

U.S. Customs and Border Protection



19 CFR PART 177

PROPOSED MODIFICATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE ELIGIBILITY OF PHEROMONE LURES FOR PREFERENTIAL TREATMENT DR-CAFTA

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

ACTION: Notice of proposed modification of one ruling letter and proposed revocation of treatment relating to the eligibility of pheromone lures for preferential treatment under DR-CAFTA.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to modify one ruling letter concerning the eligibility of pheromone lures for preferential treatment under DR-CAFTA. Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before March 6, 2015.

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

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

SUPPLEMENTARY INFORMATION:**Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to modify one ruling letter pertaining to the classification of sun dried tomatoes. Although in this notice CBP is specifically referring to New York Ruling (“NY”) N233747, dated October 24, 2012 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substan-

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

In NY N233747, CBP denied the subject pheromone lures preferential treatment under DR-CAFTA because the agreement had not yet been updated to reflect the technical updates that had been made to the HTSUS. As a result, the subheading in which the subject merchandise was classified was no longer encompassed by DR-CAFTA's tariff shift rule. However, the change in the subject merchandise's tariff classification was not a substantive shift but merely a change in the subheading tariff number as a result of the technical updates. We now believe that the postponement of technical updates is an insufficient reason to deny preferential treatment in the intervening period. However, the preferential treatment is denied for the reasons set forth in the attached ruling.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N233747, and any other ruling not specifically identified, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter ("HQ") H237563 (see Attachment "B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: January 13, 2015

MONIKA BRENNER

for

MYLES B. HARMON,

*Director Commercial and Trade
Facilitation Division*

[ATTACHMENT A]

October 24, 2012

CLA-2-38:0T:RR:NC:2:235

CATEGORY: Classification; Trade Agreement Eligibility
TARIFF NO.: 3808.91.5000

MS. JENNIFER R. DIAZ
BECKER & POLIAKOFF
121 ALHAMBRA PLAZA, 10TH FLOOR
CORAL GABLES, FL 33134

RE: The tariff classification and status under the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA), of Various Pest Lures from Costa Rica.

DEAR MS. DIAZ:

In your letter dated September 25, 2012, you requested a tariff classification ruling on behalf of Marketing Arm International, Inc. The samples submitted will be returned to you as requested.

The subject products, Spodoptera Sunia, Spodoptera Exigua, Spodoptera Frugiperda and Gossyplure Pheromone Dispenser are indicated in literature supplied as mating pheromone lures for beet army worm, cotton pink bollworm, fall army worm, and the insect armyworm. The products are enclosed inside rubber septa and packed in an impermeable aluminum pack. They are all intended for use as attractants for the respective pests indicated above. All products listed consist of various decenyl or dienyl acetate compounds that function as attractants for the particular target pest. The applicable sub-heading for the all four lures will be 3808.91.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Insecticides: Other: Other." The general rate of duty will be 5 percent ad valorem.

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

This merchandise may be subject to the requirements of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), which is administered by the U.S. Environmental Protection Agency (EPA), Office of Pesticide Programs. Information on the FIFRA can be obtained by calling the EPA at (202) 260-2090, or by visiting their website at www.epa.gov.

You also requested a determination of the applicability of the instant products to the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA). General Note 29, HTSUS, sets forth the criteria for determining whether a good is originating under the DR-CAFTA. General Note 29(b), HTSUS, (19 U.S.C. § 1202) states, in pertinent part, that

For the purposes of this note, subject to the provisions of subdivisions (c), (d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good under the terms of this note if -

(i) the good is a good wholly obtained or produced entirely in the territory of one or more of the parties to the Agreement;

- (ii) the good was produced entirely in the territory of one or more of the parties to the Agreement, and -
(A) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note; or
(B) the good otherwise satisfies any applicable regional value content or other requirements specified in subdivision (n) of this note;
and the good satisfies all other applicable requirements of this note; or
(iii) the good was produced entirely in the territory of one or more of the parties to the Agreement exclusively from originating materials.

Based on the facts provided, the goods described above do not qualify for DR-CAFTA preferential treatment since they will not meet the requirements of HTSUS General Note 29(b)(38)(9), which states

A change to subheadings 3808.10 through 3808.90 from any other subheading provided that 50 percent by weight of the active ingredient or ingredients is originating.

The most recent versions of the tariff have not been updated to reflect changes within the DR-CAFTA for the subheading in which the products under review are classified. As they do not fall within the indicated range eligible for the special duty rate indicated in the respective free trade program, they are not currently eligible for the preferential rate of duty. We suggest contacting the International Trade Committee (ITC) to determine if the changes will be reflected in future updates prior to importation of the goods. Again to reiterate, the goods will therefore not be entitled to a free rate of duty under the DR-CAFTA at the present time.

Also, please note that you indicate in your submission that many of the ingredients of the final product are purchased from United States suppliers. We cannot verify that the merchandise is produced in the United States or simply purchased in the United States and of foreign manufacture. If you decide to request administrative review for this decision, we suggest providing a more detailed accounting for the manufacturing processes of each component.

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/htsl>.

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 Paul Hodgkiss at (646) 733-3046.

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, U.S. Customs and Border Protection, Regulations & Rulings, 799 9th Street N.W. -7th floor, Washington, DC 20229-1177.

Sincerely,

THOMAS J. RUSSO

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H237563
CLA-20T:RR:CTF:TCM H237563 TNA
CATEGORY: Classification

JENNIFER R. DIAZ, Esq.
BECKER & POLIAKOFF
121 ALHAMBRA PLAZA, 10TH FLOOR
CORAL GABLES, FL 33134

RE: Reconsideration of NY N233747; Classification and DR-CAFTA Preference of Various Pest Lures from Costa Rica

DEAR Ms. DIAZ:

This letter is in reference to your request, dated January 7, 2013, of reconsideration of NY N233747, issued to you on October 24, 2012, on behalf of Marketing Arm International, Inc., concerning the tariff classification of pheromone lures that incorporate ingredients from the United States, Costa Rica, and the Netherlands and whether they are eligible for preferential treatment under the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the subject pheromone lures under subheading 3808.91.50, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Insecticides: Other: Other.” CBP also found that the merchandise did not qualify for preference under DR-CAFTA. We have reviewed NY N233747 and found it to be partially incorrect. For the reasons set forth below, we hereby modify NY N233747.

FACTS:

The subject merchandise consists of four types of pheromone dispensers, used as traps for certain types of insects, specifically beet army worm, cotton pink bollworm, fall army worm, and the insect armyworm. These products are enclosed inside rubber septa and packed in an impermeable aluminum pack. They consist of various chemical compounds that function as attractants for the particular target pest.

The first product, Spodoptera sunia pheromone lure, is a mating disruption pheromone for the armyworm. It consists of two active ingredients: (Z,E)-9,12tetradecadienyl acetate (CAS-30507-70-1) and (Z)-9-Tetradecenyl acetate (CAS16725-53-4), as well as a third ingredient, n-hexane. The product is enclosed inside a rubber septum measuring approximately 1.5 cm in length and packed in an impermeable aluminum pack. It is intended for use as an attractant for Spodoptera sunia (armyworm). You state that the supplier of the rubber septa and the active ingredients are all U.S. companies, and that the supplier of the nhexane is a Costa Rican company.

The second product, Spodoptera exigua pheromone lure, is a mating disruption pheromone for the beet armyworm. It consists of two active ingredients: (Z)-9, E-12-tetradecadienyl acetate (CAS-31654-77-0) and Z-9-tetradecenol (CAS-35153-15-2). It also contains potassium hydroxide, methanol and n-hexane. The product is enclosed inside a rubber septum

measuring approximately 1.5 cm in length and packed in an impermeable aluminum pack. It is intended for use as an attractant for *Spodoptera exigua* (beet armyworm). You state that the supplier of the rubber septa, the active ingredients, the potassium hydroxide and the methanol are U.S. companies, and the supplier of the n-hexane is a Costa Rican company.

The third product, *Spodoptera frugiperda* pheromone lure, is a mating disruption pheromone for the fall armyworm. It consists of three active ingredients: Z-7-Dodecenyl acetate (CAS-14959-86-5), (Z)-11-Hexadecenyl acetate (CAS-34010-21-4) and Z-9-Tetradecenyl acetate (CAS-16725-53-4). It also contains n-hexane. The product is blister packed inside a plastic sleeve measuring approximately 4 cm in length and packed in an impermeable aluminum pack. It is intended for use as an attractant for *Spodoptera frugiperda* (fall army worm). You state that the suppliers of the active ingredients are U.S. companies, and the supplier of the n-hexane is a Costa Rican company.

The last product is Gossyplure Pheromone Dispenser, a mating disruption pheromone for the pink bollworm. It consists of two active ingredients: Z-7, E-11-Hexadecadienyl Acetate (CAS 50933-33-0); and Z-7, Z-11-Hexadecadienyl Acetate (CAS 50933-33-0). It also contains n-hexane. It is packaged in rubber septa and is intended for use as an attractant for the pink bollworm. It is stated that the supplier of the rubber septa and the active ingredients are U.S. companies; however, one invoice indicated that origin of the n-hexane is a Costa Rican company. According to the supplier, this product's active ingredients are purchased in the Netherlands.

Pheromones are natural substances that are produced by special glands in the abdomen of insects and it attracts the opposite gender of the same species. Insects produce pheromones for various purposes such as attracting a mate, marking foraging routes, and signaling alarm. Pheromone traps such as the subject merchandise slowly releases synthetic attractants that helps detect a single species of insect.

Whereas NY N23374 7 addressed both the classification of the subject pheromone lures and their eligibility for preference under DR-CAFTA, their classification is not in dispute in this request for reconsideration. To the contrary, reconsideration was requested solely on the issue of preference under DR-CAFTA.

ISSUE:

Are the subject pheromone lures eligible for preferential treatment under DR-CAFTA?

LAW AND ANALYSIS:

General Note 29, HTSUS, incorporates Article 401 of the DR-CAFTA into the HTSUS. General Note 29(b) provides, in pertinent part, that:

For the purposes of this note, subject to the provisions of subdivisions (c), (d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good under the terms of this note if--

- (i) they are goods wholly obtained or produced entirely in the territory of one of the parties to the Agreement; or
- (ii) the good was produced entirely in the territory of one or more of the parties to the Agreement, and

(A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note; or

(B) the good otherwise satisfies any applicable regional value content or other requirements specified in subdivision (n) of this note;

and the good satisfies all other applicable requirements of this note; or

(iii) the good was produced entirely in the territory of one or more of the parties to the Agreement exclusively from originating materials.

As an initial matter, the following is noted on page 2 of the General Notes (GN) of the HTSUS (2012) (Rev. 1):

[COMPILER'S NOTE: Two sets of changes to the Harmonized System have caused rules of origin for some free trade agreements to be inconsistent with the tariff schedule chapters. First, the rules of origin provisions for various United States free trade agreements have NOT been updated since major changes to the HTS were proclaimed effective on February 3, 2007, and will therefore contain tariff numbers that do not exist in the chapters of the HTS; these outdated rules are included in terms of HS 2002. However, the rules for the North American Free Trade Agreement, the United States-Australia Free Trade Agreement, the United States-Singapore Free Trade Agreement, the United States-Chile Free Trade Agreement, the United States-Bahrain Free Trade Agreement, and the United States-Korea Free Trade Agreement have been updated, and the pertinent general notes do reflect proclaimed rectifications. See Presidential Proclamation 8097, which modified the HTS to reflect World Customs Organization changes to the Harmonized Commodity Description and Coding System and was effective as of Feb. 3, 2007; proclaimed modifications appear on the Web site of the United States International Trade Commission, www.usitc.gov.

Second, for the second set of HS changes, the rules of origin for the United States-Chile Free Trade Agreement have been updated, as shown in the change record for this edition, to reflect the modifications to the HTS made by Presidential Proclamation 8771 of December 29, 2011 and effective as of February 3, 2012. This proclamation modified the HTS to reflect the WCO changes to the Harmonized System recommended to be effective in 2012. In addition, the rules of origin for the United States-Korea Free Trade Agreement were updated effective on and after January 1, 2014, pursuant to Presidential Proclamation xxxx. No other rules of origin provisions have been updated since the 2012 Harmonized System update, and these provisions may reflect HTS numbers as in effect in 2002 or 2007.

Contact officials of U.S. Customs and Border Protection in order to ascertain whether affected goods qualify for FTA treatment. A ruling on an individual shipment may be necessary.]

Accordingly, because the DR-CAFTA rules of origin have not been updated to reflect the 2007 or the 2012 changes to the Harmonized System, the pre-2007 classifications for the goods at issue must be used in order to ascertain their correct rule of origin under the DR-CAFTA.

Therefore, under the terms of the Compiler's Note, while the DR-CAFTA rules have not yet been updated to reflect the technical updates to the HTSUS, and the updated subheading is not listed in the appropriate tariff shift rule, this alone is not a reason to deny preferential tariff treatment under the FTA, as determined in NY N233747. The change in subheading in which the subject merchandise is classified is not the result of a substantive change, but merely a change in the tariff number of the subheading because of the technical updates to the HTSUS. We now find that a denial of preference on this basis was unwarranted, and we re-examine whether the subject merchandise is entitled to duty-free treatment under the DR-CAFTA.

The relevant DR-CAFTA tariff shift rule states:

A change to subheadings 3808.10 through 3808.90 from any other subheading, provided that 50 percent by weight of the active ingredient or ingredients is originating.

It is not in dispute that the subject merchandise was classified in subheading 3808.10.50 under the pre-2007 HTSUS. Thus, contrary to the reasoning of NY N233747, the subject merchandise will meet this tariff shift rule if sufficient documentation is provided to show that 50 percent by weight of the active ingredient or ingredients is originating. If the merchandise was eligible prior to the 2007 technical updates, the technical updates themselves are not a bar to preference.

Your claim for DR-CAFTA preference is based on these goods being wholly obtained or produced in the U.S. and Costa Rica. No certificates of origin for the materials were submitted. However, CBP has allowed DR-CAFTA preference claims if the information needed to base a claim for preference is verified in documentation submitted by the importer, such as purchase orders, commercial invoices, proof of payment, shipping documents, etc., in addition to certificates of origin. See, e.g., HQ H196456, dated May 16, 2012; HQ H192596, dated February 14, 2012; and HQ H198036, dated February 27, 2012.

In the present case, the first product, *Spodoptera sunia*, contains three ingredients: (Z, E)-9, 12-tetradecadienyl acetate, (Z)-9-Tetradecenyl acetate, and n-hexane, enclosed inside a rubber septum. The first two ingredients are the active ingredients. The submitted invoices include an invoice from the U.S. supplier for the Z-9-Tetradecenyl acetate. They also include invoices from both the Costa Rican supplier and the U.S. supplier for the (Z,E)-9, 12-tetradecadienyl acetate.

The second product, *Spodoptera exigua*, consists of five ingredients: (Z)-9, E-12-tetradecadienyl acetate, Z-9-tetradecenol, potassium hydroxide, methanol and n-hexane, all enclosed inside a rubber septum. The first two are the active ingredients. Among the submitted invoices are invoices from both the Costa Rican supplier and the U.S. supplier for the (Z)-9, E-12-tetradecadienyl acetate and potassium hydroxide. An invoice was also submitted from the Costa Rican supplier for the methanol.

The third product, *Spodoptera frugiperda*, consists of four ingredients: Z-7-Dodecenyl acetate, (Z)-11-Hexadecenyl acetate, Z-9-Tetradecenyl acetate, and n-hexane. The first three are the active ingredients. The submitted invoices show that the Z-7-Dodecenyl acetate, Z-9-Tetradecenyl acetate and (Z)-11Hexadecenyl acetate were supplied by U.S. suppliers, and that the rubber septum was supplied by the Costa Rican supplier. However, one

invoice from a U.S. supplier for the (Z)-11-Hexadecenyl acetate and sold to the Costa Rican supplier, indicates that the country of origin of this ingredient is Japan.

The last product at issue, Gossyplure Pheromone Dispenser contains three ingredients: Z-7, E-11-Hexadecadienyl Acetate, Z-7, Z-11-Hexadecadienyl Acetate, and n-hexane. The first two are the active ingredients. The submitted invoices show that the country of origin of the Z-7, E-11-Hexadecadienyl Acetate and Z-7, Z-11-Hexadecadienyl Acetate is the Netherlands, and counsel acknowledges this origin.

The invoices submitted for each of the four goods show sales of the materials between Costa Rican and U.S. companies, but these materials could have been produced anywhere and there is no indication on the invoices that the materials were produced in the U.S. and/or Costa Rica. Thus, these invoices do not definitively establish that any of the ingredients were manufactured or produced in Costa Rica or the U.S. In fact, one invoice from an American supplier contains a notation that the chemicals are of Japanese origin. Thus, this invoice specifically contradicts the claim for preference for the *Spodoptera frugiperda* pheromone lure. You also admit that the subject Gossyplure Pheromone Dispenser's active ingredient is produced in the Netherlands, an admission that is supported by the submitted documentation.

Moreover, the tariff shift rule for heading 3808, HTSUS, where the subject goods are classified, requires that at least 50 percent by weight of the active ingredient or ingredients is originating. Since the submitted invoices show only the sale of ingredients used to make the pheromones lures, they do not substantiate the origin of the ingredients or the percentage by weight of any originating ingredients. Furthermore, the active ingredient in the Gossyplure Pheromone Dispenser is wholly obtained from the Netherlands and is therefore non-originating. Therefore, based on the information presented, the pheromone lures are not eligible for preferential tariff treatment under the DR-CAFTA. However, for the first and second products, if further supporting documents are presented to substantiate the U.S. origin of the active ingredients, these products would qualify for the preferential tariff treatment. For the third product, further information on the origin of the Z-7, E-11-Hexadecadienyl Acetate and (Z)-9, E12-tetradecadienyl acetate would need to be presented along with the weight of the ingredients. Further, a claim for preferential tariff treatment made under 19 C.F.R. §1 0.583(b) or §1 0.591, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, or the exporter or producer fails to consent to a verification visit, the port director may deny the claim for preferential treatment. *See* 19 CFR 10.616(a).

Thus, while we uphold the conclusion of NY N233747, based on the information presented, that the subject pheromone lures do not qualify for DRCAFTA preference, we come to this conclusion for different reasons than we did in NY N233747.

HOLDING:

Based on the information presented, the subject pheromone lures are ineligible for DR-CAFTA preference. The documentation submitted was not sufficient to support the claim for preferential tariff treatment under DR-CAFTA as explained above.

EFFECT ON OTHER RULINGS:

NY N233747, dated October 24, 2012, is MODIFIED with respect to the reasoning behind its denial of DR-CAFTA preference for the subject merchandise.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke five rulings concerning the tariff classification of self-propelled modular transporters under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before March 6, 2015.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the 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, this notice advises interested parties that CBP is proposing to revoke five ruling letters pertaining to the tariff classification of substantially similar models of self-propelled modular transporters. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter (“HQ”) H122237, dated May 19, 2011 (Attachment A); HQ H123524, dated March 18, 2011 (Attachment B); New York Ruling Letter (“NY”) 086210, dated January 7, 1999 (Attachment C); HQ 955231, dated January 7, 1994 (Attachment 0); and HQ 952400, dated February 9, 1993 (Attachment E), this notice covers any rulings on this merchandise that may exist, but which have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for ruling in addition to the five 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 deci-

sion, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In HQs H122237 and H123524, CBP determined that two models of self-propelled modular transport machines designed for the off-highway, slow-speed movement and positioning of extremely heavy loads were classified in heading 8704, HTSUS, which provides for, "Motor vehicles for the transport of goods."

In NY 086210, HQ 955231, and HQ 952400, CBP determined that various models of self-propelled modular transport machines designed for the off-highway, slow-speed movement and positioning of extremely heavy loads were classified in heading 8709, HTSUS, which provides for, "Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles."

CBP has reviewed ruling letters HQ H122237, HQ H123524, NY 086210, HQ 955231, and HQ 952400 and has determined those letters to be in error. It is now CBP's position that the merchandise described in the five rulings identified is classified, in heading 8427, HTSUS. Specifically, the self-propelled modular transporters powered by a non-electric motor are classified in subheading 8427.20.80, HTSUS, which provides for, "Fork-lift trucks; other works trucks fitted with lifting or handling equipment: Other self-propelled trucks: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke ruling letters HQ H122237, HQ H123524, NY 086210, HQ 955231, HQ 952400, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in the proposed ruling letter HQ H180102, set forth as Attachment F to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: January 9, 2015

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

HQ H122237

May 19, 2011

CLA-2 OT:RR:CTF:TCM H122237 CkG

CATEGORY: Classification

TARIFF NO.: 8704.23.00

SERVICE AREA PORT DIRECTOR
U.S. CUSTOMS AND BORDER PROTECTION
PORT OF HOUSTON
2350 N. SAM HOUSTON PKWY E. #1000
HOUSTON, TX 77032-3100

RE: Internal Advice 10/027; classification of self-propelled modular transports

DEAR PORT DIRECTOR:

This letter is in response to your memorandum forwarding Request for Internal Advice # 10/027, dated August 12, 2010, from Cameron International Corporation, concerning the classification of self-propelled modular transports under the Harmonized Tariff Schedule of the United States (HTSUS).

FACTS:

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

ISSUE:

Whether the instant transports are classified in heading 8704, HTSUS, as motor vehicles for the transport of goods, or heading 8709, HTSUS, as works trucks.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The HTSUS provisions under consideration are as follows:

8704:	Motor vehicles for the transport of goods:
	Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel):
8704.23.00:	GV.W. exceeding 20 metric tons ...
	* * * * *
8709:	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; . . . ; parts of the foregoing vehicles . . . :
	Vehicles:
8709.19.00:	Other. . .
	* * * * *

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).

EN 87.04 provides, in pertinent part, as follows:

The classification of certain motor vehicles in this heading is determined by certain features which indicate that the vehicles are designed for the transport of goods rather than for the transport of persons (**heading 87.03**) ... The following features are indicative of the design characteristics generally applicable to the vehicles which fall in this heading:

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

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

(c) Absence of rear windows along the two side panels; presence of sliding, swing-out or lift-up door or doors, without windows, on the side panels or in the rear for loading and unloading goods (van-type vehicles);

(d) Presence of a permanent panel or barrier between the area for the driver and front passengers and the rear area;

(e) Absence of comfort features and interior finish and fittings in the cargo bed area which are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays).

. . .

This heading also covers:

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

EN 87.09 provides, in pertinent part, as follows:

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

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

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

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

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

Works trucks are self-propelled trucks for the transport of goods which are fitted with, for example, a platform or container on which the goods are loaded. Small tank trucks of a kind generally used in railway stations, whether or not fitted with subsidiary pumps, are also classified here.

Tractors of the type used on railway station platforms are designed primarily to tow or push other vehicles, e.g., small trailers. They do not themselves carry goods, and are generally lighter and less powerful than the tractors of heading 87.01. Tractors of this type may also be used on wharfs, in warehouses, etc.

* * * * *

The importer claims classification in heading 8709, HTSUS, as a works truck, self-propelled, not fitted with lifting or handling equipment. As noted above, the transporter contains an elevating platform which has the ability to raise and lower approximately 24 inches to allow the transporter to drive under a cargo load and lift it up; this allows the transporter to forgo the need for additional lifting equipment, such as a crane, to place the load on the trailer bed. The manufacturer's website further notes that the transporters are "not only used for transportation, rather, they are also utilized for precise positioning of large and heavy loads." See <http://www.goldhofer.de/ghen/modular-vehicles/hydrostatic-drive-system-standard-pst.php>. The brochure available on the Goldhofer website for its

heavy duty modules (available at http://www.goldhofer.de/gh-de/pdf/de/goldhofer-modulfahrzeuge_d-e.pdf), further describes how its modular vehicles “independently lift the load by means of the hydraulic suspension system and set it down precisely at its destination.” See Goldhofer brochure, p. 25. Trucks with lifting or handling equipment are excluded from heading 8709, HTSUS. Although counsel points to a prior CBP ruling, HQ 955231, dated January 7, 1994, classifying a similar vehicle (a Scheurele Hydraulic Transporter) in heading 8709, HTSUS, we note that this ruling relied in part on the language of the EN to 87.09, which at the time included “self-propelled trucks for the transport of goods which are fitted with, for example, a platform or container (*sometimes designed for elevating*) on which the goods are loaded (emphasis added).” EN 87.09 no longer contains any reference to elevating platforms.

The importer further cites to HQ 960303, dated May 13, 1997, which classified several models of the Club Car Carryall in heading 8709, HTSUS. Unlike the instant modular vehicles, the Carryall vehicles were not fitted with lifting or handling equipment. However, we agree that HQ H030419, dated October 29, 2009, which classified vehicles known as “Cooler Scooters” in heading 8704, HTSUS, is not helpful precedent for classification of the instant vehicles, as heading 8709 was not under consideration in that ruling.

Furthermore, heading 8709, HTSUS, covers vehicles for the short-distance transport of goods, unsuitable for on-road use. As noted in the Goldhofer brochure (p.9), its modular vehicles are designed to “bring cargo to its destination across kilometers of uneven terrain.” A distance of several kilometers is not the short-distance transportation envisaged by heading 8709, HTSUS. Traveling such a distance also inevitably involves the use of public roads. Indeed, the Goldhofer website notes that “Goldhofer transport vehicles are in continuous operation in this segment and are equally suited for covering long-distances on motorways or hauling awkward and complicated loads via rural highways.” See <http://www.goldhofer.de/gh-en/modular-vehicles/range-ofapplication.php?WSESSIONID=Oe367a75a34c9d2da3c0f181ge01c6c2>. More specifically, the Goldhofer brochure notes with regard to its THP modules (which it notes are combined with the PST transporters), that they are developed for on-road use. Images of Goldhofer modules transporting their cargo on-road further suggest suitability for such use, as do the optional accessories: enclosed driver’s cabin, front and rear lighting, etc.

Although the vehicle meets the remaining criteria listed in EN 87.09 (low speed, turning radius approximately equal to the length of the vehicle itself), their lifting capability alone excludes them from classification as works trucks *not* fitted with lifting equipment of heading 8709, HTSUS (emphasis added). However, even if heading 8709 described the vehicle, their intended use for off and on road, long-distance transportation, makes them more specifically described as transport vehicles of heading 8704, HTSUS, rather than as “works trucks” of heading 8709, HTSUS.

Counsel disputes classification in heading 8704, arguing that the features listed in EN 87.04 as indicative of vehicles of heading 8704 are not applicable to the instant transports. We note, however, that these features primarily distinguish between vehicles of 8703 (designed for the transport of persons), and those of 8704 (transport of goods), and as such are intended as a guide for classifying “multipurpose” vehicles. However, classification in heading 8704

is not restricted solely to such multipurpose vehicles, as evidenced by the EN, which continues on to list other types of vehicles included in that heading, such as self-loading vehicles equipped with elevating devices. As a motor vehicle for the transport of goods, the SPMT thus falls within the scope of heading 8704.

HOLDING:

By application of GRI 1, the Goldhofer PST/SL6 is classified in heading 8704, HTSUS, specifically subheading 8704.23.00, HTSUS, which provides for “Motor vehicles for the transport of goods: Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel): GV.W. exceeding 20 metric tons.” The 2010 column one, general rate of duty is 25% *ad valorem*.

You are to mail this decision to the internal advice requester no later than 60 days from the date of the decision. At that time, the Office of International Trade, Regulations and Rulings, will make the decision available to CBP personnel and to the public on the CBP Home Page on the World Wide Web at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

ATTACHMENT B

HQ H123524

March 18, 2011

CLA-2 OT:RR:CTF:TCM H123524 CkG

CATEGORY: Classification

TARIFF NO.: 8704.23.00

PORT DIRECTOR

U.S. CUSTOMS AND BORDER PROTECTION

*PORT OF HOUSTON**2350 N. SAM HOUSTON PKWY E. #1000**HOUSTON, TX 77032-3100*

RE: Application for Further Review of Protest No. 5309-10-100335; classification of self-propelled modular transports

DEAR PORT DIRECTOR:

This is in response to the Application for Further Review of Protest No. 5309-10-100335 filed on behalf of Mammoet, Inc. ("Protestant"), contesting Customs and Border Protection's (CBP) classification and liquidation of self-propelled modular transports in heading 8704, HTSUS, as motor vehicles for the transport of goods.

The subject merchandise was entered on June 30, 2009 at the Port of Houston. CBP liquidated the entry on April 23, 2010, in heading 8704, HTSUS. Protestant claims classification in heading 8716, HTSUS, as a trailer, or alternatively, as a works truck of heading 8709.

FACTS:

The instant merchandise is a self-propelled modular transporter (SPMT), manufactured by Scheuerle Corp. An SPMT is a modular vehicle designed for off highway transport of extremely heavy loads over short distances. An SPMT is a modular unit, meaning that it can be connected to other SPMTs to accommodate larger loads. An SPMT is not towed by a tractor; rather it contains its own integrated power system. Each transport contains a removable power pack unit, containing the fuel combustion engine which drives the hydraulic pumps used to propel, steer and raise/lower the trailers. The top speed when unladen is 12 km/h (roughly 6.5 mph). The power pack unit can also hydraulically raise or lower the trailer platform. Each module can be connected mechanically, or can be freely arranged up to distances of 999 meters, connected only by a data link. An SPMT is equipped with either four or six axles, referred to as "lines". The SPMTs have a capacity of 36 tons per line of two axels. Mammoet imports both the four and six line modules.

ISSUE:

Whether the instant transports are classified in heading 8704, HTSUS, as motor vehicles for the transport of goods; heading 8709, HTSUS, as works trucks; or heading 8716, HTSUS, as trailers.

LAW AND ANALYSIS:

Initially, we note that the matter protested is protestable under 19 U.S.C. §1514(a) (2) as a decision on classification. The protest was timely filed, within 180 days of liquidation of the first entry for entries made on or after December 18, 2004. (Miscellaneous Trade and Technical Corrections Act of

2004, Pub.L. 108–429, § 2103 (2) (B) (ii), (iii) (codified as amended at 19 U.S.C. § 1514(c) (3) (2006)). Further Review of Protest No. 5309–2010–100335 was properly accorded to Protestant pursuant to 19 C.F.R. § 174.24(a) because the decision against which the protest was filed is alleged to be inconsistent with prior CBP rulings with respect to the same or substantially similar merchandise, specifically HQ 085424, dated November 29, 1989, HQ 952400, dated February 09, 1993, HQ 955231, dated January 7, 1994, and NY D86210, dated January 7, 1999.

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The HTSUS provisions under consideration are as follows:

8704:	Motor vehicles for the transport of goods: Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel) :
8704.23.00:	G.V.W. exceeding 20 metric tons . . . * * * * *
8709:	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; ... ; parts of the foregoing vehicles ... :
	Vehicles:
8709.19.00:	Other . . . * * * * *
8716:	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Other trailers and semi-trailers for the transport of goods:
8716.39.00:	Other * * * * *

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).

EN 87.04 provides, in pertinent part, as follows:

The classification of certain motor vehicles in this heading is determined by certain features which indicate that the vehicles are designed for the transport of goods rather than for the transport of persons (heading 87.03) ... The following features are indicative of the design characteristics generally applicable to the vehicles which fall in this heading:

(a) Presence of bench-type seats without safety equipment (e.g., safety seat belts or anchor points and fittings for installing safety seat belts) or passenger amenities in the rear area behind the area for the driver and front

passengers. Such seats are normally fold-away or collapsible to allow full use of the rear floor (van-type vehicles) or a separate platform (pick-up vehicles) for the transport of goods;

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

(c) Absence of rear windows along the two side panels; presence of sliding, swing-out or lift-up door or doors, without windows, on the side panels or in the rear for loading and unloading goods (van-type vehicles);

(d) Presence of a permanent panel or barrier between the area for the driver and front passengers and the rear area;

(e) Absence of comfort features and interior finish and fittings in the cargo bed area which are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays).

...

This heading also covers :

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

EN 87.09 provides, in pertinent part, as follows:

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

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

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

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

(2) Their top speed when laden is generally not more than 30 to 35 km/h.

(3) Their turning radius is approximately equal to the length of the vehicle itself.

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

The vehicles of this heading may be pedestrian controlled.

Works trucks are self-propelled trucks for the transport of goods which are fitted with, for example, a platform or container on which the goods are loaded. Small tank trucks of a kind generally used in railway stations, whether or not fitted with subsidiary pumps, are also classified here.

Tractors of the type used on railway station platforms are designed primarily to tow or push other vehicles, e.g., small trailers. They do not themselves carry goods, and are generally lighter and less powerful than the tractors of heading 87.01. Tractors of this type may also be used on wharfs, in warehouses, etc.

EN 87.16 provides, in pertinent part, as follows:

This heading covers a group of non-mechanically propelled vehicles (other than those of the preceding headings) equipped with one or more wheels and constructed for the transport of goods or persons.

The vehicles of this heading are designed to be towed by other vehicles (tractors, lorries, trucks, motorcycles, bicycles, etc.), to be pushed or pulled by hand, to be pushed by foot or to be drawn by animals.

Protestant claims classification in heading 8716, HTSUS, as a trailer or semi-trailer. Heading 8716 covers trailers, semi-trailers, and other vehicles, non-mechanically propelled. Protestant cites Headquarters Ruling Letter (HQ) 085424, dated November 29, 1989, as support for its claim that the SPMTs are not mechanically propelled. In that ruling, we stated as follows:

The trailer, although described as “powered” and designed with two hydraulic motors to provide tractive power to the tracks, is not self-propelled. The trailer does not have its own power source (motor and hydraulic pump to power the two hydraulic motors). The two hydraulic motors can become functional only when the trailer is coupled to the Formatic 4 tractor and its hydraulic system. Furthermore, the trailer has no independent steering system. . . .

The term “mechanically propelled” is not synonymous with “self-propelled.” For example, wheelchairs with a mechanical device for propulsion when operated by the physical action of the operator are not self-propelled. They are, however, mechanically propelled. In this case, the hydraulic motors, powered by a pump located on a tractor, provide mechanical propulsion to the tracks on the trailer.

This ruling in no way excludes self-propelled vehicles from classification in heading 8716, HTSUS; it merely notes that not all mechanically propelled vehicles are self-propelled. EN 87.16 offers further clarification of what is meant by “mechanically propelled.” The EN states that vehicles of heading 8716 are designed to be towed by other vehicles, to be pushed or pulled by hand, by animals, etc. Hence non-mechanically propelled vehicles are vehicles which have no built-in means of propulsion, and have to be pushed or pulled by the operator, by other vehicles, etc. HQ 085424 merely clarifies the distinction between “self-propelled” and “mechanically propelled.” A self-propelled vehicle, according to HQ 085424, would require an independent power source and steering system. The vehicle at issue in HQ 085424 was not self-propelled because the hydraulic motors were powered by a separate tractor, but they were mechanically propelled because the hydraulic motors still provided mechanical propulsion to the trailer—as opposed to other vehicles included in this heading, such as sleds, which rely primarily on gravity and physical propulsion by the operator. The instant trailers have an independent power source providing mechanical propulsion, and an independent steering system; they are therefore both self-propelled and mechanically

propelled. The SPMTs are therefore not described by the terms of heading 8716, HTSUS, which includes only nonmechanically propelled vehicles.

Alternatively, Protestant claims classification in heading 8709, HTSUS, as a works truck, self-propelled, not fitted with lifting or handling equipment. As noted above, the SPMT contains an elevating platform which raises and lowers to load and deposit cargo without the aid of additional lifting devices such as cranes. The Scheurele brochure for the instant SPMT indicates that the power pack unit, which provides both the propulsion and lift capability, possesses an elevating capacity of up to 12 degrees. Trucks with lifting or handling equipment are not provided for in heading 8709, HTSUS. Although protestant points to prior CBP rulings, HQ 955231, dated January 7, 1994, and HQ 952400, dated February 09, 1993, classifying similar platform trucks in heading 8709, HTSUS, we note that these rulings relied in part on the language of the EN to 87.09, which at the time included “self-propelled trucks for the transport of goods which are fitted with, for example, a platform or container (sometimes designed for elevating) on which the goods are loaded (emphasis added).” EN 87.09 no longer contains any reference to elevating platforms. Our decision in NY D86210, dated January 7, 1999, was based on CBP’s position at the time as set forth in the HQ rulings discussed above, which is no longer applicable due to the change in the EN. Furthermore, as CBP noted in HQ 955231, the transports at issue do not have the features commonly associated with works trucks of heading 8709, such as open driving cabs.

EN 87.09 also states that the construction and design features of works trucks of heading 8709 make them unsuitable for the transport of goods by road or other public ways. While protestant claims that the Scheurele SPMT is not suitable for transport of goods by road, we note that the brochure submitted with the protest in fact lists road transportation as one of the intended uses, and further asserts that the SPMT is certified for such use (“homologation for road transport”). Indeed, the brochure claims that each SPMT has a multifunctional use-e.g., an integrated driver’s cabin for longer transportation routes.

The Scheurele SPMT is fitted with lifting equipment and is thus precluded from classification in heading 8709, HTSUS. The SPMT is indisputably a motor vehicle for the transport of goods, *prima facie* classifiable in heading 8704. Protestant disputes classification in heading 8704 on the basis that heading 8709 offers a more specific description. However, because classification in other headings of Chapter 87 is precluded, there is no more specific provision. As a motor vehicle for the transport of goods, the SPMT falls within the scope of heading 8704.

HOLDING:

By application of GRI 1, the Scheuerle SPMTs are classified in heading 8704, HTSUS, specifically subheading 8704.23.00, HTSUS, which provides for “Motor vehicles for the transport of goods: Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel): G.V.W. exceeding 20 metric tons.” The 2010 column one, general rate of duty is 25% ad valorem.

You are instructed to deny the protest in full. In accordance with Sections IV and VI of the CBP Protest/Petition Processing Handbook (HB 3500–08A, December 2007, pp. 24 and 26), you are to mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date

of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to mailing of the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will make the decision available to CBP personnel, and to the public on the CBP Home Page on the World Wide Web at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

ATTACHMENT C

January 7, 1999
CLA-2-87:RR:NC:MM:101 D86210
CATEGORY: Classification
TARIFF NO.: 8709.19.0030

MR. ERNEST FERRANTE
KUEHNE & NAGEL, INC.,
10 EXCHANGE PLACE -19TH FLOOR
JERSEY CITY, NEW JERSEY 07302

RE: The tariff classification of **Goldhofer PST/PSP Special Self-Propelled Transporters with Hydrostatic Driving System For Superheavy Loads** from Germany

DEAR MR. FERRANTE:

In your letter dated December 29, 1998 you requested a tariff classification ruling.

You submitted a brochure depicting a **Goldhofer PST/PSP Special Self-Propelled Transporters With Hydrostatic Driving System For Superheavy Loads**. These vehicles are designed for the transport of Superheavy loads.

The series PST is equipped with all-wheel steering system up to a maximum steering angle of 54 respectively 60 degrees (language per brochure submitted). All transporters have swing axles, hydraulic axle compensation and leveling adjustment.

For special operation an electronic multi-way steering program (series PSP) permits normal steering, crab steering, 90 degree steering and carousel steering.

The applicable subheading for the **Goldhofer PST/PSP Special Self-Propelled Transporters With Hydrostatic Driving System For Superheavy Loads** will be 8709.19.0030, Harmonized Tariff Schedule of the United States (HTS), which provides for *Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for the short distance transport of goods; Vehicles: Other. . . Operator riding*. The rate of duty will be **duty free**.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212-466-5667.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

ATTACHMENT D

HQ 955231

January 7, 1994

CLA-2 CO:R:C:M 955231 DWS

CATEGORY: Classification

TARIFF NO.: 8709.19.00

DISTRICT DIRECTOR
U.S. CUSTOMS SERVICE
423 CANAL STREET, ROOM: 245
NEW ORLEANS, LA 70130

RE: Protest No. 2002-93-101553; Hydraulic Transporter; Works Trucks; Special Purpose Vehicle; Explanatory Notes 87.05(9), 87.04(3), and 87.09; HQ's 087028 and 952400; 8705.90.00; 8704.23.00; 9903.87.00

DEAR DISTRICT DIRECTOR:

The following is our decision regarding the request for further review of Protest No. 2002-93-101553 concerning your action in classifying and assessing duty on a hydraulic transporter under the Harmonized Tariff Schedule of the United States (HTSUS).

FACTS:

The imported vehicle is a Scheuerle Hydraulic Transporter (Chassis No. 4153). It is a swivel-wheel, multi-wheeled heavy duty industrial truck which consists of a cab-under-platform design. The transporter, constructed to transport loads of great weight, features infinitely variable steering at transversal drive and an electronic control for raising or lowering platform level adjustment. No dimensions or specifications are provided, however, review of the photographs and brochure for this vehicle indicates that it is constructed to transport extremely heavy loads. The transporter is used in a barge transfer facility to receive a barge from a specialized crane at the water site, and then move the barge across the yard to the work shop for repairs. The transporter never leaves the barge yard, and it is not designed for highway use.

The merchandise was entered under subheading 8705.90.00, HTSUS, as an other special purpose motor vehicle. The entry was liquidated on September 3, 1993, under subheading 8704.23.00, HTSUS, as a motor vehicle for the transport of goods, G.V.W. exceeding 20 metric tons. Goods classifiable under this provision are dutiable at 25 percent ad valorem by virtue of subheading 9903.87.00, HTSUS, in lieu of the duty rate for subheading 8704.23.00, HTSUS. The protest was timely filed on October 01, 1993.

The subheadings under consideration are as follows:

8705.90.00: [s]pecial purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, wreckers, mobile cranes, fire fighting vehicles, concrete mixers, road sweepers, spraying vehicles, mobile workshops, mobile radiological units.

The general, column one rate of duty for goods classifiable under this provision is 3.7 percent ad valorem.

8704.23.00: [m]otor vehicles for the transport of goods: [o]ther, with compression-ignition internal combustion piston engine (diesel or semi-diesel): [g] .V.W. exceeding 20 metric tons.

The general, column one rate of duty for goods classifiable under this provision is 8.5 percent ad valorem.

8709.19.00: [w]orks trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods . [v]ehicles: [o]ther.

Goods classifiable under this provision receive duty-free treatment.

ISSUE:

Whether the hydraulic transporter is classifiable under subheading 8705.90.00, HTSUS, as an other special purpose motor vehicle, under subheading 8704.23.00, HTSUS, as a motor vehicle for the transport of goods, G.V.W. exceeding 20 metric tons, or under subheading 8709.19.00, HTSUS, as an other works truck.

LAW AND ANALYSIS:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes, although not dispositive, are to be used to determine the proper interpretation of the HTSUS. 54 Fed. Reg. 35127, 35128 (August 23, 1989). Explanatory Note 87.05 (9) (p. 1429) states that:

[t]his heading covers a range of motor vehicles, specially constructed or adapted, equipped with various devices that enable them to perform certain non-transport functions, i.e., the primary purpose of a vehicle of this heading is not the transport of persons or goods.

[t]he heading includes:

(1) -(8) xxx

(9) Lorries fitted with stacking mechanisms (i.e., with a platform which moves on a vertical support and is generally powered by the vehicle engine). But the heading excludes self-loading motor vehicles equipped with winches, elevating devices, etc., but which are constructed essentially for the transport of goods (heading 87.04).

In HQ 087028, dated August 13, 1990, a vacuum tank truck was held to be classifiable under heading 8704, HTSUS. In precluding the truck from classification under heading 8705, HTSUS, we stated that:

[o]ur review of the [Explanatory Notes] leads to the conclusion that vehicles of heading 8705 must possess equipment designed to perform a specialized service or services at the job site, with any transport function clearly subsidiary.

The principal function of the subject hydraulic transporter is as a transporter of barges for repair. It is our understanding that the transporter has no other intended purpose. Therefore, because the transporter is equipped with elevating devices and is essentially for the transport of goods, in accordance with Explanatory Note 87.05(9) and HQ 087028, it is not classifiable under subheading 8705.90.00, HTSUS.

Explanatory Note 87.04 (3) (p. 1428) states that:

[t]his heading also covers:

(1) - (2) xxx

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

However, in part, Explanatory Note 87.09 states that:

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

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

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

(2) Their top speed when laden is generally not more than 30 to 35 km/h.

(3) Their turning radius is approximately equal to the length of the vehicle itself.

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

Works trucks are self-propelled trucks for the transport of goods which are fitted with, for example, a platform or container (sometimes designed for elevating) on which the goods are loaded.

In HQ 952400, dated February 9, 1993, we dealt with classification of industrial trucks under the HTSUS. In classifying the trucks under heading 8709 as works trucks, we stated that:

[t]he very heavy weights of the loads the trucks are designed to carry, considered in addition to the weights of the vehicles themselves, could not or would not normally be carried by road or other public ways. The trucks must be used on surfaces and in areas which are amenable to the operation of large trucks with very heavy loads. The maximum speeds when laden and the turning radius' of the trucks are well within the ranges commonly associated with trucks designed for the short distance transport of goods within factories and other industrial sites.

[t]he trucks do not have all the features commonly associated with heading 8709 works trucks (e.g., open driving cab). However, considering all the features of the trucks, including those described above, it is Customs position that the trucks are properly described as works trucks . . .

As with the industrial trucks in HQ 952400, it is our position that the subject hydraulic transporter is classifiable under subheading 8709.19.00, HTSUS, as a works trucks. It does not have an open cab, but it does possess the features common to the trucks in heading 8709, HTSUS. The transporter

is not used for highway use, it moves at a slow pace, it possesses an elevating platform, and, as it is designed for transporting barges, it is used to carry very heavy loads.

Therefore, because the hydraulic transporter is specifically classifiable under heading 8709, HTSUS, it is our position that it is distinguishable from the vehicles of heading 8704, HTSUS.

HOLDING:

The hydraulic transporter is classifiable under subheading 8709.19.00, HTSUS, as an other works truck.

Because reclassification of the merchandise as indicated above will result in a lower rate of duty than claimed, you are instructed to allow the protest in full.

In accordance with Section 3A(II) (b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, this decision, together with the Customs Form 19, should be mailed by your office to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to mailing of the decision. Sixty days from the date of the decision 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 the public via the Diskette Subscription Service, Lexis, Freedom of Information Act, and other public access channels.

Sincerely,

JOHN DURANT,

Director

ATTACHMENT E

HQ 952400
CLA-2 CO:R:C:M 952400 CMS
CATEGORY: Classification
TARIFF NO.: 8709.19.00

MR. H. KUMEI
ASST. TO THE GENERAL MANAGER
TRAFFIC ADMINISTRATION DIVISION
SUMITOMO CORPORATION OF AMERICA
345 PARK AVENUE
NEW YORK, NY 10154

RE: Works Trucks, Self Propelled Not Fitted With Lifting and Handling Equipment; Vehicles for The Transport of Goods; Factories; Warehouses; 8704.23.00; 8427.20.00

DEAR MR. KUMEI:

This is in response to your request dated July 27, 1992, for a classification ruling on certain industrial trucks under the Harmonized Tariff Schedule of the United States (HTSUS).

FACTS:

The merchandise consists of two self-propelled, heavy duty industrial trucks designated by the importer as models "PCF" (PCF500, PCF951, PCFII00SA, PCF1500S, PCF1800, PCF2800S) and "PCI" (PCI030, PCI550).

The "PCF" line consists of cab under platform trucks ranging in height from 1.3 to 1.6 meters, in length from 12 to 18.4 meters and in width from 2.7 to 4.35 meters. The maximum payload capacity is from 50 to 280 tons. An operator's cab is situated at each end of the trucks under the flat loading platform. The number of wheels ranges from 12 to 56. The top speed when laden ranges from 10 to 20 km/h. The trucks have minimum turning radiuses of 6.5 meters to 12 meters. They have elevating platforms for the purpose of loading large pallets of goods.

The "PCI" line consists of cab over platform trucks ranging in height from 3 to 3.1 meters, in length from 13.6 to 15.9 meters, and in width from 3.3 to 3.8 meters. The maximum payload capacity is 103 to 150 tons. There is one cab on each truck. The number of wheels ranges from 24 to 56. The top speed when laden is 25 km/h. The trucks have minimum turning radiuses of 10 meters. The "PCI" trucks have the same type of elevating loading platforms as the "PCF" trucks.

The ruling requestor states that the vehicles are most commonly used in steel plants to move materials from one point to another, such as moving semifinished products between processing points. The trucks are marketed for use in steel plants, dock areas and other industrial sites.

ISSUE:

Is the merchandise classified in heading 8709 as works trucks not fitted with lifting or handling equipment, or in heading 8704 as motor vehicles for the transport of goods?

LAW AND ANALYSIS:

The HTSUS provides that the classification of articles is governed by the General Rules of Interpretation (GRI's). GRI 1 states in pertinent part that "...classification shall be determined according to the terms of the headings and any relative section or chapter notes...".

Heading 8709 in part describes works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for the short distance transport of goods. Heading 8704 describes motor vehicles for the transport of goods.

The Harmonized Commodity Description and Coding System Explanatory Notes to heading 8709 provide guidance on the distinction between works trucks and heading 8704 vehicles for the transport of goods. The Explanatory Notes to heading 8709, p. 1433, state that "[t]his heading covers a group of self-propelled vehicles of the type used in factories, warehouses, dock areas or airports for the short distance transport of various loads ... The main features common to all vehicles of this heading which generally distinguish them from the vehicles of heading...87.04 may be summarised as follows:

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

* * *

Works trucks are self-propelled trucks for the transport of goods which are fitted with, for example, a platform or container (sometimes designed for elevating) on which the goods are loaded."

The very heavy weights of the loads the trucks are designed to carry, considered in addition to the weights of the vehicles themselves, could not or would not normally be carried by road or other public ways. The trucks must be used on surfaces and in areas which are amenable to the operation of large trucks with very heavy loads. The maximum speeds when laden and the turning radius' of the trucks are well within the ranges commonly associated with trucks designed for the short distance transport of goods within factories and other industrial sites.

The trucks do not have all the features commonly associated with heading 8709 works trucks (*e.g.*, open driving cab). However, considering all the features of the trucks, including those described above, it is customs position that the trucks are properly described as works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, or dock areas for the short distance transport of goods, and are classified in heading 8709, HTSUS.

Because of the limited number of these trucks in the United States at present, our finding is based on the best information available, and does not include an analysis of the merchandise in the United States on a large scale basis.

The trucks are not described as heading 8427 works trucks because they are not fitted with lifting or handling equipment. The elevating platforms of the trucks are solely used to load and unload goods to be carried for short

distance transport. The Explanatory Notes to heading 8709, p. 1434, provide that heading 8709 works trucks "...are fitted with, for example, a platform or container (**sometimes designed for elevating**) **on which the goods are loaded**" (emphasis added).

HOLDING:

The merchandise is classified as "[w]orks trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods ... : Vehicles: ...other", in subheading 8709.19.00, currently subject to a Column 1 general free rate of duty.

Sincerely,

ARTHUR P. SCHIFFLIN

for

JOHN DURANT,

Director

Commercial Rulings Division

ATTACHMENT F

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

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

RE: Revocation of five ruling letters concerning the tariff classification of self-propelled modular transporters; Headquarters Ruling Letter (“HQ”) H122237, dated May 19, 2011; HQ H123524, dated March 18, 2011; New York Ruling Letter (“NY”) 086210, dated January 7, 1999; HQ 955231, dated January 7, 1994; and HQ 952400, dated February 9, 1993

DEAR Ms. MARTINDALE:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered Headquarters Ruling Letter (“HQ”) H122237, dated May 19, 2011, which was issued in response to a Request for Internal Advice from the Service Port of Houston concerning the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of self-propelled modular transporters (SPMTs) imported by Cameron International Corp. (“Cameron”). In HQ H12237, CBP concluded that the SPMTs, manufactured by Goldhofer AG (“Goldhofer”) in Germany, were classified in heading 8704, HTSUS, which provides for, “Motor vehicles for the transport of goods.” Upon review of HQ H122237, CBP has determined that the ruling is incorrect. Accordingly, for the reasons set forth below, CBP intends to revoke HQ H122237 and classify the SPMTs in heading 8427, HTSUS, which provides for, “Fork-lift trucks; other works trucks fitted with lifting or handling equipment.”

Similarly, CBP believes that it can best meet its obligations regarding the sound administration of the HTSUS under 19 C.F.R. § 177.7(a) by reconsidering certain published rulings so that CBP does not have in force rulings that may be inconsistent with its current views. As such, CBP intends to also revoke four additional ruling letters concerning the tariff classification of other SPMTs that are substantially similar to the merchandise at issue in HQ H122237. Specifically, CBP intends to revoke HQ H123524, issued to Mammoet, Inc. on March 18, 2011; New York Ruling Letter (“NY”) 086210, issued to Kuehne & Nagel, Inc. on January 7, 1999; HQ 955231, dated January 7, 1994; and HQ 952400, issued to Sumitomo Corp. of America (“Sumitomo”) on February 9, 1993. In HQ H123524, CBP classified an SPMT manufactured by Scheuerle Fahrzeugfabrik GmbH (“Scheuerle”) in heading 8704, HTSUS. Additionally, in ruling letters NY 086210, HQ 955231, and HQ 952400, CBP classified various Goldhofer, Scheuerle, and Sumitomo SPMTs in heading 8709, HTSUS, which provides for, “Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles.” Similar to its review of HQ H122237, CBP finds the tariff classification of the

SPMTs at issue in HQ H123524, NY 086219, HQ 955231, and HQ 952400 to be incorrect, and pursuant to the analysis set forth below, the agency intends to revoke those rulings.

FACTS:

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

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

* * * * *

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

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

ISSUE:

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

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

LAW AND ANALYSIS:

Merchandise imported in 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. 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 their appropriate order. GRI 3(a) provides that “the heading which provides the most specific description shall be preferred to headings providing a more general description.”

The following HTSUS provisions will be referenced:

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

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

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

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTS and are thus useful in ascertaining the proper classification of merchandise. It is CSP’s practice to follow, whenever possible the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

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

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

Works trucks of this description include, for example:

...

(8) OTHER WORKS TRUCKS FITTED WITH LIFTING OR HANDLING EQUIPMENT

This group includes:

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

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

* * * * *

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

This heading covers in particular:

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

...

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

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

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

(c) Absence of rear windows along the two side panels; presence of sliding, swing-out or lift-up door or doors, without windows, on the side panels or in the rear for loading and unloading goods (van-type vehicles);

(d) Presence of a permanent panel or barrier between the area for the driver and front passengers and the rear area;

(e) Absence of comfort features and interior finish and fittings in the cargo bed area which are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays).

This heading also covers:

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

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

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

...

The heading also **excludes**:

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

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

* * * * *

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

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

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

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

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

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

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

The vehicles of this heading may be pedestrian controlled.

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

...

The heading **excludes**:

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

* * * * *

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

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

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

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

* * * * *

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

In classifying the Sumitomo SPMTs in heading 8709, HTSUS, U.S. Customs rejected classification of the vehicles from heading 8427, HTSUS, as other works trucks fitted with lifting or handling equipment, because it determined that the Sumitomo SPMTs were “not fitted with lifting or handling equipment.” Specifically, CBP noted that although the Sumitomo SPMTs featured elevating platforms “for the purpose of loading large pallets of goods,” the exemplars provided in the 1993 version of EN 87.09, HS, included works trucks “... fitted with, for example, a platform or container (sometimes designed for elevating) on which the goods are loaded.” *See* EN 87.09, HS (1992). Consequently, CBP concluded that because elevating platforms were “solely used to load and unload goods to be carried for short distance transport,” the Sumitomo SPMTs’ elevating platforms were akin to the machinery described in EN 87.09, HS, and did not constitute “lifting or handling equipment,” which would have otherwise classified the vehicles in heading 8427, HTSUS. Similarly, in ruling letters HQ 955231, dated January 7, 1994, and NY 086210, dated January 7, 1999, CBP classified Scheuerle and Goldhofer SPMTs substantially similar to the Sumitomo imports in heading 8709, HTSUS, concluding that an SPMT’s ability to raise and lower its cargo platform was consistent with the description in EN 87.09, HS, that works trucks of the heading may feature a “platform or container (sometimes designed for elevating).”

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

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

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

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

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

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

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

HOLDING:

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

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

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, HQ H123524, dated March 18, 2011; New York Ruling Letter (“NY”) 086210, dated January 7, 1999; HQ 955231, dated January 7, 1994; and HQ 952400, dated February 9, 1993 are hereby **REVOKED**.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

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

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

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Advisory Committee on Commercial Operations of U.S. Customs and Border Protection (COAC) will meet on February 11, 2015, in San Francisco, CA. The meeting will be open to the public.

DATES: The Advisory Committee on Commercial Operations of U.S. Customs and Border Protection (COAC) will meet on Wednesday, February 11, 2015, from 8:00 a.m. to 12:00 p.m. PST. Please note that the meeting may close early if the committee has completed its business.

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

- For members of the public who plan to attend the meeting in person, please register either online at https://apps.cbp.gov/te_reg/index.asp?w=34; by email to tradeevents@dhs.gov; or by fax to 202-325-4290 by 5:00 p.m. EST on February 6, 2015. You must register prior to the meeting in order to attend the meeting in person.
- For members of the public who plan to participate via webinar, please register online at https://apps.cbp.gov/te_reg/index.asp?w=35 by 5:00 p.m. EST on February 6, 2015.

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

Members of the public who are pre-registered and later require cancellation, please do so in advance of the meeting by accessing one (1) of the following links: https://apps.cbp.gov/te_reg/cancel.asp?w=34 to cancel an in person registration, or https://apps.cbp.gov/te_reg/cancel.asp?w=35 to cancel a webinar registration.

ADDRESSES: The meeting will be held at the Embassy Suites San Francisco Airport-South San Francisco at 250 Gateway Boulevard, Grand Ballroom, San Francisco, CA 94080.

All visitors to the Embassy Suites Hotel should proceed through the main lobby to the Grand Ballroom. There will be signage posted directing visitors to the location of the Grand Ballroom.

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

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

Comments must be submitted in writing no later than February 4, 2015, and must be identified by Docket No. USCBP-2014-0035, and may be submitted by *one* of the following methods:

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

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

Docket: For access to the docket or to read background documents or comments, go to <http://www.regulations.gov> and search for Docket Number USCBP-2014-0035. To submit a comment, see the link on the Regulations.gov Web site for “How do I submit a comment?” located on the right hand side of the main site page.

There will be multiple public comment periods held during the meeting on February 11, 2015. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Contact the individual listed below to register as a speaker. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP Web page, <http://www.cbp.gov/trade/stakeholder-engagement/coac>, at the time of the meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone (202) 344-1440; facsimile (202) 325-4290.

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

Agenda

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

1. The Exports Subcommittee: Review and discuss the status of the Air Manifest sub-work group and the findings of the Commodity Licensing sub-work group, which represents two of the seven planned sub-workgroups formed under the Export Process Work Group (EPWG), and the continued collaboration between the Bureau of Industry and Security's Federal Advisory Committee, the President's Export Council Subcommittee on Export Administration (PECSEA).

2. The One U.S. Government at the Border (1USG) Subcommittee: Review, discuss findings and present recommendations of the Process and Messaging Working Group. Update to COAC on the Status of U.S. Government Hold Authority. Subcommittee Closeout Report and update on status of 13th Term recommendations.

3. The Trade Enforcement and Revenue Collection Subcommittee: Update and present a recommendation of the Intellectual Property Rights (IPR) Voluntary Disclosure working group, present recommendations of the Anti-Dumping/Countervailing Duty (AD/ CVD) Working Group, and report on the Bonds Working Group's discussions on e-bonds.

4. The Trusted Trader Subcommittee: Update and discuss the Customs-Trade Partnership Against Terrorism (C-TPAT) Exporter Entity and the Trusted Trader Program pilot.

5. The Trade Modernization Subcommittee: Updates and discussion on Automated Commercial Environment (ACE), Centers of Excellence and Expertise, as well as Role of the Customs Broker activities will take place. Recommendations are expected to be presented regarding CBP regulating how Customs Brokers can confirm the bonafide nature of an importer, what metrics CBP can report regard-

ing the deployment of Centers of Excellence and Expertise, and recommendations regarding the development of a Simplified Entry Summary.

6. The Global Supply Chain Subcommittee: Updates and discussion regarding the Beyond the Border activities with Canada and 21st Century activities with Mexico will take place.

Dated: January 15, 2015.

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

[Published in the Federal Register, January 21, 2015 (80 FR 2960)]



AGENCY INFORMATION COLLECTION ACTIVITIES:

Application and Approval to Manipulate, Examine, Sample or Transfer

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 and Approval to Manipulate, Examine, Sample or Transfer Goods (Form 3499). 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 February 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** (79 FR 65233) on November 3, 2014, 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 and Approval to Manipulate, Examine, Sample or Transfer Goods.

OMB Number: 1651–0006.

Form Number: Form 3499.

Abstract: CBP Form 3499, “*Application and Approval to Manipulate, Examine, Sample or Transfer Goods*”, is used as an application to perform various operations on merchandise located at a CBP approved bonded facility. This form is filed by importers, consignees, transferees, or owners of merchandise, and is subject to approval by the port director. The data requested on this form identifies the merchandise for which action is being sought and specifies what operation is to be performed. This form may also be approved as a blanket application to manipulate

goods for a period of up to one year for a continuous or repetitive manipulation. CBP Form 3499 is provided for by 19 CFR 19.8 and is accessible at: http://forms.cbp.gov/pdf/CBP_Form_3499.pdf.

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: Businesses.

Estimated Number of Responses: 151,140.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 15,114.

Dated: January 14, 2015.

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

[Published in the Federal Register, January 21, 2015 (80 FR 2959)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Certificate of Origin

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: Certificate of Origin (CBP Form 3229). 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 February 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 aira_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** (79 FR 64826) on October, 31 2014, 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: Certificate of Origin.

OMB Number: 1651-0016.

Form Number: Form 3229.

Abstract: CBP Form 3229, Certificate of Origin, is used by shippers and importers to declare that goods being imported into the United States are produced or manufactured in a U.S. insular possession from materials grown, produced or manufactured in such possession. This form includes a list of the foreign materials included in the goods, and their description and

value. CBP Form 3229 is used as documentation for goods entitled to enter the U.S. free of duty. This form is authorized by General Note 3(a) (iv) of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and is provided for by 19 CFR part 7.3. CBP Form 3229 is accessible at http://forms.cbp.gov/pdf/CBP_Form_3229.pdf.

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Forms 3229.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 113.

Estimated Number of Annual Responses per Respondent: 20.

Estimated Number of Total Annual Responses: 2,260.

Estimated Time per Response: 22 minutes.

Estimated Annual Burden Hours: 814.

Dated: January 14, 2015.

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

[Published in the Federal Register, January 21, 2015 (80 FR 2960)]