

# U.S. Customs and Border Protection

[CBP Dec. 15–06]

## **TUNA-TARIFF RATE QUOTA; THE TARIFF-RATE QUOTA FOR CALENDAR YEAR 2015 TUNA CLASSIFIABLE UNDER SUBHEADING 1604.14.22, HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTSUS)**

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

**ACTION:** Announcement of the quota quantity of tuna in airtight containers for Calendar Year 2015.

**SUMMARY:** Each year, the tariff-rate quota for tuna described in subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS), is based on the apparent United States consumption of tuna in airtight containers during the preceding Calendar Year. This document sets forth the tariff-rate quota for Calendar Year 2015.

**DATES:** *Effective Dates:* The 2015 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1, through December 31, 2015.

**FOR FURTHER INFORMATION CONTACT:** Headquarters Quota Branch, Interagency Collaboration Division, Trade Policy and Programs, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229–1155, (202) 863–6560.

### **Background**

It has been determined that 15,954,733 kilograms of tuna in airtight containers may be entered, or withdrawn from warehouse, for consumption during the Calendar Year 2015, at the rate of 6.0 percent *ad valorem* under subheading 1604.14.22, HTSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent *ad valorem* under subheading 1604.14.30 HTSUS.

Dated: April 15, 2015.

SANDRA L. BELL,  
*Deputy Assistant Commissioner,  
Office of International Trade.*

[Published in the **Federal Register**, April 20, 2015 (80 FR 21746)]

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

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

**ACTION:** General notice.

**SUMMARY:** This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning April 1, 2015, the interest rates for overpayments will be 2 percent for corporations and 3 percent for non-corporations, and the interest rate for underpayments will be 3 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

**DATES:** *Effective Date:* April 1, 2015.

**FOR FURTHER INFORMATION CONTACT:** Michael P. Dean, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614-4882.

**SUPPLEMENTARY INFORMATION:**

**Background**

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 provides different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the

Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2015–05, the IRS determined the rates of interest for the calendar quarter beginning April 1, 2015, and ending on June 30, 2015. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (1%) plus one percentage point (1%) for a total of two percent (2%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). These interest rates are subject to change for the calendar quarter beginning July 1, 2015, and ending September 30, 2015.

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

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (eff. 1–1–99) (percent)
070174.....	063075	6	6	.....
070175.....	013176	9	9	.....
020176.....	013178	7	7	.....
020178.....	013180	6	6	.....
020180.....	013182	12	12	.....
020182.....	123182	20	20	.....
010183.....	063083	16	16	.....
070183.....	123184	11	11	.....
010185.....	063085	13	13	.....
070185.....	123185	11	11	.....
010186.....	063086	10	10	.....
070186.....	123186	9	9	.....
010187.....	093087	9	8	.....
100187.....	123187	10	9	.....
010188.....	033188	11	10	.....
040188.....	093088	10	9	.....
100188.....	033189	11	10	.....
040189.....	093089	12	11	.....
100189.....	033191	11	10	.....

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (eff. 1-1-99) (percent)
040191.....	123191	10	9	.....
010192.....	033192	9	8	.....
040192.....	093092	8	7	.....
100192.....	063094	7	6	.....
070194.....	093094	8	7	.....
100194.....	033195	9	8	.....
040195.....	063095	10	9	.....
070195.....	033196	9	8	.....
040196.....	063096	8	7	.....
070196.....	033198	9	8	.....
040198.....	123198	8	7	.....
010199.....	033199	7	7	6
040199.....	033100	8	8	7
040100.....	033101	9	9	8
040101.....	063001	8	8	7
070101.....	123101	7	7	6
010102.....	123102	6	6	5
010103.....	093003	5	5	4
100103.....	033104	4	4	3
040104.....	063004	5	5	4
070104.....	093004	4	4	3
100104.....	033105	5	5	4
040105.....	093005	6	6	5
100105.....	063006	7	7	6
070106.....	123107	8	8	7
010108.....	033108	7	7	6
040108.....	063008	6	6	5
070108.....	093008	5	5	4
100108.....	123108	6	6	5
010109.....	033109	5	5	4
040109.....	123110	4	4	3
010111.....	033111	3	3	2
040111.....	093011	4	4	3
100111.....	063015	3	3	2

Dated: April 17, 2015.

R. GIL KERLIKOWSKE,  
*Commissioner.*

[Published in the **Federal Register**, April 22, 2015 (80 FR 22543)]

**PROPOSED REVOCATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF POLYVINYL ALCOHOL  
FIBERS**

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

**ACTION:** Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to the tariff classification of polyvinyl alcohol textile fibers.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke NY R04929, dated September 29, 2006, relating to the tariff classification of polyvinyl alcohol textile fibers under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

**DATES:** Comments must be received on or before June 5, 2015.

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

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

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of polyvinyl alcohol (PVA) textile fibers. Although in this notice, CBP is specifically referring to the revocation of NY R04929, dated September 29, 2006, (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 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 R04929, CBP determined that certain PVA textile fibers were classified in heading 5503, HTSUS, which provides for synthetic staple fibers, not carded, combed, or otherwise processed for spinning.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY R04929 and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject PVA fibers in heading 5601, HTSUS, as textile fibers not exceeding 5mm in

length (flock), according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H209959, 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: April 16, 2015

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

Attachments

## [ATTACHMENT A]

NYR04929

September 29, 2006

CLA-2-55:RR:E:NC:N3:351 R04929

CATEGORY: Classification

TARIFF NO.: 5503.90.9000

MEI C. LI  
COMPLIANCE MANAGER  
MARUBENI AMERICA CORPORATION  
450 LEXINGTON AVENUE  
NEW YORK, NY 10017-3904

RE: The tariff classification of PVA staple fibers from Japan

DEAR MS. LI:

In your letter dated September 21, 2006, you requested a tariff classification ruling. Subsequently, you submitted a sample of the polyvinyl alcohol (PVA) fibers in loose fiber form. The spun fiber has been chopped into lengths of less than 5mm. You state that they are intended to be processed into fabric. The sample fibers will be retained in our files.

The applicable subheading for the PVA staple fibers will be 5503.90.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for synthetic staple fibers, not carded, combed, or otherwise processed for spinning: Other: Other. The rate of duty will be 4.3% 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/tatalhts/>.

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 Mitchel Bayer at 646-733-3102.

*Sincerely,*

ROBERT B. SWIERUPSKI,

*Director,*

*National Commodity Specialist Division*



## [ATTACHMENT B]

HQ H209959  
 CLA-2 OT:RR:CTF:TCM H20995 CkG  
 CATEGORY: Classification  
 TARIFF NO: 5601.30.00

MEI C. LI  
 COMPLIANCE MANAGER  
 MARUBENI AMERICA CORPORATION  
 450 LEXINGTON AVENUE  
 NEW YORK, NY 10017-3904

RE: Revocation of NY R04929; classification of textile fibers

DEAR Ms. LI:

This is in reference to New York Ruling Letter (NY) R04929, issued to you on September 29, 2006. In NY R04929, CBP classified polyvinyl alcohol (PVA) textile fibers in heading 5503, Harmonized Tariff Schedule of the United States (HTSUS), which provides for synthetic staple fibers. We have reconsidered this decision, and for the reasons set forth below, we find that the subject merchandise is correctly classified in heading 5601, HTSUS, as textile fibers not exceeding 5mm in length.

**FACTS:**

In NY R04929, the subject merchandise was described as “polyvinyl alcohol (PVA) fibers in loose fiber form. The spun fiber has been chopped into lengths of less than 5mm.”

**ISSUE:**

Whether the PVA fibers are classified in heading 5503, HTSUS, as synthetic staple fibers, or in heading 5601, HTSUS, as textile fibers not exceeding 5mm in length (flock).

**LAW AND ANALYSIS:**

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

The HTSUS provisions under consideration are as follows:

5503: Synthetic staple fibers, not carded, combed or otherwise processed for spinning:

5503.90: Other:

5503.90.90: Other...

\* \* \* \*

5601: Wadding of textile materials and articles thereof; textile fibers, not exceeding 5 mm in length (flock), textile dust and mill neps:

5601.30.00: Textile flock and dust and mill neps ...

\* \* \* \*

Note 8 to Section XI provides, in pertinent part, as follows:

8. For the purposes of chapters 50 to 60:

...

(b) Chapters 50 to 55 and 60 do not apply to goods of chapters 56 to 59.

\* \* \* \*

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), 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 follow, 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 General EN to Chapter 55 provides, in pertinent part, as follows:

The Chapter covers the man-made fibres described in the General Explanatory Note to Chapter 54 when in the form of staple fibres (i.e., discontinuous fibres) or of certain filament tow; it also covers the products arising at the various stages of working these fibres or tow, up to and including yarn and woven fabrics. It further includes mixed textile products classified as products of man-made staple fibres by application of Note 2 to Section XI.

Man-made staple fibres are usually manufactured by extrusion through spinnerets (jets) having a large number of holes (sometimes several thousand); the filaments from a large number of spinnerets (jets) are then collected together in the form of a tow. This tow may be stretched and then cut into short lengths, either immediately or after having undergone various processes (washing, bleaching, dyeing, etc.) while in the tow form. The length into which the fibres are cut is usually between 25 mm and 180 mm and varies according to the particular man-made fibre concerned, the type of yarn to be manufactured and the nature of any other textile fibres with which they are to be mixed.

Waste (including noils, yarn waste and garnetted stock) of man-made filaments or staple fibres is also included in this Chapter.

...

This Chapter **does not include**:

(a) Textile fibres, not exceeding 5 mm in length (flock), of **heading 56.01**.

\* \* \* \*

NY R04929 classified the PVA fibers at issue in heading 5503, HTSUS, which provides for synthetic staple fibers, not carded, combed, or otherwise processed for spinning. While Chapter 55 generally provides for man made staple fibers, textile fibers of 5mm or less are classified in heading 5601, HTSUS, pursuant to the text of heading 5601, HTSUS, and the Explanatory Notes to Chapter 55. Heading 5601, HTSUS, specifically provides for "textile fibers, not exceeding 5 mm in length." In addition, the General EN to Chapter 55 states that fibers of that chapter are cut into lengths of 25 mm to 180 mm,

and textile fibers not exceeding 5mm in length of heading 5601 are specifically excluded in part (a) of the General EN to Chapter 55. As the instant fibers are cut to lengths of less than 5mm, they are therefore provided for in heading 5601, HTSUS, and excluded from classification in Chapter 55.

**HOLDING:**

By application of GRI 1, the subject PVA fibers are classified in heading 5601, HTSUS, specifically subheading 5601.30.00, HTSUS, which provides for “Wadding of textile materials and articles thereof; textile fibers, not exceeding 5 mm in length (flock), textile dust and mill neps: Textile flock and dust and mill neps.” The 2015 column one, general rate of duty is Free.

**EFFECT ON OTHER RULINGS:**

NY R04929, dated September 29, 2006, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**GENERAL NOTICE****19 CFR PART 177****REVOCATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF BERGAZID OA-4000**

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

**ACTION:** Notice of revocation of a ruling letter and revocation of treatment concerning the tariff classification of Bergazid OA-4000.

**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 pertaining to the tariff classification of Bergazid OA-4000, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on February 25, 2015, in Volume 49, Number 8, of the *Customs Bulletin*. No comments were received in response to the proposed notice.

**EFFECTIVE DATE:** This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 6, 2015.

**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 commu-

nity's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and 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)), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 49, Number 8, on February 25, 2015, proposing to revoke New York Ruling Letter (NY) NYN237986, dated April 12, 2013, and proposing to revoke any treatment accorded to substantially identical transaction. No comments were received in response to the proposed action.

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

In NY N237986, CBP classified Bergazid OA-4000, a mixture of approximately 70% or more of Oleic Acid with Linoleic and Stearic Acids as the majority of the balance, in subheading 3824.90.41, HTSUS, which provides for, "Prepared binders for foundry molds or cores; chemical mixtures of fatty acid esters products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Fatty substances of animal or vegetable origin and mixtures thereof; Mixtures of fatty acid esters."

It is now CBP's position that Bergazid OA-4000 is properly classified under subheading 3823.19.20, HTSUS, which provides for, "Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols: industrial monocarboxylic fatty acids; acid oils from refining: other: derived from coconut, palm-kernel or palm oil."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N237986 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) H254695, (Attachment B). Addi-

tionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: April 16, 2015

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

Attachment

HQ H254695  
CLA-20T:RR:CTF:TCM: H254695 ERB  
CATEGORY: Classification  
TARIFF NO.: 3823.19.20

Ms. SANDI SIEGEL  
M.E. DAY & Co., INC.  
700 W. VIRGINIA STREET, SUITE 300  
MILWAUKEE, WI 53204

RE: Revocation of NY N237986; Tariff classification of Bergazid OA-4000

DEAR Ms. SIEGEL:

U.S. Customs and Border Protection (CBP) issued M.E. Day & Co., Inc. (M.E. Day & Co) New York Ruling Letter (NY) N23 7986 on April 12, 2013, on behalf of your client, Berg & Schmidt America, LLC. NY N237986 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of Bergazid OA-4000, a mixture of approximately 70% or more of Oleic acid with Linoleic and Stearic acids as the majority of the balance.<sup>1</sup> We have since reviewed NY N237986 and find it to be in error with respect to the classification of the product, which is described in detail herein.

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 a ruling concerning the classification of Bergazid OA-4000, under the HTSUS. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on February 25, 2015 Volume 49, Number 8, of the *Customs Bulletin*. No comments were received in response to the proposed notice.

**FACTS:**

NY N23 7986 found the following:

The instant product is called Bergazid OA-4000 (CAS# 88895–93–6). The Bergazid OA-4000 is indicated to consist of mixtures of fatty acids. It is a mixture of several unsaturated fatty acids containing predominantly Oleic Acid.

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<sup>1</sup> Oleic acid is a fatty acid that occurs naturally in various animal and vegetable fats and oils. In chemical terms it is classified as a monounsaturated omega-9 fatty acid. Linoleic acid is a polyunsaturated omega-6 fatty acid. It belongs to one of the two families of essential fatty acids, which means that the human body cannot synthesize it from other food components. Burr, G.O., Burr, M.M., and Miller, E. (1932). "On the nature and role of the fatty acids essential in nutrition." *J. Biol. Chem.* 86 (587): 1–9. Stearic acid is one of the most common saturated fatty acids found in nature, and occurs in many animal and vegetable fats and oils. It is most often found in the production of detergents, soaps and cosmetics. It is prepared by the process of saponification of fats and oils, using hot water (above 200°C) leading to the hydrolysis of triglycerides. The resulting mixture is then distilled. Commercial stearic acid is often a mixture of stearic and palmitic acids. Beare-Rogers, J.; Dieffenbacher, A; Holm, J.V. (2001). "Lexicon of lipid nutrition (IUPAC) Technical Report" *Pure and Applied Chemistry* 73 (4): 685–744.

The applicable subheading for the Burgasurf OA-4000<sup>2</sup> will be 3824.90.4140, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: “Prepared binders for foundry molds or cores; chemical mixtures of fatty acid esters products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included (con.): Other (con.): Fatty substances of animal or vegetable origin and mixtures thereof; Mixtures of fatty acid esters”. The general rate of duty is 4.6 percent ad valorem.

A sample of the product was submitted to CBP for laboratory analysis. CBP Laboratory Report NY20130332 was issued March 28, 2013 and it stated the following:

Product Name: Bergazid OA-4000  
CAS#: 88895-93-6  
CAS Name: Fatty Acids, C18-UNSATD.

As per the information received, the product is a mixture of several fatty acids containing predominantly oleic acid (about 70%), with linolenic acid and stearic acid (less than 20% each) with other fatty acids in trace amounts.

Functional Groups: Mono carboxylic fatty acids, carbonyl.

In its request for reconsideration of NY N237986, M.E. Day & Co. also provided additional information regarding the Bergazid OA-4000 product. Namely, that it is composed of Oleic acid and fatty acid C18 unsaturated. It is produced from palm oil and palm kernel oil in Malaysia, and is used chiefly for food ingredients, cosmetics and cleaners, and certain technical applications. Further, M.E. Day & Co. points to N237985, dated March 2, 2013 which classified a similar product, Bergazid OA-2000, (CAS# 88895-93-6) which also consists of Oleic acid, specifically fatty acids, C-18 unsaturated, in sub-heading 3823.19.20, HTSUS.

#### **ISSUE:**

Whether Bergazid OA-4000 is classified as a mixture of fatty acid of heading 3823, HTSUS, or as an other chemical preparation of heading 3824, HTSUS?

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

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

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

3823	Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols:
	Industrial monocarboxylic fatty acids; acid oils from refining:

<sup>2</sup> “Burgasurf” is a typo. The product’s name is confirmed as Bergazid OA-4000.



3823.19	Other:	
3823.19.20		Derived from coconut, palm-kernel or palm oil.
***		
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:
3824.90	Other:	
3824.90.41		Fatty substances of animal or vegetable origin and mixtures thereof.

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 35127,35128 (August 23, 1989).

The EN to heading 38.23 states the following in relevant part:

Industrial monocarboxylic fatty acids are generally manufactured by the saponification or hydrolysis of natural fats or oils. Separation of solid (saturated) and liquid (unsaturated) fatty acids is usually done by crystallisation either with or without solvent. The liquid part (commercially known as oleic acid or olein) consists of oleic acid and other unsaturated fatty acids (e.g. linoleic and linolenic acids) together with small amounts of saturated fatty acids. The solid part (commercially known as stearic acid or stearin) consists mainly of palmitic and stearic acids with a small portion of unsaturated fatty acids.

This heading includes, *inter alia*:

- (1) Commercial stearic acid (stearin) which is a white solid material with a characteristic odour. It is relatively hard and rather brittle and is usually marketed in the form of beads, flakes or powder. It is also marketed in liquid form when transported hot in isothermal tanks.
- (2) Commercial oleic acid (olein) which is a colourless to brown oily liquid with a characteristic odour.
- (3) Tall oil fatty acids (TOFA) which consists primarily of oleic and linoleic acid. They are obtained by the distillation of crude tall oil and contain by weight 90% or more (calculated on the weight of the dry product) of fatty acids.
- (4) Distilled fatty acids which are obtained after hydrolytic splitting of various fats and oils (e.g., coconut oil, palm oil, tallow) followed by a purification process (distillation).
- (5) Fatty acid distillate, obtained from fats and oils which have been subjected to vacuum distillation in the presence of steam as part of a refining process. Fatty acid distillate is characterised by a high free fatty acid (ffa) content.

- (6) Fatty acids obtained by catalytic oxidation of synthetic hydrocarbons of a high molecular weight.
- (7) Acid oils from refining, with a relatively high free fatty acid content, prepared by decomposing with mineral acid the soap-stock obtained during the refining of crude oils.

This heading excludes:

- (a) Oleic acid, of a purity of 85% or more (calculated on the weight of the dry product) (heading 29.16).

Heading 3824.90, HTSUS is a “basket provision,” in that it provides for products which are “not elsewhere specified or included.” Before CBP classifies a product in the basket provision heading 3824, HTSUS, classification in heading 3823, HTSUS, as an industrial monocarboxylic fatty acid must be considered.

According to the CBP laboratory report, as well as additional product information provided by M.E. Day & Co., the subject merchandise is comprised of over 70% Oleic acid with Linoleic and Stearic acids as the majority of the balance. In Headquarters Ruling (HQ) W967992, dated February 6, 2007, CBP considered the classification of a palm fatty acid distillate. The fatty free acids there included Palmitic acid (about 45–50%), Oleic acid (about 3536%), Linoleic acid (about 8–9%), and Stearic acid (about 5–6%). The remaining components were not fatty free acids. There, CBP noted that to be considered an industrial monocarboxylic fatty acid, a product must go through an industrial process that includes fractional distillation. Further, a carboxylic acid is composed of a “broad array of organic acids” that end in a carboxyl group, and typically, a carboxylic acid includes “the large and important class of fatty acids.” *Id* citing *Hawley’s Condensed Chemical Dictionary* 223 (12th ed. 1993). A fatty acid is a “carboxylic acid derived from or contained in an animal or vegetable fat or oil.” *Hawley’s, supra*, at 507. The chemical composition of the Bergazid OA-4000 meets the definition of a monocarboxylic acids because it is a mixture of 70% monocarboxylic fatty acids derived from palm kernel or palm oil. The ENs also indicate that products including Stearic acid are classified in heading 3823, HTSUS when it states that in the separation of solid and liquid fatty acids, “The solid part (commercially known as stearic acid or stearin) consists mainly of palmitic and stearic acids with a small proportion of unsaturated fatty acids” are included *inter alia*. See EN. 3823(A).

Moreover, the ENs to heading 3823, HTSUS, support classification in that heading because it includes distilled fatty acids which are obtained after hydrolytic splitting of various fats and oils (e.g. coconut oil, palm oil, tallow) followed by distillation. Bergazid OA-4000 meets this description because the stearic acid component follows this same production process. Note, pursuant to the ENs, oleic acid of a purity of 85% or more is excluded, but that does not exclude the subject merchandise here as CBP’s laboratories found the Oleic acid component to be approximately 70%.

Furthermore, previous CBP rulings support classification of Bergazid OA-4000 in heading 3823, HTSUS. See N237985, dated March 1, 2013, which classified a substantially similar product, described as “Oleic Acid,” fatty acids, C-18, unsaturated (Bergazid OA-2000) in heading 3823, HTSUS. *And* see HQ962115, dated February 1, 1999, classifying a solution of approxi-

mately 45% stearic acid, 55% palmitic acid, and 0.1% oleic acid (also a saturated fatty acid) in heading 3823, HTSUS. Therefore, Bergazid OA-4000 is classifiable in heading 3823, HTSUS. It is specifically provided for in subheading 3823.19.20, as industrial monocarboxylic fatty acids: Other: derived from palm oil.”

### **HOLDING**

By application of GRI 1, the subject Bergazid OA-4000 is provided for in heading 3823, HTSUS. It is specifically provided for under subheading 3823.19.20, HTSUS, which provides for, “Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohol: Industrial monocarboxylic fatty acids; acid oils from refining: Other: Derived from coconut, palm-kernel or palm oil.” The column one, general rate of duty is 2.3% *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 at [www.usitc.gov](http://www.usitc.gov)

### **EFFECT ON OTHER RULINGS**

NY N237986, dated April 12, 2013, is hereby REVOKED.

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

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

ALLYSON MATTANAH

**NOTICE OF REVOCATION OF FIVE RULING LETTERS  
AND REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF SELF-PROPELLED  
MODULAR TRANSPORTERS**

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

**ACTION:** Notice of revocation of ruling letters and revocation of treatment relating to the tariff classification of self-propelled modular transporters.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking five ruling letters concerning the tariff classification of self-propelled modular transporters. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in *Customs Bulletin and Decisions*, Vol. 49, No. 5, on February 4, 2015.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 6, 2015.

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

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying

out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke five ruling letters Headquarters Ruling Letter (“HQ”) H 122237, dated May 19, 2011; HQ H 123524, dated March 18, 2011; New York Ruling Letter (“NY”) D86210, dated January 7, 1999; HQ 955231, dated January 7, 1994; and HQ 952400, dated February 9, 1993—was published in the *Customs Bulletin and Decisions*, Vol. 49, No. 5, on February 4, 2015. CBP received five comments in support the notice.

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

In the five ruling letters identified in this notice, CBP classified various models of self-propelled modular transporters (“SPMTs”)—designed for the off-highway, slowspeed movement and positioning of extremely heavy loads—in headings 8704 and 8709, HTSUS. In ruling letters HQ H122237 and HQ H123524, CBP determined that two models of SPMTs were classified in heading 8704, HTSUS, which provides for, “Motor vehicles for the transport of goods.” In NY D86210, HQ 955231, and HQ 952400, CBP determined that various models of SPMTs were classified in heading 8709, HTSUS, which provides for, “Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles.”

CBP has reviewed ruling letters HQ H122237, HQ H123524, NY D86210, HQ 955231, and HQ 952400 and has determined those ruling letters to be in error. It is now CBP’s position that the SPMTs

identified in the each of the five rulings are classified in heading 8427, HTSUS. Specifically, SPMTs powered by a non-electric motor are classified in subheading 8427.20.80, HTSUS, which provides for, “Fork-lift trucks; other works trucks fitted with lifting or handling equipment: Other self-propelled trucks: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking ruling letters HQ H122237, HQ H123524, NY D86210, HQ 955231, HQ 952400, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in ruling letter HQ H180102, 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. Ruling letter HQ H180102 will become effective 60 days after publication in the *Customs Bulletin and Decisions*.

Dated: April 15, 2015

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

Attachment

HQ H180102

April 15, 2015

**CLA-2 OT:RR:CTF:TCM H180102 LWF****CATEGORY:** Classification**TARIFF NO.:** 8427.20.80

ELIZABETH A MARTINDALE  
IMPORT/EXPORT COMPLIANCE  
CAMERON INTERNATIONAL CORPORATION  
3250 BRIAR PARK, SUITE 300  
HOUSTON, TX 77042

**RE:** Revocation of five ruling letters concerning the tariff classification of self-propelled modular transporters; Headquarters Ruling Letter (“HQ”) H122237, dated May 19, 2011; HQ H123524, dated March 18, 2011; New York Ruling Letter (“NY”) D86210, dated January 7, 1999; HQ 955231, dated January 7, 1994; and HQ 952400, dated February 9, 1993

DEAR Ms. MARTINDALE:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered Headquarters Ruling Letter (“HQ”) H122237, dated May 19, 2011, which was issued in response to a Request for Internal Advice from the Service Port of Houston concerning the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of self-propelled modular transporters (SPMTs) imported by Cameron International Corp. (“Cameron”). In HQ H12237, CBP concluded that the SPMTs, manufactured by Goldhofer AG (“Goldhofer”) in Germany, were classified in heading 8704, HTSUS, which provides for, “Motor vehicles for the transport of goods.” Upon review of HQ H122237, CBP has determined that the ruling is incorrect. Accordingly, for the reasons set forth below, CBP is revoking HQ H122237.

Similarly, CBP believes that it can best meet its obligations regarding the sound administration of the HTSUS under 19 C.F.R. § 177.7(a) by reconsidering certain published rulings so that CBP does not have in force rulings that may be inconsistent with its current views. As such, CBP is revoking four additional ruling letters concerning the tariff classification of other SPMTs that are substantially similar to the merchandise at issue in HQ H122237. Specifically, CBP is revoking HQ H123524, issued to Mammoet, Inc. on March 18, 2011; New York Ruling Letter (“NY”) D86210, issued to Kuehne & Nagel, Inc. on January 7, 1999; HQ 955231, dated January 7, 1994; and HQ 952400, issued to Sumitomo Corp. of America (“Sumitomo”) on February 9, 1993. In HQ H123524, CBP classified an SPMT manufactured by Scheuerle Fahrzeugfabrik GmbH (“Scheuerle”) in heading 8704, HTSUS; in ruling letters NY D86210, HQ 955231, and HQ 952400, CBP classified various Goldhofer, Scheuerle, and Sumitomo SPMTs in heading 8709, HTSUS, which provides for, “Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles.” Similar to its review of HQ H122237, CBP has determined that ruling letters HQ H123524, NY D86210, HQ 955231, and HQ 952400 are incorrect. Accordingly, CBP is also revoking ruling letters HQ H123524, NY D86210, HQ 955231, and HQ 952400, pursuant to the analysis set forth below.

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 ruling letters HQ H122237, HQ H123524, NY D86210, HQ 955231, and HQ 952400 was published on February 4, 2015 in the Customs *Bulletin and Decisions*, Vol. 49, No. 5. CBP received five comments in support of the proposed revocation.

**FACTS:**

In HQ H122237, CBP described the Goldhofer SPMT as follows:

The Goldhofer PST/SL6 is a self-propelled modular transporter (SPMT). An SPMT is a modular vehicle designed for off-highway transport of extremely heavy loads over short distances. An SPMT is a modular unit, meaning that it can be connected to other SPMTs to accommodate larger loads. An SPMT is not towed by a tractor; rather it contains its own integrated power system. Each transport contains a removable power pack unit, containing the fuel combustion engine which drives the hydraulic pumps used to propel, steer and raise/lower the trailers. The top speed of the transporters when fully laden is 4.8s km/h. The power pack unit can also hydraulically raise or lower the trailer platform approximately 24 inches to allow the transporter to drive under a cargo load and lift it up, then set it down precisely at its destination. The total length of the transporter is 29.53 feet, and the outside turning radius is 28.9 feet. The transporters are imported with only an open bench seat for the driver, although an enclosed driver's cabin is available as an optional accessory. The vehicle can alternately be controlled via remote. HQ H122237, dated May 19, 2011.

\* \* \* \* \*

SPMTs are multi-axel machines designed for the purpose of raising, moving, and positioning very large, multi-ton payloads, such as bridge segments, portions of ship hulls, and oil rig constructions. SPMTs feature a series of wheel bogies attached in pairs along a modular, rigid trailer to form the length of the transporter. Hydraulic lift cylinders are mounted on each of wheel bogies and equip the machine with lifting capabilities, as well as independent suspension over uneven terrain. When the hydraulic cylinders are operated in unison, the SPMT can be used to drive under, elevate, and load cargo without the use of a crane or separate lifting equipment. When operated independently of one another, the hydraulic lift cylinders permit each wheel to move vertically to accommodate rough and uneven terrain, thereby keeping the cargo platform level.

Because of their slow maximum speed and heavy weight, load-carrying SPMTs are not operated on roads or highways without first closing the operations area to public traffic. Similarly, unladen SPMTs are not certified for use on public roadways, but instead are typically delivered to worksites on tractor trailers. Although optional driver's cabins are often available for attachment to SPMT vehicles, the machines are frequently controlled by a pedestrian operator via tethered or remote radio frequency controls.

**ISSUE:**

Whether the Goldhofer SPMT is classified in heading 8427, HTSUS, as other works trucks fitted with lifting or handling equipment; heading 8704, HTSUS, as motor vehicles for the transport of goods; or heading 8709, HT-



SUS, as works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods.

### LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRIs). GRI1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section of 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 following HTSUS provisions will be referenced:

8427	Fork-lift trucks; other works trucks fitted with lifting or handling equipment
8704	Motor vehicles for the transport of goods
8709	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles

\* \* \* \* \*

Note 1(1) to Section XVI, HTSUS, states:

1. This section does not cover:
  - (I) Articles of section XVII

\* \* \* \* \*

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, the ENs provide a commentary on the scope of each heading of the HTS and are thus useful in ascertaining the proper classification of merchandise. It is CBP's 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).

The EN to heading 84.27, HS, states, in relevant part:

With the **exception** of straddle carriers and works trucks fitted with a crane of **heading 84.26**, this heading covers works trucks fitted with lifting or handling equipment.

Works trucks of this description include, for example:

...

#### (B) OTHER WORKS TRUCKS FITTED WITH LIFTING OR HANDLING EQUIPMENT

This group includes:

(1) Trucks with mechanically elevating platforms for the maintenance of electric cables, public lighting systems, etc. (See the introduction to Explanatory Note to heading 84.26 regarding elevating platforms of this type mounted on lorries).

(2) Other trucks fitted with lifting or handling equipment including those specialized for use in particular industries (e.g., in the textile or ceramic industries, in dairies, etc.).

\* \* \* \* \*

The EN to heading 87.04, HS, states, in relevant part:

This heading covers in particular:

Ordinary lorries (trucks) and vans (flat, tarpaulin-covered, closed, etc.); delivery trucks and vans of all kinds, removal vans; lorries (trucks) with automatic discharging devices (tipping lorries (trucks), etc.); tankers (whether or not fitted with pumps); refrigerated or insulated lorries (trucks); multi-floored lorries (trucks) for the transport of acid in carboys, cylinders of butane, etc.; dropframe heavy-duty lorries (trucks) with loading ramps for the transport of tanks, lifting or excavating machinery, electrical transformers, etc.; lorries (trucks) specially constructed for the transport of fresh concrete, **other than** concrete-mixer lorries (trucks) of **heading 87.05**; refuse collectors whether or not fitted with loading, compressing, dampening, etc., devices.

...

The classification of certain motor vehicles in this heading is determined by certain features which indicate that the vehicles are designed for the transport of goods rather than for the transport of persons (heading 87.03). These features are especially helpful in determining the classification of motor vehicles, generally vehicles having a gross vehicle weight rating of less than 5 tonnes, which have either a separate closed rear area or an open rear platform normally used for the transport of goods, but may have rear bench-type seats that are without safety seat belts, anchor points or passenger amenities and that fold flat against the sides to permit full use of the rear platform for the transport of goods. Included in this category of motor vehicles are those commonly known as “multipurpose” vehicles (e.g., van-type vehicles, pick-up type vehicles and certain sports utility vehicles). The following features are indicative of the design characteristics generally applicable to the vehicles which fall in this heading:

(a) Presence of bench-type seats without safety equipment (e.g., safety seat belts or anchor points and fittings for installing safety seat belts) or passenger amenities in the rear area behind the area for the driver and front passengers. Such seats are normally foldaway or collapsible to allow full use of the rear floor (van-type vehicles) or a separate platform (pick-up vehicles) for the transport of goods;

(b) Presence of a separate cabin for the driver and passengers and a separate open platform with side panels and a drop-down tailgate (pick-up vehicles);

- (c) Absence of rear windows along the two side panels; presence of sliding, swing-out or lift-up door or doors, without windows, on the side panels or in the rear for loading and unloading goods (van-type vehicles);
- (d) Presence of a permanent panel or barrier between the area for the driver and front passengers and the rear area;
- (e) Absence of comfort features and interior finish and fittings in the cargo bed area which are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays).

This heading also covers :

(1) **Dumpers**, sturdily built vehicles with a tipping or bottom opening body, designed for the transport of excavated or other materials. These vehicles, which may have a rigid or articulated chassis, are generally fitted with off-the-road wheels and can work over soft ground. Both heavy and light dumpers are included in this group; the latter are sometimes characterised by a two-way seat, two seats facing in opposite directions or by two steering wheels, to enable the vehicles to be steered with the driver facing the body for unloading.

(2) **Shuttle cars**. These vehicles are used in mines to transport coal or ore from the hewing machinery to the conveyor belts. They are heavy, under-slung vehicles, equipped with tyres and fitted with internal combustion piston engines or electric motors; they unload automatically by means of a conveyor belt which forms the floor of the vehicle.

(3) **Self-loading vehicles** equipped with winches, elevating devices, etc., but designed essentially for transport purposes.

...

The heading also **excludes**:

(a) Straddle carriers used in factories, warehouses, dock areas or airports, etc., for the handling of long loads or containers (**heading 84.26**).

(b) Loader-transporters used in mines (**heading 84.29**).

\* \* \* \* \*

The EN to heading 87.09, HS, states, in relevant part:

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

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

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

(1) Their construction and, as a rule, their special design features, make them unsuitable for the transport of passengers or for the transport of goods by road or other public ways.

- (2) Their top speed when laden is generally not more than 30 to 35 km/h.
- (3) Their turning radius is approximately equal to the length of the vehicle itself.

Vehicles of this heading do not usually have a closed driving cab, the accommodation for the driver often being no more than a platform on which he stands to steer the vehicle. Certain types may be equipped with a protective frame, metal screen, etc., over the driver's seat.

The vehicles of this heading may be pedestrian controlled.

**Works trucks** are self-propelled trucks for the transport of goods which are fitted with, for example, a platform or container on which the goods are loaded.

...

The heading **excludes**:

- (a) Straddle carriers and works trucks fitted with a crane (**heading 84.26**).
- (b) Fork-lift trucks and other works trucks fitted with lifting or handling equipment (**heading 84.27**).
- (c) Dumpers (**heading 87.04**).

\* \* \* \* \*

Legacy U.S. Customs Service ("U.S. Customs") first set forth its analysis concerning the classification of SPMTs in ruling letter HQ 952400, dated February 9, 1993, in which it classified two models of Sumitomo SPMTs in heading 8709, HTSUS. The Sumitomo machines at issue in HQ 952400 consisted of platform trucks ranging in length from approximately 10 to 20 meters and possessed maximum payload capacities from 50 to 280 tons; the Sumitomo SPMTs were designed to be operated at low-speeds when laden and featured minimum turning radiuses equal to the approximate length of each vehicle. This office notes that in determining the tariff classification of the Sumitomo SPMTs in HQ H952400, U.S. Customs demurred that "because of the limited number of [SPMTs] in the United States at present, our finding is based on the best information available, and does not include an analysis of the merchandise in the United on a large scale basis." Nonetheless, this office finds that the physical characteristics and operating capabilities of the Sumitomo SPMTs described in ruling letter HQ 952400 indicate that the machines are substantially similar to the Goldhofer SPMT at issue in ruling letter HQ H12237.

In classifying the Sumitomo SPMTs in heading 8709, HTSUS, U.S. Customs in HQ 952400 rejected classification of the machines in heading 8704, HTSUS, and cited EN 87.09, HS, to provide guidance on the distinction between merchandise of the two headings. Specifically, U.S. Customs noted that EN 87.09, HS, states that the heading covers:

[S]elf-propelled vehicles of the type used in factories, warehouses, dock areas or airports for the short distance transport of various loads (goods or containers) ... The main features common to vehicles of this heading which generally distinguish them from the vehicles of heading 87.01, 87.03, or 87.04 may be summarized as follows:

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

\* \* \* \* \*

Considered in the context of the 1993 EN to heading 87.09, HS, U.S. Customs in HQ 952400 found that the maximum speeds when laden and the turning radius of the Sumitomo SPMTs were well-described by the “common features” of works trucks set forth in the EN. U.S. Customs wrote that, “the very heavy weights of the loads the trucks are designed to carry, considered in addition to the weights of the vehicles themselves, could not or would not normally be carried by road or other public ways.” Additionally, although the following exemplar was subsequently removed from EN 87.09, HS, in 1997, at the time U.S. Customs issued HQ 952400, the EN specifically provided that the heading included works trucks “... fitted with, for example, a platform or container (sometime designed for elevating) on which the goods are loaded.” Consequently, U.S. Customs concluded that when considering all the features of the Sumitomo SPMTs, the vehicles were properly described by heading 8709, HTSUS, as works trucks, not fitted with lifting or handling equipment, of the type used in factories, warehouses, or dock areas for the short distance transport of goods.

In classifying the Sumitomo SPMTs in heading 8709, HTSUS, U.S. Customs rejected classification of the vehicles from heading 8427, HTSUS, as other works trucks fitted with lifting or handling equipment, because it determined that the Sumitomo SPMTs were “not fitted with lifting or handling equipment.” Specifically, CBP noted that although the Sumitomo SPMTs featured elevating platforms “for the purpose of loading large pallets of goods,” the exemplars provided in the 1993 version of EN 87.09, HS, included works trucks “... fitted with, for example, a platform or container (sometimes designed for elevating) on which the goods are loaded.” *See* EN 87.09, HS (1992). Consequently, CBP concluded that because elevating platforms were “solely used to load and unload goods to be carried for short distance transport,” the Sumitomo SPMTs’ elevating platforms were akin to the machinery described in EN 87.09, HS, and did not constitute “lifting or handling equipment,” which would have otherwise classified the vehicles in heading 8427, HTSUS. Similarly, in ruling letters HQ 955231, dated January 7, 1994, and NY D86210, dated January 7, 1999, CBP classified Scheuerle and Goldhofer SPMTs substantially similar to the Sumitomo imports in heading 8709, HTSUS, concluding that an SPMT’s ability to raise and lower its cargo platform was consistent with the description in EN 87.09, HS, that works trucks of the heading may feature a “platform or container (sometimes designed for elevating).”

Upon review of the physical characteristics and operating capabilities of instant Goldhofer SPMTs (and SPMTs in general in prior CBP rulings), there is no dispute that the machines are identifiable as “works trucks.” The term “work trucks” is described in EN 87.09, HS, and as discussed above, the

SPMTs' extreme weight, slow laden speed, small turning radius, and inability to operate on public roads indicate that the machines are clearly distinguishable from vehicles of heading 87.01, 87.03, or 87.04. *See* EN 87.09, HS. Atypical examples of the use of SPMTs on public roadways to move cargo over long distances indicate that such operations require special permits from local transportation officials and that the roads first be closed to public traffic. Moreover, to the extent that SPMTs are primarily used to precisely elevate, handle, and position extremely heavy cargo (e.g., bridge segments, ship sections, oil rigs, etc.) to facilitate complex assembly and repairs operations in the construction, shipping, and petroleum industries, we note that the machines are not typically used for the "transport" of cargo. *See* EN 87.04, HS. As such, this office finds that the Goldhofer SPMTs at issue in HQ H122237 are properly described as "works trucks" for the classification purposes.

This office disagrees, however, with the conclusion reached in prior CBP rulings that SPMTs are properly described by the text of heading 8709, HTSUS, as "Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods." Specifically, this office has reconsidered the meaning of the terms "lifting or handling equipment" as used in heading 8709, HTSUS, and finds that the independent suspension and cargo elevating functions of the Goldhofer SPMT hydraulic systems constitute "lifting or handling equipment" as used in heading 8709, HTSUS.

The terms "not fitting with lifting or handling equipment," are not defined in Nomenclature. However, as discussed *supra*, a previous version of EN 87.09, HS, stated that the heading included works trucks "... fitted with, for example, a platform or container (sometimes designed for elevating) on which the goods are loaded." *See* EN 87.09, HS (1992). Subsequent to the publication of ruling letters HQ 952400 and HQ 955231, the EN to 87.09, HS, was amended in 1997 and can no longer be read to support the classification of SPMTs in heading 8709, HTSUS, as works trucks not fitted with lifting or handling equipment. Specifically, the previously included exemplar, "self propelled trucks for the transport of goods which are fitted with, for example, a platform or container (**sometimes designed for elevating**) on which the goods are loaded" (emphasis added), was narrowed by deleting the parenthetical "(sometimes designed for elevating)." *See* EN 87.09, HS. Additionally, an exclusionary note was added to EN 87.09, HS, which specifically states that the heading excludes, "Fork-lift trucks and other works trucks fitted with lifting or handling equipment (**heading 84.27**)." *Id.* (Emphasis original). As such, this office finds that scope of heading 8709, HTSUS, is not intended to include works trucks that are fitted with elevating platforms. Consequently, because SPMTs are capable of hydraulically lifting their cargo platforms and precisely positioning loaded cargo, this office finds that the subject merchandise does not fall under the scope of heading 8709, HTSUS, and is thus not excluded from classification under Section XVI, HTSUS, by Note 1(I) to Section XVI.

Heading 8427, HTSUS, provides, in pertinent part, for "other works trucks fitted with lifting or handling equipment," and the distinction between works trucks of headings 8427 and 8709, HTSUS, is highlighted by the EN to 84.27, HS, which states that the heading covers works trucks fitted with lifting or

handling equipment and specifically identifies “trucks with mechanically elevating platforms” as exemplars of the heading 84.27, HS. Additionally, EN 84.27, HS, explains that the heading includes, “other trucks fitted with lifting or handling equipment[,] including those specialized for use in particular industries.”

Similar to the exemplars described in EN 84.27, HS, the instant SPMTs are works trucks that feature cargo platforms that can be hydraulically raised and lowered via hydraulic rams attached to each of the SPMTs’ wheel bogies. The hydraulic rams on the wheel bogies allow the SPMTs to traverse rough and uneven terrain while maintaining the cargo platform at a level orientation. Additionally, operators of the SPMTs use the machines’ the hydraulic systems to lower and raise the cargo platforms to self-load and deposit cargo without the use of a separate crane or other lifting equipment. The slow maximum speed and precision maneuverability of the SPMTs allow operators to elevate, move, and position extremely heavy cargo (*e.g.*, bridge segments, ship sections, oil rigs, etc.) to facilitate complex assembly and repairs operations in the construction, shipping, and petroleum industries. Inasmuch as the SPMTs’ elevating platforms are described by EN 84.27, HS, CBP finds that the vehicles are provided for, *eo nomine*, by the terms of heading 8427, HTSUS, as other works trucks fitted with lifting or handling equipment.

#### **HOLDING:**

By application of GRI 1, the Goldhofer SPMTs are classified in heading 8427, HTSUS, specifically in subheading 8427.20.80, HTSUS, which provides for, “Fork-lift trucks; other works trucks fitted with lifting or handling equipment: Other self-propelled trucks: Other.” The column one, general rate of duty for subheading 8427.20.80, HTSUS, is *free*.

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

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

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

In accordance with the above analysis, HQ H122237, dated May 19, 2011; HQ H123524, dated March 18, 2011; NY D86210, dated January 7, 1999; HQ 955231, dated January 7, 1994; and HQ 952400, dated February 9, 1993 are hereby **REVOKED**.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

GREG CONNOR

**REVOCATION OF RULING LETTER AND REVOCATION OF  
TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF A LIGHTED PENGUIN SCULPTURE**

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

**ACTION:** Notice of revocation of one ruling letter and revocation of treatment relating to tariff classification of a lighted penguin sculpture.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking New York Ruling Letter (NY) N035321, dated August 18, 2008, relating to the tariff classification of a lighted penguin sculpture under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed action was published in the *Customs Bulletin* Vol. 49, No. 10, on March 11, 2015. No comments were received in response to this Notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 6, 2015.

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

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff



Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke one ruling letter pertaining to the tariff classification of a lighted penguin sculpture was published on March 11, 2015, in Volume 49, Number 10 of the *Customs Bulletin*.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N035321, CBP determined that a beaded penguin figure made predominately of plastic beads was classified as a plastic article in subheading 3926.90.35, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N035321 in order to reflect the proper classification of the subject penguin sculpture in subheading 9505.10.25, HTSUS, as a festive article, according to the analysis contained in Headquarters Ruling Letter (HQ) H039566, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: April 15, 2015

JACINTO JUAREZ  
*for*  
MYLES B. HARMON  
*Director*  
*Commercial and Trade Facilitation Division*

Attachment

HQ H039566

APR 15 2015

CLA-2 OT:RR:CTF:TCM H039566 CKG

CATEGORY: Classification

TARIFF NO.: 9505.10.25

JOSEPH STINSON,  
DIRECTOR OF IMPORT ADMINISTRATION  
LISS GLOBAL  
INC. 7746 DUNGAN ROAD  
PHILADELPHIA, PA 19111

RE: Revocation of NY N035321, dated August 18, 2008; classification of a beaded penguin figure from China

DEAR MR. STINSON:

This letter is in response to your letter of September 10, 2009, requesting the reconsideration of New York Ruling Letter (NY) N035321, issued to you on August 18, 2008. In that ruling, U.S. Customs and Border Protection (CBP) determined that a beaded penguin figure made predominately of plastic beads was classified under subheading 3926.90.35, HTSUS, as other beads and spangles of plastics, not elsewhere specified or included.

In your request for reconsideration, you assert that the proper classification of the penguin figure is either subheading 3926.40.0000, HTSUS, which provides for "other articles of plastics ... statuettes and other ornamental articles," or under subheading 9505.10.2500, HTSUS, which provides for "festive, carnival or other entertainment article, including magic tricks and practical joke articles; parts and accessories thereof: Christmas ornaments: other: other."

CBP has reviewed N035321 and determined that the classification of the beaded penguin figure in subheading 3926.90.35, HTSUS, was incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N035321 was published on March 11, 2015, in Volume 49, Number 10, of the *Customs Bulletin*. No comments were received in response to this Notice.

#### **FACTS:**

The merchandise at issue is a beaded, lighted penguin lawn ornament, item no. 9002861. In NY N035321, the product was described as follows:

The figure is 14 inches high and composed of a coated metal frame in the shape of a penguin. The frame is decorated in multiple plastic beads in red, green, orange and clear. Many of the beads are lighted with bulbs that run through the frame on white PVC-covered wires equipped with a plug to be input into a power source.

Although our files contain pictures of the subject merchandise, no samples were received or examined by our office.

#### **ISSUE:**

Is the beaded penguin figure classifiable under heading 3926, HTSUS, as "other articles of plastics," or under heading 9505, HTSUS, as "festive articles?"

**LAW AND ANALYSIS:**

Classification under the Harmonized Tariff Schedule of the United States (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. 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 GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.40.00	Statuettes and other ornamental articles
* * *	
3926.90	Other:
	Beads, bugles, and spangles, not strung (except temporarily) and not set; articles thereof, not elsewhere specified or included:
3926.90.35	Other
* * *	
9505	Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:
9505.10	Articles for Christmas festivities and parts and accessories thereof:
	Christmas ornaments:
	Other:
9505.10.25	Other
	* * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS. It is Customs and Border Protection's (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS.

The ENs to heading 9505, HTSUS, provide, in pertinent part:

This heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

\* \* \*

(2) Articles traditionally used at Christmas festivities, e.g. artificial Christmas trees, nativity scenes, nativity figures and animals, angels, Christmas crackers, Christmas stockings, imitation yule logs, Father Christmases.

According to EN 39.26, heading 3926 only covers “articles not elsewhere specified or included, of plastics.” Heading 3926, HTSUS, is a general heading or basket provision, as evidenced by the word “other.” See *The Item Company v. United States*, 98 F.3d 1294, 1296 (Fed. Cir. 1996). Classification of imported merchandise in a basket provision is only appropriate if there is no tariff provision that covers the merchandise more specifically. See *EM Industries, Inc. v. United States*, 22 Ct. Int’l Trade 156, 165 (1998).

Hence, we must first determine if the subject merchandise constitutes “festive articles” within the scope of heading 9505, HTSUS before considering classification in heading 3926, HTSUS.

In *Midwest of Cannon Falls, Inc. v. United States*, (Midwest) 122 F.3d 1423, 1429 (Fed. Cir. 1997), the Court of Appeals for the Federal Circuit (CAFC) held that classification as a “festive article” under Chapter 95 requires that the article satisfy two criteria: (1) it must be closely associated with a festive occasion and (2) the article must be used or displayed principally during that festive occasion. Additionally, the items must be “closely associated with a festive occasion” to the degree that “the physical appearance of an article is so intrinsically linked to a festive occasion that its use during other time periods would be aberrant.” *Michael Simon Design, Inc. v. United States*, (Michael Simon) 452 F. Supp 2d. 1316, 1323 (Ct. Int’l Trade 2006) (citing *Park B. Smith, Ltd. v. United States*, (25 Ct. Int’l Trade 506, 509 (2001)).

The “festive article” classification can be applied when the article is clearly associated with the festive holiday of Christmas. Even though there is a connection between penguins and snow and winter climates, a penguin alone is not specifically associated with Christmas. A penguin figure might be appropriate to display throughout the winter season, well after Christmas.

However, the lighted penguin figure is topped with a string of lights shaped like a hat, which is claimed to be a Santa hat. A Santa hat, a cone-shaped hat with a fur pom-pom at the top and a fur brim to fit around the head, is an article traditionally associated with Christmas and the Christmas season. (HQ H076796, dated December 17, 2009 “We believe that both the “Santa shaped hat” and the “Elf shaped hat” are closely associated with Christmas because the physical appearance of each is so intrinsically linked to Christmas that their use during other time periods would be aberrant.”). Figures that are not per se associated with the holiday of Christmas but that are featured wearing Santa hats have been held to be festive articles. See e.g., NY N241819, dated May 14, 2013; NY N007110, dated February 22, 2007; NY N097299, dated March 15, 2010; NY F89282, dated July 18, 2000.

The hat in the lighted penguin figure is red, cone-shaped, with a white fur pom-pom at the top and a green fur brim. Although Santa hats are most often styled with a white brim, CBP has not held that certain colors are required for a hat to be considered a Santa hat. See e.g., NY L85128, dated June 3, 2005 (holding that children’s Santa hats, with white bands, pink, purple or blue tops, and a white heart at the tip were festive articles of heading 9505, HTSUS), and NY J82576, dated April 25, 2003 (holding a Santa hat with animal print cuff was classified in heading 9505). Green and red is a color combination more commonly associated with Christmas than white and pink, purple or blue, or animal print. Thus, we agree that the hat is recognizably a Santa hat and a festive motif closely associated with Christmas.

The penguin with Santa hat is closely associated with Christmas to the degree that its use during other time periods would be aberrant. It is not a general winter decoration; it is likely to be displayed only during the Christmas season, both because of the Santa hat motif and its use as a lighted lawn sculpture, which with the occasional exception are displayed only during the Christmas season. This conclusion is consistent with past CBP rulings on similar holiday light sculptures. *See e.g.*, HQ 962100, dated November 9, 1999; HQ 963198, dated September 26, 2000; and HQ H020852, dated May 8, 2009.

**HOLDING:**

The lighted penguin figure is classified in heading 9505, HTSUS, specifically subheading 9505.10.25, HTSUS, as “Festive, carnival or other entertainment articles: Articles for Christmas festivities and parts and accessories thereof: Christmas Ornaments: Other: Other.” The 2014 column one, general rate of duty is Free.

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

**EFFECT ON OTHER RULINGS:**

NY N035321, dated August 18, 2008, is REVOKED.

*Sincerely,*

MYLES B. HARMON

*Director*

*Commercial and Trade Facilitation Division*

JACINTO JUAREZ

**PROPOSED REVOCATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF SELF-ADHESIVE  
SURGICAL DRAPES**

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

**ACTION:** Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of self-adhesive surgical drapes.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is proposing to revoke one ruling letter concerning the tariff classification of self-adhesive surgical drapes. Similarly, CBP 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 June 5, 2015.

**ADDRESSES:** Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, N.E., 10th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the address stated above 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:** Laurance W. Frierson, Tariff Classification and Marking Branch: (202) 325–0371.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are

**“informed compliance”** and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the classification of self-adhesive surgical drapes. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (“NY”) N175698, dated August 15, 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 databases for rulings in addition to those identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY N175698, CBP determined that certain self-adhesive surgical drapes, used to cover wound dressings, were classified in heading 3919, Harmonized Tariff Schedule of the United States (HTSUS). Specifically, CBP classified the self-adhesive surgical drapes in sub-heading 3919.90.50, HTSUS, which provides for “Self-adhesive plates, sheets, film, foil, tape, strip and other. flat shapes, of plastics,



whether or not exceeding 20 cm: Other: Other.” It is now CBP’s position that the self-adhesive surgical drapes are properly classified in subheading 3005.10.50, HTSUS, which provides for “Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes: Adhesive dressings and other articles having an adhesive layer: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N 175698 and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter HQ H196055, set forth as Attachment B to this notice. 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 15, 2015

MYLES B. HARMON

*Director*

*Commercial and Trade Facilitation Division*

GREG CONNOR

Attachments

## [ATTACHMENT A]

N175698

August 15, 2011

CLA-2-39:0T:RR:NC:N4:421

CATEGORY: Classification

TARIFF NO: 3919.90.5060

MR. JAY MITTLEMAN  
KCI USA, INC.  
P. O. BOX 659508  
SAN ANTONIO, TX 78265-9508

RE: The tariff classification of a self-adhesive drape from Mexico

DEAR MR. MITTLEMAN:

In your letter dated June 29, 2011, you requested a tariff classification ruling. A sample and descriptive literature were included with your letter.

The product is identified as a self-adhesive therapy drape. The drape is used with Vacuum Assisted Closure (V.A.C.) therapy apparatus to facilitate the protection and treatment of wounds. V.A.C. therapy is typically used by medical professionals in the management of severe wounds or incisions and uses an electric suction pump with a storage container to assist in the removal of wound fluids and in keeping the wound from opening. A V.A.C. therapy system dressing kit generally consists of a foam plastic dressing to be placed directly over the wound, a self-adhesive plastic sheet called a therapy drape for holding the foam dressing in place, and tubing and connectors to secure to the suction pump. You are requesting a ruling on therapy drapes imported separately from the other components, in sterilized packages. Item KCI-60515 (M6275009/10) is a package containing 10 therapy drapes. Item KCI-60566 (M6275097/5) is a package containing 5 therapy drapes.

You first propose classification in subheading 9018.90.75, Harmonized Tariff Schedule of the United States (HTSUS), which includes parts and accessories of "other" electromedical instruments and appliances. However, these adhesive sheets stick to the patient's skin primarily to hold in place for a day or two the foam plastic dressing that the V.A.C. draws exuded fluids from. It also restricts the airflow to the underside of the dressing. Its function is thus quite similar to the adhesive tape used with gauze dressings. Before use, the protective layer, which is not externally adhesive, must be removed, a hole must be cut in the middle (for the tube from the V.A.C. to be able to pump from the dressing), and it must be at least cut down to size, usually by a large percent, by, at minimum, cutting off the non-transparent border or, as indicated by the instruction manual, cut into smaller pieces when necessary to better fit body contours, etc., again similar to the use of adhesive tape. Although the imports are commercially dedicated for use in the broader activity of wound vacuuming, they are better described as materials than as parts or accessories of the V.A.C. See Court of Appeals for the Federal Circuit 98-1043, regarding the classification of blood oxygenating thread in Chapter 54, and 01-1049, regarding the distinction between parts of devices and items used in the broader activity.

However, even if we agreed that that they were parts or accessories, identifiable as suitable for use solely or principally as parts of the V.A.C. devices, they would not be classifiable in subheading 9018.90.7590. Tariff classification under the HTSUS is governed by the principles set forth in the

General Rules of Interpretation and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation. The General Rules of Interpretation and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes. Additional U.S. Rule of Interpretation 1 (c) states that in the absence of special language or context which otherwise requires, a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part or accessory. Even if the therapy drape is considered to be a part or accessory of instruments and appliances used in medical and surgical sciences, it is specifically provided for as a pressure sensitive sheet of heading 3919 of the HTSUS, and, based on Additional U.S. Rule of Interpretation 1(c), that specific provision prevails. *See* Headquarters rulings 965968, dated December 12, 2002, and HQ 967233, dated February 18, 2005, for a discussion of this.

You also suggest classification in subheading 3005.10.5000, HTSUS, as wadding, gauze, bandages and similar articles put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes ... adhesive dressings and other articles having an adhesive layer, other. However, the self adhesive sheet is designed for use exclusively with V.A.C. wound therapy appliances and has no use as a dressing outside the confines of that system. The dressings are not designed to be applied or left in place when the V.A.C. therapy device is not active. They have no function without the other components of the system, including the foam pad, the tube, the monitor and the canister. They are single-use disposable components of the V.A.C. therapy system and do not strictly meet the parameters of heading 3005.

The applicable subheading for the self-adhesive plastic therapy drapes will be 3919.90.5060, HTSUS, which provides for self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls ... other ... other. The rate of duty will be 5.8 percent ad valorem. The rate of duty will be 5.8 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 Joan Mazzola at (646) 733-3023.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H196055  
CLA-2 OT:RR:CTF:TCM H196055 LWF  
CATEGORY: Classification  
TARIFF NO.: 3005.10.50

MR. JAY MITTLEMAN  
KCI USA, INC.  
P.O. Box 659508  
SAN ANTONIO, TX 78265-9508

RE: Revocation of New York Ruling Letter (NY) N175698, dated August 15, 2011; tariff classification of self-adhesive surgical drapes from Mexico

DEAR MR. MITTLEMAN:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) N175698, dated August 15, 2011, concerning the tariff classification of KCI USA, Inc.'s (KCI) Vacuum Assisted Closure® ("V.A.C.®") self-adhesive surgical drapes, imported from Mexico and used for covering wound dressings ("the surgical drapes"). In NY N175698, CBP classified the surgical drapes in heading 3919, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not exceeding 20 cm." Upon your request, dated December 1, 2011, we have reviewed NY N175698 and find the ruling to be in error. Accordingly, for the reasons set forth below, we intend to revoke that ruling.

**FACTS:**

The merchandise at issue consists of packages of Vacuum Assisted Closure® self-adhesive surgical drapes imported and sold in packages containing either five (Item KCI-60566; M6275097/5) or ten (Item KCI-60515; M6275009/10) surgical drapes. CBP previously described the individual V.A.C.® surgical drapes in NY N175698, as follows:

The product is identified as a self-adhesive therapy drape. The drape is used with Vacuum Assisted Closure (V.A.C.) therapy apparatus to facilitate the protection and treatment of wounds. V.A.C. therapy is typically used by medical professionals in the management of severe wounds or incisions and uses an electric suction pump with a storage container to assist in the removal of wound fluids and in keeping the wound from opening. A V.A.C. therapy system dressing kit generally consists of a foam plastic dressing to be placed directly over the wound, a self-adhesive plastic sheet called a therapy drape for holding the foam dressing in place, and tubing and connectors to secure to the suction pump.

\* \* \* \* \*

The V.A.C.® self-adhesive surgical drapes are exclusively intended for direct sale without re-packing to medical professionals for use in wound care and treatment. The V.A.C.® self-adhesive surgical drapes serve as an integral component of the V.A.C.® wound therapy system and perform independent functions by protecting the wound, preventing contaminants from entering the wound area, and maintaining optimal moisture levels to support the healing environment. The V.A.C.® self-adhesive surgical drapes are not impregnated or coated with pharmaceutical substances.

**ISSUE:**

Whether KCI's V.A.C.® self-adhesive surgical drapes are classified in heading 3005, HTSUS, as wadding, gauze, bandages and similar articles, put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes; or heading 3919, HTSUS, as self-adhesive sheets of plastics, whether or not exceeding 20 cm.

**LAW AND ANALYSIS:**

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

GRI 1 requires that classification be determine 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 their appropriate order.

The following HTSUS provisions will be referenced:

- |      |   |
|------|---|
| 3005 | Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes<br>* * * * * |
| 3919 | Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not exceeding 20 cm<br>* * * * *   |

Note 2 to Section VI, HTSUS, states:

2. Subject to note 1 above, goods classifiable in heading 3004, 3005, 3006, 3212, 3303, 3304, 3305, 3306, 3307, 3506, 3707 or 3808 by reason of being put up in measured doses or for retail sale are to be classified in those headings and in no other heading of the tariff schedule.

\* \* \* \* \*

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, the ENs provide a commentary on the scope of each heading of the HS and are thus useful in ascertaining the proper classification of merchandise. It is CBP's 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).

EN 30.05, HTS, states, in pertinent part, as follows:

This heading covers articles such as wadding, gauze, bandages and the like, of textile, paper, plastic, etc., impregnated or coated with pharmaceutical substances (counter-irritant, antiseptic, etc.) for medical, surgical, dental or veterinary purposes.

These articles include wadding impregnated with iodine or methyl salicylate, etc., various prepared dressings, prepared poultices (e.g., linseed or mustard poultices), medicated adhesive plasters, etc. They may be in the piece, in discs or in any other form.

Wadding and gauze for dressings (usually of absorbent cotton) and bandages, etc., not impregnated or coated with pharmaceutical substances, are also classified in this heading, provided they are exclusively intended (e.g., because of the labels affixed or special folding) for sale directly without re-packing, to users (private persons, hospitals, etc.) for use for medical, surgical, dental or veterinary purposes.

\* \* \* \* \*

In light of the requirements set forth, *supra*, by Note 2 to Section VI, HTSUS, the classification of the V.A.C.® self-adhesive surgical drapes turns on whether the merchandise is described by the terms of heading 3005, HTSUS. Heading 3005, HTSUS, provides for “Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.”

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

The *Oxford English Dictionary* defines the term “bandage,” in relevant part, as “A strip or band of woven material used to bind up a wound, sore, or fractured limb.” *Oxford English Dictionary*, <http://www.oed.com> (last visited February 4, 2013). Consistent with the common meaning of the term “bandage,” CBP has previously interpreted the term “bandage” to include pieces of material applied to a body part to make a compression, absorb drainage, prevent motion, retain surgical dressing, or lend support to a wound. See NY I84715, dated August 8, 2002; HQ 966637, dated October 22, 2003; and HQ H22137, dated October 11, 2012. Additionally, this office notes that in CBP’s Informed Compliance Publication (ICP), *What Every Member of the Trade Community Should Know About: Wadding, Gauze, Bandages, and Similar Articles (Heading 3005, HTSUS)*, dated July 2006 (“ICP: Heading 30.05”), CBP has described the term “dressing,” used as an exemplar in the text of heading 3005, HTSUS, to be a general term that includes, among other articles, “bandages” and “protectives” for wounds or injuries.<sup>1</sup>

<sup>1</sup> *ICP: Heading 30.05* defines the terms “bandages” and “protective,” respectively, as follows:

Piece[s] of cloth or other material, of varying shape and size, applied to a body part to make compression, absorb drainage, prevent motion, retain surgical dressings” (Stedman’s). The function of a bandage is to hold a dressing in place by compression or support.

[... ] **Protectives** are used in conjunction with dressing materials to prevent loss of moisture or heat from a wound site. Film dressings are acrylate adhesives on a transparent, vapor-permeable plastic film applied directly to a wound surface. They are impervious to water and bacteria and are used to dress wounds which are already healing. *ICP: Heading 30.05* at 9, 10.

By contrast, CBP has previously held that certain articles not used for the treatment and care of wounds or injuries fall outside the scope of heading 3005, HTSUS. For example, in HQ 962172, dated May 5, 1999, CBP declined to classify a magnetic bandage in heading 3005, HTSUS, through application of *ejusdem generis*, because it could not be placed on an open wound and it therefore lacked common characteristics of the articles of heading 3005. Similarly, in HQ 966555, dated September 9, 2003, CBP determined that a hydrocolloidal polyethylene film wafer with plastic flange—adhered to the abdomen to secure ostomy pouches for the collection of bodily waste following surgical removal of parts of the intestine or urinary tract—was not classifiable in heading 3005, HTSUS, because:

[The] skin covered by the wafer is intact and there is no wound to cover ... Hence, the function of the wafer is clearly to protect intact skin rather than to dress a wound[.]

Moreover, CBP stated in ruling letter HQ 966555 that although the hydrocolloidal polyethylene film wafer was designed to protect the skin surrounding a stoma from irritation and was similar in composition material to other hydrocolloidal dressings, it was not similar in function to wadding, gauze bandages, and similar articles of heading 3005, HTSUS, because:

[I]t is not applied to a wound with the intent to protect the wound from debris, absorb exudate from the wound, or provide the environment for healing. HQ 966555, at 6.

As such, this office observes that the common meaning of the term “bandages” of heading 3005, HTSUS—describing materials applied for the treatment and care of wounds or injuries—is reflected in several previous CBP ruling letters, *supra*. Consequently, a finding that the instant V.A.C.® self-adhesive surgical drapes are used for wound care and treatment would support classification of the merchandise as “bandages” of heading 3005, HTSUS.<sup>2</sup>

In addition to meeting the common meaning of the term “bandage,” however, the text of heading 3005, HTSUS, also requires that articles of the heading meet one of two additional descriptions—namely, of being “impregnated or coated with pharmaceutical substances” or “put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.” Moreover, the ENs to heading 30.05, HS, state that wadding and gauze for dressings (usually of absorbent cotton) and bandages, etc., not impregnated or coated with pharmaceutical substances, are also classified in this heading, provided they are exclusively intended (e.g., because of the labels affixed or special folding) for sale directly without re-packing to users (private persons,

<sup>2</sup> The description of “bandages” of heading 3005, HTSUS, to care for and treat wounds or injuries is similarly reflected in *ICP: Heading 30.05*, which states:

The examples provided in the language of heading 3005 serve specialized functions in the field of health care. These functions are characterized by direct application to diseased or injured tissue, e.g., application to wounds for protection, immobilization, medication, etc. This is borne out by the definitions presented above. Products serving a lesser or different purpose, such as cleansing or soothing uninjured skin, are not classifiable in heading 3005. **The basic requirement is that all these products must be for wound treatment in a medical, surgical, dental or veterinary setting, whether impregnated or coated with pharmaceuticals, or labeled, folded and packed for retail sale.** *ICP: Heading 30.05 at 11.* (Emphasis added).

hospitals, etc.) for use for medical, dental, or veterinary purposes. Here, inasmuch as the V.A.C.® self-adhesive surgical drapes are not impregnated or coated with pharmaceutical substances, this office need only consider whether the samples are put up for retail sale for medical, surgical, dental or veterinary purposes.

Upon review of physical characteristics and intended uses of the V.A.C.® self-adhesive surgical drapes, this office finds that the surgical drapes are designed as an integral component of the V.A.C.® wound therapy system and serve additional independent functions by protecting the wound, preventing contaminant from entering the wound area, and maintaining optimal moisture levels to support the healing environment. Additionally, we note that KCI's "Basic V.A.C.® Dressing Application Pocket Guide"—which contains pictures showing the basic steps to apply a V.A.C.® self-adhesive surgical drape—clearly indicates that the merchandise is put up for retail sale for medical purposes. Consequently, this office finds that although the V.A.C.® self-adhesive surgical drapes are not impregnated or coated with pharmaceutical substances, the merchandise is put up for direct sale without re-packing to medical professionals for use in wound care and treatment.

In finding that the V.A.C.® self-adhesive surgical drapes are described by the common meaning of the term "bandages," as provided for in heading 3005, HTSUS, the merchandise is classifiable under subheading 3005.10.50, HTSUS, as "Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes: Adhesive dressings and other articles having an adhesive layer: Other." In accord with Note 2 to Section VI, HTSUS, this office need not examine classification of the merchandise in Chapter 39, HTSUS, or other headings of the tariff schedule.

In classifying the V.A.C.® self-adhesive surgical drapes in heading 3005, HTSUS, this office notes that in ruling letter HQ 967207, dated January 11, 2005, CBP similarly classified—as part of its GRI 3 analysis concerning the "Safe Start IV Start Pak"—a "Tegaderm® transparent dressing" in heading 3005, HTSUS. There, CBP described the Tegaderm® dressing as being used to cover, secure, and protect an IV catheter and insertion site after an IV is inserted into a patient's vein. Inasmuch as Tegaderm® dressing and the instant V.A.C.® self-adhesive surgical drapes are used on the human body to cover and protect open wounds during medical treatment, this office observes that the function of the instant V.A.C.® self-adhesive surgical drapes is substantially similar to that of the Tegaderm® dressing. Consequently, the classification of the Tegaderm® dressing under heading 3005, HTSUS, in ruling letter HQ 967207 is consistent with the classification of the V.A.C.® self-adhesive surgical drapes under the same provision.

#### **HOLDING:**

By application of GRI 1 and Section VI, Section Note 2, the V.A.C.® self-adhesive surgical drapes are classified under heading 3005, HTSUS, specifically in subheading 3005.10.50, which provides for "Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes: Adhesive dressings and other articles having an adhesive layer: Other." The 2014 column one, general rate of duty is free.



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

**EFFECT ON OTHER RULINGS:**

In accordance with the above analysis, NY N175698, dated August 15, 2001, is hereby REVOKED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

