic games and is now being offered for auction – the jersey to be auctioned is the game-worn original, and (7) the original sweater is extremely valuable as a collector's piece, and should fetch a very high price at action, . due to its role in the most celebrated hockey tournament of the 20<sup>th</sup> century.

Item 3 is described as the "1926 Detroit Cougars #7 Wool Sweater." The Detroit Cougars' #7 wool sweater was owned by Erik Brolin, an original member of the team which made its NHL debut in the fall of 1926. Brolin kept the sweater in his personal collection, where it became a cherished family heirloom that was passed down to his son and subsequently to his grandson.

The background of the item as described by Counsel indicates: (1) the item in question is Brolin's white and red wool sweater featuring a red Old English "D" on the front, (2) it was game-worn during Detroit's first season in the NHL, when the team was known as the Cougars -which ultimately became the Detroit Red Wings, and (3) the sweater is an original and not a replica, and is magnificently preserved.

The Explanatory Notes (ENs) to the Harmonized Tariff Schedule of the United States (HTSUS), heading 9705, in pertinent part provide the following: These articles are very often of little intrinsic value but derive their interest from their rarity, their grouping or their presentation. The heading includes at: (B) Collections and collectors' pieces of historical, ethnographic, paleontological or archaeological interest, for example: (1) Articles being the material remains of human activity suitable for the study of the activities of earlier generations, such as: mummies, sarcophagi, weapons, objects of worship, articles of apparel, articles which have belonged to famous persons, (2) Articles having a bearing on the study of the activities, manners, customs and characteristics of contemporary primitive peoples, for example, tools, weapons or objects of worship, and (3) Geological specimens for the study of fossils (extinct organisms which have left their remains or imprints in geological strata), whether animal or vegetable.

Consistent with Headquarters Rulings, HQ 962234 dated July 17, 2000 and HQ H021886 dated August 6, 2008, for goods to be classified under heading 9705, specifically, as collectors' pieces of historical interest, there must be a connection established between the articles in question and history itself. In other words there must be a nexus between the hockey memorability to specific historical events and/or to famous people. Factors, not all inclusive, to be used in a determination for classification under heading 9705 are:

whether the sweaters and jerseys belonged to famous people; whether these individuals are not only famous, but are historically significant; whether the items indicate a markedly increased value because of their historical significance; whether the items were not just owned by famous people (directly in possession or subsequently held by another), but were very closely associated with them; and whether authentic sweaters and jerseys of famous hockey players are useful in remembrance of past icons.

Upon review of item #1 as described by Counsel, one would conclude that the name Plante is a recognized famous person in regard to professional hockey, in that, he was inducted into the hall of fame, contributed to bringing his team to six winning Stanley Cup championships, and was chosen as the goaltender of the Canadiens' all-time Dream Team. However, there is no indication that the subject sweater or jersey was ever used in the Stanley Cup championships or worn for the Dream Team, nor whether the item received by the reporter was ever in one of those events. As no authentication was presented to confirm that the subject sweater is associated to a historical event, such as the Stanley Cup or Dream Team, we are of the opinion that the item does not qualify for duty-free treatment under heading 9705, HTSUS.

Upon review of item #2 as described by Counsel, one would conclude that the name Marrow is a recognized famous person in regard to professional hockey, in that, he was inducted into the hall of fame, contributed to bringing his team to winning the tournament called the Miracle on Ice and then to winning the 1980 Olympic Gold, contributed to bringing his team to winning four Stanley Cup championships, and received the Lester Patrick Trophy. It would be expected that upon authentication of the jersey to an historical event, such as the Miracle on Ice, that an increased value would occur upon sale amongst collectors. Once confirmation is established by Marrow that this jersey was used in the Miracle on Ice game, the item would be eligible for duty-free treatment under heading 9705, HTSUS.

Upon review of item #3, we find no evidence presented that Erik Brodin was a famous hockey player for the Detroit Cougars or was a significant contributing member of a team winning the Stanley Cup or the like. Internet research indicates that no player wore the "1926-27" season #7 sweater for more than a couple of games that year. Brodin left the Detroit club later that season to play in St. Paul. Accordingly, the sweater is not classifiable under heading 9705, HTSUS.

If item #1, the Jacques Plante circa 1957 Montreal Canadiens Wool Sweater and item # 3, the 1926 Detroit Cougars #7 Wool Sweater, are in chief weight of wool and are constructed from fabric having a stitch count of 9 or fewer stitches per 2 centimeters measured in the direction the stitches were formed, the applicable subheading will be 6110.11.0015, HTSUS, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: Of wool: Sweaters: Men's. The rate of duty will be 16% ad valorem.

If item #1, the Jacques Plante circa 1957 Canadiens Montreal Wool Sweater and item # 3, the 1926 Detroit Cougars #7 Wool Sweater, are in chief weight of wool and are constructed from fabric having a stitch count of more than 9 stitches per 2 centimeters measured in the direction the stitches were formed, the applicable subheading will be 6110.11.0070, HTSUS, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: Of wool: Other: Men's and boys'. The rate of duty will be 16% ad valorem.

The applicable subheading for item #2, the Ken Morrow's 1980 U.S.A. Olympic Hockey Team Game Worn Jersey, upon confirmation of authenticity, will be 9705.00.0070, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest: Archaeological, historical, or ethnographic pieces." 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 Neil H. Levy at (646) 733-3036.

*Sincerely,*

THOMAS J. RUSSO

*Director*

*National Commodity Specialist Division*

HQ H213716  
CLA-20T:RR:CTF:TCM: H213716 ERB  
CATEGORY: Classification  
TARIFF NO.: 9705.00.00

MR. JOHN M. PETERSON  
NEVILLE PETERSON LLP  
ONE EXCHANGE PLAZA  
55 BROADWAY, SUITE 2602  
NEW YORK, NY 1 0006

RE: Modification of NY N198401; Tariff classification of certain collectors' pieces; ice hockey sweaters

DEAR MR. PETERSON:

U.S. Customs and Border Protection (CBP) issued you, on behalf of your client, Classic Auctions Inc. (Classic Auctions) New York Ruling Letter (NY) N198401, dated January 27, 2012. NY N1 98401 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of three ice hockey sweaters or jerseys. We have since reviewed NY N198401 and find it to be in error with respect to the classification of the Jacques Plante circa 1957 Canadiens Montreal Wool Sweater (Item #1) and the 1926 Detroit Cougars #7 wool sweater (Item #3), which is described in detail herein.

**FACTS:**

NY N198401 states the following, in relevant part:

Item 1 is described as "Jacques Plante circa 1957 Montreal Canadiens Wool Sweater." Plante played for the Montreal Canadiens from 1953 to 1963 during which time his team won the Stanley Cup six times, including five consecutive wins. Plante was a Canadian professional ice hockey goaltender. His career spanned from 1947 through 1975 playing for teams like the Montreal Canadiens, the St. Louis Blues, the Toronto Maple Leafs, and the Boston Bruins, with a short stint as coach and general manager for the Quebec Nordiques from 1973 through 1974. Plante was included into the Hockey Hall of Fame in 1978, and was chosen as the goaltender of the Canadiens' all-time "Dream Team" in 1985. Plante was awarded the Vezina Trophy. The Canadiens retired Plante's number 1 jersey in 1995.

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Item 3 is described as the "1926 Detroit Cougars #7 Wool Sweater." The Detroit Cougars wool sweater was owned by Erik Brodin, an original member of the team which made its NHL debut in the fall of 1926.

\*\*\*

If item #1, the Jacques Plante circa 1957 Montreal Canadiens Wool Sweater and item #3, the 1926 Detroit Cougars #7 Wool Sweater, are in chief weight of wool and are constructed from fabric having a stitch count of 9 or fewer stitches per 2 centimeters measured in the direction the stitches were formed, the applicable subheading will be 6110.11.0015, HTSUS, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: of wool: Sweaters: Men's."

If item #1, the Jacques Plante circa 1957 Montreal Canadiens Wool Sweater and item #3, the 1926 Detroit Cougars #7 Wool Sweater, are in chief weight of wool and are constructed from fabric having a stitch count of more than 9 stiches per 2 centimeters measured in the direction the stiches were formed, the applicable subheading will be 6110.11.0015, HTSUS, which provides for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: of wool: Other: Men’s and boys.”

NY N198401 also classified another item, described as Item 2, “Ken Morrow’s 1980 U.S.A. Olympic Hockey Team Game Worn Jersey.” Morrow was an American professional ice hockey defenseman and he played for the 1980 U.S.A Olympic hockey team, though fame is associated with Morrow and the 1980 Team U.S.A. because of the “Miracle on Ice.” The “Miracle on Ice” is the name in popular culture for the stunning medal-round game wherethe American team, made up of amateurs and collegiate players, defeated the Soviet Union national team, which had won the gold medal in six of the seven previous Olympic games, with a final score of 4–3. Team U.S.A. then went on to take the gold medal by winning its last match over Finland. The Soviets settled for a silver medal by beating Sweden in its final game. CBP classified this item in heading 9705.00.0070, HTSUSA, as a collector’s piece. The classification of this item is not the subject of this revocation, and remains intact.

On February 24th and March 12th, 2015 you provided this office with further information which stated that the single Jacques Plante sweater at issue was presented to a journalist after the 1957 NHL Stanley Cup Finals and remained in the possession of that journalist for nearly 50 years, until Classic Auctions obtained it. You further stated that the Detroit Cougars sweater is 88 years gold, an original sweater from the inaugural season of the Cougars in Detroit. It remained in the family of Erik Brodin, a player on that team, until Classic Auctions obtained it. You stated that both sweaters are originals and are not replicas, and will be sold with a certification of authenticity.

Classic Auctions was established in 1994, and focuses exclusively on auctioning hockey memorabilia. It offers a variety of items, including game-worn, used, or player-owned apparel, equipment, posters, and autographed items. Oftentimes, the items are obtained directly from the hockey players and their families. These consignors will certify as to the provenance of the products and certification of authenticity accompany most of the high-end collectibles Classic Auctions sells. Additional verifications, authentications and appraisals are conducted in-house.<sup>1</sup> As an auction house, its reputation depends on its ability to properly and accurately authenticate the goods it sells, and the information it provides to the public. Classic Auctions sells items of varying degrees of value, their highest being the \$1.275 million sale of Paul Henderson’s 1972 Team Canada jersey.<sup>2</sup>

<sup>1</sup> A video of Classic Auctions’ authentication process is available on its website: <http://www.classicauctions.net/viewuserdefinedpage.aspx?pn=Authentication>

<sup>2</sup> See <http://www.classicauctions.net/aboutus.aspx>

**ISSUE:**

Whether the subject Jacques Plante circa 1957 Canadiens Montreal Wool Sweater and 1926 Detroit Cougars #7 wool sweater are sweaters of heading 6110, HTSUS or whether they are collectors' pieces of heading 9705, 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 provisions under consideration in this case are as follows:

6110 Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted:

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9705 Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, paleontological, ethnographic or numismatic interest:

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

The EN 97.05, HTSUS, states, in pertinent part, the following:

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

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

- (1) Articles being the material remains of human activity suitable for the study of the activities of earlier generations, such as: mummies, sarcophagi, weapons, objects of worship, articles of apparel, articles which have belonged to famous persons.

There exists no strict standard or enumerated criteria for articles which are classified in heading 9705, HTSUS. The word "historic" is not defined by the tariff, nor by the ENs, and the dictionary definition is quite broad. The *Oxford English Dictionary* states it is, "A historical work or subject; a history. Now rare", and "relating to history; concerned with past events." "historic, n. and adj." *OED Online*. Oxford University Press, December 2014. Web. 23 February 2015.

In light of this, we turn to the ENs to inform and shape our understanding of the scope of the heading, but with the caveat that the ENs are used for guidance only in interpretation of the HTSUS. The ENs explain the scope of

headings, often by means of exemplars, of which these examples are not necessarily all inclusive or all restrictive, but the ENs should not restrict or expand the scope of headings. Rather, they should describe and elaborate on the nature of goods falling within those headings, as well as the nature of goods falling outside of those headings. Thus, items must be examined on a case-by-case basis, considering all the relevant factors involved. *See* HQ 088031, dated October 8, 1991 (classifying jewelry belonging to the Duke and Duchess of Windsor in heading 9705, HTSUS).

Pursuant to the ENs, articles of “historical interest” may include items that by virtue of their rarity, age, connection to a specific historical event, or era or point in time, may be classified in heading 9705, HTSUS. *See* HQ W968392, dated February 9, 2007 (classifying a stone ushabti, described as being a stone “Ushabti of Neferhotep” in heading 9705, HTSUS). Classification is proper therein so long as the articles represent the material remains of human activity which are suitable for the study of the activities of earlier generations. By way of example, the ENs state that this could include mummies, sarcophagi, weapons, objects of worship, articles of apparel, articles which have belonged to famous persons. *See* EN 97.05(B)(1).

But in using the term, “such as,” preceding the list in the ENs, it is obvious that an object needn’t be all of those things at once. Hence, while “articles belonging to a famous person” might present difficulty administratively, nothing in the list mandates that an article must have a nexus to a historical time *and* have belonged to a famous person. It is simply an example along with others of what might constitute “articles ... suitable for study.” *See* HQ 088031, dated October 8, 1991 (“Articles that have “belonged to famous persons” is susceptible to a broad interpretation that would be impossible to administer” and thus should be judged on a case-by-case basis, considering all relevant factors).

### *Jacques Plante circa 1957 Montreal Canadiens Wool Sweater*

Jacques Plante was a Canadian professional ice hockey goaltender. His prolific career lasted from 1947 to 1975 and he is considered one of the most important innovators in the sport, having created and popularized the wearing of face masks by goaltenders, including the forerunner of today’s mask/helmet combination. He played for the Montreal Canadiens (in French, Les Habitants or “Habs”) from 1953 to 1963 and it was during his tenure the team won the Stanley Cup six times, including five consecutive wins (the championship trophy awarded annually to the National Hockey League (NHL) playoff winner). After leaving the Habs, Plante played for the St. Louis Blues, the Toronto Maple Leafs and the Boston Bruins. He coached and was the general manager for the Quebec Nordiques from 1973–74. He then came out of retirement as goaltender for the Edmonton Oilers where he ended his professional career in the 1974–75 season. Plante was inducted into the Hockey Hall of Fame in 1978. He was named to the All-Star Game every year from 1956 to 1960, and 1962, 1969, and 1970. He was named to the First All-Star Team in 1956, 1959, and 1962.<sup>3</sup> He won the Hart Memorial Trophy

<sup>3</sup> N198401 notes that Plante was chosen as the goaltender of the Canadian’s all-time “Dream Team” in 1985. In its rationale for denying classification in heading 9705, HTSUS, CBP states “there is no indication that the subject sweater or jersey was ever used in the

in 1962 (for player judged most valuable to his team), and the Vezina Trophy (for goaltender judged to be the best at his position) every year from 1956 to 1960, and 1962 and 1969. His jersey, #1, was retired by the Habs in 1995.<sup>4</sup> In short, he is universally considered one of the best goalies of all time.

The last of the exemplars in the EN 97.05, articles “which have belonged to famous persons” is relevant here. These articles may not in of themselves be noteworthy, in fact they may be quite mundane items, but they are still classified in heading 9705, HTSUS, based solely on the fame or infamy of the owner. *See* HQ 960518, dated May 30, 1997 (classifying various household goods of the Duke and Duchess of Windsor).<sup>5</sup> But given the fame of Jacques Plante, his historically significant actions and contributions to the sport of ice hockey, his prolific career, and myriad awards and trophies awarded to him, an article of memorabilia that belonged to him, and which was obtained and authenticated by Classic Auctions, such as the instant sweater, is considered a collector’s piece for tariff classification purposes. The sweater is properly classified in heading 9705, HTSUS.

### *1926 Detroit Cougars #7 Wool Sweater*

Ice hockey jerseys are mass-produced. Even special commemorative jerseys are manufactured quite often. Goods produced as a commercial undertaking to commemorate, celebrate, illustrate, or depict an event or any other matter, whether or not production is limited in quantity or circulation do not fall in this heading as collections or collectors’ pieces of historical or numismatic interest unless the goods themselves have subsequently attained that interest by reason of their age or rarity. *See* HQ H021886, dated August 6, 2008 (classifying a “Maison Tropicale,” a structure constructed from sheet steel and aluminum designed by the French architect Jean Prouve in 1949 and produced in 1951 because, “Maison Tropical [sic] does not derive its value or historical interest from its limited production nor is it identified with a particular historical event.”); *and see* HQ 089226, dated July 29, 1991 (where a one-of-a-kind gold watch, valued at \$4,975,000.00 did not qualify it as an article of “historical interest” because it was not connected to a historic time nor a famous person); HQ 961297, dated November 5, 1998 (classifying uniquely designed cars, “Without evidence that each car had been owned by a famous person and/or involved in an historically significant event. .. they also did not meet the description of an “historical event” under the tariff.”).

The NHL was organized in 1917 in Montreal, Quebec. It started with four teams based in Canada and through a series of expansions, contractions, and relocations is now composed of thirty active franchises in the United States Stanley Cup championships or worn for the Dream Team ... “. As regards the “Dream Team” this is not a team that plays a real game, rather, it is a fantasy roster of players from throughout the history of the Habs. Further, he was named to the team in 1985, at the age of 56. He died in 1986. <http://ourhistory.canadiens.com/player/Jacques-Piante>

<sup>4</sup> *See* <http://www.legendsofhockey.net/LegendsOfHockey/jsp/LegendsMember.jsp?mem=p197802&type=Player&page=bio&list=ByName#photo>

<sup>5</sup> Here, the articles included books and manuscripts, photographs, military insignia, regimental buttons, medallions, badges, brooches, ceremonial swords, jewelry, accessories to ceremonial costumes (e.g. Highland dress), rugs, personal stationery, paintings, ceramics and porcelain, phonograph records, household furnishings, musical instruments and silver articles.

and Canada. In 1926 a group of investors bought the roster of the Western Hockey League's Victoria Cougars, -and relocated-them to Detroit as the Detroit Cougars: The-team's inaugural season was 1926-1927, and they played at the Border Cities Arena in Windsor, Ontario, because the arena in Detroit wasn't completed yet. The team was purchased by grain merchant James E. Norris in 1932 and he renamed the team the Detroit Red Wings, which remains its name today. The team had a rocky start, finishing at the bottom of the American Division as well as the league, and failing to make the playoffs in their inaugural year. But since then, the Red Wings have won the most Stanley Cup championships (11) of any NHL franchise based in the United States. It is one of the most popular franchises in the NHL, and fans and commentators refer to Detroit and its surrounding areas as "Hockeytown", which has been a registered trademark owned by the franchise since 1996.

The Cougars changed their sweater style and design each of their first four seasons, until they became the Red Wings. Introduced in 1932, the Red Wings sweater has not changed since then, remaining the same for over 80 years.<sup>6</sup> This means original sweaters from those first four years of the franchise, when the team played as the Cougars, are very rare.

Erik Brolin was not a famous hockey player. He was the third-string goalie for the inaugural season.<sup>7</sup> But the creation of the NHL was a historical occurrence, as was the creation of one of the NHL's most successful franchises. Thus, original artifacts associated with this particular historical time, the inaugural season of the Detroit Cougars, and especially articles of apparel, which are mentioned specifically as an exemplar in the ENs, are considered a collector's piece, of heading 9705, HTSUS.

There exist no strict guidelines or requirements for authentication of goods classified under heading 9705, HTSUS, because articles classified therein are done so on a case-by-case basis and considering all relevant factors. Regarding the subject merchandise, counsel for Classic Auctions states that the two items at issue have been authenticated as originals, not replicas, are of the vintage they purport to be, and are of the correct provenance. The Port may verify this statement from counsel before liquidation. To do so, the Port may request attestations, appraisals, and certifications of authenticity or other documents that Classic Auctions maintains in the ordinary course of doing business with sports memorabilia.

## HOLDING

By application of GRI 1, and subject to verification by the Port Director as described above, the subject Jacques Plante circa 1957 Canadiens Montreal Wool Sweater (Item #1) and the 1926 Detroit Cougars #7 wool sweater (Item #3), may be classified in heading 9705, HTSUS. They are specifically provided for under subheading 9705.00.00, HTSUS, which provides for, "Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, paleontological, ethnographic or numismatic interest." The column one, general rate of duty is free.

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<sup>6</sup> See <http://nhluniforms.com/RedWings/RedWings.html>

<sup>7</sup> See <http://thirdstringgoalie.blogspot.com/2014/11/1926-27-detroit-cougars-eric-brolin.html> His first name is variously spelled "Eric" or "Erik" depending on the source.

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 at *www.usitc.gov*

### **EFFECT ON OTHER RULINGS**

NY N198401, dated January 27, 2012, is hereby MODIFIED, as regards Item #1 and Item #3.

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



## **GENERAL NOTICE**

### **19 CFR PART 177**

#### **PROPOSED REVOCATION OF RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF CHOCOLATE WITH HAZELNUTS**

**AGENCY:** U.S. Customs and Border Protection (“CBP”), Department of Homeland Security.

**ACTION:** Notice of proposed revocation of ruling letter and treatment relating to the classification of chocolate with hazelnuts.

**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 CBP proposes to modify a ruling concerning the classification of chocolate with hazelnuts under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before May 22, 2015.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, N.E., 10th Floor, Washington, D.C. 20229. Comments submitted may be inspected 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:** Tamar Anolic, Tariff Classification and Marking Branch: (202) 325-0036.

### **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 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), this notice advises interested parties that CBP proposes to modify a ruling pertaining to the classification of chocolate with hazelnuts. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N007869, dated April 2, 2007 (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 data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., 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 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, 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 his agents for importations of merchandise subsequent to this notice.

In NY N007869, CBP classified milk chocolate with 2.2 percent milk fat and 15.0 percent milk solids in subheading 1806.20.81, HTSUS. We now believe that the subject merchandise is excluded from this subheading under Additional U.S. Note 1 to chapter 4 because of its percentage of milk fat and milk solids. We now believe that the merchandise is better described in subheading 1806.20.99, HTSUS, as an other type of food preparation containing cocoa.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N007869, and any other ruling not specifically identified, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H 105330. (*see* Attachment "B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes 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: March 31, 2015

MYLES B. HARMON,  
*Director*

COMMERCIAL AND TRADE FACILITATION DIVISION  
CLAUDIA GARVER

Attachments

April 2, 2007

CLA-2-18: RR: E: NC:SP:232

CATEGORY: Classification

TARIFF NO.: 1806.20.8100; 1806.20.8200

MR. BOB FORBES

ROE LOGISTICS

660 BRIDGE STREET

MONTREAL, QUEBEC CANADA H3K 3K9

RE: The tariff classification of “milk chocolate with hazelnuts” (Product number M-6LNPL-N128) from France

DEAR MR. FORBES:

In your letter dated March 5, 2007, on behalf of Barry Callebaut Canada, of St. Hyacinthe, Quebec, you requested a tariff classification ruling. You indicate that the product contains 39.0 percent sugar, 20.0 percent hazelnuts, 19.5 percent cocoa butter, 8.5 percent non-fat dry milk, 6.5 percent dry whole milk, 6.5 percent cocoa paste, and traces of soy lecithin and vanilla. The total milk fat is 2.2 percent and the total milk solids are 15.0 percent. You note that the percentage of milk fat is included in the percentage of milk solids. It will be shipped in 2.5kilogram bags and is ready to use. The product is intended for use in the molding of cakes, pastries, and confectionery or on ice cream.

The applicable subheading for “milk chocolate with hazelnuts,” if imported in quantities that fall within the limits described in additional U.S. note 10 to chapter 4, will be 1806.20.8100, Harmonized Tariff Schedule of the United States, (HTSUS), which provides for Chocolate and other food preparations containing cocoa: Other preparations in blocks or slabs weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg: Other: Other: Other: Dairy products described in additional U.S. note 1 to chapter 4: Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions. The general rate of duty will be 10 percent ad valorem. If the quantitative limits of additional U.S. note 10 to chapter 4 have been reached, the product will be classified in subheading 1806.20.8200, HTS, and dutiable at the rate of 37.2 cents per kilogram plus 8.5 percent ad valorem.

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

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site [www.fda.gov/oc/bioterrorism/bioact.html](http://www.fda.gov/oc/bioterrorism/bioact.html).

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 Frank Troise at 646-733-3031.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

HQ H105330  
CLA-2 OT:RR:CTF:TCM H105330 TNA  
CATEGORY: Classification  
TARIFF NO.: 1806.20.99

Ms. SHERRI COMEAU  
IMPORT EXPORT MANAGER/ CUSTOMS COMPLIANCE  
BARRY CALLEBAUT  
2950 NELSON STREET  
ST-HYACINTHE, QUEBEC J2S 1Y7

**RE:** Revocation of NY N007869; Classification of milk chocolate with hazelnuts

DEAR Ms. COMEAU:

This letter is in reference to New York Ruling Letter (“NY”) N007869, issued to ROE Logistics on behalf of its client, Barry Callebaut Canada (“Barry Callebaut”) on April 2, 2007, concerning the tariff classification of milk chocolate with hazelnuts. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise in subheading 1806.20.81, Harmonized Tariff Schedule of the United States (“HTSUS”), as a dairy product containing cocoa. We have reviewed NY N007869 and found it to be in error. For the reasons set forth below, we hereby revoke NY N007869.

**FACTS:**

The subject merchandise is Product Number M-6LNPL-N0128, which consists of milk chocolate with hazelnuts that contains 39.0 percent sugar, 20.0 percent hazelnuts, 19.5 percent cocoa butter, 8.5 percent non-fat dry milk, 6.5 percent dry whole milk, 6.5 percent cocoa paste, and traces of soy lecithin and vanilla. The total milk fat is 2.2 percent and the total milk solids are 15.0 percent. The percentage of milk fat is included in the percentage of milk solids. The subject merchandise is imported in 2.5-kilogram bags and is ready to use. It is intended to be used on ice cream or in the molding of cakes, pastries and confectionery.

In NY N007869, CBP classified Product Number M-6LNPL-N0128 in subheading 1806.20.81, HTSUS, as a dairy product containing cocoa. Once the quantitative limits of Additional U.S. Note 10 to Chapter 4, HTSUS, were met it was then classified in subheading 1806.20.82, HTSUS.

**ISSUE:**

Is the instant merchandise classified under subheadings 1806.20.81 and 1802.20.82, HTSUS, as a dairy product containing cocoa, or under subheadings 1806.20.95 and 1806.20.98, as a food preparation containing cocoa and over ten percent by dry weight of sugar, or under subheading 1806.20.99, HTSUS, as an “other” type of food preparation containing cocoa?

**LAW AND ANALYSIS:**

Classification under the Harmonized Tariff Schedule of the United States (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. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related sub-heading notes and, *mutatis mutandis*, to the GRIs.

The HTSUS provisions under consideration are as follows:

1806	Chocolate and other food preparations containing cocoa:
1806.20	Other preparations in blocks, slabs or bars, weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg
	Other:
	Other:
	Other:
	Dairy products described in additional U.S. note 1 to chapter 4:
1806.20.81	Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions Other:
1806.20.82	Containing less than 21 percent by weight of milk solids Additional U.S. Note 1 to Chapter 4, HTSUS, provides that:  Articles containing over 10 percent of dry weight of sugar described in additional U.S. note 3 to chapter 17:
1806.20.95	Described in additional U.S. note 8 to Chapter 17 and entered pursuant to its provisions
1806.20.98	Other
1806.20.99	Other

Additional U.S. Note 1 to Chapter 4, HTSUS, provides that:

For the purposes of this schedule, the term “*dairy products described in additional U.S. note 1 to chapter 4*” means any of the following goods: malted milk, and articles of milk or cream (except (a) white chocolate and (b) inedible dried milk powders certified to be used for calibrating infrared milk analyzers); articles containing over 5.5 percent by weight of butterfat which are suitable for use as ingredients in the commercial production of edible articles (except articles within the scope of other import quotas provided for in additional U.S. notes 2 and 3 to chapter 18); or, *dried milk*, whey or buttermilk (of the type provided for in subheadings 042.10, 0402.21, 0403.90 or 0404.10) *which contains not over 5.5 percent by weight of butterfat* and which is mixed with other ingredients, including but not limited to sugar, *if such mixtures contain over 16 percent milk solids by weight*, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the ultimate consumer in the identical form and package in which imported. [emphasis added]

Additional U.S. Note 3 to Chapter 17, HTSUS, provides that:

For the purposes of this schedule, the term “articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17” means articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, *except* (a) articles not principally of crystalline structure or not in dry amorphous form, the foregoing that are prepared for marketing to the ultimate consumer in the identical form and package in which imported; (b) blended syrups containing sugars derived from sugar cane or sugar beets, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported; (c) articles containing over 65 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported; or (d) *cake decorations and similar products to be used in the same condition as imported without any further processing other than the direct application to individual pastries or confections. finely ground or masticated coconut meat or juice thereof mixed with those sugars. and sauces and preparations therefor.* [emphasis added]

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. 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 (Aug. 23, 1989).

The EN to heading 18.06 of the Harmonized System provides, in pertinent part, as follows:

Chocolate is composed essentially of cocoa paste and sugar or other sweetening matter, usually with the addition of flavouring and cocoa butter; in some cases, cocoa powder and vegetable oil may be substituted for cocoa paste. Milk, coffee, hazelnuts, almonds, orange-peel, etc., are sometimes also added.

There is no dispute that the subject merchandise is classified in heading 1806, HTSUS. NY N007869 classified Product Number M-6LNPL-N0128 in subheading 1806.20.81, HTSUS. In your request for reconsideration, you argue that the percentages of the subject merchandise’s components make it ineligible for this subheading. By its terms, subheading 1806.20.81, HTSUS, covers dairy products containing cocoa. Dairy products are described in Additional U.S. Note 1 to Chapter 4, HTSUS.

To meet the terms of Additional U.S. Note 1 to Chapter 4, HTSUS, the instant merchandise must consist of: (a) malted milk, and articles of milk or cream (except (a) white chocolate and (b) inedible dried milk powders certified to be used for calibrating infrared milk analyzers); (b) articles containing over 5.5 percent by weight of butterfat which are suitable for use as ingredients in the commercial production of edible articles (except articles within the scope of other import quotas provided for in additional U.S. notes 2 and

3 to chapter 18); or (c) dried milk which contains not over 5.5 percent by weight of butterfat and which is mixed with other ingredients, including but not limited to sugar, if such mixtures contain over 16 percent milk solids by weight, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the ultimate consumer in the identical form and package in which imported. Of all of these items, the instant merchandise most closely resembles \_ the last.

While Product Number M-6LNPL-N0128 contains dried milk which has less than 5.5 percent milk fat and is mixed with other ingredients, it contains less than 16 percent milk solids. As such, we agree that the subject merchandise does not meet the terms of Additional U.S. Note 1 to Chapter 4, HTSUS, and therefore cannot be classified as a dairy product of subheading 1806.20.82, HTSUS.

In your request for reconsideration, you request classification of the subject merchandise in subheading 1806.20.95, HTSUS. This subheading provides for food preparations containing cocoa that consist of more than 10 percent sugar by dry weight and are described by Additional U.S. Note 3 to Chapter 17, HTSUS. Additional U.S. Note 3 to chapter 17, HTSUS, covers merchandise containing more than 10 percent sugar by weight, derived from sugar cane or sugar beets, but excludes certain merchandise, even when such merchandise contains more than 10 percent sugar. One such exclusion is for cake decorations and similar products that are used in the same condition as imported without any further processing other than the direct application to individual pastries or confections. *See* Additional U.S. Note 3(d) to Chapter 17, HTSUS. This excludes the subject merchandise because it is imported ready to use in the molding of cakes, pastries, and confectionary. As a result, the subject merchandise is excluded from subheading 1806.20.95, HTSUS.

In the alternative, you argue for classification in subheading 1806.20.98, HTSUS. To be classified in this subheading, however, merchandise must still be described by Additional U.S. Note 3 to Chapter 17, HTSUS. Because the subject merchandise is excluded from this note, it cannot be classified in subheading 1806.20.98, HTSUS.

The subject merchandise is a food preparation containing cocoa. As a result, it is classified in subheading 1806.20.99, HTSUS, which provides for "Chocolate and other food preparations containing cocoa: Other preparations in blocks, slabs or bars, weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg: Other: Other: Other: Other: Other."

#### **HOLDING:**

By application of GRI 1 and GRI 6, Product Number M-6LNPL-N-128 is classified in subheading 1806.20.99, HTSUS, which provides for "Chocolate and other food preparations containing cocoa: Other preparations in blocks, slabs or bars, weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg: Other: Other: Other: Other: Other." The 2015 column one, general rate of duty is 8.5% *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

NY N007869, dated April 2, 2007, is REVOKED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

  
**GENERAL NOTICE****19 CFR PART 177****REVOCATION OF TWO RULING LETTERS, MODIFICATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF PLUSH ANIMALS WITH GEL PACKS**

**AGENCY:** U.S. Customs and Border Protection (“CBP”), Department of Homeland Security.

**ACTION:** Revocation of two ruling letters, modification of two ruling letters and revocation of treatment relating to the classification of plush animals with gel packs.

**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 CBP is revoking two ruling letters and modifying two ruling letters concerning the classification of plush animal packs with gel packs 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. 49, No. 1, on January 1, 2015. CBP received no comments in response to this notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 22, 2015.

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

**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 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), notice proposing to revoke NY L83691, dated April 15, 2005, and NY L82259, dated January 26, 2005, and modify NY F85438, dated April 25, 2000, and NY G80850, dated September 5, 2000, was published on January 1, 2015, in Volume 49, Number 1, of the Customs Bulletin. CBP received no comments in response to this notice.

Although in this notice CBP is specifically referring to NY L83691, NY L82259, NY F85438, and NY G80850, 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 data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's failure to have advised 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.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking L83691 and NY L82259 and modifying NY F85438, and NY G80850 in order to reflect the proper classification of this merchandise pursuant to the analysis set forth in Headquarters Ruling Letter ("HQ") H253885, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 25, 2015

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

HQ H253885  
CLA-2 OT:RR:CTF:TCM H253885 TNA  
CATEGORY: Classification  
TARIFF NO.: 6307.90.98

MS. STEPHANIE DE SILVA  
AVON PRODUCTS, INC.  
1251 AVENUE OF THE AMERICAS  
NEW YORK, NY 10020

**RE:** Revocation of NY L83691 and NY L82259 and Modification of NY F85438 and NY G80850; Classification of a “Boo Boo Pack”

DEAR MS. DE SILVA:

This letter is in reference to New York Ruling Letter (“NY”) L83691, dated April 15, 2005, issued to you concerning the tariff classification of “Boo Boo Pack” from China. There, U.S. Customs and Border Protection (“CBP”) classified Boo Boo Pack in subheading 9503.00.00, Harmonized Tariff Schedule of the United States (“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.”<sup>1</sup> We have reviewed NY L83691 and found it to be incorrect. For the reasons set forth below, we hereby revoke NY L83691 .

This letter also concerns NY L82259, dated January 26, 2005, NY F85438, dated April 25, 2000, and NY G80850, dated September 5, 2000. We have reviewed these rulings as well and found them to be incorrect. For the reasons that follow, we revoke NY L82259, and modify NY F85438<sup>2</sup> and NY G80850<sup>3</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 proposing to revoke NY L83691 and NY L82259, and modify NY F85438 and NY G80850 was published on January 1, 2015, in Vol. 49, No. 1, of the Customs Bulletin. CBP received no comments in response to this notice.

#### **FACTS:**

The subject merchandise consists of plush fabric animals in the form of teddy bears, a hippo, and a brown bear. Each animal contains an opening in which to insert a gel pack that can either be heated or frozen. Once the gel pack is inside the animal, they are used together to treat minor scrapes, bruises, etc. in children. Each animal is imported with the gel pack.

In NY L83691, the hot/cold pack consists of a gel that contains 70 percent distilled water and 30 percent propylene glycol. In L82259, the cool pack is a

<sup>1</sup> We note that NY L83691 classified its merchandise in subheading 9503.49.00, HTSUS, which provides for “toys representing animals or non-human creatures ...and parts and accessories thereof: other.” Following technical changes to the tariff schedule in 2007, subheading 9503.49.00, HTSUS, became subheading 9503.00.00, HTSUS. Because subheading 9503.00.00, HTSUS, remains in the 2014 nomenclature, it is the subheading we consider here.

<sup>2</sup> NY F85438 classified two items: the Warm Buddy Sleep Pet, a plush toy in the shape of a brown bear with a hot/cold gel pack, and a Radiant Touch Soothing Aromatherapy Neck Wrap. Only the classification of the Warm Buddy Sleep Pet is at issue here.

<sup>3</sup> NY G80850 dealt with the classification and country of origin of the Hot & Cold Cuddly Bear. Only the classification of this item is at issue here.

reusable, flexible ice pack that consists of a non-toxic gel and a soft, washable cover that protects the skin from direct contact with the frozen gel pack. In NY F85438, the warm/cold pack consists of a rice/lavender mix. In NY G80850, the hot pack consisted of dry, white, long-grained rice encased in a textile pouch. The Cold Pack consists of a mixture of 70 percent water, 30 percent glycol, and polyurethane foam sealed in a water-tight polyurethane film bag.

In NY L83691, NY L82259, NY F85438, and NY G80850, CBP the subject merchandise in 9503.49.00, HTSUS, which provides for “toys representing animals or nonhuman creatures ... and parts and accessories thereof: other.”

### ISSUE:

Whether fabric animals with hot or cold packs inside of them are classified as toys of heading 9503, HTSUS, or in various headings depending on the chemical makeup of the hot and cold packs?

### LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

1404	Vegetable products not elsewhere specified or included:
2905	Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives
3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:
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 to Chapter 29, HTSUS, provides the following:

Except where the context otherwise requires, the headings of this chapter apply only to:

- (a) Separate chemically defined organic compounds, whether or not containing impurities;
- (b) Mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (chapter 27);
- (c) The products of headings 2936 to 2939 or the sugar ethers, sugar acetals and sugar esters, and their salts, of heading 2940, or the products of heading 2941, whether or not chemically defined;

(d) Products mentioned in (a), (b) or (c) above dissolved in water;

Note 1 to Chapter 95, HTSUS, states, in pertinent part, the following:

This chapter does not cover: ...

(v) Tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen linen and similar articles having a utilitarian function (classified according to their constituent material).

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The EN to heading 1404, HTSUS, provides, in pertinent part, the following:

This heading covers all vegetable products, not specified or included elsewhere in the Nomenclature.

The EN to heading 2905, HTSUS, provides, in pertinent part, the following:

Acyclic alcohols are derivatives of acyclic hydrocarbons obtained by replacing one or more atoms of hydrogen by the hydroxyl group. They are oxygenated compounds which react with acids giving the compounds known as esters.

The alcohols may be primary (containing the characteristic group -CH<sub>2</sub>OH), secondary (containing the characteristic group >CHOH) or tertiary (containing the characteristic group COH) ....

### **(C) DIOLS AND OTHER POLYHYDRIC ALCOHOLS**

#### **(I) Diols**

(1) Ethylene glycol (ethanediol). A colourless, syrupy liquid with a faint, pungent odour. Used in the manufacture of nitroglycerol (explosive), as a solvent for varnishes, as an anti-freeze agent or in organic synthesis.

(2) Propylene glycol (propane-1,2-diol). Colourless, viscous and hygroscopic liquid.

The EN to heading 6307, HTSUS, provides, in pertinent part, the following:

This heading covers made up articles of any textile material which are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature.

The EN to heading 3824, HTSUS, provides, in pertinent part:

This heading covers: ...

### **(B) CHEMICAL PRODUCTS AND CHEMICAL OR OTHER PREPARATIONS**

With only three exceptions (see paragraphs (7), (19) and (32) below), this heading does not apply to separate chemically defined elements or compounds.

The chemical products classified here are therefore products whose composition is not chemically defined, whether they are obtained as byproducts of the manufacture of other substances (this applies, for example, to naphthenic acids) or prepared directly.

The chemical or other preparations are either mixtures (of which emulsions and dispersions are special forms) or occasionally solutions. Aqueous solutions of the chemical products of Chapter 28 or 29 remain classified within those Chapters, but solutions of these products in solvents other than water are, apart from a few exceptions, excluded therefrom and accordingly fall to be treated as preparations of this heading.

The preparations classified here may be either wholly or partly of chemical products (this is generally the case) or wholly of natural constituents (see, for example, paragraph (24) below).

The EN to heading 9503, HTSUS, provides, in pertinent part:

This heading covers:

(D) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults). However, toys which, on account of their design, shape or constituent material, are identifiable as intended exclusively for animals, e.g., pets, do not fall in this heading, but are classified in their own appropriate heading. This group includes:

(i) Toys representing animals or non-human creatures even if possessing predominantly human physical characteristics (e.g., angels, robots, devils, monsters), including those for use in marionette shows.

In NY L83691, NY L82259, NY F85438, and NY G80850, the subject merchandise was classified as toys of heading 9503, HTSUS. In several court cases that have defined the term “toy,” heading 9503, HTSUS, has been found to be a principal use provision. The CIT has provided factors which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. See *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979 (hereinafter *Carborundum*).

In *United States v. Topps Chewing Gum, Inc.*, 58 C.C.P.A. 157, CAD 1022 (1971), however, the court defined “toy” as “any article chiefly used for the amusement of children or adults.” *United States v. Topps Chewing Gum, Inc.*, 58 C.C.P.A. 157, CAD 1022 (1971). In *Minnetonka Brands v. United States*, 24 C.I.T. 645; 110 F. Supp. 2d 1020; 2000 Ct. Inti. Trade LEXIS 87; SLIP ·OP. 2000–86 (Ct. Int’l. Trade 2000) (“*Minnetonka*”), the court held that “an object is a toy only if it is designed and used for amusement, diversion or play, rather than practicality.” *Minnetonka Brands v. United States*, 24 C.I.T. 645; 110 F. Supp. 2d 1020; 2000 Ct. Inti. Trade LEXIS 87; SLIP OP. 2000–86 (Ct. Int’l. Trade 2000). For articles that are both amusing and functional, we look

to *Ideal Toy Corp. v United States*, 78 Cust. Ct. 28 (1977), in which the court stated that “when amusement and utility become locked in controversy, the question becomes one of determining whether amusement is incidental to the utilitarian purpose, or whether the utility purpose is incidental to the amusement.” Thus, not all merchandise that provides amusement is properly classified in a toy provision. See also HQ H040737, dated July 23, 2009.

In the present case, the subject merchandise has a utilitarian purpose. It is heated or chilled to decrease the pain and provide healing to children’s scrapes, bruises and other minor injuries. As a result, it cannot be classified in heading 9503, HTSUS. This conclusion is consistent with prior CBP rulings, as CBP has consistently precluded classification of items with a utilitarian function from Chapter 95, HTSUS, because of this utilitarian purpose, under both the authority of *Ideal Toy Corp.* and Note 1 (v) to Chapter 95, HTSUS. See, e.g., HQ H238475, dated May 14, 2013 (“Note 1(v) to excludes merchandise from the heading when it has a utilitarian function. Courts have also held that “an object is a toy only if it is designed and used for amusement, diversion or play, rather than practicality.” *Minnetonka Brands v. United States*, 24 C.I.T. 645 (2000). See also *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28 (1977)); NY N248810, dated January 13, 2014 (precluding a handbag from classification in heading 9503, HTSUS, because of its utilitarian function); NY N219280, dated June 25, 2012 (precluding classification of novelty tote bags from Chapter 95, HTSUS, because of their utilitarian function); NY N217537, dated June 1, 2012 (precluding children’s novelty tote bags from Chapter 95, HTSUS, via Note 1 (v) because of their utilitarian function); NY N 198255, dated January 26, 2012 (precluding a child’s novelty handbag from Chapter 95, HTSUS, via note 1 (v) because of its utilitarian function); NY N141795, dated February 2, 2011 (precluding a novelty travel bag from classification in Chapter 95, HTSUS, because of its utilitarian function); NY N138557, dated January 7, 2011 (precluding children’s novelty handbags from classification in Chapter 95, HTSUS, because of their utilitarian function); NY N048845, dated February 4, 2009 (precluding various tote bags from classification in Chapter 95 via Note 1 (v) to Chapter 95, HTSUS).

In addition, an analysis of the *Carborundum* factors supports the conclusion that the subject “Boo-Boo Packs” are not toys. In terms of physical characteristics, the fabric components of the subject merchandise are imported with a gel pack. They also contain an opening into which the gel pack is inserted. This is a clear indication that the subject merchandise is intended to be used with the gel packs for healing minor wounds, not by themselves as stuffed animals. Furthermore, these “Boo Boo Packs” are often sold as cold packs in stores’ health and personal care sections, not in their toy sections. See, e.g., [http://www.amazon.com/Boo-Buddy-Cat-ColdPack/dp/B002122WNY/ref=sr\\_1\\_1?ie=UTF8&qid=1410442483&sr=81&keywords=boo+boo+buddies](http://www.amazon.com/Boo-Buddy-Cat-ColdPack/dp/B002122WNY/ref=sr_1_1?ie=UTF8&qid=1410442483&sr=81&keywords=boo+boo+buddies); <http://www.target.com/p/sesame-street-boo-boo-buddy-cold-pack/-1 A-13345776>. Consumer reviews also show that consumers are purchasing and using these items as ice or hot packs first and foremost. The fact that the fabric component makes the item more attractive to children is

secondary to the items' use as an ice or hot pack. *See. e.g.* .. [http://www.amazon.com/Stephan-Baby-Fuzzy-Bunnie-Packldp/B002CRT2GM/ref=sr\\_1\\_1?ie=UTF8&qid=1410443428&sr=81&keywords=Stephan+baby+fuzzy+boo+bunnie+ice+pack](http://www.amazon.com/Stephan-Baby-Fuzzy-Bunnie-Packldp/B002CRT2GM/ref=sr_1_1?ie=UTF8&qid=1410443428&sr=81&keywords=Stephan+baby+fuzzy+boo+bunnie+ice+pack). Thus, an analysis of the *Carborundum* factors supports the conclusion that the subject merchandise is used as an ice or hot pack rather than as a toy. As a result, we examine alternate headings.

The subject "Boo Boo Packs" contain both a pack that can be heated or cooled, and fabric components. Thus, they contain two components that cannot be described by the terms of a single heading. As a result, they cannot be classified under GRI 1. GRI 2 is not applicable here, and neither is GRI 3(a), because none of the headings at issue describe the whole good more specifically than any other. As such, we turn to GRI 3(b), which states, in pertinent part, the following:

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

- (a) 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.

For purposes of GRI 3(b), EN IX to GRI 3(b) explains, in relevant part, that:

For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those which the components are attached to each other to form a practically inseparable whole, but also those with separable components, provided these components are adapted to one another and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

With respect to the essential character of composite goods, EN (VIII) to GRI 3(b) provides the following guidance:

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

In HQ 957478, dated September 7, 1995, CBP stated that:

In Headquarters Ruling Letter (HRL) 956845, issued December 22, 1994, we discussed the classification of articles equipped with a heating or cooling element. The ruling articulated the proposition that the heating/cooling element of articles of this kind will not always impart essential character to the article. The ruling explained that where an article as a whole appears to function primarily as a means to employ the heating or cooling element, the heating/cooling element will usually be considered to impart essential character on the basis of its more predominant function or role. In such an instance, it is relatively clear that the heating/cooling element is the predominant component for GRI 3(b) purposes. However, where the article as a whole performs an ordinary function that merely incorporates the heating or cooling function, it is not clear that the

heating/cooling element is predominant. A closer examination of the components, their functions/roles, and other factors is required.

See HQ 957478.

In HQ 966262, dated May 29, 2003 we classified a heated head therapy wrap consisting of a terry head cover or hood of knit 100% polyester terry fabric and plastic covered gel packs that can be heated in a microwave and placed inside specially shaped pockets in the terry cloth as headgear of heading 6505, HTSUS. We did so because the headgear portion of the article kept the gel packs in place. The unique shape of the fabric component was paramount in the functioning of the articles. See also HQ 964851, dated April 18, 2001 (classifying the plastic eye mask is filled with chemicals and can be heated or chilled which the user places the plastic in a textile packet containing an elastic band to keep the article over his or her eyes as an article of plastic of heading 3924, HTSUS); HQ 964877, dated May 17, 2001 (classifying an eye patch consisting of a vinyl plastic eye patch filled with solution consisting of 58% propylene glycol, and 41.98% distilled water and 0.02% dyeing material that can be heated or chilled as an article of plastic of heading 3924, HTSUS); HQ 964878, dated May 17, 2001 (classifying four different styles of vinyl plastic eye masks and one vinyl plastic head compress designed to be heated or cooled and worn over the eyes or the forehead and temple as plastic articles of heading 3924, HTSUS); HQ 963725, dated May 17, 2001 (classifying a vinyl plastic eye mask filled with 59.8 percent propylene glycol, 40 percent distilled water and 0.02 percent color pigment that is intended to be chilled and placed over the user's eyes as articles of plastic of heading 3924, HTSUS); and HQ 963852, dated May 17, 2001 (classifying one facial mask consisting of a vinyl plastic facial mask filled with water, 0.3% Poly Aery/Sodion, 0.5% salt, 0.2% 2-Phenoxyethanol and 0.05% food color, and one eye mask consisting of a vinyl plastic mask filled with a 60% glycerin and 40% distilled water mixture as articles of plastic of heading 3924, HTSUS).

In the present case, the subject "Boo Boo Packs" consist of a gel pack that is placed inside a fabric component. It is then placed on a child's injury and serves as a barrier between the hot or cold gel pack and the child's skin. The familiar shape and soft fabric of the animal theoretically function to soothe the child such that he or she will not be adverse to allowing the hot or cold pack to stay on the injured body part for the requisite amount of time. However, the shape of the fabric components is not particularly conducive to placement on a particular body part. Hence, this merchandise is not completely analogous to that in HQ 966262, but the fabric component here still plays a relatively important role in delivering the heat or cold for the required amount of time. Thus, the fabric component and the gel packs, in this limited scenario, equally contribute to the use of the goods. As such, the subject merchandise will be classified according to the last tariff provision at issue.<sup>4</sup>

Lastly, we note that the subject merchandise is distinguishable from the ice packs and heating packs that CBP has classified in heading 3824, HTSUS,

<sup>4</sup> While the fabric component appears bulkier than the gel packs, we have no information regarding comparative weight or value.

according to the chemical makeup of the gel inside the packs. *See. e.g.*, NY N070376, dated August 11, 2009 and NY N057817, dated April 22, 2009. These rulings classified vinyl-covered gel packs that were put directly on bruises and cuts and were not first inserted into fabric components. As a result, these articles are fundamentally different than the items at issue in the present case.

**HOLDING:**

Under the authority of GRI 3(c), the Warm Buddy Sleep Pet, the Hot & Cold Cuddly Bear, Boo Boo Pack, and the Huggable Booboo Buddy are all classified in heading 6307, HTSUS. Specifically, they are provided for in subheading 6307.90.98, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other: Other.” The column one general rate of duty is 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 on the internet at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY L83691, dated April 15, 2005, NY L82259, dated January 26, 2005 are REVOKED.

NY F85438, dated April 25, 2000, and NY G80850, dated September 5, 2000 are MODIFIED.

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 and Trade Facilitation Division*

ALLYSON MATTANAH



**PROPOSED MODIFICATION OF THREE RULING LETTERS  
AND PROPOSED REVOCATION OF TREATMENT  
RELATING TO THE CLASSIFICATION OF SLICED AND  
DICED POTATOES**

**AGENCY:** U.S. Customs and Border Protection (“CBP”), Department of Homeland

**ACTION:** Notice of proposed modification of three ruling letters and proposed revocation of treatment relating to the classification of sliced and diced potatoes.

**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 CBP proposes to modify three ruling letters

concerning the classification of sliced and diced potatoes under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before May 22, 2015.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, N.E.—10th Floor, Washington, DC 20229–1179. Comments submitted may be inspected at 90 K Street, N.E. 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:** Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

#### **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 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), this notice advises interested parties that CBP proposes to modify three ruling letters pertaining to the classification of sliced and diced. Although in this notice CBP is specifically referring to Headquarters Ruling Letter (“HQ”) 966202, dated February 21, 2003 (Attachment A), New York Ruling Letter (“NY”) 189048, dated December 23, 2002 (Attachment B), and HQ 954208, dated September 14, 1993 (Attachment C), 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 data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., 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 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, 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 his agents for importations of merchandise subsequent to this notice.

In HQ 966202, NY 189048, and HQ 954208, CBP classified sliced and diced potatoes that had been treated with the preservative sodium bisulfite to preserve their color in Subheading 2005.20.00, Harmonized Tariff Schedule of the United States (“HTSUS”), as potatoes, “prepared or preserved otherwise than by vinegar or acetic acid, other.” We now believe these potatoes are classified in subheading 0712.90.30, HTSUS, which provides for “Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared: Other vegetables; mixtures of vegetables: Potatoes whether or not cut or sliced but not further prepared.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify HQ 966202, NY 189048, and HQ 954208, and any other ruling not specifically identified, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (“HQ”) H243645 (see Attachment “D” to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes 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: March 31, 2015

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

HQ 966202

February 21, 2003  
CLA-2 RR:CR:GC 966202 DSS  
CATEGORY: Classification  
TARIFF NO.: 2005.20.00

Ms. JOYCE MIKESELL  
BASIC AMERICAN FOODS  
2999 OAK ROAD, SUITE 400  
WALNUT CREEK, CA 95496

RE: Request for Reconsideration of NY 189048; Dry Potato Products

DEAR Ms. MIKESELL:

This is our decision on your January 6, 2003 request for reconsideration of New York Ruling letter (NY) 189048, filed against classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain dry potato products under subheading 2005.20.00. You submitted this request to the National Commodity Specialist Division, who forwarded it to this office for reply. No samples were included in your submission. After review of NY 189048, Customs has determined that the classification of your dry potato products under subheading 2005.20.00, HTSUS, is correct.

**FACTS:**

There are five types of dry potato products described by product specification sheets accompanying your original November 27, 2002 ruling request. The articles are identified as Potato Flakes (no. 2032300), Instant Potato Granules (no. 28168), Instant Potato Granules (no. 10116), Sliced Potatoes (no. 99570), and Diced Potatoes (3/8 x 3/8 x 3/8; no. 27156). The sliced and diced potatoes consist of potatoes with added sodium bisulfite. The stated ingredients for the granules are potatoes, sodium acid pyrophosphate, citric acid, and mono and diglycerides. The flakes are composed of potatoes, sodium acid pyrophosphate, sodium bisulfite, monoglycerides, citric acid, and butylated hydroxyanisole (BHA). All will be packed in multi-wall paper bags containing from 20 to 45 kilograms, net weight. According to you, the products will be manufactured in the United States and exported to Mexico.

In NY 189048, dated December 23, 2002, we classified all five types of dried potato products as "other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen," under subheading 2005.20.00, HTSUS.

You argue that the Sliced Potatoes (no. 99570) and the Diced Potatoes (no. 27156) are properly classified in chapter 7, HTSUS, (presumably subheading 0712.90.30, HTSUS), as sliced and diced potatoes, not otherwise prepared, and that the Potato Flakes (no. 2032300), and Potato Granules (nos. 28168 and 10116) are properly classified in chapter 11, (presumably under subheading 1105.12.00, HTSUS), as flakes and granules of potatoes. In your January 6, 2003 letter, you argue that preservatives are only added to these products during production to aid the manufacturing process. In your words, the preservatives were not added "to enhance" or add value to the finished product, and consequently, the products should not be classified as prepared or preserved in heading 2005, HTSUS.

**ISSUE:**

What is the proper tariff classification for these dry potato products?

**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 may then be applied.

The HTSUS provisions under consideration are as follows:

“0712 Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared:

\* \* \* \* \* 712.90 Other vegetables. mixtures of vegetables:  
 \* \* \* \* \* 0712.90.30 Potatoes whether or not cut or sliced but not further prepared  
 \* \* \* \* \*

1105 Flour, meal, powder, flakes, granules and pellets of potatoes:

\* \* \* \* \* 1105.20.00 Flakes, granules and pellets  
 \* \* \* \* \*

Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006:

\* \* \* \* \* 2005.20.00 Potatoes

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (ENs). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989). Note 3(c), Chapter 7, HTSUS, states that “heading 0712 covers all dried vegetables of the kinds falling in headings 0701 to 0711, other than: flour, meal, flakes, granules and pellets of potatoes (heading 1105) ....” “However, the chapter notes for chapter 7 go on to state that, “vegetables prepared or preserved by any process not provided for in this Chapter fall in Chapter 20” (emphasis in original). Heading 1105, HTSUS, covers flour, meal, flakes, granules and pellets of potatoes. EN 11.05 states that “products of this heading may be improved by the addition of very small amounts of anti-oxidants, emulsifiers or vitamins.” The EN further states that “the heading excludes products to which other substances have been added so that they take on the characteristics of potato preparations.”

The products at issue are excluded from classification in chapters 7 and 11, HTSUS, because they contain preservatives. The sliced and diced potatoes contain sodium bisulfite; the flakes and granule products contain added mono and diglycerides, sodium acid pyrophosphate, sodium bisulfite, and BHA. The mono and diglycerides are antioxidants, and their presence in small quantities does not affect the classification of a product in chapter 11. However, sodium bisulfite and sodium acid pyrophosphate are preservatives used to retain food color, and do not function the same as the permitted additives. The presence of these preservatives prevents classification of the sliced and diced potatoes in heading 0712, HTSUS, and the potato granules and flakes in heading 1105, HTSUS.

In relevant part, Note 3, Chapter 20, HTSUS, provides that heading 2005 (vegetables prepared or preserved otherwise than by vinegar or acetic acid)

covers products of “heading 1105 ... which have been prepared or preserved by processes other than those” described in Chapter 11. The chapter notes for chapter 20 also state that the chapter covers products of 2005 that have been prepared or preserved by methods other than those provided for in chapter 7. As noted above, the products are potato preparations that are excluded from coverage under chapters 7 and 11, HTSUS. Accordingly, these products are classifiable in chapter 20, HTSUS. *See* HQ 954208, dated September 14, 1993, and HQ 952788, dated January 14, 1993.

Further, the ENs do not state that the point at which the preservatives are added to the product in the manufacturing process is a relevant consideration for classification under heading 0712 or 1105, HTSUS. The ENs only indicate that it is relevant whether the preservatives (or other additives besides trace amounts of antioxidants, emulsifiers and vitamins) are present in the product as imported. Based on the ingredient lists provided, the products as imported contain preservatives, which precludes their classification under heading 0712 or 1105, HTSUS.

Therefore, based on the foregoing analysis, all five dried potato products are classified under the provision for potatoes, prepared or preserved otherwise than by vinegar or acetic acid, other, under subheading 2005.20.00, HTSUS.

**HOLDING:**

Under the authority of GRI 1, these potato products are found under heading 2005, HTSUS. The products are classified under subheading 2005.20.00, HTSUS, as potatoes, “prepared or preserved otherwise than by vinegar or acetic acid, other.”

**EFFECT ON OTHER RULINGS:**

NY 189048 is AFFIRMED.

*Sincerely,*  
MYLES B. HARMON  
*Director,*  
*Commercial Rulings Division*

189048

December 23, 2002  
CLA-2-20:RR:NC:2:228 189048  
CATEGORY: Classification  
TARIFF NO.: 2005.20.00

Ms. LORITA MORGADO  
BASIC AMERICAN FOODS  
2999 OAK ROAD SUITE 400  
WALNUT CREEK, CA 94596

RE: The tariff classification of dry potato products

DEAR Ms. MORGADO:

In your letter dated November 27, 2002, you requested the tariff classification for five dry potato products.

Product specification sheets accompanied your letter. The articles are identified as Potato Flakes no. 2032300, Instant Potato Granules no. 28168, Instant Potato Granules no. 10116, Sliced Potatoes no. 99570, and Diced Potatoes (3/8 x 3/8 x 3/8) no. 27156. The sliced and diced potatoes consist of potatoes with added sodium bisulfite. The stated ingredients for the granules are potatoes, sodium acid pyrophosphate, citric acid, and mono and diglycerides. The flakes are composed of potatoes, sodium acid pyrophosphate, sodium bisulfite, monoglycerides, citric acid, and BHA. All will be packed in multi-wall paper bags containing from 20 to 45 kilograms, net weight.

The applicable subheading for these potato products will be 2005.20.00, Harmonized Tariff Schedule of the United States (HTS), which provides for other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen ... potatoes.

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

If you have any questions regarding the tariff classification of these products, contact National Import Specialist Stanley Hopard at 646-733-3029.

*Sincerely,*

ROBERT B. SWIERUPSKI  
*Director,*

*National Commodity Specialist Division*

HQ 954208

September 14, 1993

CLA-2 CO:C:F 954208 ALS

CATEGORY: Classification

TARIFF NO.: 2005.20.6040 2005.20.6060

Ms. SANDY GARCIA  
SENIOR TRANSPORTATION ASSISTANT  
P.O. Box 1140  
VACAVILLE, CA 95696

RE: Dehydrated Potato Products

DEAR Ms. GARCIA:

This is in further response to your FAX inquiry of May 16, 1993, regarding the classification for seven dehydrated potato products. No samples were provided.

**FACTS:**

The products under consideration are dehydrated potato products. The potato products are identified as Slice-1/8" Random cut, Redi-Shred Hashbrown Potatoes, Golden Extra Rich Potato Pearls, Far East Mashed Potato, Potato Granules, No Sulfite-BHT Potato Pieces, and Dice (3/8" x 3/8" x 3/8"). The products are in the form of flour, meal, flakes, slices or granules, and/or have been prepared or preserved. All the products except the No Sulfite have sodium bisulfite as a preservative. The hashbrown's have starch, dextrose, and onion powder in addition to the above ingredients. The potato pearls contain nonfat milk, salt, partially hydrogenated soybean oil, vegetable emulsifier, natural and artificial flavors, artificial colors in addition to the potatoes and preservatives. The mashed potatoes, in addition to the potatoes and preservatives, contain nonfat milk, salt, emulsifier (mono and diglycerides of vegetable fats), sodium acid pyrophosphate, calcium chloride, and spice. -2-

The BHT potatoes pieces contain mono and diglycerides, sodium acid pyrophosphate and citric acid. The dice potatoes only have a preservative. The potatoes granules have mono and diglycerides, sodium acid pyrophosphate as well as the preservatives. The potato granules contains added mono and diglycerides, sodium acid pyrophosphate, sodium bisulfite, and BHT.

**ISSUE:**

What is the classification of the various potato products?

**LAW AND ANALYSIS:**

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI's) taken in order. GRI 1 provides that the classification is determined first in accordance with the terms of the heading and any relative section and chapter notes. If GRI 1 fails to classify the goods and if the heading and legal notes do not otherwise require, the remaining GRI's are applied, taken in order.

In considering the applicable subheadings we note that dried potatoes and products based on or prepared from dried potatoes, may fall in subheadings 0712.10, 1105.10 1105.20, or 2005.20, HTSUSA. Since the instant potato products are in the form of flour, meal, flakes, granules or pellets they would

not come under subheading 0712.10, HTSUSA, which specifically excludes potatoes in such forms. We also believe that these products would be excluded from classification in such subheading since they have been prepared or preserved further than the level contemplated by that subheading. They, for example, contain various additives including sodium bisulfite which is a preservative, prevents the loss of color during storage and helps retain flavor.

Based on the particle size descriptions provided (i.e., the “screen analysis”), only the potato granules would appear to be classifiable in chapter 11. The explanatory notes (EN) to the Harmonized System, which represent the views of the international classification experts, indicate that products classifiable in heading 1105 may contain antioxidants, emulsifiers, and vitamins. This product contains added mono and diglycerides, sodium acid pyrophosphate, sodium bisulfite, and BHT. The mono and diglycerides and BHT are antioxidants, and their presence in -3-

small quantities does not affect the classification of a product in chapter 11. However, sodium bisulfite and sodium acid pyrophosphate are preservatives used to retain food color, and do not function the same as the permitted additives. The presence of these items prevents classification of the potato granules in heading 1105, HTSUSA.

We, therefore, have concluded that all 7 potato products would be classifiable under the provision for potatoes, prepared or preserved otherwise than by vinegar or acetic acid, other, in subheading 2005.20.60, HTSUSA.

**HOLDING:**

Potato granules preserved otherwise than by vinegar or acetic acid are classifiable in subheading 2005.20.6040, HTSUSA. Random cut potatoes, hashbrown potatoes, potato pearls, mashed potatoes, no sulfite-BHT potato pieces and diced potatoes preserved otherwise than by vinegar or acetic acid are classifiable in subheading 2005.20.6060, HTSUSA. Potatoes classifiable in either of these subheadings are subject to a general rate of duty of 10 percent ad valorem.

*Sincerely,*

JOHN DURANT,

*Director*

*Commercial Rulings Division*

HQ H243645  
CLA-2 OT:RR:CTF:TCM H243645 TNA  
CATEGORY: Classification  
TARIFF NO.: 0712.90.30

Ms. JOYCE MIKESELL  
BASIC AMERICAN FOODS  
2999 OAK ROAD, SUITE 400  
WALNUT CREEK, CA 95496

RE: Modifying of HQ 966202, NY I89048, and HQ H954208; Classification of dried potatoes

DEAR Ms. MIKESELL:

This letter is in reference to Headquarters Ruling Letter (“HQ”) 966202, issued to you on February 21, 2003, and New York Ruling Letter (“NY”) NY 189048, issued to you on December 23, 2002, concerning the tariff classification of dried potatoes. There, U.S. Customs and Border Protection (“CBP”) classified the subject potatoes in subheading 2005.20.00, Harmonized Tariff Schedule of the United States (“HTSUS”), as potatoes, “prepared or preserved otherwise than by vinegar or acetic acid, other.”

This letter also concerns HQ 954208, dated September 14, 1993, which also classified dehydrated diced potatoes in subheading 2005.20.00, HTSUS.<sup>1</sup> We have reviewed HQ 966202, NY 189048, and HQ 954208 and found them to be partly in error. For the reasons set forth below, we hereby modify HQ 966202, NY 189048, and HQ 954208.

**FACTS:**

In HQ 966202 and NY 189048, CBP classified sliced potatoes and diced potatoes, each with added sodium bisulfite.<sup>2</sup> Both are packed in multi-wall paper bags containing from 20 to 45 kilograms, net weight. In addition, the diced potatoes measure 3/8 inch by 3/8 inch by 3/8 inch. In HQ 966202 and NY 189048, CBP classified this merchandise in subheading 2005.20.00, HTSUS, as “Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006: potatoes.”

In HQ 954208, CBP classified diced potatoes, which measure 3/8 inch by 3/8 inch by 3/8 inch and contained the preservative sodium bisulfite. In HQ 954208, CBP also classified potatoes called “Siice-1/8” Random cut,” which were also treated with sodium bisulfite. CBP classified this merchandise in subheading 2005.20.00, HTSUS.<sup>3</sup>

**ISSUE:**

Whether dried potatoes treated with sodium bisulfate are classified in heading 0711, HTSUS, as provisionally preserved vegetables that are unsuitable for immediate consumption, in heading 0712, HTSUS, as dried tomatoes, whole, cut, sliced, broken or in powder, but not further prepared, or in

<sup>1</sup> We note that HQ 954208, which was decided in 1993, classified the subject dehydrated diced potatoes in subheading 2005.20.60, HTSUS, which has become subheading 2005.20.00 in the 2014 nomenclature.

<sup>2</sup> HQ 966202 and NY 189048 both classified five different types of potato products. Only the Sliced Potatoes and the Diced Potatoes are at issue in this reconsideration.

<sup>3</sup> HQ 954208 also classified several other potato products, but only these two products are at issue here.

heading 2005, HTSUS, as other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006?

### LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

- |      |  |
|------|--|
| 0711 | Vegetables provisionally preserved (for example, by sulfur dioxide gas, in brine, in sulfur water or in other preservative solutions), but unsuitable in that state for immediate consumption:   |
| 0712 | Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared:   |
| 2005 | Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006: Note 3 to Chapter 7, HTSUS, provides, in pertinent part, that: |

Heading 0712 covers all dried vegetables of the kinds falling in headings 0701 to 0711, other than: ...

- (c) Flour, meal, powder, flakes, granules and pellets of potatoes (heading 11 05);

Note 1 to Chapter 20, HTSUS, provides, in pertinent part, that:

This chapter does not cover:

- (a) Vegetables, fruit or nuts, prepared or preserved by the processes specified in chapter 7, 8 or 11;

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The General EN to Chapter 7, HTSUS, provides, in pertinent part, the following:

This Chapter covers vegetables, including the products listed in Note 2 to the Chapter, whether fresh, chilled, frozen (uncooked or cooked by steaming or boiling in water), provisionally preserved or dried (including dehydrated, evaporated or freeze-dried). It should be noted that some of these products when dried and powdered are sometimes used as flavouring materials but nevertheless remain classified in heading 07.12 ...

Vegetables not presented in a state covered by any heading of this Chapter are classified in Chapter 11 or Section IV. For example, flour, meal and powder of dried leguminous vegetables and flour, meal, powder, flakes,

granules and pellets of potatoes are classified in Chapter 11, and vegetables prepared or preserved by any process not provided for in this Chapter fall in Chapter 20.

The EN to heading 0711, HTSUS, states the following:

This heading applies to vegetables which have been treated solely to ensure their provisional preservation during transport or storage prior to use (e.g., by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), provided they remain unsuitable for immediate consumption in that state.

Vegetables covered by this heading are generally packed in casks or barrels, and are mainly used as raw materials for manufacturing purposes; the principal varieties are onions, olives, capers, cucumbers, gherkins, mushrooms, truffles and tomatoes.

However the heading excludes goods which, in addition to having been provisionally preserved in brine, have also been specially treated (e.g., by soda solution, by lactic fermentation); these fall in Chapter 20 (for example, olives, sauerkraut, gherkins and green beans).

The EN to heading 0712, HTSUS, provides, in pertinent part, the following:

This heading covers vegetables of headings 07.01 to 07.09 which have been dried (including dehydrated, evaporated or freeze-dried) i.e., with their natural water content removed by various processes. The principal kinds of vegetables treated in this way are potatoes, onions, mushrooms, wood ears (*Auricularia* spp.), jelly fungi (*Tremella* spp.), truffles, carrots, cabbage and spinach. They are usually prepared in strips or slices, either of one variety or mixed julienne).

The heading also covers dried vegetables, broken or powdered, such as asparagus, cauliflower, parsley, chervil, onion, garlic, celery, generally used either as flavouring materials or in the preparation of soups.

The EN to heading 2005, HTSUS, provides, in pertinent part, the following:

The term “vegetables” in this heading is limited to the products referred to in Note 3 to this Chapter. These products (other than vegetables prepared or preserved by vinegar or acetic acid of heading 20.01, frozen vegetables of heading 20.04 and vegetables preserved by sugar of heading 20.06) are classified in the heading when they have been prepared or preserved by processes not provided for in Chapter 7 or 11.

Such products fall in the heading irrespective of the type of container in which they are put up (often in cans or other airtight containers).

These products, whole, in pieces or crushed, may be preserved in water, in tomato sauce or with other ingredients ready for immediate consumption. They may also be homogenised or mixed together (salads).

In HQ 966202, NY 189048, and HQ 954208, CBP classified the subject merchandise in subheading 2005.20.00, HTSUS, which provides for “Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006: Potatoes.” In HQ 954208, we reasoned that because these products were excluded from heading 0712, HTSUS, because they have been prepared or preserved further than the level

contemplated by the heading. We also reasoned that sodium bisulfite is a preservative that prevents the loss of color during storage and helps retain flavor.

Upon reconsideration, we note that in HQ H226236, dated July 29, 2013, CBP defined to the term “preserved” by stating that:

It has been held that preservation in a tariff sense ordinarily involves cooking, salting, drying, smoking, curing, or the application of some method or process whereby the fresh or natural condition of the article is so changed as to be more or less a permanent preservation and that something more must be done to it than merely to arrest change and decomposition while in transit.

See HQ H226236, citing *Crawfish Processors Alliance v. United States*, 431 F. Supp. 2d 1342, 1349 (Ct. Int’l. Trade 2006), *aff’d* 483 F.3d 1358 (Fed. Cir. 2007) (quoting *Frosted Fruit Prods. Co. v. United States*, 18 Cust. Ct. 119, 120 (1947)). See also *Bruce Duncan Co., Inc., a/c Staalkat of America. Inc. v. United States*, 67 Cust. Ct. 430, 434 (1971) (citing *Stone & Downer Co. v. United States*, 17 CCPA 34 (1929); *United States v. J.H. Brown*, 46 CCPA 1, 8 (1958)).

Sodium bisulfite is widely used in food to preserve color and flavor. See *Food Chemicals Codex* at 1075 (9th Ed. 2014); <http://www.veggie-sensations.com/sodiumbisulfite/>; [http://www.foodinsight.org/IFIC\\_Review\\_Sodium\\_in\\_Food\\_and\\_Health](http://www.foodinsight.org/IFIC_Review_Sodium_in_Food_and_Health). The instant dried potatoes with sodium bisulfite are imported ready to be eaten, and are not used as raw materials for manufacturing purposes. As such, they do not meet the terms of heading 0711, HTSUS. See also EN 07.11.

In HQ H226236, CBP states 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.” See HQ H226236, citing *Crawfish Processors Alliance*, 431 F. Supp. 2d 1342, 1349 (Ct. Int’l. Trade 2006), *aff’d* 483 F.3d 1358 (Fed. Cir. 2007) (quoting *Frosted Fruit Prods.*, 18 Cust. Ct. 119, 120 (1947)). See also *Bruce Duncan Co., Inc.*, 67 Cust. Ct. 430, 434 (1971) (citing *Stone & Downer Co.*, 17 CCPA 34 (1929); *United States v. J.H. Brown*, 46 CCPA 1, 8 (1958)). We further stated that:

CBP has previously found that processes which change the taste of a food product, or render it suitable for a particular use, can alter its essential character, such that it becomes a “prepared fish” of heading 1604, HTSUS. See HQ 560931, dated July 8, 1998 (where the spicing and breeding of crawfish tails altered the taste and use of the product such that it resulted “in the creation of a new article with a character and use which is different from that possessed by the article prior to processing.”); HQ H034679, dated September 15, 2008 (“The process by which the breeding is added to the subject [cod] fillets indicates that the resulting products are permanently changed in terms of their taste and end-use.”).

See HQ H226236. In HQ H226263, CBP classified fish that had been treated with a “tasteless smoke” which was designed only to preserve the color of the fish for up to a year. This process was not designed to change the taste or anything else about the fish. As a result, CBP stated that:

fillets treated with tasteless smoke are suitable for any of the same uses that untreated fillets can be subject to. The process does not render the treated fillets suitable for any particular purpose. The red color is specifically intended to make the tuna fillets appear fresh, and thus more attractive to the average consumer, but does not extend the shelf life of the product. Fillets that are treated or untreated can be put to all the same uses, whether fried, baked, broiled, or eaten raw. The fact that the color makes the product appear to be of a higher quality has no effect on the uses of the product. Hence, the tasteless smoke process does not advance the tuna in condition so as to make it more valuable under *Frosted Fruit*. Therefore, it is CBP's conclusion that the tasteless smoke process does not create a "prepared tuna."

See HQ H226236.

Similarly, in the present case, the sodium bisulfite with which the subject potatoes have been treated simply preserves the color and taste of these potatoes without actually changing the taste. Thus, it does not actively produce a considerably longer shelf life. In fact, in its ruling request for NY 189048 and its request for reconsideration in HQ 966202, the importer of these products notes that the sodium bisulfite is used to "preserve freshness, color and flavor, not to enhance the product." Furthermore, potatoes that are treated with sodium bisulfite can be put to all the same uses as fresh potatoes, whether fried, baked, or turned into potato chips, hash browns, or any of the other myriad uses of potatoes. As a result, potatoes treated with sodium bisulfite do not meet the definitions of "prepared" or "preserved."

The subject potatoes have been dried, cut and sliced, but they have not been further prepared within the meaning of this heading. As a result, we find that these potatoes meet the terms of heading 0712, HTSUS, and will be classified there. Classification in heading 0712, HTSUS, is also consistent with prior CBP rulings that have classified tomatoes preserved with sodium bisulfite or a similar preservative in heading 0712, HTSUS. See NY N239661, dated March 26, 2013. Because the subject potatoes are classified in heading 0712, HTSUS, they cannot be classified in heading 2005, HTSUS, under Note 1 to Chapter 20, HTSUS.

#### **HOLDING:**

Under the authority of GRI1, the subject potatoes are classified in heading 0712, HTSUS. They are specifically classified in subheading 0712.90.30, HTSUS, which provides for "Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared: Other vegetables; mixtures of vegetables: Potatoes whether or not cut or sliced but not further prepared." The column one general rate of duty is 2.3¢/kg.

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

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

HQ 966202, dated February 21, 2003, NY 189048, dated December 23, 2002, and HQ 954208, dated September 14, 1993, are MODIFIED with respect to the diced or sliced potatoes with added sodium bisulfite.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED MODIFICATION OF A RULING LETTER AND  
REVOCATON OF TREATMENT RELATING TO THE  
CLASSIFICATION OF CYCLING SHOES**

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

**ACTION:** Notice of modification of a ruling letter and revocation of treatment concerning the classification of cycling shoes.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) is modifying one ruling letter relating to the classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of a one style of cycling shqes. CBP is also revoking any treatment previously accorded by it to substantially identical transactions.

**DATES:** Comments must be received on or before May 22, 2015.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade-Regulation and Rulings, Attn: Mr. Joseph Clark, 90 K St., NE. 10th Floor, Washington D.C. 20229–1177. Comments submitted may be inspected at 90 K St, NE. 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:** Nerissa Hamilton-vom Baur, Tariff Classification and Marking Branch, at (202) 325–0104

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary

compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. § 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP proposes to modify a ruling letter pertaining to the tariff classification of a certain style of cycling shoes. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter ("NY") N170022, dated June 29, 2011, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

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

In NY N170022, CBP ruled that the "Dominator 5" style of cycling shoe, item# 10205401370 is classified in subheading 6402.19.90, HT-SUS, based on the information presented to CBP. This classification is incorrect because subsequent CBP Laboratory analysis showed that the shoe's external surface area of the upper consists of at least 90% rubber/plastics.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N170022 (Attachment A) and any other ruling not specifically identified, to reflect the proper classification of a certain style of cycling shoes to the analysis contained in proposed Headquarters Ruling Letter (HQ) H237638, 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: March 30, 2015

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

CLAUDIA GARVER

Attachments

N170022

June 29, 2011

CLA-2-64:0T:RR:NC:N4:447

CATEGORY: Classification

TARIFF NO.: 6402.19.90

Ms. SHIRLEY MOORE  
D.B. GROUP AMERICA, LTD.  
5300 KENNEDY ROAD, SUITE D  
FOREST PARK, GA 30297

RE: The tariff classification of footwear from Italy

DEAR Ms. MOORE:

In your letter dated June 1, 2011 you requested a tariff classification ruling on behalf of your client, Sidi America, Inc. for cycling shoes.

The submitted half-pair samples identified as item #'s 10105101410, 10205401370 and 112041224 are "unisex" cycling shoes with rubber/plastic outer soles which incorporate the provision for the attachment of "cleats." The two component uppers are textile mesh and "Lorica," (micro-fibers treated with special resins according to the literature provided by you) which constitutes rubber/plastic for tariff classification purposes. Since you did not provide a component material breakdown by percentage, visual estimation shows that the textile mesh accounts for more than ten percent of the predominantly rubber/plastic uppers. The shoes feature strap closures, do not have a foxing or foxing-like band and are not protective against water, oil, grease or chemicals or cold or inclement weather. You provided F.O.B. values over \$12.00/pair for each shoe. The shoes meet the tariff definition of "sports footwear" under Subheading Note 1(a) (b) to Chapter 64 of the Harmonized Tariff Schedule of the United States (HTSUS).

The submitted half-pair sample identified as item #10110101410, is a "unisex" ankle-high cycling shoe with a rubber/plastic outer sole which incorporates the provision for the attachment of "cleats." The two component upper is textile mesh and "Lorica," the latter of which predominates as the constituent material having the greatest external surface area. The shoe is lined with Gore-Tex® and is considered "protective" against water. You provided an F.O.B. value over \$12.00/pair. The shoe meets the tariff definition of "sports footwear" under Subheading Note 1(a) (b) to Chapter 64 of the Harmonized Tariff Schedule of the United States (HTSUS).

The applicable subheading for item #'s 10105101410, 10205401370, 11204122410 and 10110101410 will be 6402.19.90, HTSUS, which provides for other footwear with outer soles and uppers of rubber or plastics: sports footwear: other: other: valued over \$12/pair. The rate of duty will be 9% ad valorem.

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

The submitted samples are not marked with the country of origin. Therefore, if imported as is, they will not meet the country of origin marking requirements of 19 U.S.C. 1304. Accordingly, the footwear would be considered not legally marked under the provisions of 19 C.F.R. 134.11 which states, "every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the

nature of the article (or container) will permit, in such manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.”

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 Stacey Kalkines at (646) 733-3042.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

HQ H237638  
CLA-2 OT:RR:CTF:TCM H237638 HvB  
CATEGORY: Classification  
TARIFF NO.: 6402.19.15; 6402.19.90

Ms. SHIRLEY MOORE  
D. B. GROUP AMERICA, LTD.  
245 COUNTRY CLUB DRIVE, SUITE 100A  
STOCKBRIDGE, GA 30281

Re: Modification of NY N170022; Request for Reconsideration; Classification of Cycling Shoes.

DEAR Ms. MOORE:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) N170022, dated June 29, 2011, concerning the classification of cycling shoes under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N170022, CBP determined that the cycling shoes, items #10105101410, #10205401370, #11204122410, and #10110101410, were classified in subheading 6402.19.90, HTSUS, which provides for "Other footwear with outer soles and uppers of rubber or plastics: Sports footwear: Other: Other: Valued over \$12/pair."

In your letter dated September 17, 2012 to the National Commodity Specialist Division (NCSA), on behalf of Sidi America, Inc., you requested reconsideration of NY N 170022, as it pertains to the classification of three styles of cycling shoes (Items #10105101410, 10205401370, and 11204122410) in subheading 6402.19.90, HTSUS. You request classification in subheading 6402.19.15, HTSUS, which provides for "Other footwear with outer soles and uppers of rubber or plastics: Sports footwear: Other: Having uppers of which over 90 percent of the external surface area [ESAU] (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter is rubber or plastics... : Other." We note that Item #10110101410 is not at issue. Your request for reconsideration was forwarded to our office for a decision.

We have reviewed NY N170022 and have found that the classification of item #10205401370, Dominator 5 style, in subheading 6402.19.90, HTSUS, was in error. Therefore, for the reasons set forth below, this ruling modifies NY N170022, as it pertains to Item #10205401370.

This decision takes into consideration your letter dated March 27, 2013, in which you forwarded independent laboratory reports from ACT Lab LLC ("ACT Lab") and from Laboratorie Chimico di Venezia, which is located in Italy.

Samples of the subject merchandise have been provided and were examined by the CBP Laboratories and Scientific Services Directorate (LSSD).

**FACTS:**

The merchandise at issue consists of three styles of unisex cycling shoes with rubber/plastic outer soles which are designed to incorporate cleats. The shoes close by means of a strap. The uppers of each shoe are composed of textile mesh and "Lorica" (micro-fibers treated with special resin), which constitutes rubber/plastic for purposes of tariff classification. The rubber/plastics outer soles of each shoe are said to be composed of a graphite composite material. In your September 17, 2012 letter, you admit that the

statement in NY N170022, that the subject merchandise does not have a foxing or foxing-like band and is not protective against water, oil, or grease, or chemicals, is correct

The styles at issue are as follows. Item #1 0105101410 is identified as the “Genus 5 Pro” style. Item # 10205401370 is identified as the “Dominator 5” style. And, item# 11204122410 is identified as the Spider SRS style.

In NY N170022, CBP used visual estimation to conclude that the rubber/plastic components of the shoes did not account for more than 90% of the uppers since no component material breakdowns were provided. Thus, CBP classified the subject footwear in subheading 6402.19.90, HTSUS, which provides for “Other footwear with outer soles and uppers of rubber of plastics: Sports footwear: Other: Other: Valued over \$12/pair.”

Included in your September 17, 2012 and March 27, 2013 submissions were copies of independent laboratory analyses, to support your assertion that the items are properly classified in subheading 6402.19.1561, HTSUSA, the provision for “Other footwear. .. sports footwear ... having uppers of which over 90 percent of the [ESAU] is rubber or plastics.” The reports issued by ACT Lab are undated and were issued on Item# 11204122410, which is identified as the “Spider SRS” style, and on Item# 10105301455, which is identified as the “Gen 5 Pro Carb narrow” style.<sup>1</sup> ACT Lab’s report for Item # 11204122410, the Spider SRS style, states that the “% Exposed Area: 7.26%”, with “mesh” written in handwriting adjacent to the percentage. Below this text, the following is handwritten: “92.74% rub/pl. These reports do not indicate what test methods were utilized. The second independent lab reports were issued by Laboratorie Chimico di Venezia for the “Gen 5 Pro” and the “Spider SRS” styles. The reports are accompanied by certificates. Both the certificates and the laboratory reports are entirely written in Italian and do not provide item numbers. For the “Spider SRS” style, the Italian lab determined that the “material plastico 92%” and that the “material tessile is 8%”. For the “Calzatura Sidi Gen 5 Pro” style, the report states that the “material plastico 94%” and that the “material tessile 6%”. The reports states that method “MI13VEA” was used.

In a letter dated September 17, 2012, you contacted NCSD to request reconsideration of NY N170022, and submitted samples of the merchandise. NCSD sent the samples to LSSD for analysis on September 28, 2012. LSSD reported lab analysis of the subject merchandise on December 6, 2012, which is detailed below:

- For Item # 10205401370, the Dominator 5 style, LSSD found that the External Surface Area of the Upper (ESAU), consisted of 91.1% rubber/plastic, including reinforcements and/or accessories.<sup>2</sup> See Lab Report# NY20121859, dated December 6, 2012.
- For item # 10105101410, the Genus 5 Pro style, LSSD found that the ESAU was 89% rubber/plastic, including reinforcements and/or accessories. See Lab Report # NY20121860, dated December 6, 2012.

<sup>1</sup> We note that item# 10105301455 is not at issue, thus the results are not relevant to the discussion.

<sup>2</sup> All percentages taken from CBP Laboratory reports indicate the percentage of rubber/plastic, including reinforcements and/or accessories.

- For the Spider SRS style, item # 11204122410, the LSSD determined that the ESAU was 89.7% rubber/plastics, including reinforcements and/or accessories. See Lab Report# 20121857, dated December 6, 2012

After being advised of these lab results, on March 27, 2013, you requested that we conduct a second laboratory testing of two of the items at issue in the ruling, and enclosed additional samples of the Genus 5 Pro and Spider SRS styles, item# 1010510410 and item# 11204122410, respectively.

On November 8, 2013, LSSD issued Supplemental Laboratory Report# NY 2012860S for Item# 10105101410, the Genus 5 Pro style. LSSD concluded that the ESAU of the upper is 89.1% rubber or plastics. In addition, LSSD issued Supplemental Laboratory Report # NY20121857S for the Spider SRS style, Item # 11204122410. LSSD concluded that the ESAU of the shoe is 89.5% rubber or plastic, including reinforcements and/or accessories.

#### ISSUE:

Whether the subject cycling shoes should be classified in subheading 6402.19.15, HTSUS, as other sports footwear having uppers of which over 90 percent of the ESAU is rubber or plastics, or under subheading 6402.19.90, HTSUS, as other sports footwear valued over \$12/pair.

#### 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. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to the GRIs.

The HTSUS subheadings under consideration are the following:

6402            Other footwear with outer soles and uppers of rubber or plastics:

    Sports footwear:

        \* \* \*

6402.19            Other:

    Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather):

        \* \* \*

        \* \* \*

6402.19.15

    Other:

        \* \* \*

Other:

\* \* \*

6402.19.90

Valued over \$12/pair

Note 3 to Chapter 64, HTSUS, provides in part:

- (a) The terms “*rubber*” and “*plastics*” include woven fabrics or other textile products with an external layer of rubber or plastics being visible to the naked eye; for the purpose of this provision, no account should be taken of any resulting color; and

...

Note 4 to Chapter 64, HTSUS, provides in part:

- (a) The material of the upper shall be taken to be the constituent material having the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, edging, ornamentation, buckles, tabs, eyelet stays or similar attachments;

...

\* \* \* \* \*

In the present case, there is no dispute at the heading level. The subject merchandise consists of cycling shoes with rubber outer soles and uppers composed of rubber/plastic. As such, it is classified in heading 6402, HTSUS, as “Other footwear with outer soles and uppers of rubber.” The instant issue is whether, at the subheading level, the products meet the requirements of subheading 6402.19:15, HTSUS, *i.e.* whether the ESAU of the shoe’s upper is over 90% rubber/plastic.

With respect to Item # 10205401370, the “Dominator 5” style, CBP Lab report# NY20121859, dated December 6, 2012, found that the ESAU is 91.1% rubber or plastics, including reinforcements and/or accessories. Therefore, the Dominator style meets the requirements of HTSUS subheading 6402.19.15.

Next, we consider the two remaining styles of shoes, the Genus 5 Pro and the Spider SRS, respectively, Items# 10105101410 and# 11204122410. You argue that the uppers of the instant footwear are more than 90 percent rubber/plastic. In support, you submit copies of independent laboratory reports from two different labs.

The first set of laboratory reports is from ACT Lab, one of which is for an item number not at issue. The second set of laboratory reports, which are written in Italian, are from Laboratorie Chimico di Venezia. You also argue that a third lab, Customs Laboratory Services, located in Rockville, MD (that did not examine the merchandise at issue), advised you that “CBPL Method 64–04 was no longer used by [CBP] because of the inherent error in the method caused by the added toner and often inconsistent weight of ink/toner on the photocopied paper pieces that are weight to determine the ESAU.”

Pursuant to 28 U.S.C. § 2639(a)(1) (1994), CBP enjoys a statutory presumption of correctness. Thus, an importer has the burden to prove by a preponderance of the evidence that a CBP decision was incorrect. *Ford Motor Company v. United States*, 157 F.3d 849, 855 (Fed. Cir. 1998). Furthermore, “[i]t is well settled that the methods of weighing, measuring, and testing merchandise used by [CBP] officers and the results obtained are presumed to

be correct.” *Aluminum Company of America v. United States*, 60 C.C.P.A. 148, 151, 477 F.2d 1396, 1398 (1973). Absent a conclusive showing that the testing method used by the CBP laboratory is in error, or that the CBP’s laboratory results are erroneous, there is a presumption that the results are correct. See *Exxon Corp. v. United States*, 462 F. Supp. 378, 81 Cust. Ct. 87, C.D. 4772 (1978).

In cases such as this, where an outside laboratory report is submitted that differs from the CBP laboratory report, the CBP laboratory report cannot be disregarded and takes precedence over the outside report. See HQ 957282, dated March 28, 1995 (citing Customs Directive 099 3820–002, dated May 4, 1992). CBP cannot rely on outside reports that may or may not utilize different testing methods and still remain consistent in its tariff classification. Therefore, CBP must rely on its own laboratory analysis when determining the proper tariff classification of merchandise and need not consult an independent laboratory. See HQ 963748, dated November 20, 2000. CBP’s additional laboratory analysis did not deviate from the original lab reports results, which concluded that the ESAU of the uppers of the Genus Pro and Spider SRS styles was less than 90% rubber/plastic. Subheading 6402.19.90, HTSUS, describes other footwear which has “uppers of which over 90 percent of the external surface area (including reinforcements[ ... ]) is rubber or plastics [emphasis added].” Since LSSD found that the ESAU (including reinforcements) was 89.1% rubber/plastic in the case of the “Genus 5 Pro” style, and 89.5% rubber/plastic in the case of the “Spider SRS” style, we therefore disagree that the instant footwear is classifiable in subheading 6402.19.90, HTSUS.

Moreover, the independent laboratory reports do not conclusively show that CBP’s lab reports are erroneous. One of the independent lab reports submitted with your September 17, 2012 letter identifies a shoe with a style name and item number that is not at issue. The other independent lab report for the item #11204122410, the Spider SRS Style, is an unreliable document as it has a handwritten notation on it and does not state what testing method was used. The reports are also undated. You have not conclusively shown that the testing method used by the CBP laboratory is in error or, that the CBP’s laboratory results are erroneous, as you simply argue that there is an allegedly better testing method. Therefore, you have failed to overcome CBP’s presumption of correctness regarding Item# 10105101410, the Genus 5 Pro style, and Item# 11204122410, the Spider SRS style. See HQ H005111, dated August 20, 2007.

Accordingly, NY N170022 is affirmed with respect to the Spider SRS and the Genus 5 Pro styles (items# 11204122410 and# 10105101410). With respect to Item# 10205401370, the “Dominador 5” style, NY N170022 is modified to reflect that it is correctly classified in subheading 6402.19.15, HTSUS.

#### **HOLDING:**

Under the authority of GRI 1, Item # 10205401370, the “Dominador Pro” is provided for in heading 6402, HTSUS. More specifically, it is classified under subheading 6402.19.15, HTSUS, which provides for: “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Having uppers of which over 90 percent of the external surface area (including any accesso-

ries or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather: Other.” The general, column one duty rate is 5.1%.

Under the authority of GRI 1, item# 10105101410, the “Genus 5 Pro” style, is provided for in heading 6402, HTSUS. More specifically, it is classified under subheading 6402.19.90, HTSUS, which provides for: “Other footwear with outer soles and uppers of rubber or plastics: Sports footwear: Other: Other: Valued over \$12/pair.” The general, column one duty rate is 9%.

Under the authority of GRI 1, item # 11204122410, the “Spider SRS” style, is provided for in heading 6402, HTSUS. More specifically, it is classified under subheading 6402.19.90, HTSUS, which provides for: “Other footwear with outer soles and uppers of rubber or plastics: Sports footwear: Other: Other: Valued over \$12/pair.” The general, column one duty rate is 9%.

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

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

NY N170022, dated June 29, 2011, is hereby MODIFIED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



### **PROPOSED REVOCATION OF RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN PASSENGER BOARDING BRIDGES**

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

**ACTION:** Notice of proposed revocation of ruling letters and proposed revocation of treatment relating to the classification of certain passenger boarding bridges.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) is proposing to revoke ruling letters relating to the tariff classification of certain passenger boarding bridges under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

**DATES:** Comments must be received on or before May 22, 2015.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Commercial Trade and Regulations Branch, 90K St NE, Washington, D.C., 20229-1177. Submitted comments may be inspected at U.S. Customs and Border Protection, 90K Street NE, Washington, D.C., 20229-1177, 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:** Nerissa Hamilton-vern Baur, Tariff Classification and Marking Branch, at (202) 325-0104.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke three ruling letters pertaining to the tariff classification of certain passenger boarding bridges. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (“NY”) 085781, dated January 20, 1999 (Attachment A), NY 888222, dated August 13, 1997 (Attach-

ment B), and NY 088830, dated March 24, 1999 (Attachment C), 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., a 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 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY 085781, NY 888222, and NY 088830, CBP classified the passenger boarding bridges under heading 8428, HTSUS, as lifting and handling machines.

We have reviewed these rulings and determined that the classification decisions set forth therein is incorrect. It is now our position that the passenger boarding bridges in each ruling are properly classified under heading 8479, HTSUS, machines with individual functions.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY D85781, NY B88222, and NY D88830 and any other ruling not specifically identified, to reflect the proper classification of this merchandise according to the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H 108235 (Attachment D). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends 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: March 31, 2015

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

Attachments

CLA-2-84:RR:NC:1:103 D85781

CATEGORY: Classification

TARIFF NO.: 8428.90.0090

MR. TED CORBETT  
APEX INDUSTRIES INC.  
250 PACIFIC AVENUE  
MONCTON, NEW BRUNSWICK, CANADA E1C 8M6

RE: The tariff classification of aircraft passenger boarding bridges from Canada

DEAR MR. CORBETT:

In your letter dated December 10, 1998 you requested a tariff classification ruling.

With your inquiry you submitted literature describing three types of aircraft passenger boarding bridges. These mechanical bridges act as embarking and disembarking passageways between a terminal and an aircraft. The Apex Elevating Sliding Bridge basically consists of a fixed walkway, rotunda, moveable tunnel, bridgehead cab, lift column, service door, landing and stairs, and a canopy. The tunnel extends from the terminal doorway at a maximum vertical travel rate of 1.5 meters per minute and a maximum horizontal travel rate of 6 meters per minute, thus enabling the bridge to align with an aircraft's doorway. Limit switches and physical stops ensure the bridge operates safely.

The Apex Apron Drive Bridge is similar to the Elevating Sliding Bridge, but utilizes two or three telescoping tunnels to connect to a commercial aircraft doorway. It also features a service door with stairs and a landing so that authorized personnel have access to the terminal apron.

Apex Fixed Walkways basically consist of a tunnel and rotunda supported on fixed columns and an extendable walkway. The fixed tunnels are manufactured in sections up to 55 feet in length and have rigid tubular end frames for additional structural stability. As with the other bridges, the interior walls consist of laminated plastic panels, and the floor features either neoprene rubber or carpeting.

The applicable subheading for the aircraft passenger boarding bridges will be 8428.90.0090, Harmonized Tariff Schedule of the United States (HTS), which provides for other lifting, handling, loading or unloading machinery: other machinery: other: other: other. The rate of duty will be free. 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 Alan Horowitz at 212-466-5494. After January 28, 1999, Mr. Horowitz's phone number will be 212-637-7027.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

August 13, 1997

CLA-2-84:RR:NC:1:103 B88222

CATEGORY: Classification

TARIFF NO.: 8428.90.8085

MR. ERIC S.C. WANG  
DYNASTY CUSTOMS BROKER INC.  
1409 SAN MATEO AVE.  
SO. SAN FRANCISCO, CA 94080

RE: The tariff classification of aircraft passenger boarding bridges from China

DEAR MR. WANG:

In your letter dated Aug. 1, 1997 on behalf of Alliance Standard Inc. you requested a tariff classification ruling.

TianDa passenger boarding bridges act as embarking and disembarking passageways between a terminal and an aircraft. Apron drive type boarding bridges basically consist of a rotunda connected to the terminal, telescoping tunnels, a cab platform and cab, and dual hydraulic or electro-mechanical lifting columns mounted on a bogey capable of horizontal movement. Driven by the bogey, the bridge can extend to the combined length of its tunnels and swivel around its rotunda to reach the aircraft. The cab then rotates to align with the aircraft's fuselage, and the lifting columns raise or lower the bridge to a level even with the aircraft's door. In case of a power failure, the bridge can be manually retracted. The operator controls the direction and speed of the bridge, as well as other functions such as cab rotation and extension and contraction of the canopy, from a console incorporating a programmable logic controller. Speed control and collision prevention limit switches ensure the bridge operates safely.

Nose-loader fixed type boarding bridges are economical alternatives to the more complex apron drive bridges. They basically consist of one tunnel connected to the terminal, a perpendicular tunnel, and an extendable tunnel containing the cab platform. The cab rotates to dock with the aircraft door. Like the apron drive type passenger boarding bridge, nose-loader fixed bridges are capable of use with many different aircraft models.

The applicable subheading for the aircraft passenger boarding bridges described above will be 8428.90.8085, Harmonized Tariff Schedule of the United States (HTS), which provides for other lifting, handling, loading or unloading machinery: other machinery: other: other. The rate of duty will be 0.8 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alan Horowitz at 212-466-5494.

Sincerely,

ROBERT B. SWIERUPSKI

Chief,

Metals & Machinery Branch National Commodity  
Specialist Division

*CLA-2-84:RR:NC:1:103 D88830*

*CATEGORY: Classification*

*TARIFF NO.: 8428.90.0090*

*MR. ANDERS G. FRICK*

*FMT AIRCRAFT GATE SUPPORT SYSTEMS CANADA, INC.*

*208 EVANS AVENUE*

*TORONTO, ONTARIO M8Z 1J7*

RE: The tariff classification of passenger boarding bridges from Sweden

DEAR MR. FRICK:

In your letter dated February 26, 1999 you requested a tariff classification ruling.

You submitted a brochure describing the FMT Mobile Telescopic Bridge for use in airports, as well as a drawing of a Mobile Elevating Gangway for use at cruise ship terminals. These are mechanical devices which act as embarking and disembarking passageways between the terminal building and an aircraft or ship. The Mobile Telescopic Bridge basically consists of a rotunda which connects to the terminal building, three glass-walled telescoping tunnels, a hydraulic lift column resting on hydraulic twin wheel bogies, and an adjustable cab containing a microprocessor based interactive operator control panel, electronic bumper, and extendable canopy. The hydraulically driven twin wheel bogies and lift column allow the bridge to be maneuvered smoothly and accurately in order to properly align the canopy with the aircraft doorway. An Aircraft Parking and Information System utilizing a laser range finder and digital camera can be used to guide the aircraft pilot to the correct stop position and transmit this data to the bridge control, thus enabling an automatic connection. In the event of a power loss the bridge can be retracted manually.

While the drawing simply depicts the Mobile Elevating Gangway, we assume it can be mechanically elevated and lowered in a manner similar to the FMT Mobile Telescopic Bridge in order to accommodate different vessels.

The applicable subheading for the Mobile Telescopic Bridge and Mobile Elevating Gangway will be 8428.90.0090, Harmonized Tariff Schedule of the United States (HTS), which provides for other lifting, handling, loading or unloading machinery: other machinery: other: other. The duty rate will be free.

Your inquiry does not provide enough information for us to give a classification ruling on software for use in controlling the movement and positioning of the bridge and gangway. Your request for a classification ruling should include a statement as to the medium on which the software resides (CDROM, floppy diskette, hard disk drive, etc.), as well as a statement specifying the characteristics of the software (e.g., instructions, data, sound, image, interactivity).

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 Alan Horowitz at 212-637-7027.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

HQ H108235  
OT:RR:CTF:TCM H1 08235 HvB  
CATEGORY: Classification  
TARIFF NO.: 8479.71.00

TED CORBETT  
APEX INDUSTRIES INC.  
250 PACIFIC AVENUE  
MONCTON, NEW BRUNSWICK  
CANADA E1C 8M6

RE: Revocation of New York Ruling Letter (NY) D85781, NY 088830, and NY 888222; Classification of Aircraft Passenger Boarding Bridges

DEAR MR. CORBETT:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) D85781, issued to you on January 20, 1999. In that ruling, CBP classified three types of aircraft passenger boarding bridges designed to be used for embarking and disembarking passageway between a terminal and an aircraft under subheading 8428.90.0090<sup>1</sup>, of the Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for: “Other lifting, handling, loading or unloading machinery: other: other: other.”

We have reviewed NY D85781, and have found it to be in error. For the reasons set forth below, we hereby revoke NY D85781, and two other rulings with substantially similar merchandise: NY B88222, dated August 13, 1997, which was issued to Dynasty Customer Brokers, Inc. and NY D88830, dated March 24, 1999, which was issued to FMT Aircraft Gate Support System Canada, Inc.

**FACTS:**

In NY 085781, we described the merchandise as follows:

The Apex Elevating Sliding Bridge basically consists of a fixed walkway, rotunda, moveable tunnel, bridgehead cab, lift column, service door, landing and stairs, and a canopy. The tunnel extends from the terminal doorway at a maximum vertical travel rate of 1.5 meters per minute and a maximum horizontal travel rate of 6 meters per minute, thus enabling the bridge to align with an aircraft’s doorway. Limit switches and physical stops ensure the bridge operates safely.

The Apex Apron Drive Bridge is similar to the Elevating Sliding Bridge, but utilizes two or three telescoping tunnels to connect to a commercial aircraft doorway. It also features a service door with stairs and a landing so that authorized personnel have access to the terminal apron.

Apex Fixed Walkways basically consist of a tunnel and rotunda supported on fixed columns and an extendable walkway. The fixed tunnels are manufactured in sections up to 55 feet in length and have rigid tubular end frames for additional structural stability. As with the other bridges, the interior walls consist of laminated plastic panels, and the floor features either neoprene rubber or carpeting.

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<sup>1</sup> The product was classified under an 8 and 10 digit subheading which no longer exists: 8428.90.0090. The applicable 2015 HTSUS subheading would be 8428.90.0290.

And, in NY B88222<sup>2</sup> and NY 088830<sup>3</sup>, we classified similar merchandise.

#### ISSUE:

Are the passenger boarding bridges classifiable under heading 8428, HTSUS, as “Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics)” or under heading 8479, HTSUS, as “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter, parts thereof?”

#### 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 provisions under consideration are as follows:

**8428** Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics):

\* \* \*

8428.90 Other machinery ...

**8479** “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter, parts thereof:

\*\*\*

#### Passenger Boarding Bridges:

8479.71 Of a kind used in airports

Legal Note 4 to Section XVI, HTSUS, provides, in relevant part:

Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 84, then the whole falls to be classified in the heading appropriate to that function.

<sup>2</sup> In NY B88222, the merchandise was described as follows: “TianDa passenger boarding bridges act as embarking and disembarking passageways between a terminal and an aircraft. Apron drive type boarding bridges basically consist of a rotunda connected to the terminal, telescoping tunnels, a cab platform and cab, and dual hydraulic or electro-mechanical lifting columns mounted on a bogey capable of horizontal movement. Driven by the bogey, the bridge can extend to the combined length of its tunnels and swivel around its rotunda to reach the aircraft. The cab then rotates to align with the aircraft’s fuselage, and the lifting columns raise or lower the bridge to a level even with the aircraft’s door.”

<sup>3</sup> In NY 088830, the FMT Telescopic Bridge was described as follows: “These are mechanical devices which act as embarking and disembarking passageways between the terminal building and an aircraft or ship. The Mobile Telescopic Bridge basically consists of a rotunda which connects to the terminal building, three glass-walled telescoping tunnels, a hydraulic lift column resting on hydraulic twin wheel bogies, and an adjustable cab containing a microprocessor based interactive operator control panel, electronic bumper, and extendable canopy.”

\*\*\*

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 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).

The ENs to heading 8479, HTSUS, provide, in part:

\* \* \*

### (III) MISCELLANEOUS MACHINERY

This group includes:

\* \* \*

**(32) Passenger boarding bridges.** These bridges permit passengers and personnel to walk between a terminal building and a parked aircraft, a cruise ship or ferry-boat, without having to go outside. The bridges generally consist of a rotunda assembly, two or more rectangular telescopic tunnels, vertical lift columns with wheel bogies, and a cabin located in the front part of the bridges. They include electromechanical or hydraulic devices that are designed for moving the bridges horizontally, vertically and radially (i.e., their telescopic sections, cabin, vertical lift columns, etc.), in order to adjust the bridges to the appropriate position to the particular aircraft’s door, or to the port (entrance) of the cruise ship or ferry-boat. The passenger boarding bridges of the type used at seaports can be, furthermore, equipped with a transitional device installed on their foreshore which can be extended into the port (entrance) of the cruise ship or ferry-boat. These bridges themselves do not lift, handle, load or unload anything.

\* \* \*

The ENs to heading 8428, HTSUS, provide, in part:

\* \* \*

This heading also excludes:

\* \* \*

(c) Passenger boarding bridges (heading 84.79).

\* \* \* \* \*

Heading 8428, HTSUS, provides for “Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics).” CBP has held, consistent with EN 84.28, that heading 8428 is intended for those machines that “either perform the actual function of lifting, moving or manipulating an object, or they constitute an integral part of a lifting or handling system.” *See* HQ H058784, dated December 15, 2009. The subject passenger boarding bridges do not actively engage in lifting, moving, or handling objects. Instead, they act as walkways that allow airline personnel and passengers to cross between the airport terminal and the aircraft. In addition, the EN for heading 8428 expressly excludes the merchandise in

question, passenger boarding bridges, under EN 84.28(c). As such, we conclude that the passenger boarding bridges are not “lifting and handling machinery” of heading 8428, HTSUS.

Heading 8479, HTSUS, provides, in pertinent part, for “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter, parts thereof.” The three different types of passenger boarding bridges classified in NY D85781, identified as the Apex Elevating Sliding Bridge, the Apex Drive Bridge, and the Apex Fixed Bridge, serve as passageways between a terminal and an aircraft. Each passenger boarding bridge consists of various parts, such as tunnel, fixed walkway, and a rotunda, which work in concert to allow airline personnel and passengers to access to the aircraft and terminal. Hence, under Note 4 to Section XVI, HTSUS, the components contribute together to a clearly defined function covered by heading 8479, HTSUS.

As such, we find that the passenger boarding bridges at issue are classified under heading 8479, specifically, in subheading 8479.71.00, HTSUS, as “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter, parts thereof: Passenger Boarding Bridges: Of a Kind used in Airports.” We also note that at HSC 41 in November 2008 (Annex F/2 to Doc. NC1263E1a), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) recently considered the structure and function of passenger boarding bridges and determined that the classification should be in heading 8479, by application of GRIs 1 and 6. As stated in T.D. 89–80, CBP accords HSC opinions the same weight as that the EN, i.e., while neither legally dispositive or binding, these decisions are generally indicative of the proper interpretation of these headings, and note that this ruling is in accord with the HSC opinion.

#### **HOLDING:**

By application of GRI 1 and Note 4 to Section XVI, the subject passenger boarding bridges are classified in heading 8479.71.00, HTSUS, specifically in subheading 8479.71.00, which provides for: “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter, parts thereof: Passenger Boarding Bridges: Of a Kind used in Airports.”

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

**NY 085781**, dated January 20, 1999, is hereby revoked.

**NY 088830**, dated March 24, 1999, is hereby revoked.

**NY 888222**, dated August 13, 1997, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**19 CFR PART 177****PROPOSED REVOCATION OF FOUR RULING LETTERS  
AND MODIFICATION OF ONE RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE CLASSIFICATION OF BATTERY PACKS**

**AGENCY:** U.S. Customs and Border Protection (“CBP”), Department of Homeland Security.

**ACTION:** Notice of proposed revocation of four ruling letters, proposed modification of one ruling letter, and proposed revocation of treatment relating to the classification of battery packs used to recharge electronic devices and car batteries.

**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 CBP proposes to revoke four ruling letters and modify one ruling letter concerning the classification of battery packs used to recharge electronic devices and car batteries under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before May 22, 2015.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, N.E.—10th Floor, Washington, DC 20229–1179. Comments submitted may be inspected at 90 K Street, N.E. 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:** Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

**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 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), this notice advises interested parties that CBP proposes to revoke four rulings and modify one ruling pertaining to the classification of battery packs used to charge electronic devices and car batteries. Although in this notice CBP is specifically referring to New York Ruling (“NY”) N233902, dated October 16, 2012 (Attachment A); NY N231545, dated September 11, 2012 (Attachment B); NY N004618, dated December 26, 2006 (Attachment C); NY N232914, dated September 11, 2012 (Attachment D); and NY N233370, dated October 15, 2012 (Attachment E), 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 data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., 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 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, 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 his agents for importations of merchandise subsequent to this notice.

In NY N231545, NY N233902, NY N233370, and NY N232914, CBP classified a battery pack & charging kit, an external battery pack for iPhone 4/4s, and iPower Battery Pack, respectively, in subheading 8504.40.8500, HTSUS, which provides for “Electrical transformers, static converters (for example rectifiers) and inductors; parts thereof: Static converters: For telecommunication apparatus.” In NY N004618, CBP classified a Jump N Start portable rechargeable power station and a Jump N Start portable power and air station used to jump start car batteries in subheading 8504.40.9530, HTSUS, which provides for “Static converters: Other: Rectifiers and rectifying apparatus: Power supplies: With a power output exceeding 150W but not exceeding 500W.” We now believe that these items are classified in subheading 8507.60.00, HTSUS, which provides for “Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof: Lithium-ion batteries.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N233902, NY N231545, NY N004618, and NY N232914, and modify NY N233370, and any other ruling not specifically identified, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H249299 (see Attachment “F” to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes 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: March 30, 2015

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

NY N233902

October 16, 2012

CLA-2-85:0T:RR:NC:N1:109

CATEGORY: Classification

TARIFF NO.: 8504.40.8500

MR. BRYAN S. BELLAMY,  
LCB/CCS CASE-MATE INCORPORATED  
2048 WEEMS RD.  
TUCKER, GA 30084

RE: The tariff classification of the external battery pack for iPhone 4/4s from an unspecified country

DEAR MR. BELLAMY:

In your letter dated July 18, 2012, you requested a tariff classification ruling.

The merchandise subject to this ruling is known as the Fuel Cell Lite. It is an external battery pack for the iPhone 4/4s. The product consists of a PC phone cover with a built-in battery enclosed in the cover. The cover has an on/off button on the bottom front of the cover. The built-in battery type is a lithium ion rechargeable battery. The dimensions of the cover are 5 inches in length, 2 1/4 inches in width, and 1/2 inch in depth. The external battery pack is designed specifically for the iPhone 4/4S and also functions as a protective case. A sample was furnished for classification purposes.

When the Fuel Cell Lite is plugged into an external power source, the internal battery in the battery pack is charging first; once that is completely charged, the power is transferred to charge the phone battery, thus bypassing the battery in the pack. The item charges the phone when the power button on the cover is switched on.

The external battery pack for iPhone 4/4s (Fuel Cell Lite) is a composite good made of materials classifiable under different headings. General Rule of Interpretation 3(b), HTSUS, states that composite goods are to be classified according to the material or component that gives them their essential character. You suggested Harmonized Tariff Schedule of the United States (HTSUS) subheading 3926.90.9980, which provides for other articles of plastics: Other. However, the external battery pack for iPhone 4/4s provides power and recharges the battery within a cell phone. As such, it is a power supply and a battery charger for telecommunication apparatus. Based on your description of the merchandise, use of the merchandise, and the product sample submitted, it is the opinion of this office that the essential character of this composite good is performed by the battery charging function and the secondary function is that of the cell phone cover. The battery charger functions to supply power to not only the battery in an iPhone 4 or 4S, but also to the internal battery of the battery pack itself. Battery chargers are classified within heading 8504. As such, the external battery pack for iPhone 4/4s will be classified within heading 8504.

The applicable subheading for the external battery pack for iPhone 4/4s (Fuel Cell Lite) will be 8504.40.8500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Electrical transformers, static converters (for example rectifiers) and inductors; parts thereof: Static converters: For telecommunication apparatus." The general 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 Linda Hackett at (646) 733-3015.

*Sincerely,*

THOMAS J. RUSSO

*Director*

*National Commodity Specialist Division*

NY N231545

September 11, 2012

CLA-2-85:0T:RR:NC:N1:109

CATEGORY: Classification

TARIFF NO.: 8504.40.8500

Ms. DENISE YOUNG-SANG  
6600 NORTH MILITARY TRAIL  
BOCA RATON, FL 33496

RE: The tariff classification of an iPhone battery pack & charging kit from China

DEAR Ms. YOUNG-SANG:

In your letter dated August 15, 2012 you requested a tariff classification ruling.

The merchandise subject to this ruling is a battery pack & charging kit. It consists of a 1500 mAh rechargeable li-polymer battery with a 30-pin plug and mini-B outlet, a 2-port combo car/wall charger, a 4 connector adapter with a 30-pin, a micro-B plug and 2 mini-B outlets, a retractable USB-A to mini-B cable. They will be imported within a zippered carrying case and packaged ready for retail sale as a set. The purpose of the set is to provide power to and recharge the battery of Apple's iPhone4 or iPhone 4S. A sample was provided for classification purposes and is being returned to you as per your request.

The rechargeable li-polymer battery has an input of DC5V/1 000mA and an output of DC5V/500mA. When the battery within a user's iPhone no longer has power, the user can connect their iPhone to the battery for power, as well as to recharge the iPhone's battery. The 2 port combo car/wall charger can obtain direct current from a car by inserting the car plug into the car's power output port or can obtain alternating current from a standard wall outlet in order to charge the li-polymer battery or any the battery of an iPhone4 or an iPhone 4S that a user connects to it via the retractable USB-A to mini-B cable. The 4 connector adapter with a 30-pin a micro-B plug and 2 mini-B outlets allows for various electronic devices to connect to the battery and car/wall charger. The car/wall charger is the component that imparts the essential character of the set because it not only can charge the battery within an iPhone 4 and an iPhone 4S, but it is also needed to initially charge the rechargeable li-polymer battery so that the battery can provide power to and recharge the battery of an iPhone 4 and an iPhone 4S. The car/wall charger is also utilized to recharge the rechargeable li-polymer battery when its power has been exhausted.

The applicable subheading for the iPhone battery pack & charging kit will be 8504.40.8500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Static converters: For telecommunication apparatus." 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 Linda M. Hackett at (646) 733-3015.

*Sincerely,*

THOMAS J. RUSSO

*Director*

*National Commodity Specialist Division*

NY N004618

December 26, 2006

CLA-2-85:RR:NC:MM:109

CATEGORY: Classification

TARIFF NO.: 8504.40.9530

MR. DEREK SAKAGUCHI  
MICOM CHB, INC.  
240 S. HINDRY AVENUE, UNIT C  
INGLEWOOD, CA 90301

RE: The tariff classification of a Jump N Start portable rechargeable power station and a Jump N Start portable power & air station from an unspecified country

DEAR MR. SAKAGUCHI:

In your letter dated December 8, 2006, you requested a tariff classification ruling on behalf of your client, Roadmaster USA Corporation.

The merchandise subject to this ruling is a Jump N Start portable rechargeable power station and a Jump N Start portable power & air station. The Jump N Start portable rechargeable power station is identified in your letter as JNS2000 and the Jump N Start portable power & air station is identified as JNS1880N.

The Jump N Start portable rechargeable power station (JNS2000) contains built-in booster cables to provide immediate power as a jump-start function for vehicles. The power output of this portable power station is within the range of 150 watts to 500 watts. It has the following features: a 120-volts direct current (DC) adaptor, a light emitting diode (LED) battery condition and charging indicator light, two 12volt cigarette lighter output sockets, a work light, a spare fuse, a spare bulb, and a rechargeable battery. The JNS2000 does not have the capability to recharge the battery. Once the energy within the battery is exhausted, the battery would have to be recharged at home (using the 120-volts DC adaptor via an AC outlet) or in a car (via the cigarette lighter socket). The essential character of the Jump N Start portable rechargeable power station (JNS2000) is that of the power supply.

The Jump N Start portable power & air station (JNS1880N) contains built-in booster cables to provide immediate power as a jump-start function for vehicles. The power output of this portable power station is within the range of 150 watts and 50 watts. An air compressor is built-in, which can be used to inflate the vehicles tires. It has the following features: a 120-volts alternating current (AC) to direct current (DC) adaptor, a light emitting diode (LED) battery condition and charging indicator light, two 12-volt cigarette lighter output sockets, and a work light, a spare fuse, a spare bulb, and a rechargeable battery. The JNS1880N does not have the capability to recharge the battery. Once the energy within the battery is exhausted, the battery would have to be recharged at home (using the AC to DC adaptor via an AC outlet) or in a car (via the cigarette lighter socket). The essential character of the Jump N Start portable rechargeable power & air station (JNS1880N) is that of the power supply.

The applicable subheading for the Jump N Start portable rechargeable power station (JNS2000) and the Jump N Start portable power & air station (JNS1880N) will be 8504.40.9530, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Static converters: Other: Rectifiers and

rectifying apparatus: Power supplies: With a power output exceeding 150W but not exceeding 500W.” The rate of duty will be 1.5 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on 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 Linda M. Hackett at 646-733-3015.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

NY N232914

September 11, 2012  
CLA-2-85:0T:RR:NC:N1: 109  
CATEGORY: Classification  
TARIFF NO.: 8504.40.8500

MR. JIMMY TING  
GREAT WORLD CUSTOMS SERVICE  
218 LITTLEFIELD AVE SOUTH  
SAN FRANCISCO, CA 94080

RE: The tariff classification of an iPower 600i battery charger from China

DEAR MR. TING:

In your letter dated September 4, 2012, you requested a tariff classification ruling on behalf of your client ASI Computer Technologies, Inc.

The merchandise subject to this ruling is an iPower 600i battery charger. The product is a battery charger case with a built-in battery. The built-in battery type is a 1900 mAh Li Polymer rechargeable battery; its dimensions are 4.96 inches in length, 2.48 inches in width and .62 inches in depth. The battery has up to 300 hours of battery life. The iPower 600i battery charger is designed specifically for the iPhone 4/4S and also functions as a protective case.

The iPower 600i handles charging intuitively. When the iPower 600i is connected via a USB cable to an external power source, it will charge the battery within the iPhone 4 or 4S first and then the internal battery within the iPower600i itself. The quick charge technology can fully charge the iPhone 4S when its battery is low in approximately two hours. It has an over-charge protection feature that reduces the risk of fire hazards as well as extending the battery life.

The applicable subheading for the iPower 600i battery charger will be 8504.40.8500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Electric transformers, static converters (for example rectifiers) and inductors; parts thereof: Static converters: For telecommunication apparatus." 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 Linda Hackett at (646) 733-3015.

*Sincerely,*

THOMAS J. RUSSO  
*Director*

*National Commodity Specialist Division*

NY N233370

October 15, 2012

CLA-2-85:OT:RR:NC:N1: 109

CATEGORY: Classification

TARIFF NO.: 8504.40.8500 8531.80.0040

MR. JIMMY TING  
GREAT WORLD CUSTOMS SERVICE  
218 LITTLEFIELD AVENUE SOUTH  
SAN FRANCISCO, CA 94080

RE: The tariff classification of iPower Reminder 608i from China

DEAR MR. TING:

In your letter dated September 17, 2012, you requested a tariff classification ruling on behalf of your client, ASI Computer Technologies, Incorporated

The merchandise subject to this ruling is the iPower Reminder 608i. The product consists of an iPower Battery Pack and an iRemember Tracker.

The iPower Battery Pack is a battery charger case with a built-in battery and a built-in paging alarm. The dimensions are 4.96 inches in length, 2.48 inches in width and .62 inches in depth. The built-in battery type is a 1900 mAh Li Polymer rechargeable battery. The battery has up to 300 hours of battery life. The iPower 600i battery charger is designed specifically for the iPhone 4/4S and also functions as a protective case. The paging alarm within the iPower Battery Pack enables the iRemember Tracker to find it.

The iPower Battery Pack handles charging intuitively. When it is connected via a USB cable to an external power source, it will charge the battery within an iPhone 4 or iPhone 4S first and then charge the internal battery within the iPower Battery Pack itself. The quick charge technology can fully charge the iPhone 4/4S when its battery is low in approximately two hours. It has an over-charge protection feature that reduces the risk of fire hazards as well as extending the battery life.

The iRemember Tracker, which is a separate device from the iPower Battery Pack, is a paging alarm that is meant to be attached to a key chain. Its dimensions are 2.42 inches in length, 1.42 inches in width and .46 inches in depth. The built-in battery type is a CR2032. The battery life is 50 days, with a standby of 8 hours per day. The iRemember Tracker sends out a loud 95 dB alarm when an iPhone 4 or 4S that it is paired-up with is separated from the iRemember Tracker by more than the user selected distances of 16 feet to 32 feet. It also has a "find me" button that helps either device (the iPower Battery Pack and the iRemember Tracker) locate the other within a 100 foot radius.

The iPower Reminder 608i does not meet the set provision in totality; it does not contribute to one specific activity or function. The iPower Battery Pack executes the function of charging batteries in heading 8504 and a signaling function of heading 8531. The iRemember Tracker only executes a signaling function in heading 8531. Together they do not execute one function or one specific activity because the iPower Battery Pack has a dual function. Therefore, the iPower Reminder 608i, does not meet the requirements of a set and the two components (the iPower Battery Pack and the iRemember Tracker) will each be classified separately. In regards to the classification of the iPower Battery Pack, Legal Note 3 to Section XVI of the Harmonized Tariff Schedule of the United States (HTSUS) states that unless the context otherwise requires, composite machines consisting of two or more machines

fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function. As the iPower Battery Pack consists of a cell phone battery charger and a paging alarm fitted together to form a whole, it is a composite machine in accordance with Legal Note 3 to Section XVI of the HTSUS.

Based on your description of the merchandise, use of the merchandise, the product literature submitted, and your own admission that the essential character is that of the battery charger and the secondary function is that of the Remember Tracker, it is the opinion of this office that the principal function of this composite machine is performed by the battery charging function. The battery charger functions to supply power to not only the battery in an iPhone 4 or 4S, but also to the internal battery of the iPower Battery Pack itself. Battery chargers are classified within heading 8504. As such, the iPower Battery Pack will be classified within heading 8504.

The applicable subheading for the iPower Battery Pack will be 8504.40.8500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Electrical transformers, static converters (for example rectifiers) and inductors; parts thereof: Static converters: For telecommunication apparatus." The general rate of duty will be free.

The applicable subheading for the iReminder will be 8531.80.0040, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Electric sound or visual signaling apparatus ... : Other apparatus: Other sound signaling apparatus." The rate of duty will be 1.3%.

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 Linda M. Hackett at (646) 733-3015.

*Sincerely,*

THOMAS J. RUSSO

*Director*

*National Commodity Specialist Division*

HQ H249299  
CLA-2 OT:RR:CTF:TCM H249299 TNA  
CATEGORY: Classification  
TARIFF NO.: 8507.60.00

MR. BRYAN S. BELLAMY  
LCB/CCS CASE-MATE INCORPORATED  
2048 WEEMS RD.  
TUCKER, GA 30084

RE: Revocation of NY N233902, NY N231545, NY N004618 and NY N232914;  
Modification of NY N233370; Classification of rechargeable battery packs

DEAR MR. BELLAMY:

This letter is in reference to New York Ruling Letter (“NY”) N233902, issued to you on October 16, 2012, concerning the tariff classification of an external battery pack for iPhone 4/4s. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the subject battery pack in subheading 8504.40.85, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Electrical transformers, static converters (for example rectifiers) and inductors; parts thereof: Static converters: For telecommunication apparatus.”

We have reviewed N233902, and found it to be incorrect. We have also reviewed NY N231545, dated September 11, 2012, and NY N004618, dated December 26, 2006, and NY N232914, dated September 11, 2012, which classify similar merchandise, and found them to be incorrect. We have also reviewed NY N233370, dated October 15, 2012, and found it to be partially incorrect. For the reasons that follow, we hereby revoke NY N233902, NY N231545, NY N004618, and NY N232914, and modify NY N233370.

**FACTS:**

The subject merchandise consists of various types of rechargeable battery packs. In NY N233902, NY N233370, NY N231545, and NY N232914, CBP classified external rechargeable battery packs for iPhones and other electronic devices. Each of these batteries is a lithium ion battery that is built into a plastic cover for the iPhone or other electronic device. In NY N233370, the battery pack also contained a built-in paging alarm.<sup>1</sup> In NY N231545, the battery pack was imported with two sets of plugs and minioutlets, a combination car/wall charger, and an adapter that are imported within a zippered carrying case and packaged ready for retail sale. In each of these rulings, CBP classified the instant merchandise in subheading 8504.40.85, HTSUS, which provides for “Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof: Static converters: For telecommunication apparatus.”

In NY N004618, CBP classified two types of portable rechargeable power stations that jump-start stranded vehicles. They contain rechargeable batteries, cables, lights, adapters, sockets and fuses, all contained in a single plastic housing. The top of this housing has a handle that makes the item portable. In NY N004618, CBP classified this merchandise in subheading

<sup>1</sup> NY N233370 classified the iPower Battery Pack and the iRemember Tracker, which were separate devices. Only the classification of the iPower Battery Pack is at issue here.

8504.40.95, HTSUS, which provides for “Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof: Static converters: Other.”

**ISSUE:**

Whether battery packs that charge electronic devices are classified as static converters of heading 8504, HTSUS, or as electric storage batteries of heading 8507, HTSUS?

**LAW AND ANALYSIS:**

Classification under the Harmonized Tariff Schedule of the United States (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.

The HTSUS provisions under consideration are as follows:

- |      |  |
|------|--|
| 8504 | Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof:                       |
| 8507 | Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof: |

Note 3 to Section XVI, HTSUS, of which headings 8504 and 8507, HTSUS, are a part, provides that:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System 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).

The EN to heading 8504, HTSUS, states, in pertinent part, the following:

The apparatus of this group are used to convert electrical energy in order to adapt it for further use. They incorporate converting elements (e.g., valves) of different types. They may also incorporate various auxiliary devices (e.g., transformers, induction coils, resistors, command regulators, etc.). Their operation is based on the principle that the converting elements act alternatively as conductors and non-conductors.

The fact that these apparatus often incorporated auxiliary circuits to regulate the voltage of the emerging current does not affect their classification in this group, nor does the fact that they are sometimes referred to as voltage or current regulators.

This group includes: ...

(D) Direct current converters by which direct current is converted to a different voltage ...

This heading also includes stabilised suppliers (rectifiers combined with a regulator), e.g., uninterruptible power supply units for a range of electronic equipment.

The EN to heading 8507, HTSUS, states, in pertinent part, the following:

Electric accumulators (storage batteries or secondary batteries) are characterised by the fact that the electrochemical action is reversible so that the accumulator may be recharged. They are used to store electricity and supply it when required. A direct current is passed through the accumulator producing certain chemical changes (charging); when the terminals of the accumulator are subsequently connected to an external circuit these chemical changes reverse and produce a direct current in the external circuit (discharging). This cycle of operations, charging and discharging, can be repeated for the life of the accumulator.

Accumulators consist essentially of a container holding the electrolyte in which are immersed two electrodes fitted with terminals for connection to an external circuit. In many cases the container may be subdivided, each subdivision (cell) being an accumulator in itself; these cells are usually connected together in series to produce a higher voltage. A number of cells so connected is called a battery. A number of accumulators may also be assembled in a larger container. Accumulators may be of the wet or dry cell type ...

Accumulators are used for supplying current for a number of purposes, e.g., motor vehicles, golf carts, fork-lift trucks, power hand-tools, cellular telephones, portable automatic data processing machines, portable lamps ....

Accumulators containing one or more cells and the circuitry to interconnect the cells amongst themselves, often referred to as “battery packs”, are covered by this heading, whether or not they include any ancillary components which contribute to the accumulator’s function of storing and supplying energy, or protect it from damage, such as electrical connectors, temperature control devices (e.g., thermistors), circuit protection devices, and protective housings. They are classified in this heading even if they are designed for use with a specific device.

NY N233902, NY N233370, NY N231545, NY N232914, and NY N004618 classified the subject merchandise as static converters of heading 8504, HTSUS. In HQ H176833, dated November 17, 2011, CBP defined “static converter” as:

“[a] unit that employs solid state devices such as semiconductor rectifiers or controlled rectifiers (thyristors), gated power transistors, electron tubes, or magnetic amplifiers to change ac power to de power, de power to ac power, or fixed frequency ac power to variable frequency ac power.” According to EN 85.04(11), a static converter is “used to convert electrical energy in order to adapt it for further use.” EN 85.04(11) further states that rectifiers, inverters, alternating current converters, cycle converters and direct current converters are all examples of static converters.

See HQ H176833; *ENI Technology Inc. v. United States*, 641 F. Supp. 2d 1337, 1353-1354 (Ct. Int’l Trade 2009), citing *The Authoritative Dictionary of IEEE Standards Terms* (IEEE 100) 912, 1103 (7th ed. 2000).

In HQ H176833, no electrical conversions occurred within the subject battery module. To the contrary, the notebook computer of which the battery module was a component contained DC regulators and DC to DC converters. These items converted the voltage from the battery to specific voltages required by different circuits within the computer. Because no electrical conversion occurred within the subject battery module, CBP declined to classify it as a static converter. *See* HQ H 176833.

Here, the subject merchandise is capable of two functions: 1. converting alternate current to direct current and converting direct current to a different voltage (a function of heading 8504, HTSUS) and 2. storing that current in a battery and producing that current to recharge the device to which the merchandise is connected (a function of heading 8507, HTSUS). Thus, it meets the terms of Note 3 to Section XVI, HTSUS, because it is designed for the purpose of performing two complementary or alternative functions. As such, we classify it according to its principal function. In NY N233370, the subject battery pack also contained a built-in paging alarm of heading 8531, HTSUS, which is an alarm that sends the merchandise's owner a message if the merchandise is in the process of being stolen. As a result, this battery pack also meets the definition of a composite good of Note 3 to Section XVI, HTSUS, and it will too be classified according to its principal function.

The subject merchandise functions by storing electricity and supplying it to the batteries of the electronics and cars to which they are connected. The consumer charges the subject merchandise before use. Once it is charged, the subject merchandise is then connected to the iPhone, iPad, car battery, or other item that needs recharging, and its charge flows into that item. This cycle can be repeated continuously throughout the life of the subject merchandise. Thus, the subject items are essentially rechargeable batteries. For all of these reasons, we find that the battery function constitutes the principal function.

Heading 8507, HTSUS, provides for "Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof." Electric accumulators of this heading, which the ENs specifically call storage batteries or secondary batteries, are characterized by the fact that the electrochemical action is reversible so that the accumulator may be recharged. *See* EN 85.07. Furthermore, the merchandise of this heading is used to store electricity and supply it when required. This merchandise functions by way of a direct current passing through the accumulator, which produces certain chemical changes (i.e., the charging function of the battery itself); when the terminals of the accumulator are later connected to an external circuit, these chemical changes reverse and produce a direct current in the external circuit (i.e., the charging of the device to which it is connected). This cycle of operations, charging and discharging, can be repeated for the life of the accumulator. *See* EN 85.07.

In the present case, the subject merchandise consists of lithium-ion battery packs that must be charged when they are first purchased. The batteries are then used to charge consumer electronics such as iPhones and other smart phones, iPads, etc. In the case of the battery pack at issue in NY N004618, the battery pack is used to jump start and provide battery power to a motor vehicle. In each case, it is the battery that is doing the work to recharge these items. As such, the subject merchandise meets the terms of heading 8507, HTSUS, and will be classified there. This classification is consistent with

prior CBP rulings. *See, e.g.*, HQ H070632, dated January 10, 2011 (classifying lithium-ion cell phone battery packs in heading 8507, HTSUS); HQ 966268, dated May 21, 2003 (classifying battery packs for cell phones in heading 8507, HTSUS, and holding that battery packs are “essentially electric storage batteries”). *See also* HQ 966328, dated March 31, 2003; HQ H176833, dated November 17, 2011; HQ H155376, dated June 22, 2011; HQ 963870, dated July 14, 2000; HQ H136116, dated March 2, 2011; HQ 955498, dated February 18, 1994; HQ 954061, dated May 13, 1993; NY N152037, dated April, 2011; NY N240050, dated April 18, 2013.

We note that in NY N231545 and NY N004618, the merchandise consisted of batteries which are imported with various cables, adapters, etc. Heading 8507, HTSUS, includes accumulators containing one or more cells and the circuitry to interconnect the cells amongst themselves, merchandise that is often referred to as “battery packs.” *See* EN 85.07. Such battery packs are included in heading 8507, HTSUS, whether or not they include any ancillary components which contribute to the accumulator’s function of storing and supplying energy. *See* EN 85.07. Such ancillary items include electrical connectors, temperature control devices (e.g., thermistors), circuit protection devices, and protective housings. *See* EN 85.07. As such, heading 8507, HTSUS, encompasses these types of battery packs such as the ones classified in NY N231545 and NY N004618, which are imported with various ancillary items.

Lastly, we note that the subject merchandise can be distinguished from chargers that CBP has classified in heading 8504, HTSUS. These chargers of heading 8504, HTSUS, work without a battery and charge items by connecting them directly to an electrical outlet. *See, e.g.*, NY N018172, dated October 31, 2007. Thus, these items do not contain a battery function; as such, they do not meet the terms of heading 8507, HTSUS.

#### **HOLDING:**

Under the authority of GRI 1, the subject battery packs are classified in heading 8507, HTSUS. They are specifically provided for in subheading 8507.60.00, HTSUS, which provides for “Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof: Lithium-ion batteries.” The applicable duty rate is 3.4%.

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

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

NY N233902, dated October 16, 2012, NY N231545, dated September 11, 2012, NY N004618, dated December 26, 2006, and NY N232914, dated September 11, 2012, are REVOKED.

NY N233370, dated October 15, 2012, is MODIFIED.

*Sincerely,*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

