

U.S. Customs and Border Protection



PROPOSED MODIFICATION OF ONE RULING LETTER RELATING TO THE TARIFF CLASSIFICATION OF A SPONGE ART SET

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

ACTION: Notice of proposed modification of one ruling relating to the tariff classification of a sponge art set.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this Notice advises interested parties that U.S. Customs and Border Protection (CBP) proposes to modify one ruling letter relating to the tariff classification of a sponge art set composed of six shaped sponges, six jumbo glitter watercolor paints, six sheets of coated paper and one artist brush under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to modify 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 September 4, 2015.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street N.E., 10th Floor, Washington, D.C. 20229–1177. Submitted comments may be inspected at the above address during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Peter Martin, Tariff Classification and Marking Branch: (202) 325–0048.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this Notice advises interested parties that CBP intends to modify one ruling letter pertaining to the tariff classification of a sponge art set. Although in this Notice, CBP is specifically referring to the modification of Headquarters Ruling Letter HQ 957131, dated February 27, 1995 (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 modify any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this Notice, may raise issues of reasonable

care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In HQ 957131, we classified the sponge art set under 3213.10 HTSUS, by application of General Rule of Interpretation (GRI) 1 as a set, including the coated paper packaged with the set. It is now CBP's position that the sponge art set may not be classified under heading 3213 as a GRI 1 set because heading 3213 does not encompass the coated paper. The sponge set is properly classified in subheading 3213.10 which provides for "Artists', students' or signboard painters' colors, modifying tints, amusement colors and the like, in tablets, tubes, jars, bottles, pans or in similar forms or packings: Colors in sets" by application of GRI 3(b) because the watercolor glitter paint provides the essential character of the product.

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to modify HQ 957131, and to revoke or to modify any other ruling not specifically identified, in order to reflect the proper classification of sponge art sets, according to the analysis contained in proposed HQ H194138, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke or modify any treatment previously accorded by CBP to substantially similar transactions.

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

Dated: July 14, 2015

GREG CONNOR
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ 957131

February 27, 1995

CLA-2 CO:R:C:F 957131 GGD

CATEGORY: Classification

TARIFF NO.: 3213.10.0000; 3926.20.9010;
9503.70.0030

ASSISTANT DISTRICT DIRECTOR OF
CUSTOMS COMMERCIAL OPERATIONS DIVISION
198 WEST SERVICE ROAD
CHAMPLAIN, NEW YORK 12919

RE: Internal Advice Request No. 49/94; "Creative Art," "Paint Art," "Spiral Art," and "Sponge Art" Sets

DEAR SIR:

This letter is in response to Internal Advice Request No. 49/94, initiated by a letter dated July 6, 1994, submitted by Trans-Border Customs Services, Inc., One Trans-Border Drive, P.O. Box 800, Champlain, New York 12919, on behalf of Henry Gordy International, Inc. The request concerns the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of four separate articles imported from Canada and identified above. A sample of each article has been submitted.

FACTS:

All of the articles are retail packaged in Canada, and are imported suitable for direct sale without repackaging. Most of the components comprising the articles are the products of Hong Kong, Thailand, and/or Malaysia. The origins of components not manufactured in Canada are identified in parentheses below.

The "Creative Art" article, identified by item no. 05020, consists of one vinyl apron (Hong Kong), eight crayons (Thailand), eight watercolor paints (Hong Kong), eight pictures to color, and one artist brush (Hong Kong).

The "Paint Art" article, identified by item no. 05030, consists of two framed pictures and easels, eight acrylic paints (Hong Kong), and one artist brush (Hong Kong).

The "Spiral Art" article, identified by item no. 05125, consists of three kaleidoscope stencils and their holder, six felt tipped, watercolor markers (Thailand), twenty five sheets of drawing paper, and one pencil (Hong Kong).

The "Sponge Art" article, identified by item no. 05130, consists of six specially shaped sponges (Malaysia), six jumbo glitter watercolor paints (Hong Kong), six sheets of coated paper, and one artist brush (Hong Kong).

ISSUE:

In what tariff provisions are the sets properly classified?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be

classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

The four articles each consist of an array of components that are classifiable individually in various headings. We note, however, that the “paint art” and “sponge art” articles essentially consist only of paints and accessories related to the paint’s application. In determining whether any one heading would accommodate the components of these two sets, we look to heading 3213, HTSUS.

Heading 3213, HTSUS, provides for “Artists’, students’ or signboard painters’ colors, modifying tints, amusement colors and the like, in tablets, tubes, jars, bottles, pans or in similar forms or packings.” The ENs to heading 3213 indicate that, among other items, the heading includes colors and paints (including watercolors) that are sold in sets or outfits, with or without brushes, palettes, palette knives, stumps, pans, etc. It is apparent that the non-paint components of the “paint art” and “sponge art” articles are put up with the paints and colors to enhance the sets’ attractiveness to children. As heading 3213 is sufficiently broad to cover these components, it specifically describes the “paint art” and “sponge art” sets. The proper subheading for these colors in sets is 3213.10.0000, HTSUSA.

In considering the “spiral art” and “creative art” sets, we note that the items are comprised of several components other than mere paints and related accessories. The components of the “spiral art” article are classifiable individually in the following headings: the stencils and stencil holder in heading 9017, the felt tipped markers in heading 9608, the sheets of drawing paper in heading 4823, and the pencil in heading 9609. The components of the “creative art” article are classifiable individually in the following headings: the vinyl apron in heading 3926, the crayons in heading 9609, the watercolor paints in heading 3213, the printed pictures for coloring in heading 4911, the artist brush in heading 9603. Upon considering whether any one heading would accommodate these components, we look to heading 9503, HTSUS.

Heading 9503, HTSUS, provides for “Other toys...and accessories thereof,” i.e., all toys not specifically provided for in the other headings of chapter 95. Although the term “toy” is not defined in the tariff, the ENs to chapter 95 indicate that a toy is an article designed for the amusement of children or adults. It has been Customs position that toys should be designed and used principally for amusement. The ENs to heading 9503 indicate that collections of articles, the individual items of which if presented separately would be classified in other headings in the nomenclature, are classified in chapter 95 when they are put up in a form clearly indicating their use as toys.

In HRL 950700, issued August 25, 1993, we discussed the circumstances in which certain items, normally classified elsewhere in the HTSUS, may be classified in subheading 9503.70 as toys put up in sets. We noted that the subheading encompasses a combination of two or more mutually complementary, complete articles in a retail package, the essential character of which is established by the combination of the items, and not by any individual article in the combination. The components should generally be used together, i.e., some connection exists between the items which work collectively to provide

amusement. When an article is comprised of components individually classifiable elsewhere in the HTSUS, the manner in which the items are put up together (e.g., packaged and sold as a combination) should convert the components from their designs and uses as individual articles, to toys.

In HRL 086330, issued May 14, 1990, this office held that a retail package (similar to the “spiral art” set) which consisted of stencils, a drawing ring, ball point pens, and a writing pad, was an educational toy classified in subheading 9503.70, HTSUS. We likewise find that the components of the “spiral art” set comprise a combination designed and used principally for the amusement of children. The stencils, stencil holder, pencil, markers, and paper, are put up in a form clearly indicated for use as an instructional toy. The article is thus properly classified in subheading 9503.70.0030, HTSUSA.

With respect to the “creative art” set, the ENs to heading 9503, HTSUS, indicate that the heading excludes paints put up for children’s use (heading 3213), and crayons for children’s use (heading 9609). This exclusionary language suggests that children’s paints and crayons, if imported separately, are more specifically provided for elsewhere in the nomenclature. It is also apparent, however, that certain components of “creative art” do not work well jointly (e.g., the crayons and watercolors), stand apart from the others (e.g., the vinyl apron) and, when packaged together, are used in the same manner as when individually imported. In light of the above, we find that classification of the “creative art” set in heading 9503, solely by reference to GRI 1, is not appropriate. We thus look next to GRI 2.

In pertinent part, GRI 2(b) states that:

[t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

GRI 3(a) directs that the headings are regarded as equally specific when each heading refers to part only of the items contained in a set put up for retail sale. Therefore, to determine under which provision the article will be classified, we look to GRI 3(b), which states in pertinent part that:

goods...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.

In order to determine the essential character of the set, we next view Explanatory Note VIII to GRI 3(b), which provides the following guidance:

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

In this case, we note that it is the role of the vinyl apron to contain and keep the other components close at hand while the child experiments with an array of artistic media. The apron also helps to keep clothing and skin clean. While the other components will be depleted and replaced, the vinyl apron’s nature entails durability for reuse. For these reasons, we find that the apron is the component which supplies the set with its essential character. The “creative art” set is classified in subheading 3926.20.9010, HTSUS.

HOLDING:

The “Paint Art” and “Sponge Art” sets, identified by item nos. 05030 and 05130, respectively, are classified in subheading 3213.10.0000, HTSUSA, the provision for “Artists’, students’ or signboard painters’ colors, modifying tints,

amusement colors and the like, in tablets, tubes, jars, bottles, pans or in similar forms or packings: Colors in sets.” The applicable duty rate is 6.5 percent ad valorem on the entire set.

The “Spiral Art” set, identified by item no. 05125, is classified in subheading 9503.70.0030, HTSUSA, the provision for “Other toys, put up in sets or outfits, and parts and accessories thereof, Other: Other.” The applicable duty rate is free.

The “Creative Art” set, identified by item no. 05020, is classified in subheading 3926.20.9010, HTSUSA, the provision for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Articles of apparel and clothing accessories (including gloves): Other: Other, Aprons.” The applicable duty rate is 5 percent ad valorem.

This decision should be mailed by your office to the internal advice requester no later than 60 days from the date of this letter. After sixty days, the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS, and to the public via the Diskette Subscription Service, Freedom of Information Act, and other public access channels.

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

[ATTACHMENT B]

HQ H194138
OT:RR:CTF:TCM H194138 PTM
CATEGORY: CLASSIFICATION
TARIFF NO: 3213.10.00

TRANS-BORDER CUSTOMS SERVICES, INC.
ONE TRANS-BORDER DRIVE
P.O. BOX 800
CHAMPLAIN, NY 12919

DEAR SIR OR MADAM:

On February 27, 1995, we issued Headquarters Ruling HQ 957131 in response to your request for internal advice regarding the tariff classification of four separate articles, including a “sponge art” set. In HQ 957131, we determined that the proper tariff classification of the sets under the Harmonized Tariff Schedule of the United States (“HTSUS”) under heading 3213 as a GRI 1 set. We have reviewed HQ 957131 and find it to be in error with respect to the classification analysis pertaining to the sponge art set. For the reasons set forth below, we hereby modify HQ 957131.

FACTS:

In HQ 957131, we classified several art sets consisting of various articles, including a sponge art set. We described the sponge art set as follows:

The “Sponge Art” article, identified by item no. 05130, consists of six specially shaped sponges (Malaysia), six jumbo glitter watercolor paints (Hong Kong), six sheets of coated paper, and one artist brush (Hong Kong).

Thus, the sponge art set consisted of an array of components of differing origin that were classifiable individually in various tariff headings.

ISSUE:

What is the proper tariff classification of the sponge art set?

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 GRIs 2 through 6 may then be applied in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs 1 through 5.

The merchandise at issue consists of a set of glitter watercolor paints, shaped sponges, a brush, and coated paper. The HTSUS provision at issue are as follows:

3213	Artists', students' or signboard painters' colors, modifying tints, amusement colors and the like, in tablets, tubes, jars, bottles, pans or in similar forms or packings:
3213.10	Colors in sets
	* * *
4811	Paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810
4811.59	Other: ...

Heading 3213 covers various painters' colors in different forms of packaging, and includes colors in sets. Consequently, the paint set in the sponge art set is *prima facie* classifiable under heading 3213 HTSUS. Heading 4811 covers coated paper, and therefore the coated paper in the sponge art set is *prima facie* classifiable under heading 4811 HTSUS.

In HQ 957131, the legacy Customs Service stated, with respect to the sponge art set and a separate "paint art set":

We note, however, that the "paint art" and "sponge art" articles essentially consist only of paints and accessories related to the paint's application. In determining whether any one heading would accommodate the components of these two sets, we look to heading 3213, HTSUS.

Heading 3213, HTSUS, provides for "Artists', students' or signboard painters' colors, modifying tints, amusement colors and the like, in tablets, tubes, jars, bottles, pans or in similar forms or packings." The ENs to heading 3213 indicate that, among other items, the heading includes colors and paints (including watercolors) that are sold in sets or outfits, with or without brushes, palettes, palette knives, stumps, pans, etc. It is apparent that the non-paint components of the "paint art" and "sponge art" articles are put up with the paints and colors to enhance the sets' attractiveness to children. As heading 3213 is sufficiently broad to cover these components, it specifically describes the "paint art" and "sponge art" sets. The proper subheading for these colors in sets is 3213.10.0000, HTSUSA.

In HQ H957131, legacy Customs classified the sponge art set under heading 3213.10.1000 by application of GRI 1 set because "heading 3213 is sufficiently broad to cover these components." We disagree that heading 3213 covers all of the component parts of the sponge art set, specifically the coated paper included in the set. We note that the plain language of the heading covers colors, tints, and colors. The language of the heading does not include any reference to sheets of paper or other medium onto which the user will paint.

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, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. *See* T.D. 89-80, 54 Fed. Reg. 35127 (Aug. 23, 1989). The EN for heading 3213 provides:

This heading covers prepared colours and paints of a kind used by artists, students or signboard painters, modifying tints, amusement colours and the like (water colours, gouache colours, oil paints, etc.), **provided** they are in the form of tablets or put up in tubes, small jars or bottles, pans or in similar forms or packings.

The heading also includes those sold in sets or outfits, with or without brushes, palettes, palette knives, stumps, pans, etc.

The EN clarifies that the heading covers colors and paints, but the heading also includes those sold in sets with brushes, palettes, palette knives, stumps and pans. Each of the items enumerated are used to either prepare or apply the paint in the set. Consequently, the sponges and brush are encompassed by heading 3213. However, there is no indication that heading 3213 covers the medium onto which the painter will apply the paint, i.e., canvas, paper sheets or signboards. In this case, the coated paper in the sponge art set would not be covered under heading 3213. Based on the plain language of heading 3213 HTSUS and the commentary of explanatory note 32.13, we find that the sponge art set may not be classified under heading 3213 HTSUS as a GRI 1 set.

Because the components of the sponge art set are *prima facie* classifiable under separate headings, it must be classified pursuant to GRI 3, which states:

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

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

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

Because the sponge art set consists of various components, the set is a composite good classifiable under GRI 3(b). The EN (VIII) to GRI 3(b) states the following:

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

The application of the “essential character test” requires a fact-intensive analysis. See *Home Depot U.S.A., Inc. v. United States*, 491 F.3d 1334, 1337 (Fed. Cir. 2007). But in addition to the those listed in the EN (VIII) to GRI

3(b), other factors should be considered, including the article's name, primary function, and the "attribute which strongly marks or serves to distinguish what it is. Its essential character is that which is indispensable to the structure, core or condition of the article, i.e. what it is." *A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971).

In the instant case, the sponge and paint brush are used to apply the six types of glitter paint. The paint is applied to the coated sheets of paper. Consequently, the primary function of the sponges, brush, and paper is to assist with the application of the watercolor glitter paint. Therefore, we find that the set of six watercolor glitter paint provides the essential character of the set.

Subheading 3213.10 HTSUS provides for paint and colors in sets. Furthermore, prior CBP rulings have classified paint sets under heading 3213 HTSUS. For example, in HQ 561326 (April 26, 1999), we found a childrens' paint set, consisting of 6 plastic bottles of washable paint was properly classified under subheading 3213.10.00, HTSUS. In N004275 (Jan. 9, 2007), we found an "Easter Fun Paint Set" consisting of 4 water color paint, 1 paint brush and two plaster ornaments in a blister package put up for retail sale to be classified under subheading 3213.10.00 HTSUS. *See also* NY K89008 (Sept. 21, 2004), (where CBP classified a pumpkin paint set under subheading 3213.10.00 HTSUS by application of GRI 3(b)). Based on the foregoing, we find that the paint set in the sponge art kit is properly classified under subheading 3213.10.00 HTSUS.

HOLDING:

By application of GRI 3(b), the sponge art kit is properly classified in heading 3213 HTSUS, specifically subheading 3213.10.0000, which provides for "Artists', students' or signboard painters' colors, modifying tints, amusement colors and the like, in tablets, tubes, jars, bottles, pans or in similar forms or packings: Colors in sets." The general, column one rate of duty is 6.5 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

HQ 957131 is hereby **MODIFIED**

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 A CERTAIN GRADER SYSTEM**

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 tariff classification of a certain grader system.

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 a ruling letter relating to the tariff classification of a grader system (also called a sizer or weight grader) under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 23, on June 10, 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 October 5, 2015.

FOR FURTHER INFORMATION CONTACT: Gregory Connor, Tariff Classification and Marking Branch: (202) 325–0025.

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*, Vol. 49, No. 23, on June 10, 2015, proposing to revoke Headquarters Ruling Letter (HQ) 961522, dated August 10, 1998, in which CBP determined that the subject merchandise was classified under subheading 8423.20.00, HTSUS, which provides for, “Weighing machinery (excluding balances of a sensitivity of 5 cg or better), including weight-operated counting or checking machines; weighing machine weights of all kinds; parts of weighing machinery: Scales for continuous weighing of goods on conveyers”, by application of General Rules of Interpretation (GRIs) 1, 3(b) and 6.

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 (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 with substantially identical transactions should have advised CBP during the comment period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ 961522 to reflect the proper tariff classification of this merchandise under subheading 8423.30.00, HTSUS, which provides for: “Weighing machinery (excluding balances of a sensitivity of 5 cg or better), including weight-operated counting or checking machines; weighing machine weights of all kinds; parts of weighing machinery: Constant-weight scales and scales for discharging a predetermined weight of material into a bag or container, including hopper scales....” by application of

GRI 1 and 6, pursuant to the analysis set forth in HQ H242605, which is attached to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by it 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: July 14, 2015

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H242605

July 14, 2015

CLA-2 OT:RR:CTF:TCM H242605 GC

CATEGORY: Classification and Marking

TARIFF NO.: 8423.30.00

PORT DIRECTOR

U.S. CUSTOMS AND BORDER PROTECTION

NORFOLK SERVICE PORT

101 EAST MAIN STREET NORFOLK, VA 23510

RE: Revocation of HQ 961522; Tariff classification of a “grader system”

DEAR PORT DIRECTOR:

On August 10, 1998, U.S. Customs and Border Protection (then the U.S. Customs Service) issued Headquarters Ruling Letter (HQ) 961522 to dispose of Application for Further Review of Protest 1401–98–100001, which pertained to the tariff classification of the instant “grader system”. We have since reviewed HQ 961522 and find it to be in error.

HQ 961522 is a decision on a specific protest. A protest is designed to handle entries of merchandise which have entered the United States and been liquidated by CBP. A final determination of a protest, pursuant to Part 174, Customs Regulations (19 CFR §174), cannot be modified or revoked as it is applicable only to the merchandise which was the subject of the entry protested. Furthermore, CBP lost jurisdiction over the protested entries in HQ 961522 when notice of disposition of the protest was received by the protestant. See *San Francisco Newspaper Printing Co. v. U.S.*, 9 CIT 517, 620 F.Supp. 738 (1935).

However, CBP can modify or revoke a protest review decision to change the legal principles set forth in the decision. Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. §1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), 60 days after the date of issuance, CBP may propose a modification or revocation of a prior interpretive ruling or decision by publication and solicitation of comments in the *Customs Bulletin*. This revocation will not affect the entries which were the subject of Protest 1401–98–100001, but will be applicable to any entries of similar merchandise made 60 days after publication of the final notice of revocation in the *Customs Bulletin*.

Pursuant to 19 U.S.C. §1625 (c)(1), a notice was published in the *Customs Bulletin*, Volume 49, No. 23, on June 10, 2015, proposing to revoke HQ 961522, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

The merchandise is described in HQ 961522 as follows:

The merchandise in issue is a grader system, also called a sizer or weight grader, used in the weighing, grading and sizing of chicken fillets and tenders, chunk meats, fish, and other food products. It consists essentially of infeed and take-away conveyors, a weighing machine or scale and, in this case, a batching bin. The product moves by infeed conveyor

to the weighing machine which utilizes a weight sensor or load cell. This machine operates without interruption to weigh individual pieces and, based on weight, activates mechanical discharge arms that pull the product from the scale into the pneumatically-operated batching bin. When a predetermined weight of product is reached, the door to the batching bin closes and a signal light activates. A button is then pushed which permits the batched product to fall down the chute into bags or boxes which the take-away conveyor removes. The machinery does not mechanically wrap or package the product, nor does it replace full bags with empty ones. These functions are performed by a technician. There is no indication that this machinery is capable of detecting and removing defective product. The computer that monitors and controls the entire process is not a part of this importation.

In HQ 961522, CBP classified the above-described merchandise under subheading 8423.20.00, HTSUS, which provides for, “Weighing machinery (excluding balances of a sensitivity of 5 cg or better), including weight-operated counting or checking machines; weighing machine weights of all kinds; parts of weighing machinery: Scales for continuous weighing of goods on conveyers”, by application of General Rules of Interpretation (GRIs) 1, 3(b) and 6.

ISSUE:

Is the subject grader system classified under subheading 8423.20, HTSUS, as a scale for the continuous weighing of goods on a conveyor, or under subheading 8423.30, HTSUS, as a constant-weight scale and scale for discharging a predetermined weight of material into a bag or container?

LAW AND ANALYSIS:

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

8423	Weighing machinery (excluding balances of a sensitivity of 5 cg or better), including weight-operated counting or checking machines; weighing machine weights of all kinds; parts of weighing machinery:
	* * *
8423.20.00	Scales for continuous weighing of goods on conveyers...
	* * *
8423.30.00	Constant-weight scales and scales for discharging a predetermined weight of material into a bag or container, including hopper scales...

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. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

Subheading EN 8423.20 provides as follows:

The scales for continuous weighing of goods on conveyors of this subheading, which may be either of the totaliser or integrating kind, measure and record the weight of materials as they go past in buckets, on chains or the like.

There was no dispute in HQ 961522 that the subject grader system was classified under heading 8423, HTSUS, as weighing machinery. This remains CBP's position.

However, in HQ 961522, applying GRI 6¹, CBP concluded that the grader system was a “composite good” of GRI 3(b)² made up of a scale for continuous weighing of goods and a scale for discharging a predetermined weights of material. The conclusion that the subject merchandise constituted a “composite good” was premised on the conclusion that the scope of subheading 8423.20, HTSUS, covers “scales that operate in a continuous process with brief intervals or with continued recurrence”. Indeed, the fact that Subheading EN 8423.20 refers to measured materials located “in buckets, on chains or the like” clarifies that scales for continuous weighing can weigh materials that pass the scale sensor “with brief intervals or with continued recurrence”. However, in spite of the fact that the instant grader system incorporates a continuously moving conveyer belt, it is designed to weigh individual items, which is decidedly discontinuous and is not characteristic of a totalizer or integrating kind of scale described in Subheading EN 8423.20.

Accordingly, we find that the merchandise at issue in HQ 961522 does not perform a function covered by subheading 8423.20, HTSUS. Moreover, as a consequence of the fact that it is equipped with mechanical discharge arms to pull the chicken thighs from the scale into the pneumatically-operated batching bin, it is *prima facie* classifiable under subheading 8423.30, HTSUS, as a scale for discharging a predetermined weight of material into a bag or container.

HOLDING:

By application of GRI 1, the instant grader system is classified under heading 8423, HTSUS, as weighing machinery. By application of GRIs 1 and 6, it is specifically provided for under subheading 8423.30.00, HTSUS, which provides for: “Weighing machinery (excluding balances of a sensitivity of 5 cg or better), including weight-operated counting or checking machines; weigh-

¹ GRI 6 states:

For legal purposes, the classification of goods in the subheading of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

² GRI 3(b) states:

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

ing machine weights of all kinds; parts of weighing machinery: Constant-weight scales and scales for discharging a predetermined weight of material into a bag or container, including hopper scales....” The general column one rate of duty, for merchandise classified in this subheading is free.

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

EFFECT ON OTHER RULINGS:

HQ 961522, dated August 10, 1998, is hereby REVOKED.

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

Sincerely,

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF AN INKJET
PRINTER/CUTTER**

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

ACTION: Notice of proposed modification of a ruling letter and treatment relating to tariff classification of an inkjet printer/cutter.

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 modify a ruling letter relating to the tariff classification of inkjet printer/cutter from Japan, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before September 4, 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, 90 K Street NE, 10th Floor, Washington, D.C. 20229-1177. Submitted comments may be inspected at the above address during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: George Aduhene, Tariff Classification and Marking Branch: (202) 325-0184

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP intends to modify a ruling letter relating to the tariff classification of an inkjet printer/cutter. Although in this notice, CBP is specifically referring to the modification of NY N004132, dated December 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 intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY N004132, CBP classified an inkjet printer/cutter imported from Japan, in subheading 8477.80.00, HTSUS, which provides for, "Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this chapter; parts thereof: Other machinery for molding or otherwise forming: Other machinery."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify N004132 and any other ruling not specifically identified, in order to reflect the proper classification of an inkjet printer/cutter in subheading 8443.32.10, HTSUS, according to the analysis contained in proposed HQ H128416, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 9, 2015

MONIKA R. BRENNER
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N004132

December 29, 2006

CLA-2-84:RR:NC:1:104

CATEGORY: Classification

TARIFF NO.: 8443.51.5000; 8477.80.0000

MR. TOM BOIVIN
ROLAND DGA CORPORATION
15363 BARRANCA PARKWAY
IRVINE, CA 92618-2216

RE: The tariff classification of a wide format inkjet printer and a wide format inkjet printer/cutter from Japan

DEAR MR. BOIVIN:

In your letter dated November 30, 2006 you requested a tariff classification ruling.

The wide-format sublimation digital inkjet printer, Model Number FP-740, is designed to produce graphics for a range of wide-format applications, i.e. flags, banners and other soft signage. The unit features eight piezo print heads and an extended capacity ink system. It produces graphics up to 548 square feet per hour. Sublimated prints can be transferred from paper to surfaces such as fabric, plastic, metal and porcelain. Printing width is 73.6 inches wide and the printing resolution is 720 dpi max. There is no indication in the submitted data that this unit is principally used on textiles. The unit is intended to be used in conjunction with a separate personal computer (not imported with the Model Number FP-740).

The 6 color inkjet printer and contour cutter, Model Number XC-540, is designed to produce outdoor graphics (banners, signs, vehicle graphics) that are UV and water resistant. Other applications include the production of labels, decals, apparel graphics, floor graphics, and packaging. The unit can print on and cut media such as vinyl, canvas, banner and backlit film up to 54 inches in width. It features a 64 nozzle piezo inkjet print head capable of printing resolutions up to 1440 dpi using solvent based inks. In addition, it has a swivel drag cutting blade for high speed precision contour cutting. In your letter, you indicate that the unit is principally used on plastic media. The unit is intended to be used in conjunction with a separate personal computer (not imported with the Model Number XC-540).

Both the units are excluded from heading 8471, Harmonized Tariff Schedule of the United States (HTSUS), which provides for automatic data processing machines, by virtue of Note 5(E) to Chapter 84 as they are performing functions other than data processing.

The applicable subheading for the wide-format sublimation digital inkjet printer, Model Number FP-740, will be 8443.51.5000, HTSUS, which provides for Printing machinery used for printing by means of printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof: Other printing machinery: Ink-jet printing machinery: Other. The rate of duty will be free.

The applicable subheading for the 6 color inkjet printer and contour cutter, Model Number XC-540, will be 8477.80.0000, HTSUS, which provides for Machinery for working rubber or plastics or for the manufacture of products

from these materials, not specified or included elsewhere (in Chapter 84): other machinery. The rate of duty will be 3.1 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 Patricia O'Donnell at 646-733-3011.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H128416
CLA-2 OT:RR:CTF:TCM H128416 GA
CATEGORY: Classification
TARIFF NO.: 8443.32.1040

MR. TOM BOIVIN
ROLAND DGA CORPORATION
15363 BARRANCA PARKWAY
IRVINE, CA 92618

RE: Modification of NY N004132; Classification of a wide format inkjet printer and a wide format inkjet printer/cutter from Japan

DEAR MR. BOIVIN:

This is in reference to New York Ruling Letter (“NY”) N004132, dated December 29, 2006, issued to you concerning the tariff classification of a wide format inkjet printer and a wide format inkjet printer/cutter from Japan, under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N004132, U.S. Customs and Border Protection (CBP) classified a 6 color inkjet printer and contour cutter, Model Number XC-540 in subheading 8477.80.00, HTSUS, which provides for, “Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this chapter; parts thereof: Other machinery.” CBP also classified a wide-format sublimation digital inkjet printer, Model Number FP-740 in subheading 8443.51.50, HTSUS, which provides for, “Printing machinery used for printing by means of printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof: Other printing machinery: Ink-jet printing machinery: Other.” We have reviewed NY N004132 and find the portion that relates to the classification of the 6 color inkjet printer and contour cutter, Model XC-540 to be in error. The classification of the wide-format sublimation digital inkjet printer, Model Number FP-740, remains unmodified. For the reasons set forth below, we hereby modify NY N004132.

FACTS:

In NY N004132, the subject merchandise was described as follows:

The 6 color inkjet printer and contour cutter, Model Number XC-540, is designed to produce outdoor graphics (banners, signs, vehicle graphics) that are UV and water resistant. Other applications include the production of labels, decals, apparel graphics, floor graphics, and packaging. The unit can print on and cut media such as vinyl, canvas, banner and backlit film up to 54 inches in width. It features a 64 nozzle piezo inkjet print head capable of printing resolutions up to 1440 dpi using solvent based inks. In addition, it has a swivel drag cutting blade for high speed precision contour cutting. In your letter, you indicate that the unit is principally used on plastic media. The unit is intended to be used in conjunction with a separate personal computer (not imported with the Model Number XC-540)

ISSUE:

What is the proper classification of the inkjet printer/cutter?

LAW AND ANALYSIS:

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

The HTSUS headings under considerations are as follows:

8443	Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof:
8477	Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this chapter; parts thereof:

Note 3 to Section XVI, HTSUS, states, in pertinent part, the following:

3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

* * * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While 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).

The ENs to Section XVI, provide, in relevant part, as follows:

**(VI) MULTI-FUNCTION MACHINES
AND COMPOSITE MACHINES**

(Section Note 3)

In general, multi-function machines are classified according to the principal function of the machine.

...

Composite machines consisting of two or more machines or appliances of different kinds, fitted together to form a whole, consecutively or simultaneously performing **separate** functions which are generally complementary and are described in different headings of Section XVI, are also classified according to the principal function of the composite machine.

...

For the purposes of the above provisions, machines of different kinds are taken to be **fitted together to form a whole** when incorporated one in the other or mounted one on the other, or mounted on a common base or frame or in a common housing.

* * * * *

In your letter dated August 4, 2010, in response to our letter of April 21, 2010, requesting additional information, you addressed the questions concerning the principal function of the subject printer/cutter machine. As an initial matter, we note your admission that information provided to CBP by your former Director of Distribution concerning the principal function of the subject merchandise of ruling NY N004132 (an earlier model inkjet printer with a contour cutter) was incorrect. You indicated that the error could have led CBP to classify the subject printer/cutter in subheading 8477.80.00, HTSUS. You now indicate that the criteria you use to determine the principal function are: (1) the design of the machine, (2) the application to which the end users put the machines, and (3) the cost of the printer/cutters compared to single function machines. You indicate that the principal function of the subject printer/cutter is “printing” and believe it should be classified under heading, 8443, HTSUS. Furthermore, you state that the subject printer/cutter is purposely intended to enable the user to print graphics on a variety of substrate material and once the printing is completed, to permit the cutting of the material into the final form.

Note 3 to Section XVI, HTSUS, directs that unless context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole are to be classified as if consisting only of that component or as being that machine which performs the principal function. As described above, the subject merchandise is used for printing by means of ink jets with the option to cut printed materials. As you indicated, the user may choose to use the printing machine to perform cutting functions. However, the cutting function is not necessary for the operation of the printing machine. The printing machine would not be used solely or primarily for cutting materials without printing.

CBP has found the analysis developed and utilized by the courts in relation to “principal use” (the “*Carborundum* factors”) to be a useful aid in determining the principal function of such machines. Generally, the courts have provided several factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: (1) general physical characteristics; (2) expectation of the ultimate purchaser; (3) channels of trade, environment of sale (accompanying accessories, manner of advertisement and display); (4) use in the same manner as merchandise that defines the class; (5) economic practicality of so using the import; and (6) recognition in the trade of this use. See *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377 (1976), cert. denied, 429 U.S. 979 (1976); *Lennox Collections v. United States*, 20 Ct. Int’l Trade 194, 196 (1996); *Kraft, Inc. v. United States*, 16 Ct. Int’l Trade 483, 489 (1992); and *G. Heileman Brewing Co. v. United States*, 14 Ct. Int’l Trade 614, 620 (1990). See also HQ W968223, dated January 12, 2007, and HQ 966270, dated June 3, 2003.

You listed a number of *Carborundum* factors in your submission including: general physical characteristics, expectation of the ultimate purchaser, channels of trade, environment of sale, the use in the same manner as merchandise which defines the class, economic practicality, and economic recognition in the trade of use of the printer/cutter machine. After examining the product literature and documentation you provided and considering the *Carborundum* factors, we agree that the principal function of the printer/cutter is for a user to print graphics on a variety of materials. As such, CBP concludes that the subject printer/cutter performs the principal function of printing materials, and pursuant to Note 3 to Section XVI, HTSUS, the subject merchandise shall be classified as if consisting only of the printer. This finding is consistent with prior CBP rulings on similar merchandise. In NY N092737, dated February 4, 2010, various inkjet printers with a built-in contour cutter from Japan were classified as having the principal function of printing machines. *See also* NY N112997, dated July 16, 2010; NY N018032, dated October 19, 2007; NY N030139, dated June 26, 2008; and NY N044490, dated December 8, 2008.

Therefore, the printing machine is properly classified under heading 8443, HTSUS, as opposed to 8477, HTSUS.

HOLDING:

By application of GRI 1, we find the inkjet printer/cutter (Model XC-540) to be properly classified under heading 8443, HTSUS, specifically, in subheading 8443.32.10, HTSUS, which provides for "Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof: Printing machinery used for printing by means plates, cylinders and other printing components of heading 8422: Other printers, copying machines and facsimile machines, whether or not combined: Other, capable of connecting to an automatic data processing machine or to a network: Printer units: Ink jet.." The duty rate is "Free."

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

EFFECT ON OTHER RULINGS:

NY N004132, dated December 29, 2006, is hereby MODIFIED.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**REVOCAION OF TWO RULING LETTERS AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF SHOWERHEADS**

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

ACTION: Notice of revocation of two ruling letters and revocation of treatment relating to the tariff classification of showerheads.

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 CPB is revoking two rulings concerning the tariff classification of showerheads. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 23, on June 10, 2015. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 5, 2015.

FOR FURTHER INFORMATION CONTACT: Jacinto P. Juarez, Jr., Tariff Classification and Marking Branch: (202) 325–0027.

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, Vol. 49, No. 23, on June 10, 2015, proposing to revoke two ruling letters pertaining to the tariff classification of showerheads, specifically, New York Ruling Letter (NY) R01416, dated February 23, 2005, and New York Ruling Letter (NY) F87785, dated June 2, 2000. No comments were received.

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 rulings 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 (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.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY R01416, NY F87785, 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 Letters (HQ) H092556 and HQ H092558, set forth as Attachments A and B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 10, 2015

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

Attachments

[ATTACHMENT A]

HQ H092556

July 10, 2015

CLA-2 OT:RR:CTF:TCM H092556 JPJ

CATEGORY: Classification

TARIFF NO.: 7419.99.50

Ms. LINDSAY WILSON
DIRECT SOURCE INTERNATIONAL
3737 ROUNDBOTTOM ROAD
CINCINNATI, OH 45244

RE: Revocation of NY R01416; Classification of “Water Blossom” showerheads

DEAR Ms. WILSON:

This letter is to inform you that Customs and Border Protection (CBP) has reconsidered New York Ruling letter (NY) R01416, issued to you on February 23, 2005. CBP has determined that NY R01416 is incorrect. Therefore, this ruling revokes NY R01416.

NY R01416 determined, in relevant part, that two styles of decorative “Water Blossom” showerheads, style “Poppy” and style “Jonquil” made of brass were classified under heading 7418, of the Harmonized Tariff Schedule of the United States (HTSUS).

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 R01416 was published on June 10, 2015, in Vol. 49, No. 23, of the *Customs Bulletin*. No comments were received.

FACTS:

The merchandise is described as two styles of decorative “Water Blossom” showerheads, style “Poppy” and style “Jonquil”. The flower petals are made of brass sheeting, the connector is made of copper, and the showerhead itself is made of galvanized steel.

ISSUE:

Whether the subject merchandise is classified under heading 7418, HTSUS, as “sanitary ware, and parts thereof, of copper” or under heading 7419, HTSUS as “Other articles of copper”.

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 may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (“EN’s”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive,

the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

The 2010 HTSUS provisions under consideration are as follows:

- | | |
|------|---|
| 7418 | Table, kitchen or other household articles and parts thereof, of copper; pot scourers and scouring or polishing pads, gloves and the like, of copper; sanitary ware and parts thereof, of copper: |
| 7419 | Other articles of copper: |

The issue presented is whether the showerheads are described as “sanitary ware” within the meaning of heading 7418, HTSUS.

The term “sanitary ware” in heading 7418, HTSUS, is not defined in the section or chapter notes for this heading. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. See *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). A tariff term's meaning is presumed to be its common meaning in the absence of evidence to the contrary. See *Timber Products Co. v. United States*, 515 F.3d 1213, 1219 (Fed. Cir. 2005) (citing *Rohm & Haas Co. v. United States*, 727 F.2d 1095, 1097 (Fed. Cir. 1984)). A tariff term's common and commercial meanings are presumed to be the same. See *Nippon Kogaku, Inc. v. United States*, 69 CCPA 89, 92, 673 F.2d 380 (1982).

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”. *Id.* (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271, 69 C.C.P.A. 128 (C.C.P.A. 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). Also, the ENs, while not binding law, offer guidance as to how tariff terms are to be interpreted. See *Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003) (noting that Explanatory Notes are “intended to clarify the scope of HTSUS subheadings and to offer guidance in their interpretation”). Finally, standards promulgated by industry groups such as ANSI, ASME, and others are often used to define tariff terms. See *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1361 (Fed. Cir. 2001), citing *Hafele Am. Co. v. United States*, 18 C.I.T. 1096, 870 F. Supp. 352, 355 (Ct. Int'l Trade 1994) (using ANSI/ASME Specification B18.2.1); *Wash. Int'l Ins. Co. v. United States*, 16 C.I.T. 873, 803 F. Supp. 420, 422 (Ct. Int'l Trade 1992) (using ASTM standard), *aff'd*, 24 F. 3d 224 (Fed. Cir. 1994).

The EN's to heading 7418, HTSUS, do not provide any commentary on the scope of “sanitary ware”. The Merriam-Webster on-line dictionary at www.merriam-webster.com, defines “sanitary ware” as:

ceramic plumbing fixtures (as sinks, lavatories, or toilet bowls).

“Sanitary ware” is also defined at www.dictionary.reference.com as:

plumbing fixtures, as sinks or toilet bowls, made of ceramic material or enameled metal.

The American Society of Mechanical Engineers (ASME) and the Canadian Standards Association (CSA) has published joint standards for plumbing supply fittings (ASME A112.18.1/CSA B125.1). From our research on the ASME website at *www.asme.org*, a standard can be defined as a set of technical definitions and guidelines that function as instructions for designers, manufacturers and users. Standards promote safety, reliability, productivity and efficiency in almost every industry that relies on engineering components or equipment. The ASME/CSA standard for plumbing supply fittings is definite and uniform throughout the United States and Canada.

The scope of the ASME A112.18.1/CSA B125.1 standard for plumbing supply fittings can be found in Part 1, Section 1.1, which states that the standard applies to plumbing supply fittings *and accessories* located between the supply line stop and the terminal fitting, including, in relevant part, “(b) bath and shower supply fittings” (emphasis added).

Part 3, entitled “Definitions and abbreviations”, at Section 3.1 Definitions, states, in relevant part: “The following definitions apply in this Standard:

Accessory—a component that can, at the discretion of the user, be readily added, removed, or replaced, and that, when removed, will not prevent the fitting from fulfilling its primary function. Note: Examples include aerators, hand-held shower assemblies, *shower heads*, and in-line flow controls (emphasis added).

* * *

Fixture—a device for receiving water, waste matter, or both and directing these substances into a sanitary drainage system

A showerhead does not have the character of a plumbing fixture because unlike a sink, a lavatory, and a toilet, it is not permanently installed in or on walls. Instead, it is easily connected to a faucet or shower pipe and readily added, removed, or replaced. In addition to not being permanently installed, a showerhead is also unlike sinks, lavatories, or toilet bowls because they do not receive water, waste matter, or both, and direct them into a sanitary drainage system. The ASME standard for plumbing supply fittings indicates that a showerhead is an example of a plumbing *accessory* (emphasis added). Therefore, we conclude that a showerhead is not “sanitary ware”. Our conclusion is consistent with two New York Ruling letters (NY) G85952, dated January 17, 2001, and NY I81519, dated June 4, 2002, that determined that brass showerheads are properly classifiable under heading 7419, HTSUS. In NY G85952, CBP determined that a chrome-plated, brass shower head was classifiable under subheading 7419.99.50, HTSUS. In NY I81519 CBP determined, in relevant part, that brass shower heads were classifiable under subheading 7419.99.50, HTSUS.

Our conclusion is also consistent with several CBP rulings that have held that showerheads made of plastic are not “sanitary ware” of heading 3922, HTSUS, but are other household articles and hygienic or toilet articles of heading 3924, HTSUS. For example, in HQ 960011, dated September 23, 1998, regarding the classification of plastic massage shower heads, we stated, in relevant part, as follows:

Heading 3922, HTSUS, provides for baths, shower-baths, wash-basins, bidets, lavatory pans, seats and covers, flushing cisterns and similar

sanitary ware of plastics. The shower heads are not like any of the items described by this heading. EN 39.24, at page 621, states that heading 3924 includes

[t]oilet articles (whether for domestic or non-domestic use) such as toilet sets (ewers, bowls, etc.), sanitary pails, bed pans, urinals, chamber-pots, spittoons, douche cans, eye baths; soap dishes, towel rails, tooth-brush holders, toilet paper holders, towel hooks and similar articles for bathrooms, toilets or kitchens, not intended for permanent installation in or on walls. However, such articles intended for permanent installation in or on walls or other parts of buildings (e.g., by screws, nails, bolts or adhesives) are excluded (heading 39.25).

In this instance, the evidence presented illustrates that the shower heads are easily connected to a faucet or shower pipe and do not have the character of being fixtures for permanent installation in or on walls. Moreover, we note NY 810116, dated May 24, 1995, that classified similar shower heads under subheading 3924.90.55, HTSUS. We therefore conclude that the merchandise is described by heading 3924, HTSUS.

See also HQ H046780, dated March 10, 2009; NY N033873, dated August 21, 2008; NY N039939, dated October 28, 2008; NY N039940, dated October 28, 2008; NY N040084, dated October 28, 2008; NY N039938, dated October 29, 2008; NY N042600, dated November 10, 2008; NY G87164, dated March 2, 2001; NY F86127, dated May 8, 2000; HQ 962584, dated July 27, 1999; NY E89558, dated December 8, 1999; NY F80479, dated December 28, 1999; NY 810116, dated May 24, 1995.

HOLDING:

Pursuant to GRI 1, the “Water Blossom” showerheads, style “Poppy” and style “Jonquil” are classified under heading 7419, HTSUS. They are specifically provided for under subheading 7419.99.50, HTSUS, which provides for “Other articles of copper: Other: Other: Other, Brass plumbing goods not elsewhere specified or included”. The 2015 general column one rate of duty is Free.

EFFECT ON OTHER RULINGS:

NY R01416, dated February 23, 2005, is revoked.

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

Sincerely,

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H092558

July 10, 2015

CLA-2 OT:RR:CTF:TCM H092558 JPJ

CATEGORY: Classification

TARIFF NO.: 7419.99.50

MR. JUAN DOMINGUEZ
WAL MART STORES, INC.
702 SW 8TH STREET
BENTONVILLE, AR 72716-8023

RE: Revocation of NY F87785; Classification of Eurostyle showerhead

DEAR MR. DOMINGUEZ:

This letter is to inform you that Customs and Border Protection (CBP) has reconsidered New York Ruling letter (NY) F87785, issued to you on June 2, 2000. CBP has determined that NY F87785 is incorrect. Therefore, this ruling revokes NY F87785.

NY F87785 determined that a fixed mount Eurostyle showerhead made of chrome-plated brass was classified under heading 7418, of the Harmonized Tariff Schedule of the United States (HTSUS).

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 R01416 was published on June 10, 2015, in Vol. 49, No. 23, of the *Customs Bulletin*. No comments were received.

FACTS:

The merchandise is described as item number B1197CP, a fixed mount Eurostyle showerhead measuring approximately 6 inches in diameter and made of chrome-plated brass.

ISSUE:

Whether the subject merchandise is classified under heading 7418, HTSUS, as “sanitary ware, and parts thereof, of copper” or under heading 7419, HTSUS as “Other articles of copper”.

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 may then be applied.

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The 2010 HTSUS provisions under consideration are as follows:

- 7418 Table, kitchen or other household articles and parts thereof, of copper; pot scourers and scouring or polishing pads, gloves and the like, of copper; sanitary ware and parts thereof, of copper:
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The issue presented is whether the showerheads are described as “sanitary ware” within the meaning of heading 7418, HTSUS.

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Accessory—a component that can, at the discretion of the user, be readily added, removed, or replaced, and that, when removed, will not prevent the fitting from fulfilling its primary function. Note: Examples include aerators, hand-held shower assemblies, *shower heads*, and in-line flow controls (emphasis added).

* * *

Fixture—a device for receiving water, waste matter, or both and directing these substances into a sanitary drainage system

A showerhead does not have the character of a plumbing fixture because unlike a sink, a lavatory, and a toilet, it is not permanently installed in or on walls. Instead, it is easily connected to a faucet or shower pipe and readily added, removed, or replaced. In addition to not being permanently installed, a showerhead is also unlike sinks, lavatories, or toilet bowls because they do not receive water, waste matter, or both, and direct them into a sanitary drainage system. The ASME standard for plumbing supply fittings indicates that a showerhead is an example of an plumbing *accessory* (emphasis added). Therefore, we conclude that a showerhead is not “sanitary ware”. Our conclusion is consistent with two New York Ruling letters (NY) G85952, dated January 17, 2001, and NY I81519, dated June 4, 2002, that determined that brass showerheads are properly classifiable under heading 7419, HTSUS. In NY G85952, CBP determined that a chrome-plated, brass shower head was classifiable under subheading 7419.99.50, HTSUS. In NY I81519 CBP determined, in relevant part, that brass shower heads were classifiable under subheading 7419.99.50, HTSUS.

Our conclusion is also consistent with several CBP rulings that have held that showerheads made of plastic are not “sanitary ware” of heading 3922, HTSUS, but are other household articles and hygienic or toilet articles of heading 3924, HTSUS. For example, in HQ 960011, dated September 23, 1998, regarding the classification of plastic massage shower heads, we stated, in relevant part, as follows:

Heading 3922, HTSUS, provides for baths, shower-baths, wash-basins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware of plastics. The shower heads are not like any of the items described by this heading. EN 39.24, at page 621, states that heading 3924 includes

[t]oilet articles (whether for domestic or non-domestic use) such as toilet sets (ewers, bowls, etc.), sanitary pails, bed pans, urinals,

chamber-pots, spittoons, douche cans, eye baths; soap dishes, towel rails, tooth-brush holders, toilet paper holders, towel hooks and similar articles for bathrooms, toilets or kitchens, not intended for permanent installation in or on walls. However, such articles intended for permanent installation in or on walls or other parts of buildings (e.g., by screws, nails, bolts or adhesives) are excluded (heading 39.25).

In this instance, the evidence presented illustrates that the shower heads are easily connected to a faucet or shower pipe and do not have the character of being fixtures for permanent installation in or on walls. Moreover, we note NY 810116, dated May 24, 1995, that classified similar shower heads under subheading 3924.90.55, HTSUS. We therefore conclude that the merchandise is described by heading 3924, HTSUS.

See also HQ H046780, dated March 10, 2009; NY N033873, dated August 21, 2008; NY N039939, dated October 28, 2008; NY N039940, dated October 28, 2008; NY N040084, dated October 28, 2008; NY N039938, dated October 29, 2008; NY N042600, dated November 10, 2008; NY G87164, dated March 2, 2001; NY F86127, dated May 8, 2000; HQ 962584, dated July 27, 1999; NY E89558, dated December 8, 1999; NY F80479, dated December 28, 1999; NY 810116, dated May 24, 1995.

HOLDING:

Pursuant to GRI 1, item number B1197CP, a fixed mount Eurostyle showerhead made of chrome-plated brass is classified under heading 7419, HTSUS. It is specifically provided for under subheading 7419.99.50, HTSUS, which provides for “Other articles of copper: Other: Other: Other, Brass plumbing goods not elsewhere specified or included”. The 2015 general column one rate of duty is Free.

EFFECT ON OTHER RULINGS:

NY F87785, dated June 2, 2000, is revoked.

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

Sincerely,

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE**19 CFR PART 177****REVOCAION OF FOUR RULING LETTERS AND
MODIFICATION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
CLASSIFICATION OF BATTERY PACKS**

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

ACTION: Notice of revocation of four ruling letters, modification of one ruling letter, and revocation of treatment relating to the classification of battery packs used to recharge electronic devices and car batteries.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking four ruling letters and modifying one ruling letter concerning the classification of battery packs used to recharge electronic devices and car batteries under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 16, on April 22, 2015. No comments were received in response to the notice.

DATES: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 5, 2015.

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

FOR FURTHER INFORMATION CONTACT: Nicholai C. Diamond, Tariff Classification and Marking Branch: (202) 325–0292.

SUPPLEMENTARY INFORMATION:**Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Vol. 49, No. 16, on April 22, 2015, proposing to revoke four rulings and modify one ruling pertaining to the classification of battery packs used to charge electronic devices and car batteries. As stated in the proposed notice, this action will cover New York Ruling (“NY”) N233902, dated October 16, 2012, NY N231545, dated September 11, 2012, NY N004618, dated December 26, 2006, NY N232914, dated September 11, 2012, and NY N233370, dated October 15, 2012, as well as any other rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N231545, NY N233902, NY N233370, and NY N232914, CBP classified a battery pack & charging kit, an external battery pack for iPhone 4/4s, and iPower Battery Pack, respectively, in subheading 8504.40.8500, HTSUS, which provides for "Electrical transformers, static converters (for example rectifiers) and inductors; parts thereof: Static converters: For telecommunication apparatus." In NY N004618, CBP classified a Jump N Start portable rechargeable power station and a Jump N Start portable power and air station used to jump start car batteries in subheading 8504.40.9530, HTSUS, which provides for "Static converters: Other: Rectifiers and rectifying apparatus: Power supplies: With a power output exceeding 150W but not exceeding 500W." We now believe that these items are classified in subheading 8507.60.00, HTSUS, which provides for "Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof: Lithium-ion batteries."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N233902, NY N231545, NY N004618, and NY N232914, and modifying NY N233370, and any other ruling not specifically identified, pursuant to the analysis set forth in Headquarters Ruling Letter H249299 (see Attachment "A" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 13, 2015

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

HQ H249299

July 13, 2015

CLA-2 OT:RR:CTF:TCM H249299 NCD**CATEGORY:** Classification**TARIFF NO.:** 8507.60.00

MR. BRYAN S. BELLAMY
LCB/CCS CASE-MATE INCORPORATED
2048 WEEMS RD.
TUCKER, GA 30084

RE: Revocation of NY N233902, NY N231545, NY N004618 and NY N232914; Modification of NY N233370; Classification of rechargeable battery packs

DEAR MR. BELLAMY:

This letter is in reference to New York Ruling Letter (“NY”) N233902, issued to you on October 16, 2012, concerning the tariff classification of an external battery pack for iPhone 4/4s. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the subject battery pack in subheading 8504.40.85, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Electrical transformers, static converters (for example rectifiers) and inductors; parts thereof: Static converters: For telecommunication apparatus.”

We have reviewed N233902, and found it to be incorrect. We have also reviewed NY N231545, dated September 11, 2012, and NY N004618, dated December 26, 2006, and NY N232914, dated September 11, 2012, which classify similar merchandise, and found them to be incorrect. We have also reviewed NY N233370, dated October 15, 2012, and found it to be partially incorrect. For the reasons that follow, we hereby revoke NY N233902, NY N231545, NY N004618, and NY N232914, and modify NY N233370.

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

FACTS:

The subject merchandise consists of various types of rechargeable battery packs. In NY N233902, NY N233370, NY N231545, and NY N232914, CBP classified external rechargeable battery packs for iPhones and other electronic devices. Each of these batteries is a lithium ion battery that is built into a plastic cover for the iPhone or other electronic device. In NY N233370, the battery pack also contained a built-in paging alarm.¹ In NY N231545, the battery pack was imported with two sets of plugs and mini-outlets, a combination car/wall charger, and an adapter that are imported within a zippered carrying case and packaged ready for retail sale. In each of these rulings, CBP classified the instant merchandise in subheading 8504.40.85, HTSUS, which provides for “Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof: Static converters: For telecommunication apparatus.”

¹ NY N233370 classified the iPower Battery Pack and the iRemember Tracker, which were separate devices. Only the classification of the iPower Battery Pack is at issue here.

In NY N004618, CBP classified two types of portable rechargeable power stations that jump-start stranded vehicles. They contain rechargeable batteries, cables, lights, adapters, sockets and fuses, all contained in a single plastic housing. The top of this housing has a handle that makes the item portable. In NY N004618, CBP classified this merchandise in subheading 8504.40.95, HTSUS, which provides for “Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof: Static converters: Other.”

ISSUE:

Whether battery packs that charge electronic devices are classified as static converters of heading 8504, HTSUS, or as electric storage batteries of heading 8507, HTSUS?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes.

The HTSUS provisions under consideration are as follows:

8504	Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof:
8507	Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof:

Note 3 to Section XVI, HTSUS, of which headings 8504 and 8507, HTSUS, are a part, provides that:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

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

The EN to heading 8504, HTSUS, states, in pertinent part, the following:

The apparatus of this group are used to convert electrical energy in order to adapt it for further use. They incorporate converting elements (e.g., valves) of different types. They may also incorporate various auxiliary devices (e.g., transformers, induction coils, resistors, command regulators, etc.). Their operation is based on the principle that the converting elements act alternatively as conductors and non-conductors.

The fact that these apparatus often incorporated auxiliary circuits to regulate the voltage of the emerging current does not affect their classification in this group, nor does the fact that they are sometimes referred to as voltage or current regulators.

This group includes:...

(D) Direct current converters by which direct current is converted to a different voltage...

This heading also includes stabilised suppliers (rectifiers combined with a regulator), e.g., uninterruptible power supply units for a range of electronic equipment.

The EN to heading 8507, HTSUS, states, in pertinent part, the following:

Electric accumulators (storage batteries or secondary batteries) are characterised by the fact that the electrochemical action is reversible so that the accumulator may be recharged. They are used to store electricity and supply it when required. A direct current is passed through the accumulator producing certain chemical changes (charging); when the terminals of the accumulator are subsequently connected to an external circuit these chemical changes reverse and produce a direct current in the external circuit (discharging). This cycle of operations, charging and discharging, can be repeated for the life of the accumulator.

Accumulators consist essentially of a container holding the electrolyte in which are immersed two electrodes fitted with terminals for connection to an external circuit. In many cases the container may be subdivided, each subdivision (cell) being an accumulator in itself; these cells are usually connected together in series to produce a higher voltage. A number of cells so connected is called a battery. A number of accumulators may also be assembled in a larger container. Accumulators may be of the wet or dry cell type...

Accumulators are used for supplying current for a number of purposes, e.g., motor vehicles, golf carts, fork-lift trucks, power hand-tools, cellular telephones, portable automatic data processing machines, portable lamps....

Accumulators containing one or more cells and the circuitry to interconnect the cells amongst themselves, often referred to as "battery packs", are covered by this heading, whether or not they include any ancillary components which contribute to the accumulator's function of storing and supplying energy, or protect it from damage, such as electrical connectors, temperature control devices (e.g., thermistors), circuit protection devices, and protective housings. They are classified in this heading even if they are designed for use with a specific device.

NY N233902, NY N233370, NY N231545, NY N232914, and NY N004618 classified the subject merchandise as static converters of heading 8504, HTSUS. In HQ H176833, dated November 17, 2011, CBP defined "static converter" as:

"[a] unit that employs solid state devices such as semiconductor rectifiers or controlled rectifiers (thyristors), gated power transistors, electron tubes, or magnetic amplifiers to change ac power to dc power, dc power to ac power, or fixed frequency ac power to variable frequency ac power."

According to EN 85.04(II), a static converter is “used to convert electrical energy in order to adapt it for further use.” EN 85.04(II) further states that rectifiers, inverters, alternating current converters, cycle converters and direct current converters are all examples of static converters.

See HQ H176833; *ENI Technology Inc. v. United States*, 641 F. Supp. 2d 1337, 1353-1354 (Ct. Int’l Trade 2009), *citing* The Authoritative Dictionary of IEEE Standards Terms (IEEE 100) 912, 1103 (7th ed. 2000).

In HQ H176833, no electrical conversions occurred within the subject battery module. To the contrary, the notebook computer of which the battery module was a component contained DC regulators and DC to DC converters. These items converted the voltage from the battery to specific voltages required by different circuits within the computer. Because no electrical conversion occurred within the subject battery module, CBP declined to classify it as a static converter. See HQ H176833.

Here, the subject merchandise is capable of two functions: 1. converting alternate current to direct current and converting direct current to a different voltage (a function of heading 8504, HTSUS) and 2. storing that current in a battery and producing that current to recharge the device to which the merchandise is connected (a function of heading 8507, HTSUS). Thus, it meets the terms of Note 3 to Section XVI, HTSUS, because it is designed for the purpose of performing two complementary or alternative functions. As such, we classify it according to its principal function. In NY N233370, the subject battery pack also contained a built-in paging alarm of heading 8531, HTSUS, which is an alarm that sends the merchandise’s owner a message if the merchandise is in the process of being stolen. As a result, this battery pack also meets the definition of a composite good of Note 3 to Section XVI, HTSUS, and it will too be classified according to its principal function.

The subject merchandise functions by storing electricity and supplying it to the batteries of the electronics and cars to which they are connected. The consumer charges the subject merchandise before use. Once it is charged, the subject merchandise is then connected to the iPhone, iPad, car battery, or other item that needs recharging, and its charge flows into that item. This cycle can be repeated continuously throughout the life of the subject merchandise. Thus, the subject items are essentially rechargeable batteries. For all of these reasons, we find that the battery function constitutes the principal function.

Heading 8507, HTSUS, provides for “Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof.” Electric accumulators of this heading, which the ENs specifically call storage batteries or secondary batteries, are characterized by the fact that the electrochemical action is reversible so that the accumulator may be recharged. See EN 85.07. Furthermore, the merchandise of this heading used to store electricity and supply it when required. This merchandise functions by way of a direct current passing through the accumulator produces certain chemical changes (i.e., the charging function of the battery itself), and when the terminals of the accumulator are later connected to an external circuit, these chemical changes reverse and produce a direct current in the external circuit (i.e., the charging of the device to which it is connected). This cycle of operations, charging and discharging, can be repeated for the life of the accumulator. See EN 85.07.

In the present case, the subject merchandise consists of lithium-ion battery packs that must be charged when they are first purchased. The batteries are then used to charge consumer electronics such as iPhones and other smart phones, iPads, etc. In the case of the battery pack at issue in NY N004618, the battery pack is used to jump start and provide battery power to a motor vehicle. In each case, it is the battery that is doing the work to recharge these items. As such, the subject merchandise meets the terms of heading 8507, HTSUS, and will be classified there. This classification is consistent with prior CBP rulings. *See, e.g.*, HQ H070632, dated January 10, 2011 (classifying lithium-ion cell phone battery packs in heading 8507, HTSUS); HQ 966268, dated May 21, 2003 (classifying battery packs for cell phones in heading 8507, HTSUS, and holding that battery packs are “essentially electric storage batteries”). *See also* HQ 966328, dated March 31, 2003; HQ H176833, dated November 17, 2011; HQ H155376, dated June 22, 2011; HQ 963870, dated July 14, 2000; HQ H136116, dated March 2, 2011; HQ 955498, dated February 18, 1994; HQ 954061, dated May 13, 1993; NY N152037, dated April 1, 2011; NY N240050, dated April 18, 2013.

We note that in NY N231545 and NY N004618, the merchandise consisted of batteries which are imported with various cables, adapters, etc. Heading 8507, HTSUS, includes accumulators containing one or more cells and the circuitry to interconnect the cells amongst themselves, merchandise that is often referred to as “battery packs.” *See* EN 85.07. Such battery packs are included in heading 8507, HTSUS, whether or not they include any ancillary components which contribute to the accumulator’s function of storing and supplying energy. *See* EN 85.07. Such ancillary items include electrical connectors, temperature control devices (e.g., thermistors), circuit protection devices, and protective housings. *See* EN 85.07. As such, heading 8507, HTSUS, encompasses these types of battery packs such as the ones classified in NY N231545 and NY N004618, which are imported with various ancillary items.

Lastly, we note that the subject merchandise can be distinguished from chargers that CBP has classified in heading 8504, HTSUS. These chargers of heading 8504, HTSUS, work without a battery and charge items by connecting them directly to an electrical outlet. *See, e.g.*, NY N018172, dated October 31, 2007. Thus, these items do not contain a battery function; as such, they do not meet the terms of heading 8507, HTSUS.

HOLDING:

Under the authority of GRI 1, the subject battery packs are classified in heading 8507, HTSUS. They are specifically provided for in subheading 8507.60.00, HTSUS, which provides for “Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof: Lithium-ion batteries.” The applicable duty rate is 3.4%.

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

EFFECT ON OTHER RULINGS:

NY N233902, dated October 16, 2012, NY N231545, dated September 11, 2012, NY N004618, dated December 26, 2006, and NY N232914, dated September 11, 2012, are REVOKED. NY N233370, dated October 15, 2012, is MODIFIED.

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

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**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 July 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:* July 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 2015–12, the IRS determined the rates of interest for the calendar quarter beginning July 1, 2015, and ending on September 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 October 1, 2015, and ending December 31, 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)	Overpay-ments (percent)	Corporate overpay-ments (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	

Beginning date	Ending date	Under-payments (percent)	Overpay-ments (percent)	Corporate overpay-ments (Eff. 1-1-99) (percent)
010188.....	033188	11	10	
040188.....	093088	10	9	
100188.....	033189	11	10	
040189.....	093089	12	11	
100189.....	033191	11	10	
040191.....	123191	10	9	
010192.....	033192	9	8	
040192.....	093092	8	7	
100192.....	063094	7	6	
070194.....	093094	8	7	
100194.....	033195	9	8	
040195.....	063095	10	9	
070195.....	033196	9	8	
040196.....	063096	8	7	
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.....	093015	3	3	2

Dated: July 13, 2015.

KEVIN K. McALEENAN,
Deputy Commissioner.

[Published in the Federal Register, July 21, 2015 (890 FR 43102)]

**NOTICE OF ISSUANCE OF FINAL DETERMINATION
CONCERNING STORAGE INFRASTRUCTURE SOLUTION
SYSTEM**

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of the VistA imaging tier II storage infrastructure solution (“VistA Storage Solution”) manufactured and distributed by Merlin International (“Merlin”). Based upon the facts presented, CBP has concluded that the United States will be the country of origin of the VistA Storage Solution for purposes of U.S. Government procurement.

DATES: The final determination was issued on July 16, 2015. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within August 21, 2015.

FOR FURTHER INFORMATION CONTACT: Antonio J. Rivera, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202) 325–0226.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on July 16, 2015 pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP has issued a final determination concerning the country of origin of the VistA Storage Solution manufactured and distributed by Merlin, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H259758, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreement Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination CBP found that, based upon the facts presented, four U.S.-origin hardware and software components and two foreign-origin

hardware and software components were integrated into one end product, the VistA Storage Solution. CBP found that assembling the hardware components together, loading the software components onto the hardware components, and configuring the software components to reach the desired storage infrastructure, which were processes that took place entirely in the United States, substantially transformed the individual components into the final product, the VistA Storage Solution. CBP noted that the majority of the components were from the United States; that the processing took place entirely in the United States; that the name, character and use of the individual components differed from the name, character and use of the final product; that the tariff classification of the foreign components changed when they were integrated into the final product; and, the cost breakdown of each component, to find that under the totality of the circumstances, the country of origin of the VistA Storage Solution will be the United States for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: July 16, 2015.

HAROLD SINGER,
*Acting Executive Director, Regulations and
Rulings,
Office of International Trade*

HQ H59758.

July 16, 2015

OT:RR:CTF:VS H259758 AJR

CATEGORY: Origin

GEORGE W. THOMPSON, ESQ.
THOMPSON & ASSOCIATES, PLLC
1250 CONNECTICUT AVENUE, NW, SUITE 200,
WASHINGTON, DC 20036

RE: U.S. Government Procurement; Country of Origin of Storage Infrastructure Solution Systems; Substantial Transformation

DEAR MR. THOMPSON:

This is in response to your letter, dated November 21, 2014, requesting a final determination on behalf of Merlin International, Inc. (“Merlin”), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (“CBP”) Regulations (19 C.F.R. part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of Merlin’s VistA Imaging Tier II Storage Infrastructure Solution (“VistA Storage Solution”). We note that Merlin is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

You describe the pertinent facts as follows. The VistA Storage Solution is a record imaging, storage, and data retrieval system produced by Merlin in accordance with its contract with the Veterans Administration (“VA”). The VistA Storage Solution at issue contains a 24 TeraByte (“TB”) storage system.¹ Under its contract with the VA (“VA Contract”), Merlin will install the VistA Storage Solution at 144 VA locations where Veterans Integrated Service Network (“VISN”) facilities are hosted. The VA Contract requires that each installed VistA Storage Solution (1) be networked into a single “grid” to allow access to, and automatic replication of, stored data throughout the networked system; while also (2) performing as “virtual machines” to ensure that data stored remains available in the event of any system failures. To meet these contract requirements, Merlin designed the VistA Storage Solution, assembling together three main hardware components and configuring them with three main software components, in order to provide the particular product required by the VA.

A. The Hardware Components

Each VistA Storage Solution will consist of at least the following hardware components: two to four Cisco UCS C240 rack-mount servers (“Cisco Serv-

¹ Merlin produces other VistA Storage Solutions with the same functionality as the subject VistA Storage Solution, but with different storage capabilities that include 18, 36, 90, 120, and 180 TB storage systems.

ers”); one or more NetApp E2600 series Fibre Channel storage arrays (“NetApp Storage Arrays”); and, two Cisco Catalyst 2960 Gigabit Ethernet network switches (“Cisco Network Switches”).

You state that the Cisco Servers are produced in the United States and will provide the computing platform for the system. You state that the NetApp Storage Arrays are produced in the United States and will provide the data storage capability for the system. You state that the Cisco Network Switches are produced in the United States or China and will provide network connectivity for the system, enabling management access to the system’s components, and user and application access to the system’s data storage.

The Cisco Servers, NetApp Storage Arrays, and Cisco Network Switches will be interconnected by cables, mounted on a rack, and supplied electricity through power strips. You state that the cables, racks, and power strips (collectively, “Miscellaneous Components”) originate in various countries.

B. The Software Components

The Cisco Servers will be loaded with the following software: VMware vSphere 5 ESXi hypervisor software (“VMware”); Novell SuSE Linux Enterprise Server 11 (“Novell”); and, NetApp’s StorageGRID software solution (“StorageGRID”).

You state that VMware was developed in the United States and it will enable the Cisco Servers to host three to six “virtual machines.” You state that Novell was developed in the United States and it will be the operating system software for the Cisco Servers. You state that StorageGRID was developed in Canada and it will protect images against data loss or corruption by maintaining multiple geographically separated replicas, by proactively and continuously checking integrity, and by self-healing to maintain resiliency in the event of corruption or failure. Additionally, you state that StorageGRID will provide the “virtual machines” with: an administration node for administrative access and control; a control node for metadata management and replication management of data objects; a storage node for stored objects; a standard gateway node for access to stored data; and, a primary gateway HA² pair providing a high availability cluster of standard gateways.

You state the hardware components, with their standard features, lack the “grid” and “virtual machine” functions required by the VA Contract. You state that without VMWare and StorageGRID, it would be impossible for the Vista Storage Solution components to act together as part of a multi-site system (*i.e.* a single “grid”). You also state that without Novell, the Cisco Servers would be unable to operate at all, much less support the “virtual machine” requirements.

C. Assembly and Configuration Process

The Vista Storage Solutions will be assembled in Virginia, United States by two of Merlin’s subcontractors, Mission Mobility (“MM”) and NetApp Inc. (“NAI”). Once MM obtains the hardware from Merlin it will perform the first assembly process in about two days as follows:

² HA means High-Availability. See http://www.cisco.com/c/en/us/td/docs/security/nac/appliance/configuration_guide/411/cam/cam411-book/m_ha.html.

1. Assembling the hardware onto racks, and connecting the individual pieces by cables;
2. Setting the server specifications for compatibility with VA's current document storage and retrieval system (VistA Imaging Tier II);
3. Configuring CIMC³ and hard drives;
4. Setting proper boot device and the connection to the server CIMC;
5. Connecting drives and media to the servers;
6. Entering the boot menu and configuring the server management IP address;
7. Loading the VMware on the servers;
8. Configuring the storage devices to accept StorageGRID; and,
9. Conducting tests to ensure the equipment operates properly.

After this first assembly, NAI will install the VistA Storage Solutions at individual VA sites in a final assembly process that takes about one to two weeks as follows:

1. Configuring the servers to permit them to communicate on the VISN, use StorageGRID, adjust the Network Time Protocol, deploy VMware templates, set up the vCenter Server Linux Virtual Appliance, and deploy the Open Virtualization Formats;
2. Mapping storage to hosts and creating raw device mapping to provide direct "virtual machine" access to storage devices;
3. Installing Novell on each "virtual machine" and building the nodes;
4. Installing StorageGRID; and,
5. Conducting tests and connecting the equipment to the VA computer network.

You also state that prior to the final assembly process by NAI, VA employees will remove preloaded firmware (incompatible with the VA Contract requirements) from the Cisco Network Switches and replace it with Cisco Systems firmware package that permits the Cisco Network Switches to operate in virtual mode. After the NAI installation activity, you state that VA technicians will update the Cisco Network Switches with the latest version of Cisco Systems' Internal Operating Software firmware, a United States developed firmware.

In an email, dated May 29, 2015, Merlin submitted information concerning the cost of each component, photographs of each hardware component and the installed components together, a workflow diagram of the system, and the VA Contract.

ISSUE:

What is the country of origin of the VistAs for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 C.F.R. 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a design-

³ CIMC means Cisco Integrated Management Controller. See <http://www.cisco.com/c/en/us/support/servers-unified-computing/ucs-c-series-integrated-management-controller/products-installation-and-configuration-guides-list.html>.

nated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In rendering final determinations for purposes of U.S. Government Procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 CFR § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government’s purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR § 25.403(c)(1).

The Federal Acquisition Regulations define “U.S.-made end product” as: an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. 48 CFR § 25.003.

With respect to the product under consideration in the instant case, we note that CBP has not previously considered whether the components at issue are substantially transformed when brought together in the manner set forth above. However, CBP has previously considered the substantial transformation of components into servers (*see* Headquarter Ruling (“HQ”) H215555, dated July 13, 2012), into storage arrays (*see* HQ H125975, dated January 19, 2011), and into network switches (*see* HQ H241177, dated December 3, 2013), as “end products,” individually. CBP has also considered whether components of various origins have been substantially transformed during the assembly of related products. Particularly, HQ H090115, dated August 2, 2010, considered whether media servers, media gateways,⁴ circuit packs, telephone sets, and proprietary software were substantially transformed into a “Unified Communications Solution,” the “end product.” Though such rulings may not be directly on point, to the extent the VistA Storage Solution is an “end product,” we find such guidance applicable to the issue presently before us.

In order to determine whether a substantial transformation occurs when components of various origins are assembled to form completed articles, CBP considers the totality of the circumstances and makes such decisions on a case-by-case basis. The country of origin of the article’s components, the extent of the processing that occurs within a given country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, facts such as resources

⁴ The media gateways described in HQ H090115 packed together wide area network routers and local area network switches.

expended on product design and development, extent and nature of post-assembly inspection procedures, and worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one such factor is determinative. In this case, the determination will be “a mixed question of technology and customs law, mostly the latter.” *Texas Instruments v. United States*, 681 F.2d 778, 783 (CCPA 1982).

The Country of Origin of the Article’s Components

In HQ 735315, dated April 10, 1995, CBP considered whether three essential components (a U.S.-origin controlling computer, an Australian-origin optics module with a U.S.-origin printed wiring board assembly (“PWB”), and a U.S.-origin output device such as a printer) were substantially transformed into an optical spectroscopy instrument for purposes of U.S. Government procurement. In determining that the instrument was a product of the United States, it was noted that the majority of the components (the computer, PWB, and printer) and the added software were products of the United States, and their incorporation with the foreign optic module, rendered the instrument a product of the U.S. Similarly, in HQ 561734, dated March 22, 2001, CBP determined that certain multifunctional (printer, copier, and facsimile) machines assembled in Japan from 227 parts (108 from Japan, 92 from Thailand, and 24 from other countries) and eight Japanese subassemblies, were products of Japan for purposes of U.S. Government procurement. It was particularly noted that the Japanese-origin scanner subassembly was characterized as “the heart of the machine” in HQ 561734, which is similarly reflected with the U.S.-origin PWB in HQ 735315.

In this case, you state that there are six essential components, four from the United States, one from China, and one from Canada. From the VA Contract, the VistA Storage Solution appears to serve two purposes: (1) giving access to and automatically replicating stored data in the network; and (2) backing up data virtually in the case of any system failure. The VA Contract also notes that the VistA Storage Solution must be compatible with VA’s VistA Imaging Tier II, a sophisticated and comprehensive electronic health record (“EHR(s)”) database system used by the VA’s medical staff to store, retrieve, and manage documents at various VA locations.⁵

At their basic levels, all six components provide essential qualities to support the purposes of the VA Contract; that is, the server will provide a computer operating structural function, the storage array will provide a storage structural function, the network switch will provide a connectivity structural function, VMware will provide the system with “virtual machine” capability, Novell will provide the system with an operating system, and StorageGRID will provide the system with capabilities that enhance its virtual functions and ensure data protection. However, the underlying basis of this product is the ability to store EHRs for their later use by the VA.⁶ If the product could not store EHRs, it would not have any EHRs to retrieve.

⁵ EHR is an electronic version of a patient’s medical history, comprising a collection of standard medical and clinical data gathered by the patient’s providers. See <http://www.healthit.gov/providers-professionals/electronic-medical-records-emr>.

⁶ The VistA Storage Solution’s storage capabilities were emphasized in the VA Contract, which states that the purpose of the solicitation by the VA “is to acquire Tier II archive storage for use within VA’s VistA Imaging environment,” noting the prior storage

Even when considering its network connectivity and virtual data protection purposes, these functions would not matter if the product was not able to store EHRs in the first place. Similar to the scanner subassembly being the “heart of the machine” in HQ 561734, which allowed the multifunctional machine to take in data it would eventually output, the NetApp Storage Array allows the VistA Storage Solution to store EHRs that are later utilized by the functions of its other components. Therefore, only considering the country of origin of the VistA Storage Solution’s components, and noting that four of the six components are from the United States, and the particular importance of the U.S.-origin NetApp Storage Array, we find that this factor weighs towards a United States country of origin determination for the VistA Storage Solution.⁷

The Extent of the Processing that Occurs within a Given Country

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 573 F. Supp. 1149 (Ct. Int’l Trade 1983), *aff’d*, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. If the manufacturing or combining process is a minor one which leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026 (1982), *aff’d* 702 F. 2d 1022 (Fed. Cir. 1983).

In HQ H125975, CBP held that an electronic data storage system that ensures data integrity and availability was a product of Mexico as a result of the assembly and programming operations that took place in Mexico. All of the systems hardware components were assembled into the final product in Mexico and its foreign-origin controller assembly, already assembled into the final product, was reprogrammed with software in Mexico. It was stated that the system could not function in its intended manner without the software.

This case considers a very similar product that will be assembled from subassemblies into its final form, loaded with software, and then configured to customer specifications, all in the same country. This process from assembly to configuration will start and end in the United States and may take more than two weeks to complete. According to the information submitted, the VistA Storage Solution cannot function in its intended manner without the downloaded software components. We also note there are various configuration tasks which take place throughout this process that are essential to the VA Contract purposes, such as configuring the servers to permit them to communicate on the VISN and deploy VMware, and mapping storage to hosts and creating raw device mapping to provide direct “virtual machines” capabilities and updated storage requirements, which “must be reviewed on a regular basis to determine the best solution to meet the system’s expanding storage needs.”

⁷ This finding is made on the assumption that the four U.S.-origin components of the VistA Storage Solution actually originate in the United States as claimed in the final determination request.

access to storage devices. The *NetApp and VMware vSphere Storage Best Practices*⁸ is a technical report published by NetApp, detailing the flexible storage infrastructure designs offered by combining NetApp Storage Array, VMware, with servers and network switches, and intended for those architecting, designing, managing, and supporting such a storage infrastructure. In explaining the best practices for device mapping, various storage architecture concepts and constructs, and methods of configuration, it is clear that such tasks are not minimal or simple, but require a certain level of expertise to design and reach the desired storage infrastructure for particular systems like the VistA Storage Solution. Therefore, only considering the extent of processing that occurs within a given country, and noting the entire process will take place in the United States, we find that this factor weighs towards a United States country of origin determination for the VistA Storage Solution.

Whether such Processing Renders a Product with a New Name, Character, and Use

In *Data General v. United States*, 4 Ct. Int'l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States ("HTSUS")), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. In programming the imported PROMs, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function, that is, its "memory" which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no less a "substantial transformation" than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

In C.S.D. 84–85, 18 Cust. B. & Dec. 1044, CBP stated:

We are of the opinion that the rationale of the court in the *Data General* case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming; . . . [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

⁸ This technical report was published by NetApp with contributions from Cisco (Trey Layton), but is independent from Merlin. See Vaughn Stewart, Larry Touchette, et al., *NetApp and VMware vSphere Storage Best Practices*, NetApp Technical Report, TR–3749, Version 2.1 (July 2010).

Accordingly, the programming of a device that defines its use generally constitutes substantial transformation. *See also* HQ 558868, dated February 23, 1995 (programming of SecureID Card substantially transforms the card because it gives the card its character and use as part of a security system and the programming is a permanent change that cannot be undone); and HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions that allow it to perform certain functions that prevent piracy of software constitute substantial transformation); *but see* HQ 732870, dated March 19, 1990 (formatting a blank diskette does not constitute substantial transformation because it does not add value, does not involve complex or highly technical operations and did not create a new or different product); and, HQ 734518, dated June 28, 1993, (motherboards are not substantially transformed by the implanting of the central processing unit on the board because, whereas in *Data General* use was being assigned to the PROM, the use of the motherboard had already been determined when it was imported).

It is claimed that Merlin will take several individual components and combine them in the United States to make an otherwise mere collection of hardware into a functional storage system, specifically compatible with the VA technology demands. These hardware components will not have pairing capability until the software components are downloaded, and it is claimed that their integration into the final product will impart the essential character of the VistA Storage Solution, substantially transforming the individual components that comprise it. In support, HQ H082476, dated May 11, 2010; HQ H034843, dated May 5, 2009; and, HQ H175415, dated October 4, 2011, are cited.⁹

HQ H082476 held that a mass storage device was a product of the United States because assembling 12 foreign-origin hardware components (a central processing unit, speed processing circuit, EEPROM, hard disk drive, memory module, etc.) and configuring them with U.S.-developed proprietary software, a process that took place entirely in the United States, constituted a substantial transformation. It was noted that the tariff classification of the assembled hardware without the software (8471.70.40, HTSUS) shifted when the product was complete with the software (8471.80.10, HTSUS). The decision particularly emphasized the technical effort in loading the software, and that the “customization and installation of firmware and application software make[s] what would otherwise be a non-functioning rack storage unit, into [a] proprietary clustered technology.” HQ H034843 held that USB flash drives were products of Israel or the United States because, though the assembly process began in China and the software and firmware were developed in Israel, the installation and customization of the firmware and software that took place in Israel or the United States made the USB flash drives functional, permitted them to execute their security features, and increased their value. HQ H175415 held that Ethernet switches were products of the United States because, though the hardware components were fully assembled into

⁹ Counsel for Merlin cites to “*Notice of Issuance of Final Determination Concerning Certain Ethernet Switches*, 76 Reg. Reg. 62431 (Oct. 7, 2011), issued as *Customs Headquarters Ruling* 561568.” HQ 561568, dated March 22, 2001, was published as 66 FR 17222 and concerns bowling pin sets. The cited 76 Reg. Reg. 62431 concerning Ethernet switches corresponds to HQ H175415, and the correct citation is provided above.

Ethernet switches in China, they were programmed with U.S.-origin operating software enabling them to interact and route within the network, and to monitor, secure, and access control of the network.

Similarly, the substantial transformation of components into servers, storage arrays, or network switches per HQ H215555, HQ H125975, and HQ H241177, as noted above, is well documented, relying on the same principles discussed in HQ H082476, HQ H034843, and HQ H175415. This suggests that the servers, storage arrays, and network switches, each and of themselves, already have a determined use and character prior to their assembly into a VistA Storage Solution. As HQ 732870 and HQ 734518 point out, when programming does not actually create a new or different product, it may not constitute a substantial transformation. Moreover, HQ 241177 notes certain “software downloading” does not amount to “programming” which “involves writing, testing and implementing code necessary to make a computer function a certain way.” Given these considerations, it would appear, for instance, that programming an imported, already functional, network switch just to customize its network compatibility, would not actually change the identity of the imported product as a network switch. However, the issue before us, with an end product that has functions and purposes beyond network connectivity, requires consideration beyond the function of one single component, but rather consideration of the integrated whole.

In HQ H090115, CBP held, based on a totality of the circumstances, that subassemblies manufactured in China (media servers, media gateways, circuit packs, and telephone sets) were substantially transformed into a “Unified Communications Solution” product of the United States. The United States processing, lasting about 16 days, included configuring the software to the end users requirements and integrating the hardware and software to work as one functional unit. It was particularly noted that the software was developed and maintained exclusively in the United States, and added functionality to certain individual components and changed the functionality of others.

In this case, you state there is only one foreign hardware component. Similar to HQ H090115, the foreign hardware component is assembled with other hardware components in the United States, loaded with software, and then configured to the end users requirements. This process occurs entirely in the United States, lasts about 16 days, and will also result in one functional unit. By integrating the network switch into the VistA Storage Solution, the result is not merely a network switch; rather, the network switch will be configured, per the added and customized software components, to specifically work with two other hardware components in a manner that permits storing and retrieving EHRs for a particular and complex medical network. The network switch, though it would be functional as a network switch prior to its assembly and configuration with the other components, would not be functional as the subject end product with its required purposes and functions.

Moreover, though HQ H090115 notes that the development of the software is also relevant, in this case you state that there are three software components, two developed in the United States and one in Canada, all of which will be installed and configured in the United States. Particularly, StorageGRID will be customized in the United States to be compatible with the hardware components and the networked system, the various nodes enabled by StorageGRID will be built during the assembly process in the United

States, and the access to storage enabled by StorageGRID will be enabled in the United States by mapping the storage to the servers. As noted in the discussion above concerning *NetApp and VMware vSphere Storage Best Practices*, these tasks are not minimal or simple, but require a certain level of expertise to design and reach the desired storage infrastructure for particular systems like the VistA Storage Solution.

Therefore, only considering whether such processing renders a product with a new name, character, and use, and noting the manner in which the foreign hardware component and foreign software component are integrated to form an end product that functions differently than such components do on their own, we find that this factor weighs towards a United States country of origin determination for the VistA Storage Solution.¹⁰

Additional Factors

Aside from the factors above weighing towards a finding that the VistA Storage Solution is a product of the United States for purposes of U.S. Government Procurement, we note additional factors that lead to this conclusion. While changes in tariff classification are not determinative, the two foreign components, the Cisco Network Switch (8471.80.1000, HTSUS) and StorageGRID (8523, HTSUS), will change in tariff classification once configured and integrated into the final product (8471.70, HTSUS). See HQ H082476. Additionally, the cost breakdown per each hardware component places the most value on the NetAPP Storage Array, followed by the Cisco Server, and then the Cisco Network Switch; while the cost breakdown per each software component places the most value on Novell; followed by VMware, and then StorageGRID.¹¹

In summary, Merlin produces the VistA Storage Solution using six main components (three hardware components and three software components), from which only two components are of foreign-origin. The components will be combined, loaded with software, and then configured using skilled technical effort to design and reach the desired storage infrastructure for the VistA Storage Solution. The customization of the components and further installation of the software and firmware make what would otherwise be a non-functional rack storage unit into Merlin's proprietary networked storage system, the VistA Storage Solution. This process, from combining the two U.S.-origin hardware components and one foreign-origin hardware component to installing the two U.S.-origin software components and one foreign-origin software component, occurs entirely in Virginia, United States in a period of up to 16 days. As a result of the processing in the United States, based on the totality of the circumstances and assuming that four of the components actually originate in the United States as claimed, we find that the imported hardware and software components will be substantially trans-

¹⁰ This finding is made on the assumption that the four U.S.-origin components of the VistA Storage Solution actually originate in the United States as claimed in the final determination request.

¹¹ Aside from the values per component provided by Merlin in the email, dated May 29, 2015, these values aligned with the values per unit costs estimated from Merlin's Product Catalog, dated October 1, 2013, and similarly reflected by Cisco prices, consumer reports, and other price databases.

formed. Therefore, the country of origin of the VistA Storage Solution will be the United States for purposes of U.S. Government procurement.

HOLDING:

Based on the facts provided, the hardware and software components will be substantially transformed through an assembly process that occurs entirely in the United States. As such, the VistA Storage Solution will be considered a product of the United States for purposes of U.S. Government procurement.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

HAROLD SINGER,
*Acting Executive Director
Regulations and Rulings
Office of International Trade*

[Published in the Federal Register, July 22, 2015 (890 FR 43451)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

**Application for Extension of Bond for Temporary
Importation**

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

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Extension of Bond for Temporary Importation (CBP Form 3173). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before August 20, 2015 to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (80 FR 24952) on May 1, 2015, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Application for Extension of Bond for Temporary Importation

OMB Number: 1651-0015

Form Number: CBP Form 3173

Abstract: Imported merchandise which is to remain in the customs territory for a period of one year or less without the payment of duties is entered as a temporary importation, as authorized under the Harmonized Tariff Schedule of the United

States (19 U.S.C. 1202). When this time period is not sufficient, it may be extended by submitting an application on CBP Form 3173, “*Application for Extension of Bond for Temporary Importation.*” This form is provided for by 19 CFR 10.37 and is accessible at: <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%203173.pdf>.

Current Actions: CBP proposes to extend the expiration date of this information collection with no changes to the burden hours or to Form 3173.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 1,200.

Estimated Number of Annual Responses per Respondent: 14.

Estimated Total Annual Responses: 16,800.

Estimated Time per Response: 13 minutes.

Estimated Total Annual Burden Hours: 3,646.

Dated: July 15, 2015.

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

[Published in the Federal Register, July 21, 2015 (890 FR 43105)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Screening Requirements for Carriers

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

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Screening Requirements for Carriers. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before August 20, 2015 to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (80 FR 25313) on May 4, 2015, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Screening Requirements for Carriers.

OMB Number: 1651-0122.

Abstract: Section 273(e) of the Immigration and Nationality Act (8 U.S.C. 1323(e) the Act) authorizes the Department of Homeland Security to establish procedures which carriers must undertake for the proper screening of their alien passengers prior

to embarkation at the port from which they are to depart for the United States, in order to become eligible for an automatic reduction, refund, or waiver of a fine imposed under section 273(a)(1) of the Act. To be eligible to obtain such an automatic reduction, refund, or waiver of a fine, the carrier must provide evidence to CBP that it screened all passengers on the conveyance in accordance with the procedures listed in 8 CFR 273.3.

Some examples of the evidence the carrier may provide to CBP include: a description of the carrier's document screening training program; the number of employees trained; information regarding the date and number of improperly documented aliens intercepted by the carrier at the port(s) of embarkation; and any other evidence to demonstrate the carrier's efforts to properly screen passengers destined for the United States.

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

Type of Review: Extension (without change).

Affected Public: Carriers.

Estimated Number of Respondents: 65.

Estimated Time per Respondent: 100 hours.

Estimated Total Annual Burden Hours: 6,500.

Dated: July 15, 2015.

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

[Published in the Federal Register, July 21, 2015 (890 FR 43104)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Application for Withdrawal of Bonded Stores for Fishing Vessels and Certificate of Use

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

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork

Reduction Act: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certificate of Use (CBP Form 5125). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before August 20, 2015 to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (80 FR 27335) on May 13, 2015, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public

record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certificate of Use.

OMB Number: 1651-0092.

Form Number: CBP Form 5125.

Abstract: CBP Form 5125, *Application for Withdrawal of Bonded Stores for Fishing Vessel and Certificate of Use*, is used to request the permission of the CBP port director for the withdrawal and lading of bonded merchandise (especially alcoholic beverages) for use on board fishing vessels involved in international trade. The applicant must certify on CBP Form 5125 that supplies on board were either consumed, or that all unused quantities remain on board and are adequately secured for use on the next voyage. CBP uses this form to collect information such as the name and identification number of the vessel, ports of departure and destination, and information about the crew members. The information collected on this form is authorized by section 1309 and 1317 of the Tariff Act of 1930, and is provided for by 19 CFR 10.59(e) and 10 65, and 27 CFR 290. CBP Form 5125 is accessible at: <http://www.cbp.gov/newsroom/publications/forms?title=5125>

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

Type of Review: Extension (without change).

Affected Public: Carriers.

Estimated Number of Respondents: 500.

Estimated Number of Total Annual Responses: 500.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 165.

Dated: July 15, 2015.

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

