

U.S. Customs and Border Protection

19 CFR PARTS 4, 7, 10, 12, 18, 19, 24, 54, 102, 113, 123, 125,
128, 132, 134, 141, 142, 143, 144, 145, 146, 148, 151, 152, 158,
163, 174, 181, AND 191

CBP DEC. NO. 15-14

RIN 1515-AE03

AUTOMATED COMMERCIAL ENVIRONMENT (ACE) FILINGS FOR ELECTRONIC ENTRY/ENTRY SUMMARY (CARGO RELEASE AND RELATED ENTRY); CORRECTION

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

ACTION: Interim final rule; correction.

SUMMARY: U.S. Customs and Border Protection (CBP) published an Interim Final Rule (CBP Dec. 15-14) on October 13, 2015, in the **Federal Register**, which amends the CBP regulations to reflect that on November 1, 2015, the Automated Commercial Environment (ACE) will be a CBP-authorized Electronic Data Interchange (EDI) System. That document erroneously included language in Amendatory Instruction 38 that was not consistent with the text of the existing CFR. This document corrects the text in Amendatory Instruction 38.

DATES: Effective November 1, 2015. The effective date for the interim final rule, published October 13, 2015 (80 FR 61278), remains November 1, 2015. Written comments must be submitted on or before November 12, 2015.

FOR FURTHER INFORMATION CONTACT: Robert Altneu, Chief, Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, at robert.f.altneu@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

On October 13, 2015, U.S. Customs and Border Protection (CBP) published in the **Federal Register** (80 FR 61278) an Interim Final Rule (CBP Dec. 15-14) document, entitled Automated Commercial

Environment (ACE) Filings for Electronic Entry/Entry Summary (Cargo Release and Related Entry). As published, the Interim Final regulation contains an error in the text of Amendatory Instruction 38 in the “Amendments to the CBP Regulations” section of FR Doc. 2015–25729.

Correction

On page 61289, in the second column, under “§ 141.57 [Amended]” revise Amendatory Instruction 38 to read as follows:

■ 38. Amend § 141.57, in paragraph (d)(2) by removing the words “through the Customs ACS (Automated Commercial System)” and adding in their place the words “to the CBP Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system”.

Dated: October 20, 2015.

HAROLD M. SINGER,
Director,
Regulations and Disclosure Law Division,
Regulations and Rulings,
Office of International Trade,
U.S. Customs and Border Protection.

HEIDI COHEN,
Senior Counsel for Regulatory Affairs,
Department of the Treasury.

[Published in the Federal Register, October 26, 2015 (80 FR 65134)]



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 remains unchanged from the previous quarter. For the calendar quarter beginning October 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.

EFFECTIVE DATE: October 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 2015-17, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2015, and ending on December 31, 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 January 1, 2016, and ending March 31, 2016.

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

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (Eff. 1-1-99) (percent)
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	123115	3	3	2

Dated: October 23, 2015.

R. GIL KERLIKOWSKE,
Commissioner.

[Published in the Federal Register, October 28, 2015 (80 FR 66016)]

GENERAL NOTICE

19 CFR PART 177

MODIFICATION OF ONE RULING LETTER, REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF PLASTIC HEAT SHRINK TUBING

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

ACTION: Notice of modification, revocation of two ruling letters, and revocation of treatment relating to the tariff classification of plastic heat shrink tubing.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying or revoking two ruling letters concerning tariff classification of plastic heat shrink tubing under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP to 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. 30, on July 29, 2015. One comment regarding the proposed was received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 11, 2016.

FOR FURTHER INFORMATION CONTACT: Nerissa Hamilton-vom Baur, Tariff Classification and Marking Branch, at (202) 325–0104.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (“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 public 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. 30, on July 29, 2015, proposing to modify or revoke ruling two letters pertaining to the tariff classification of plastic heat shrink tubing. As stated in the proposed notice, this action will cover New York Ruling Letter ("NY") H80297, dated May 31, 2001, and NY 843391, dated July 21, 1989, as well as 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 two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the 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 its agents for importations of merchandise subsequent to the effective date of this notice.

In NY H80297 and NY 843391, CBP classified plastic heat shrink in heading 8546, HTSUS, which provides for "electrical insulators of any materials." CBP has reviewed NY H80297 and NY 843391, and has determined the ruling letters to be in error. It is now CBP's position that plastic heat shrink tubing is properly classified, by operation of GRI 1, in heading 3926, HTSUS, specifically in subheading

3926.90.99, HTSUS, which provides for “Other articles of plastic and articles of other materials of headings 3901 to 3914: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY H80297, revoking NY 843391, and revoking any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (“HQ”) H118307, set forth as an attachment 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), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: October 14, 2015

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H118307

October 14, 2015

OT:RR:CTF:TCM H118307 HvB

CATEGORY: Classification

TARIFF NO.: 3926.90.99

BRENT REIDER

INTERNATIONAL TRADE GROUP, INC.

2920 NORTH STAR ROAD

COLUMBUS, OH 43221-2961

RE: Modification of NY H80297 and Revocation of NY 843391; Classification of plastic heat-shrink tubing.

DEAR MR. REIDER:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) H80297, issued to you on May 31, 2001, on the classification of Insultube 500–546 under the Harmonized Tariff Schedule of the United States (HTSUS).

We have reviewed NY H80297 and have found it to be partially in error. For the reasons set forth below, we hereby modify NY H80297 with respect to the Insultube 500–546, and revoke NY 843391, dated July 21, 1989, in which CBP classified similar merchandise.

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, Volume 49, No. 30, on July 29, 2015, proposing to modify NY H80297, to revoke NY 843391, and to revoke any treatment accorded to substantially identical transactions. CBP received one comment in response to this notice, which is addressed herein.

FACTS:

The subject merchandise is heat-shrink tubes made from polyethylene. NY H80297 described the merchandise as consisting of “a 50-foot length of polyethylene tubing that is used for insulating electrical conductor.” In NY 843391, CBP stated that the subject merchandise consisted of “polyethylene heat-shrinkable products used to insulate telecommunication cable splices and seal the ends of PVC cables.”

ISSUE:

Whether the heat-shrink tubes are classified in heading 3926, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914” or, in heading 8546, HTSUS, which provides for “Electrical insulators of any material”?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be

classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The following 2015 HTSUS provisions are under consideration:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914

3926.90	Other
8546	Electrical insulators of any material

8546.90	Other

The Notes to Chapter 39 (which include heading 3926) provide in pertinent part:

2. This chapter does not cover:

...

(s) Articles of section XVI (machines and mechanical or electrical appliances[.]

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to heading 8546, HTSUS, provide in relevant part:

Insulators of this heading are used for the fixing, supporting or guiding of electric current conductors while at the same time insulating them electrically from each other, from earth, etc.

Usually there is a relation between the size of the insulator and the voltage (large for high voltages, smaller for low voltages). Similarly, the shape of the various types of insulators is influenced by electric, thermic and mechanical considerations. The external surface is very smooth in order to prevent the formation of deposits of non-insulating materials, such as water, salts, dusts, oxides and smoke. Insulators are often given bell, accordion, petticoat, grooved, cylinder or other shapes. Certain types are constructed in such a way that when in position they may contain oil to prevent contamination of the surface by conducting materials.

Insulators may be made of any insulating material, usually very hard and non-porous, e.g., ceramic material (porcelain, steatite), glass, fused basalt, hardened rubber, plastics or compounded insulating materials. They may contain fixing devices (e.g., metal brackets, screws, bolts, clips, laces, slings, pins, cross pieces, caps, rods, suspension or carrying clamps). Insulators equipped with metal horns or guard shields or other devices to form lightning arresters are excluded (heading 85.35).

Insulators are used on outdoor cables, e.g., in telecommunications, power networks, electrical traction systems (railway, tramway, trolleybus, etc.), and also for indoor installations or on certain machines and appliances.

* * *

The instant merchandise consists of plastic tubing that is used to provide a protective seal or jacket. Note 2(s) to Chapter 39, Section VII, HTSUS, excludes “[a]rticles of Section XVI”, which includes heading 8546, HTSUS. Accordingly, before considering whether the articles are classifiable in heading 3926, HTSUS, as a plastic article, it must first be determined whether the subject merchandise is classifiable as an electrical appliance of Section XVI, in heading 8546, HTSUS, which provides for “electrical insulators.”

In order to be classified as an electrical insulator of heading 8546, HTSUS, an article must serve two functions: (1) it must fix, support, or guide an electrical current, and (2) it must also insulate the electric current conductors from each other. *See* Headquarters Ruling Letter (HQ) 088157, dated July 2, 1992, citing to HQ 089276, dated July 24, 1991. *See* EN 85.46. Furthermore, EN 85.46 lists three types of electrical insulators: suspension insulators, rigid insulators, and leading-in insulators. A picture of the subject Insultube 500–546, which is currently discontinued, is available on amazon.com.¹ We note that the instant plastic tubing does not share physical characteristics nor, is it a device that fixes or guides electrical currents. Instead, the subject merchandise is used to form a protective jacket for wires that are buried underground. Thus, we find that the instant articles are not described by heading 8546, HTSUS.

CBP received one comment written on behalf of the importer Tyco Electronics, Inc. (“Tyco Electronics”). In its comment, Tyco Electronic states that it does not believe that CBP’s proposal to classify polyethylene heat shrink tubing in heading 3926 “establishes a general rule that ALL heat shrink tubing is classifiable in heading 3926.” The comment continues below:

Tyco Electronics respectfully submits that there are certain types of heat shrink tubing that remain classifiable in heading 8546. Due to Tyco Electronics’ concern that local ports may interpret the proposed modification/revocation of these rulings as establishing a bright line rule concerning the classification of heat shrink tubing, Tyco Electronics requests that Customs state, in any final modification/revocation, that there is no such bright line rule and that the classification of heat shrink tubing ultimately is a fact specific to the characteristics of the heat shrink tubing. In other words, Tyco Electronics requests that Customs clarify that the modification/revocation only applies to the specific products at issue in NYRL H80297 and NYRL 843391 and that that plastic heat shrink tubing may remain classifiable in heading 8546 provided the requirements of classification in heading 8546 are met.

CBP declines to state that the proposed notice applies only to the rulings at issue as Tyco Electronics suggests. An insulator of heading 8546, HTSUS, both insulates and supports/guide an electrical conductor. CBP has ruled that merely because a material is insulative or non-conductive does not mean that

¹ <http://www.amazon.com/Fi-Shock-500-546-Insultube-Discontinued-Manufacturer/dp/B000IK0MCS> (June 6, 2015)

it is an electrical insulator. *See, e.g.*, HQ 966980, dated October 25, 2004, pertaining to the classification of fabricated mica. Tyco Electronics did not elaborate as to how or why “certain types of heat shrink tubing” are classifiable in heading 8546 as electrical insulators. While we agree that determining the classification of an article in heading 8546 is a fact-specific inquiry, we do not agree that a product that consists of plastic tubing, whether heat-shrinkable or not, is *prima facie* classifiable in heading 8546. Heat shrink tubing has numerous applications. Thus, heat shrinkable tubing that is imported in material lengths to be cut after importation does not meet the terms of heading 8546, which provides for “electrical insulators.”

CBP has previously classified substantially similar merchandise in heading 3926, HTSUS. In HQ 082619, dated February 26, 1990, CBP was presented with polyethylene and ethylene vinyl acetate heat shrinkable tubing, and found that the articles were classifiable in heading 3926. *See also* HQ 082700, dated February 15, 1990, describing the tubing as “designed for corrosion protection and sealing of joint connections.” In NY E89483, dated November 19, 1999, CBP classified heat shrink tubing described as “nonconductive polyolefin... designed to provide protection or the wires in a variety of electric and electronic appliances” in heading 3926. Similarly, we classified shrinkable PVC tubes in heading 3926. *See* NY J81242, dated February 26, 2003.

In light of the foregoing, we find that the heat shrinkable tubing at issue is classified in heading 3926, HTSUS, specifically subheading 3926.90.99, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The 2015 general duty rate is 5.3% *ad valorem*.

HOLDING:

By application of GRI 1 and pursuant to Note 2(s) of Chapter 39, Section VII, the subject heat shrink tubes are classifiable under heading 3926, specifically subheading 3926.90.99, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The 2015 duty rate is 5.3% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY H80297, dated May 31, 2001, is hereby modified with respect to the Insultube 500–546 described therein.

NY 843391, dated July 21, 1989, is hereby revoked.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE

19 CFR PART 177

REVOCATION OF 3 RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF AN ANTI-THEFT DEVICE

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

ACTION: Notice of revocation of 3 ruling letters and revocation of treatment relating to the tariff classification of an anti-theft device with an ink cartridge.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking 3 ruling letters concerning tariff classification of an anti-theft device under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP to 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. 35, on September 2, 2015. No comments supporting the proposed revocation were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 11, 2016.

FOR FURTHER INFORMATION CONTACT: Peter Martin, Tariff Classification and Marking Branch, at (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) (“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 public 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. 35, on September 2, 2015, proposing to revoke 3 ruling letters pertaining to the tariff classification of anti-theft devices. As stated in the proposed notice, this action will cover New York Ruling Letter ("NY") 888345 (Aug. 10, 1993), NY C84082 (Feb. 27, 1998), and NY 885120 (May 12, 1993) as well as 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 3 identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the 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 its agents for importations of merchandise subsequent to the effective date of this notice.

In NY 888345, CBP classified anti-theft device in heading 3215, HTSUS, specifically in subheading 3215.90.5000 HTSUS, which provides for "Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid: Other: Other." It is now CBP's position that the anti-theft device is properly classified in subheading

3926.90.9995, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY 888345, NY C84082 and NY 885120 and revoking any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (“HQ”) H080818 set forth as an attachment 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), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: October 14, 2015

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H080818

October 14, 2015
OT:RR:CTF:TCM H080818 PTM
CATEGORY: CLASSIFICATION
TARIFF NO: 3926.90.9980MR. RICHARD J. HARTENSTINE
F.W. MYERS & CO. INC.
149-09 183 STREET
JAMAICA, NY 11413-4030

RE: Revocation of NY 888345, dated August 10, 1993, NY C84082, dated February 27, 1998, and NY 885120, dated May 12, 1993. Tariff classification of an anti-theft device with an ink cartridge.

DEAR MR. HARTENSTINE,

On August 10, 1993, we issued New York (NY) Ruling 888345 in response to your request for a ruling concerning the tariff classification of an anti-theft device with an ink cartridge. In NY 888345, we determined that the proper tariff classification of the anti-theft device under the Harmonized Tariff Schedule of the United States (“HTSUS”) was under heading 3215.90, which provides for “Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid: Other.” We have reviewed NY 888345 and found it to be in error. For the reasons set forth below, we hereby revoke NY 888345 several other rulings on substantially similar merchandise: NY C84082 (Feb. 27, 1998), and NY 885120 (May 12, 1993).

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*, Volume 49, No. 35, on September 2, 2015, proposing to revoke NY 888345, NY C84082 and NY 885120 and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

In NY 888345 we described the anti-theft device as follows:

The prospective import is a Colored Pin (Ink Anti-Theft Device) for preventing of the theft of clothes. The device is composed of a plastic capsule which is approximately 1 1/2 inches in diameter by 5/8 inch thick. It is filled with red ink. The ink capsule is attached with a steel pin to clothing or other items in department stores. If unauthorized persons try to remove the pin, the ink will leak onto the clothing.

The anti-theft devices are used by retailers to prevent shoplifters from stealing merchandise. The retailers affix the devices to garments with a locking clamp, and the devices can only be removed with a specially designed detaching tool. If a person attempts to remove the device without the detaching tool, a tack in the device will break the vial of ink and ruin the garment. The device is designed to work as both a visual and functional deterrent.

ISSUE:

Are the anti-theft devices properly classified under heading 3215 HTSUS as “other inks” or in heading 3926 HTSUS as “other articles of plastics”?

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

The HTSUS provisions at issue are as follows:

3215	Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid:
3215.90	Other:
	* * *
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:

The anti-theft device consists primarily of two components: a plastic shell housing and an ink capsule. Because the anti-theft device is a composite good, it must be classified pursuant to GRI 3, which states, in pertinent part:

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

* * *

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

Regarding the determination of which component imparts the instant anti-theft device with its essential character, 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.

GRI 3(b) requires that classification be based on the component that provides the article with its essential character. As noted above, EN (VIII) to GRI 3(b) provides that when performing an essential character analysis, the factors that should be considered are the bulk, quantity, weight or value, or the role of a constituent material in relation to the use of the goods. There have been several court decisions on “essential character” for purposes of classification under GRI 3(b). *See, e.g., Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1337–1338 (Ct. Int’l Trade 2005); and *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278, 1295–1356 (Ct. Int’l Trade 2006), *aff’d* 491 F.3d 1334 (Fed. Cir. 2007). “[E]ssential character is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d at 1293 quoting *A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971). In particular, in *Home Depot USA, Inc. v. United States*, the court stated “[a]n essential character inquiry requires a fact intensive analysis.” 427 F. Supp. 2d 1278, 1284 (Ct. Int’l Trade 2006). Therefore, a case-by-case determination on essential character is warranted in this situation.

The ink capsule of the anti-theft device is enclosed within the plastic shell housing, which is clamped onto the garment. The plastic shell is the only visible component of the anti-theft device. The shell prevents the ink cartridge from breaking and ruining the merchandise unless the device is tampered with. Additionally, the plastic shell housing accounts for the majority of the bulk and weight of the anti-theft device. The primary function of the anti-theft device is to prevent shoplifters from stealing garments. The plastic shell housing serves as a physical and visual deterrent to would-be shoplifters. The anti-theft device is visible on the garments onto which it is affixed. Furthermore, the garments are unusable if the device is not removed using the removal tool. The ink housed in the plastic shell is an additional deterrent, however, it is incapable of operating on its own. By contrast, the plastic shell housing can function as a theft deterrent without the ink cartridge. Thus, the role of the plastic shell housing is indispensable to the use of the device. Based on the analysis of these factors, we find that the plastic shell housing provides the merchandise with its essential character. Therefore, based on the information available, the merchandise is properly classified as an article of plastic under heading 3926 HTSUS.

Prior CBP rulings have classified similar anti-theft devices in heading 3926 HTSUS. For example, in HQ 082561 (Nov. 25, 1988), the legacy Customs Service classified Colortag anti-shoplifting device under heading 3926 HTSUS. Similarly, in NY N801735 (Sept. 28, 1994), Customs classified an anti-theft device consisting of a plastic shell containing ink under heading 3926 HTSUS. *See also*, NY 868503 (Nov. 11, 1991), NY 855458 (Aug. 29, 1990). Consequently, our holding is consistent with prior rulings.

HOLDING:

By application of GRI 3(b), the anti-theft tag is classified in heading 3926 HTSUS, more specifically in subheading 3926.90.9995, which provides for

“Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The 2015 column one, general rate of duty, is 5.3 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:

NY 888345 (Aug. 10, 1993), NY C84082 (Feb. 27, 1998), and NY 885120 (May 12, 1993) are hereby **REVOKED**.

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE

19 CFR PART 177

REVOCATION OF A RULING LETTER, MODIFICATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF CYCLOSPORINE, CAS #59865-13-3

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

ACTION: Notice of revocation of a ruling letter, modification of two ruling letters, and revocation of treatment related to the classification of Cyclosporine, CAS #59865-13-3.

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 and modifying two ruling letters concerning the classification of Cyclosporine, CAS #59865-13-3, 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. 21, on May 27, 2015. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 11, 2016.

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

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking a ruling and modifying two rulings pertaining to the classification of cyclosporine (CAS 59865-13-3). As stated in the proposed notice, this action will cover New York Ruling Letter (NY) G81655, dated January 24, 2001, NY 801521, dated October 13, 1994 and NY 801775, dated October 25, 1994, as well as any rulings on this merchandise which may exist but have not been specifically

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

In the 1994 rulings, CBP classified the product in subheading 2941.90.10, HTSUS, which provides for: "Antibiotics: Other: Natural: Other." In the 2001 ruling, CBP classified cyclosporine under subheading 2933.90.90 (now 2933.99.90), which provides for: "[H]eterocyclic compounds with nitrogen hetero-atom(s) only: Other: Other: Other: Drugs." We have determined that these three rulings are in error with respect to the classification of cyclosporine and that NY R04986, dated October 10, 2006 provides the correct classification for the merchandise in subheading 2933.79.85, HTSUS, which provides for: "Heterocyclic compounds with nitrogen hetero-atom(s) only: Lactams: Other lactams: Other: Other." Therefore, this ruling revokes NY G81655, and modifies NY 801521 and NY 801775 with respect to classification of cyclosporine (CAS 59865-13-3).

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY G81655, and modifying NY 801521 and NY 801775 with respect to classification of cyclosporine (CAS 59865-13-3), and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H192519 set forth as an attachment to this notice. Additionally, pursuant to 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: September 25, 2015

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

Attachment

HQ H192519

September 25, 2015

CLA-2 OT:RR:CTF:TCM H192519 ARM

CATEGORY: Classification

TARIFF NO.: 2933.79.85

MR. JOSEPH J. CHIVINI
AUSTIN CHEMICAL COMPANY, INC.
1565 BARCLAY BOULEVARD
BUFFALO GROVE, IL 60089

RE: Revocation of NY G81655 and modification of NY 801521 and NY 801775; Cyclosporine, CAS #59865-13-3

DEAR MR. CHIVINI:

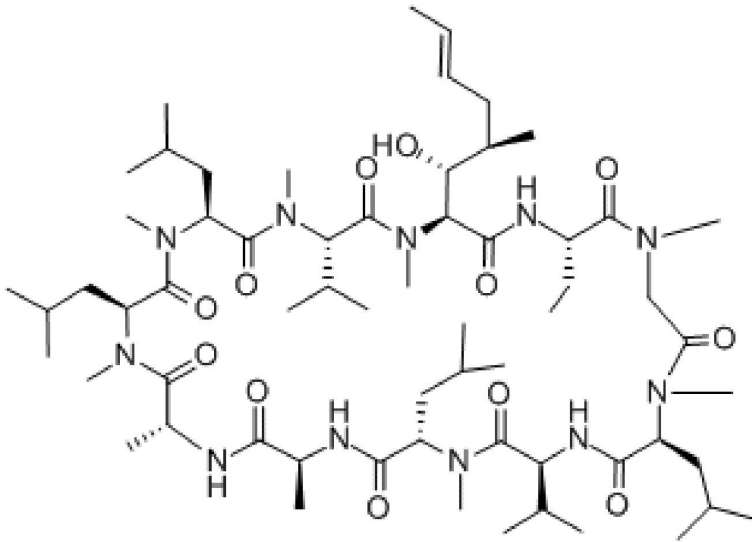
This is to inform you that Customs & Border Protection (CBP) has reconsidered New York Ruling letter NY G81655, dated January 24, 2001, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of cyclosporine (CAS 59865-13-3). CBP classified cyclosporine under subheading 2933.90.90 (now 2933.99.90), which provides for: “[H]eterocyclic compounds with nitrogen hetero-atom(s) only: Other: Other: Other: Drugs.” We have also reconsidered (NY) 801521, dated October, 13, 1994, NY 801775, dated October 25, 1994, where we classified the product in subheading 2941.90.10, HTSUS, which provides for: “Antibiotics: Other: Natural: Other.”

We have determined that these three rulings are in error with respect to the classification of cyclosporine and that NY R04986, dated October 10, 2006 provides the correct classification for the merchandise in subheading 2933.79.85, HTSUS, which provides for: “Heterocyclic compounds with nitrogen hetero-atom(s) only: Lactams: Other lactams: Other: Other.” Therefore, this ruling revokes NY G81655, and modifies NY 801521 and NY 801775 with respect to classification of cyclosporine (CAS 59865-13-3).

Pursuant to section 625(c), 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, Volume 49, No. 21, on May 27, 2015, proposing to revoke NY G81655 and to modify NY 801521 and NY 801775 and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to the notice.

FACTS:

Cyclosporine, CAS #59865-13-3, is also known as Cyclosporine A and has the chemical formula $C_{62}H_{111}N_{11}O_{12}$, and the chemical structure printed below:



In NY G81655, we stated the following:

Cyclosporine is a cyclic peptide, consisting of 11 amino acids, produced as a metabolite by the fungus, *Beauveria nivea*. It is indicated for use as an immunosuppressant agent for the prevention of organ rejection in kidney, liver, and heart allogeneic transplants (i.e., transplants involving individuals who are antigenically distinct). We note that the International Nonproprietary Name (INN) for Cyclosporine is “Ciclosporin,” which is listed in Table 1 of the Pharmaceutical Appendix to the Tariff Schedule.

A report issued to this office by the U.S. Customs laboratory in New York notes the lack of any evidence in the scientific literature indicating Cyclosporine’s ability to kill other microorganisms or inhibit their growth.

CBP Laboratory Report No. NY20111634S, dated October 7, 2011, a supplement to the report referred to in NY G81655, states, in pertinent part, the following: “In our opinion, Cyclosporine is a Lactam...”

In both NY 801521 and NY 801775 we described cyclosporine as “an antibiotic which is used as an immunosuppressive drug.”

ISSUE:

Whether cyclosporine is classifiable as an antibiotic of heading 2941, and if not, whether when classified by structure, it is a lactam of subheading 2933.79.85.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of

Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 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 HTSUS provisions under consideration are the following:

- 2933: Heterocyclic compounds with nitrogen hetero-atom(s) only:
 - Lactams:
 - 2933.79 Other Lactams:
 - Other:
 - 2933.79.85 Other...
 - *****
 - Other:
 - 2933.99 Other:
 - Other:
 - 2933.99.90 Drugs . . .
 - * * * * *
 - 2941 Antibiotics:
 - 2941.90 Other:
 - 2941.90.10 Natural

The EN to heading 2933 states, in pertinent part, the following:

(G) **Lactams.**

These compounds may be regarded as internal amides analogous to lactones; obtained from amino-acids by elimination of water. The molecules may contain one or more amide functions in a ring. They are known as mono-, di-, trilactams, etc., according to the number of amide functions present.

The EN to heading 2941, HTSUS, states in relevant part:

Antibiotics are substances secreted by living micro-organisms which have the effect of killing other micro-organisms or inhibiting their growth. They are used principally for their powerful inhibitory effect on pathogenic micro-organisms, particularly bacteria or fungi, or in some cases on neoplasms. They can be effective at a concentration of a few micrograms per ml in the blood.

In *Lonza, Inc. v. U.S.*, 46 F.3d 1098 (Fed. Cir. 1995), the court stated that “antibiotics are commonly understood to mean substances, produced either naturally or synthetically, that exhibit an ability to kill or inhibit the growth of microorganisms.” *Id.*

In the 1994 NY rulings, we described cyclosporine as an antibiotic that is used as an immunosuppressant. Though originally isolated in 1970 from samples submitted for the screening program for antifungal antibiotics, an-

tifungal activity proved both modest and restricted. *Tribe, Henry T., "The Discovery and Development of Cyclosporin", Mycologist, Volume 12, Part 1, February 1998. (http://www.fungi4schools.org/Reprints/Mycologist_articles/Post-16/Medical/V12pp020-023cyclosporin.pdf).*

Furthermore, "no effect was found on tumour cells of mice in vitro, nor on survival of leukaemic mice, these facts indicating that immunosuppression was not linked with general cytotoxic activity." *Id.* Therefore, cyclosporine has not been shown to inhibit neoplasms or to inhibit pathogenic microorganisms. Rather, cyclosporine is the first line treatment in organ transplants as an immunosuppressant to decrease the chance of rejection of the new organ. Also, the immunosuppressant activity of cyclosporine is now being used to treat autoimmune diseases such as psoriasis, uveitis, rheumatoid arthritis, and others. *Id.* Therefore, in accordance with the terms of heading 2941, HTSUS, and the EN thereto, cyclosporine is not classifiable as an antibiotic because it does not exhibit antibiotic activity and is not used as such. Hence, it is classified by its structure.

A heterocyclic compound is an organic compound "composed of one or more rings, and which contain in the ring(s), in addition to the carbon atoms, atoms of other elements." General EN, Subchapter X, Chapter 29, HTSUS. Cyclosporine meets this description, thus it is a heterocyclic compound; as nitrogen is the only element other than carbon found in the ring structure of cyclosporine, it is a "heterocyclic compound with nitrogen hetero-atom(s) only," properly classified in heading 2933, HTSUS. Furthermore, in accordance with the CBP Laboratory Report, Cyclosporine is a lactam of subheading 2933.79, HTSUS, because the molecules contain one or more amide functions in a ring.

HOLDING:

Cyclosporine, CAS #59865-13-3, is classified in heading 2933, HTSUS. Specifically, the merchandise is classified in subheading 2933.79.85, HTSUS, which provides for: "Heterocyclic compounds with nitrogen hetero-atom(s) only: Lactams: Other lactams: Other: Other." The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY G81655 is revoked and NY 801521 and 801775 are modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Sincerely,

MYLES B. HARMON,

Director

Commercial Rulings Division

CC: Ms. Joan von Doehren
Interchem Corporation
120 Rt. 17 North, Suite 115
Paramus, NJ 07652

Ms. Iliana Fuller
Allergan, Inc. 2525 Dupont Drive
P.O. Box 19534
Irvine, CA 92623-9534

**PROPOSED REVOCATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF SAYTEX HP 7010, ALSO
KNOWN AS BROMINATED POLYSTYRENE (CAS
#88497-56-7)**

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

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to the tariff classification of Saytex HP 7010, also known as Brominated Polystyrene (CAS #88497-56-7).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke one ruling letter relating to the tariff classification of Saytex HP 7010, also known as Brominated Polystyrene (CAS #88497-56-7), 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 December 10, 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 revoke a ruling letter pertaining to the tariff classification of Saytex HP 7010, also known as Brominated Polystyrene (CAS #88497–56–7). Although in this notice, CBP is specifically referring to the revocation of NY N074315, dated September 25, 2009 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 N074315, CBP classified Saytex HP 7010, also known as Brominated Polystyrene (CAS #88497-56-7) in subheading 3824.90, HTSUS, which provides for: “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY N074315 and any other ruling not specifically identified, in order to reflect the proper classification of Saytex HP 7010, also known as Brominated Polystyrene (CAS #88497-56-7) according to the analysis contained in proposed HQ H257795, 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: October 14, 2015

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

Attachments

[ATTACHMENT A]

N074315
September 25, 2009
CLA-2-38:OT:RR:E:NC:2:239
CATEGORY: Classification
TARIFF NO.: 3824.90

MR. TRISTAN WATKINS
ALBERMARLE CORPORATION
451 FLORIDA STREET
BATON ROUGE, LA 70801

RE: The tariff classification of Saytex HP 7010, CAS No. 88497-56-7

DEAR MR. WATKINS:

In your letter dated September 1, 2009, you requested a tariff classification ruling.

Saytex HP 7010, also known as Brominated Polystyrene, is a mixture composed of 68% bromine and 32% polystyrene. The product is a flame retardant polymeric additive indicated for use in engineering plastic applications.

The applicable subheading will be 3824.90, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other.

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 Richard Dunkel at 646-733-3032.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H257795
 CLA-2 OT:RR:CTF:TCM H257795 GA
 CATEGORY: Classification
 TARIFF NO.: 3903.90.50

MR. J. MICHAEL TAYLOR
 KING & SPALDING
 1700 PENNSYLVANIA AVE., NW
 SUITE 200
 WASHINGTON, DC 20006

RE: Revocation of NY N074315; Classification of Saytex HP 7010, also known as brominated polystyrene (CAS #88497-56-7)

DEAR MR. TAYLOR:

This is in response to your request for reconsideration of New York Ruling Letter (NY) N074315, dated September 25, 2009, issued to your client, Albemarle Corporation (“Albemarle”), concerning the tariff classification of Saytex HP 7010, also known as brominated polystyrene (CAS #88497-56-7), under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Custom and Border Protection (CBP) classified the subject product in subheading 3824.90, HTSUS, which provides for: “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other.”

We have reviewed NY N074315 and find it to be in error. The product was incorrectly described as a mixture in that ruling. For the reasons set forth below, we hereby revoke NY N074315.

FACTS:

In NY N074315, CBP described the merchandise as follows:

Saytex HP 7010, also known as Brominated Polystyrene, is a mixture composed of 68% bromine and 32% polystyrene. The product is a flame retardant polymeric additive indicated for use in engineering plastic applications.

The specification data provided by Albemarle clarifies that the product is not a mixture of two unreacted components with a ratio of 68% bromine and 32% polystyrene. The product is in the form of the reacted product, that is, a chemically modified polymer. It contains by weight 68% of bromine.

ISSUE:

Is Saytex HP 7010, also known as brominated polystyrene (CAS #88497-56-7), properly classified in heading 3824, HTSUS, as a “chemical product or preparation. . . not elsewhere specified or included”, or in heading 3903, HTSUS, as “polymers of styrene, in primary forms”?

LAW AND ANALYSIS:

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

Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions at issue provide, in pertinent part, as follows:

- 3824 Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included.
- 3903 Polymers of styrene, in primary forms.

Heading 3824, HTSUS, provides, in relevant part, for chemical products and preparations which are “not elsewhere specified or included.” Therefore, if the merchandise is described by heading 3903, HTSUS, it is not classified in heading 3824, HTSUS.

Heading 3903, HTSUS, provides for polymers of styrene, in primary forms. The specification data submitted by Albemarle confirms that Saytex HP 7010, also known as brominated polystyrene (CAS #88497-56-7), is a chemically modified polymer. Chemically modified polymers are classified according to their constituent polymeric material – polystyrene. The merchandise is classified in heading 3903, HTSUS. As such, it cannot be classified in Heading 3824, HTSUS.

HOLDING:

Pursuant to GRIs 1 and 6, Saytex HP 7010, also known as brominated polystyrene (CAS #88497-56-7), is classified in heading 3903, HTSUS, and specifically in subheading 3903.90.50, which provides for “Polymers of styrene, in primary forms: Other: Other.” The column one, general rate of duty is 6.5 percent *ad valorem*.

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

This merchandise may be subject to the requirements of the Toxic Substances Control Act (TSCA) which is administered by the U.S. Environmental Protection Agency (EPA). Contact information for the EPA is as follows: 402 M Street, S.W., Washington, D.C. 20460, telephone number (202) 554-1404, or EPA Region II at (908) 321-6669.

EFFECT ON OTHER RULINGS:

NY N074315, dated September 25, 2009, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

