

# U.S. Customs and Border Protection



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

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

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

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling relating to the tariff classification of data recorders under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially similar transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 16, on April 22, 2015. No comments were received in response to the notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 8, 2015.

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

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Volume 49, No. 16, on April 22, 2015, proposing to revoke New York Ruling Letter (NY) 861163, dated April 5, 1991, in which CBP determined that the data recorders were classified in heading 9033, HTSUS, which provides for: "Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90...". No comments were received in response to this notice.

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

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY 861163, in order to reflect the proper classification of the data recorders under heading 9031, HTSUS, which provides for "Measuring or checking instruments... not specified or included elsewhere in this chapter...; other instruments, appliances and machines: other..." according to

the analysis contained in HQ H126636, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

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

Attachment

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

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

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

DEAR MR. FOLLETT:

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed revocation was published on April 22, 2015, in the *Customs Bulletin*, Volume 49, No. 16. CBP received no comments in response to this notice.

**FACTS:**

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

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

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



**ISSUE:**

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

**LAW AND ANALYSIS:**

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

The HTSUS provisions at issue are as follows:

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

Note 2 to Chapter 90 states that:

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

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

of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind.

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

\* \* \*

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

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

Decisions by the courts interpreting nomenclature under the HTSUS’ predecessor tariff code, the TSUS, are not deemed dispositive under the HTSUS. However, on a case-by-case basis, such decisions should be deemed instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418, Aug. 23, 1988, 102 Stat. 1107, 1147; H.R. Rep. No. 576, 100th Cong., 2d Sess. 549–550 (1988); 1988 U.S.C.C.A.N. 1547, 1582–1583. In this instance, we find instructive the discussion of the court in *United States v. Corning Glass Works* on the meaning of the term “checking instruments.”

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

can check the levels of gas in industrial gas tanks by reading the data recorder's print-out. The data recorders, therefore, carry out steps in a process for inspecting.

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

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

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

#### **HOLDING:**

By application of GRI 1 (Note 2 to Chapter 90), the data recorders of NY 861163 are classifiable under heading 9031, HTSUS. Specifically, they are classifiable under subheading 9031.80.80, HTSUS, which provides for "Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof; other instruments, appliances and machines: other." The 2015 column one, general rate of duty is 1.7% *ad valorem*.

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

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

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

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

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

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

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

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking three ruling letters relating to the tariff classification of components of data recorders under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially similar transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 16, on April 22, 2015. No comments were received in response to the notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 8, 2015.

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

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Volume 49, No. 16, on April 22, 2015, proposing to revoke Headquarters Ruling Letter (HQ) 952499, dated March 26, 1993, New York Ruling Letter (NY) 881722, dated January 26, 1993, and NY H80308, dated June 5, 2001, in which CBP determined that the subject components of data recorders were classified in heading 9033, HTSUS, which provides for, in pertinent part: "Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90...". No comments were received in response to this notice.

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

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ 952499, NY 881722 and NY H80308, in order to reflect the proper classification of the components of data recorders as parts of measuring or checking instruments of heading 9031, HTSUS, according to the analysis contained in HQ H219316, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

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

Attachment

## ATTACHMENT A

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

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

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

DEAR MR. RILEY:

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed revocation was published on April 22, 2015, in the *Customs Bulletin*, Volume 49, No. 16. CBP received no comments in response to this notice.

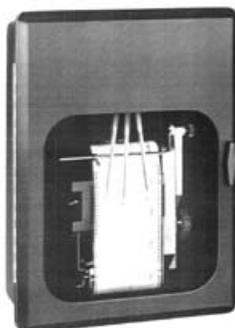
**FACTS:**

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

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



### **Strip Chart Drive 420**



#### **ISSUE:**

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

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

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

The HTSUS provisions at issue are as follows:

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

Note 2 to Chapter 90 states that:

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

(a) Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings;

(b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind.

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

\* \* \*

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

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

Decisions by the courts interpreting nomenclature under the HTSUS’ predecessor tariff code, the TSUS, are not deemed dispositive under the HTSUS.

However, on a case-by-case basis, such decisions should be deemed instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418, Aug. 23, 1988, 102 Stat. 1107, 1147; H.R. Rep. No. 576, 100th Cong., 2d Sess. 549–550 (1988); 1988 U.S.C.C.A.N. 1547, 1582–1583. In this instance, we find instructive the discussion of the court in *United States v. Corning Glass Works* on the meaning of the term “checking instruments.”

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

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

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

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

#### **HOLDING:**

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

one, general rate of duty is 1.7% *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

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

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

*Sincerely,*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

**REVOCAION OF A RULING LETTER AND REVOCAION  
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 revocation of one ruling letter and 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) is revoking 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). Notice proposing to revoke NY R04929 was published in the *Customs Bulletin* Vol. 49, No. 18, on May 6, 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 September 8, 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 polyvinyl alcohol (PVA) textile fibers was published on May 6, 2015, in in Volume 49, Number 18 of the *Customs Bulletin*. . No comments were received in response to this notice.

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

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

on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In NY 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 is revoking NY R04929 and revoking 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 Headquarters Ruling Letter (HQ) H209959, 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.

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

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.

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 R04929 was published on May 6, 2015, in Volume 49, Number 18, of the *Customs Bulletin*. No comments were received in response to this notice.

**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 neeps:
- 5601.30.00: Textile flock and dust and mill neeps...

\* \* \* \*

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*



**REVOCATION OF RULING LETTERS AND REVOCATION  
OF TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF INSULATED COOLER BAGS**

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

**ACTION:** Notice of revocation of four ruling letters and revocation of treatment relating to tariff classification of insulated cooler bags.

**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 Letters (NY) N024831, N024015, N024016 and N047035, relating to the tariff classification of insulated cooler bags under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation of NY N024831, N024015, and N024016 was published in the

*Customs Bulletin* Vol. 46, No. 42, on October 10, 2012. Two comments were received in response to this notice. In accord with the comments received in response to the notice, CBP is also revoking NY N047035, dated December 10, 2008.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 8, 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 three ruling letters pertaining to the tariff classification of insulated cooler bags was published on October 10, 2012, in Volume 46, Number 42 of the *Customs Bulletin*. One comment was received in response to this notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision

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

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

In NY N024831, NY N024015, and N047035, CBP determined that certain insulated cooler bags were classified in subheading 4202.92.08, which provides for "Trunks, suitcases... traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Insulated food or beverage bags: With outer surface of textile materials: Other."

In NY N024016, CBP determined that certain insulated cooler bags were classified in subheading 4202.92.10, HTSUS, which provides for "Trunks, suitcases... traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Insulated food or beverage bags: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N024831, NY N024015, NY N047035, and NY N024016 and revoking or modifying any other ruling not specifically identified, in order to reflect the proper classification of the cooler bags in subheadings 4202.92.10 and 4202.92.08, HTSUS, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H088427, 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.

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

Attachments

HQ H088427

CLA-2 OT:RR:CTF:TCM H088427 CkG

CATEGORY: Classification

TARIFF NO.: 4202.92.10, 4202.92.08

UNA GAUTHIER  
BARTHCO INTERNATIONAL  
ONE CVS DRIVE  
WOONSOCKET, RI 02895

Re: Revocation of NY N024831, NY N024015, NY N024016 and NY N047035; classification of insulated cooler bags

DEAR Ms. GAUTHIER:

This is in reference to New York Ruling Letters (NY) N024831, issued by the Customs and Border Protection (CBP) National Commodity Division to Rite Aid Corporation on April 7, 2008, NY N024015 and NY N024016, issued to you on March 20, 2008, and NY N047035, issued to you on December 18, 2008, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of insulated food and beverage bags.

We have reconsidered these decisions. For the reasons set forth below, we have determined that the classification of the containers in subheading 4202.92.08, HTSUS (NY N024015, NY N024831 and NY N047035), as insulated food or beverage bags having an outer surface of textile, and 4202.92.10 (NY N024016), as insulated food or beverage bags having an outer surface of other than textile, is incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N024831, NY N024015, and NY N024016 was published on October 10, 2012, in Volume 46, Number 42, of the *Customs Bulletin*. Two comments were received in response to this Notice. One commenter suggested that NY N047035 also be included in this revocation. We agree that the merchandise in NY N047035 is substantially similar to the cooler bags at issue in NY N024831, NY N024015, and NY N024016, and should be classified according to the analysis laid out below.

**FACTS:**

In NY N024831, the subject merchandise was described as follows:

Style 9000838 is a soft-sided insulated cooler bag constructed with a front and top panel of polyester textile material. The sides, back and bottom of the bag are constructed of polyvinyl chloride plastic (PVC) sheeting material... It is designed to provide storage, protection, organization, and portability to food and beverages during travel. The bag is also designed to maintain the temperature of food and beverages. The interior compartment has a mesh pocket and is lined with PVC sheeting material. There is a layer of foam plastics between the outer surface and the PVC lining. It has a top zipper closure and an adjustable shoulder strap. The back exterior has an open pocket. The bag measures about 8" (W) x 5.5" (H) x 4.5" (D).

The front panel of the soft sided cooler bag at issue in NY N024831 features an orange "Igloo" logo, but otherwise does not differ in any visual aspect from the remainder of the bag.

In NY N024015, the subject styles 453474, 453469, 453471, 416959, and 416961, were generally described as:

[A]n insulated soft-sided lunch bag designed to provide storage, protection, organization, and portability to food and beverages during travel. They are also designed to maintain the temperature of food and beverages. Each has a main interior compartment that is lined with a polyvinyl chloride plastic sheeting material. There is a layer of foam plastics between the polyester fabric and the PVC lining. The bags secure with both a zipper closure and a hook and loop fastener. The top of the bags has a padded carrying handle with a plastic clip that allows it to attach to a school bag or similar bag.

Each style has a front panel constructed of polyester textile material, while the sides, backs and bottoms of the bags are of polyvinyl chloride plastic (PVC) sheeting material

Style 453474 measures approximately 7" (W) x 11.5" (H) x 6" (D)...Style 453471 measures approximately 7.5" (W) x 10" (H) x 3" (D)... Style 416959 measures approximately 9" (W) x 10" (H) x 6.25" (D)...Style 416961 measures approximately 7" (W) x 8" (H) x 3" (D).

The merchandise at issue in NY N024016 was described as follows:

Style 453799 is a soft-sided insulated cooler bag that is designed to provide storage, protection, organization, and portability to food and beverages during travel. It is also designed to maintain the temperature of food and beverages. The bag is constructed with a front panel of polyvinyl chloride (PVC) sheeting material while the remaining three sides are constructed of polyester textile material. There is a layer of polyurethane foam plastic between the outer surface and the lining. The bag also has a top carrying handle and a zipper closure. It measures approximately 7.50" (W) x 9" (H) x 3" (D).

Style 335135, at issue in NY N047035, was described as follows:

Item 335135 is a soft-sided insulated cooler bag. The outer surface of the bag is composed of two materials. The front panel of the bag and the top are composed of man-made textile material. The sides, back and bottom are composed of plastic sheeting material. The essential character of the cooler bag is imparted by the textile fabric of the front panel. The bag is designed to provide storage, protection, portability, and organization to food and beverages during travel. It is also capable of maintaining the temperature of food and beverages. It features a rubberized grip handle, adjustable shoulder strap, two storage compartments, a plastic interior lining, and a zippered closure. There is a layer of foam between the lining and the outer surface materials.

This model is described as the "Playmate Gripper". The top front panel features a white Igloo logo, but does not otherwise differ in any visual aspect from the reminder of the bag.

#### **ISSUE:**

Whether the essential character of the instant cooler bags is imparted by the textile or plastic outer surface.

**LAW AND ANALYSIS:**

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6. GRI 6, HTSUS, requires that the GRI's be applied at the subheading level on the understanding that only subheadings at the same level are comparable. The GRI's apply in the same manner when comparing subheadings within a heading.

4202: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:

Other:

4202.92: With outer surface of sheeting of plastic or of textile materials:

Insulated food or beverage bags:

With outer surface of textile materials:

4202.90.04: Beverage bags whose interior incorporates only a flexible plastic container of a kind for storing and dispensing potable beverages through attached flexible tubing. . .

4202.92.08: Other . . . .

4202.92.10: Other . . .

\* \* \* \* \*

There is no dispute that the instant cooler bags are classified in heading 4202, HTSUS, as insulated food or beverage bags. The issue arises at the 8 digit subheading level, which requires the application of GRI 6. GRI 6 requires that the GRI's be applied at the subheading level on the understanding that only subheadings at the same level are comparable.

At the eight-digit subheading level, the issue is whether the instant insulated food or beverage bags have an outer surface of textile or non-textile material. Because the instant bags have outer panels of both textile and plastic, classification is determined by application of GRI 3.

GRI 3 states:

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

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods . . . , those headings are

to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components . . . which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

The headings covering the article refer only to part of the materials or components contained therein. Therefore, under GRI 3(a), the headings must be regarded as equally specific in relation to the article, and the article must be classified as if it consisted of the material or component which gives it its essential character, pursuant to GRI 3(b).

The “essential character” of an article is “that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int’l Trade 2005). EN VIII to GRI 3(b) explains that “[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.” The classification of the instant cooler bags will thus turn on which component imparts the essential character to the whole.

The front and top panels of the bags at issue in NY N024831 (style 900838) have an outer surface of man-made textile material. The sides, back and bottom are constructed of polyvinyl chloride plastic (PVC) sheeting material. NY N024831 determined that the front textile panel of the bag imparted the essential character. In NY N024018, the bags at issue (styles 453474, 453469, 453471, 416959, and 416961), were composed of a front textile panel and five panels of plastic sheeting. CBP ruled that the essential character of the bags was imparted by the front textile panel. In NY N024016, the front panel of style 453799 was made of plastic sheeting, and the remaining sides were composed of a polyester textile material. CBP found in NY N024016 that the essential character of the bag was imparted by the plastic front panel. In NY N047035, the front and top panels of style 335135 were composed of textile material, and the sides, back and bottom of the bag were composed of plastic sheeting. CBP determined that the front and top panels of style 335135 imparted the essential character of the bag because the textile surface comprised roughly 40% of the external surface area of the bag and the textile material was more valuable than the plastic sheeting.

In the proposed revocation of NY N024831, NY N024015, and NY N024016, CBP upheld the decision to classify style 335135 in subheading 4202.92.08, HTSUS. One comment received in response to the notice of proposed revocation argued that upholding NY N047035 was inconsistent with the decision to revoke NY N024831, NY N024015, and NY N024016, because merchandise at issue in all four rulings is substantially similar, and the differences in physical characteristics are insufficient to justify a different outcome. We have considered these arguments, and agree that NY N047035 is also incorrect.

CBP has consistently determined that the material comprising the bulk of the exterior surface area of a bag imparts the essential character, even where the front panel featured a visually appealing design such as a cartoon character. *See e.g.*, NY M82559, dated May 2, 2006 (in which three bags with front panels of PVC sheeting featuring Dora the Explorer, Tinkerbell, and Sponge-Bob motifs were classified according to the majority textile outer surface area) and NY M84189, dated June 16, 2006 (in which two bags with PVC front panels depicting a Cars theme were classified on the basis of the textile outer surface area). *See also*, HQ H025873, dated September 3, 2010 (classifying a cooler bag in accordance with the majority of the exterior surface area); HQ 962817, dated January 14, 2002 (four panels with an outer surface of plastic imparted the essential character of a bag because they comprised the bulk of the outer surface of the bag); NY K83596, dated March 3, 2004 (classifying a cooler bag with an exterior surface of an equal quantity of plastic and textile material at GRI 3(c) in subheading 4202.92.10, HTSUS).

The front panel of an insulated food or beverage bag might impart the essential character to the whole in cases where its bulk, quantity, weight or value, or role in relation to the use of the goods significantly outweighs the remainder of the bag. However, this is not the case with regard to styles 9000838, 453474, 453469, 453471, 416959, 416961, 453799, and 335135.

Style 9000838 has only two panels of textile material, and four panels of plastic sheeting. Styles 453474, 453469, 453471, 416959, and 416961 have only one panel of textile material, with the remainder of the external surface area composed of plastic sheeting. Style 335135 has three textile panels and four plastic panels. Finally, style 453799 consists of one panel of plastic sheeting surrounded by textile panels. In each of these cases, the material composing the front panel of the bags is only a small portion of the external surface area. Therefore a finding that the essential character is imparted by the bulk of the outer surface area is appropriate and consistent with past CBP rulings.

In the case of style 335135 and NY N047035, the closer ratio of textile to plastic and higher value of the textile weighs in favor of a finding that the essential character is imparted by the textile; however, the fact that the greater exterior surface of the bag is composed of plastic supports the opposite conclusion. Upon further consideration, we find that neither the plastic nor the textile material can clearly be said to impart the essential character of the bag. Classification will thus be determined by GRI 3(c), which holds that classification falls to the heading or subheading which occurs last in numerical order among those which equally merit consideration. In the instant case, subheading 4202.92.10 occurs last in numerical order.

Styles 9000838 (NY N024831), 453474, 453469, 453471, 416959, and 416961 (NY N024015), have an outer surface composed mostly of plastic. By application of GRI 3(b), these styles are therefore classified in subheading 4202.92.10, HTSUS, as insulated food or beverage bags with a non-textile outer surface material. By application of GRI 3(c), style 335135 (NY N047035) is also classified in subheading 4202.92.10, HTSUS. Style 453799 (NY N024016) has an outer surface area composed primarily of textile. Style 453799 is thus classified in subheading 4202.92.08, HTSUS, as an insulated food or beverage bag with an outer surface of textile materials.

**HOLDING:**

By application of GRI 3(b), the cooler bags at issue in NY N024831 and NY N024015 (Styles 9000838, 453474, 453469, 453471, 416959, and 416961) are classified in heading 4202, HTSUS, specifically subheading 4902.92.10, HTSUS, which provides for “Trunks, suitcases... traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Insulated food or beverage bags: Other.” The 2015 column one, general rate of duty is 3.4% *ad valorem*.

By application of GRI 3(b), the cooler bag at issue in NY N024016 (Style 453799) is classified in subheading 4202.92.08, which provides for “Trunks, suitcases... traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Insulated food or beverage bags: With outer surface of textile materials: Other.” The 2015 column one, general rate of duty is 7% *ad valorem*.

By application of GRI 3(c), style 335135, at issue in NY N047035, is classified in heading 4202, HTSUS, specifically subheading 4902.92.10, HTSUS, which provides for “Trunks, suitcases... traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Insulated food or beverage bags: Other.” The 2015 column one, general rate of duty is 3.4% *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

NY N024016 (March 20, 2008), NY N024015 (March 20, 2008), NY N024831 (April 7, 2008) and NY N047035 (December 10, 2008) are hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*