

U.S. Customs and Border Protection



19 CFR PART 177

PROPOSED REVOCATION OF A RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF ONE OUNCE PLASTIC CUPS

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

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to the classification of one ounce plastic cups.

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 revoke a ruling letter concerning the classification of one ounce plastic cups 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 August 6, 2012

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, 799 9th Street, N.W., 5th Floor Washington, D.C. 20229–1179. Comments submitted may be inspected at 799 9th St. N.W. 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 revoke a ruling pertaining to the classification of one ounce plastic cups. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) H81035, dated June 8, 2001 (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 substantially identical transactions should advise CBP during this notice

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

In NY H81035, one ounce plastic cups with measurements on the side, used primarily in the medical industry, were classified in subheading 3924.10.50, Harmonized Tariff Schedule of the United States (HTSUS), as "Tableware, kitchenware, other household articles...of plastics: tableware and kitchenware: other," which corresponds to subheading 3924.10.40, HTSUS, of the 2012 HTSUS. This ruling noted that the merchandise is used primarily in the medical and retirement communities, but states that it is classified as kitchenware. We now believe the correct classification of these cups is in heading 3926, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY H81035, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H176516. (*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: June 8, 2012

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

NY H81035

June 8, 2001

CLA-2-39:RR:NC:SP:222 H81035

CATEGORY: Classification

TARIFF NO.: 3924.10.5000

MR. CONOR O'MALLEY
OAK RIDGE PRODUCTS, INC.
211 BERG STREET
ALGONQUIN, IL 60102

RE: The tariff classification of small plastic one-ounce cups from Hong Kong.

DEAR MR. O'MALLEY:

In your letter received in this office on May 10, 2001, you requested a tariff classification ruling.

The submitted samples are one-ounce plastic cups made of 100 percent polypropylene. The cups are graduated in shape. The cups have markings on the plastic denoting various types of measurements such as: ounce, teaspoons, drams and centimeters and millimeters. Your letter of inquiry states that this product will be sold wholesale to school systems, food service distributors, retirement homes and hospital groups. The cups will be used to serve pills to individuals. The cups are considered kitchenware. Kitchenware is not restricted to the home.

The applicable subheading for the plastic cups will be 3924.10.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for tableware, kitchenware, other household articles...of plastics: tableware and kitchenware: other. The rate of duty will be 3.4 percent ad valorem.

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 Alice Masterson at 212-637-7090.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

CLA-2 OT:RR:CTF:TCM HQ H176516 TNA
CATEGORY: Classification
TARIFF NO.: 3926.90.99

MR. CONOR O'MALLEY
OAK RIDGE PRODUCTS, INC.
211 BERG STREET
ALGONQUIN, IL 60102

RE: Revocation of NY H81035; Classification of one ounce plastic cups from Hong Kong

DEAR MR. O'MALLEY:

This letter is in reference to New York Ruling Letter ("NY") H81035, issued to Oak Ridge Products, Inc. on June 8, 2001, concerning the tariff classification of one ounce plastic cups from Hong Kong. There, U.S. Customs and Border Protection ("CBP") classified the merchandise under subheading 3924.10.50, Harmonized Tariff Schedule of the United States ("HTSUS"), as "Tableware, kitchenware, other household articles...of plastics: tableware and kitchenware: other."¹ We have reviewed NY H81035 and found it to be in error. For the reasons set forth below, we hereby revoke NY H81035.

FACTS:

The subject merchandise consists of one-ounce plastic cups made entirely of polypropylene. The cups are graduated in shape and have markings on the side of the cup that denote various measurements, such as ounces, teaspoons, drams, centimeters and millimeters.

The subject cups are sold wholesale to school systems, food distributors, retirement homes and hospital groups. The importer claims that the cups are primarily used to administer oral medication in these settings. A sample of the subject merchandise has been received and examined by this office.

ISSUE:

Whether graduated one ounce plastic cups are classified in heading 3924, HTSUS, as other kitchenware, or in heading 3926, HTSUS, as other articles of plastic?

LAW AND ANALYSIS:

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

¹ We note that subheading 3924.10.50, HTSUS, which appeared in the 2001 tariff schedule, is now subheading 3924.10.40 of the 2012 HTSUS. As a result, we will consider subheading 3924.10.40, HTSUS, in this ruling.

The HTSUS provisions under consideration are as follows:

| | |
|------|------------------------------------------------------------------------------------------------|
| 3924 | Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: |
| 3926 | Other articles of plastics and articles of other materials of headings 3901 to 3914: |

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The EN to heading 3924, HTSUS, provides, in pertinent part:

This heading covers the following articles of plastics:

- (1) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes and trays of all kinds, coffee-pots, teapots, sugar bowls, beer mugs, cups, sauce-boats, fruit bowls, cruets, salt cellars, mustard pots, egg-cups, teapot stands, table mats, knife rests, serviette rings, knives, forks and spoons.
- (2) Kitchenware such as basins, jelly moulds, kitchen jugs, storage jars, bins and boxes (tea caddies, bread bins, etc.), funnels, ladles, kitchen-type capacity measures and rolling-pins.
- (3) Other household articles such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).
- (4) Hygienic and toilet articles (whether for domestic or non-domestic use) such as toilet sets (ewers, bowls, etc.), sanitary pails, bed pans, urinals, chamber-pots, spittoons, douche cans, eye baths; teats for baby bottles (nursing nipples) and finger-stalls; soap dishes, towel rails, tooth-brush holders, toilet paper holders, towel hooks and similar articles for bathrooms, toilets or kitchens, not intended for permanent installation in or on walls. However, such articles intended for permanent installation in or on walls or other parts of buildings (e.g., by screws, nails, bolts or adhesives) are **excluded (heading 39.25)**.

The heading also covers cups (without handles) for table or toilet use, not having the character of containers for the packing or conveyance of goods, whether or not sometimes used for such purposes. It **excludes**, however, cups without handles having the character of containers used for the packing or conveyance of goods (**heading 39.23**).

The EN to heading 3926, HTSUS, provides, in pertinent part:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14.

NY H81035 classified the subject plastic cups in heading 3924, HTSUS, as other plastic tableware and kitchenware. In HQ W968181, dated October 3, 2006, CBP examined the scope of heading 3924, HTSUS. There, we noted that the heading provides for, *inter alia*, other household articles of plastics. Furthermore, we noted that the heading covers tableware, kitchenware, and other household articles “such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust covers (slipcovers).” See HQ W968181, citing EN 39.24. HQ W968181 then cited *Nissho-Iwai American Corp. v. United States*, where the Court of International Trade (“CIT”) stated that the canon of construction *ejusdem generis*, which means “of the same class or kind,” teaches that “where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” See HQ W968181, citing *Nissho-Iwai American Corp. v. United States*, 10 CIT 154, 156 (1986). The court continued by stating that “as applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157. See also *Totes, Inc. v. United States*, 18 CIT 919, 865 F. Supp. 867, 871 (1994), *aff’d*. 69 F. 3d 495 (Fed. Cir. 1995). In HQ W968181, we then stated that the essential characteristics or purposes of the above-listed exemplars are that they are of plastic, are used in the household, and are reusable. See HQ W968181, page 4.

In NY H81035, after noting the physical characteristics of the subject merchandise, we stated that “the cups are considered kitchenware. Kitchenware is not restricted to the home.” Upon reconsideration, we believe that NY H81035 is incorrect because we no longer believe that that the subject plastic cups are only used in the house. Thus, we examine whether the subject cups can be classified, *ejusdem generis*, in heading 3924, HTSUS, as “other household articles and hygienic or toilet articles.”

The subject cups are sold by Oak Ridge Products, a manufacturer and wholesaler of disposable plastic products primarily for medical industry. See <http://www.oakridgeproducts.com/AboutUs.aspx>. After examining the sample of the subject merchandise, we note that they are too flimsy to be reused. Furthermore, the chain of supply suggests that the subject cups are primarily used to administer oral medication, and their graduated design, with measurement markings on the side, is the type of plastic cups that are sold with medicine bottles. Lastly, the subject cups are sold to retirement homes, hospital groups, school systems and food service distributors. The instant merchandise is not sold to individuals for household use or to retailers that serve the household market. As a result, we find that the subject plastic cups do not meet the exemplars of heading 3924, HTSUS, and must be classified elsewhere.

Inasmuch as the instant merchandise is not described by the terms of heading 3924, HTSUS, the subject plastic cups are described by the terms of heading 3926, HTSUS, as articles of plastic not elsewhere specified or included. As a result, we find that they are classified in heading 3926, HTSUS. This decision is consistent with prior CBP rulings. See NY N043950, dated November 26, 2008 (classifying one-ounce medicine cup of polypropylene

plastic with incremental measurements shown on the side, used in administering medicine, in subheading 3926.90.99, HTSUS); NY 815693, dated November 7, 1995 (classifying a one-ounce plastic medicine cup with incremented measurements on the side of the cup in ounces, drams, cc's and ml's that was used in hospitals and doctors' offices in subheading 3926.90.98, HTSUS.)

HOLDING:

Under the authority of GRI 1, the subject one ounce plastic cups are classified in heading 3926, HTSUS, and specifically in subheading 3926.90.99, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other." The 2012 column one general rate of duty is 5.3% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY H81035, dated June 8, 2001, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177**PROPOSED REVOCATION OF ONE RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF AN LED TASK LIGHT
KIT**

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

ACTION: Notice of proposed revocation of one ruling letter and proposed revocation of treatment concerning the tariff classification of an LED task light kit.

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 one ruling letter relating to the tariff classification of an LED task light kit under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before August 6, 2012.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Office of International Trade, Attention: Trade and Commercial Regulations Branch, 799 9th Street, 5th Floor, N.W., Washington, D.C. 20229–1179. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. 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: Dwayne S. Rawlings, Tariff Classification and Marking Branch, (202) 325–0092.

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of an LED task light kit. Although in this notice CBP is specifically referring to the revocation of NY N077436, dated October 9, 2009 (Attachment A), this notice covers any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a 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 intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY N077436, CBP classified the LED task light kit in subheading 8513.10.20, HTSUS, which provides for flashlights. It is now

CBP's position that the LED task light kit is properly classified in subheading 8513.10.40, HTSUS, which provides for other portable electric lamps.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY N077436 and any other ruling not specifically identified, in order to reflect the proper analysis contained in proposed HQ H081686 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 8, 2012

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N077436

October 9, 2009

CLA-2-85:OT:RR:NC:1:110

CATEGORY: Classification

TARIFF NO.: 8513.10.2000

Ms. MARIAN E. LADNER
LADNER & ASSOCIATES PC
THE KIRBY MANSION
2000 SMITH STREET
HOUSTON, TX 77002

RE: The tariff classification of a flashlight from China.

DEAR Ms. LADNER:

In your letter dated September 22, 2009 you requested a tariff classification ruling on behalf of your client, Bayco Products.

The merchandise under consideration is the Nightstick Task Light, model number NSR-2492. Samples of the item were submitted with your ruling request and will be returned to you.

The Nightstick Task Light is a cylindrical battery-powered hand-held work light that measures approximately 11 ½ inches high by 2 inches in diameter at its widest points. It is made of plastic, features sculpted finger grooves for a positive grip, and is powered by an internal Ni-MH (nickel-metal hydride) battery. At one end of the Nightstick is an LED (light emitting diode) bulb and a reflector under a clear lens. Along one side of the upper part of the housing are 60 LED bulbs, arranged in a 4 by 15 grid, under a clear lens. On the other side of the housing is a push button switch that cycles the light between flashlight on, grid on, and off, as well as a connection for a battery charger adapter. The Nightstick also features two removable plastic cuffs designed to snap onto the body of the light. One cuff provides a magnet for mounting the light on any flat, ferrous surface; the other a swiveling combination hook/stand. The Nightstick Task Light is packaged for retail sale in a plastic clamshell case with an AC wall adapter, a DC 12-V car charger adapter, and an instruction booklet.

In your ruling request you suggest classification of the Nightstick Task Light in 8513.10.4000, as a portable electric lamp other than a flashlight. However, "Flashlights" have been defined in previous Customs Rulings as small battery-operated portable electric lights normally held in the hand by the housing itself, whose primary function is to project a beam of light. (**HQ 084852**) The Nightstick Task Light meets this definition by virtue of its design.

As imported above, the Nightstick Task Light, AC adapter, car charger adapter, and instruction sheet meet the definition of "goods put up in sets for retail sale." As per GRI 3(b), classification is determined by the component, or components taken together, which confer on a set as a whole its essential character. The Nightstick Task Light clearly provides the essential character of the set.

The applicable subheading for the Nightstick Task Light, model number NSR-2492 will be 8513.10.2000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Portable electric lamps designed to

function by their own source of energy (for example, dry batteries, storage batteries, magnetos)...: Lamps: Flashlights.” The general rate of duty will be 12.5 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 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 Thomas Campanelli at (646) 733-3016.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H081686

CLA-2 OT:RR:CTF:TCM H081686 DSR**CATEGORY:** Classification**TARIFF NO.:** 8513.10.20

MARIAN E. LADNER
LADNER & ASSOCIATES PC
THE KIRBY MANSION
2000 SMITH STREET
HOUSTON, TX 77002

RE: Revocation of NY N077436, dated October 9, 2009; classification of LED task light kit

DEAR MRS. LADNER:

This is in response to your letter, dated October 22, 2009, requesting reconsideration of New York Ruling Letter (NY) N077436, dated October 9, 2009. NY N077436 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of an LED task light kit referred to as the “Nightstick Task Light” (Model NSR-2492) (hereinafter “Nightstick”) and imported by the requester Bayco Products (“Bayco”). CBP classified the article in subheading 8513.10.20, HTSUS, which provides for “Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos) ...: Lamps: Flashlights.” You assert that the Nightstick is instead classifiable under subheading 8513.10.40, HTSUS, as “Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos) ...: Lamps: Other.”

FACTS:

The Nightstick is a cylindrical battery-powered hand-held work light that measures approximately 11 ½ inches high by 2 inches in diameter at its widest points. It is made of plastic, features sculpted finger grooves for a positive grip, and is powered by an internal Ni-MH (nickel-metal hydride) battery. At one end of the Nightstick are an LED (light emitting diode) bulb and a reflector under a clear lens. Along one side of the upper part of the Nightstick’s housing are 60 LED bulbs arranged in a 4 by 15 grid under a clear lens. On the other side of the housing is a push button switch that cycles the light between flashlight on/off, LED grid on/off, and a dual use function, where the flashlight and LED grid are powered on simultaneously. The Nightstick is imported together with two removable plastic cuffs designed to snap onto the body of the light. One cuff provides a magnet for mounting the light on any flat, ferrous surface; the other is a swiveling combination hook/stand. There is also a connection for a battery charger adapter. The Nightstick is packaged for retail sale in a plastic clamshell case with the plastic cuffs, an AC wall adapter, a DC 12-V car charger adapter, and an instruction booklet. Images of the device appear below.



ISSUE:

Whether the Nightstick Task Light kit is classified in subheading 8513.10.20, HTSUS, as a flashlight, or in subheading 8513.10.40, HTSUS, as an “other” portable electric lamp.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

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

| | |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8513 | Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof: |
| * | * * |
| 8513.10 | Lamps: |
| 8513.10.20 | Flashlights. |
| 8513.10.40 | Other. |
| * | * * |

We first note that the kit cannot be classified according to GRI 1 because it is not provided for *eo nomine* in any heading of the tariff. GRI 2 is also not applicable in this instance. As noted above, the Nightstick is imported in a kit as it is sold at retail. The kit contains the Nightstick, two removable plastic cuffs designed to snap onto the body of the light, an AC wall adapter,

a DC 12-V car charger adapter, and an instruction booklet. A plastic clam-shell case holds all of the above items. All of the items are classifiable in different headings, are “put up together” to enable a user to carry, charge and understand how to operate the Nightstick, and are offered for sale directly to users without repacking. GRI 3(b) states that “[g]oods put up in sets for retail sale shall be classified as if they consisted of the material or component which gives them their essential character.” See EN(X) to GRI 3(b) (goods put up for retail sale mean goods which consist of at least two different articles which are, *prima facie*, classifiable in different headings; consist of products or articles put up together to meet a particular need or carry out a specific activity; and are put up in a manner suitable for sale directly to users without repacking). The item that imparts the essential character of this set is the Nightstick, as it is the dominant component, both by use and cost in relation to the other constituent components of the set. It is also the reason why a consumer would purchase the set. As such, the set is classified as if consisting only of the Nightstick.

Note 3 to Section XVI, HTSUS, reads in pertinent part as follows:

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

Note 5 to Section XVI, HTSUS, defines a “machine” as “any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of chapter 84 or 85.” The ENs to Section XVI state, in pertinent part:

(VI) MULTI-FUNCTION MACHINES AND COMPOSITE MACHINES

(Section Note 3)

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

Multi-function machines are, for example, machine-tools for working metal using interchangeable tools, which enable them to carry out different machining operations (e.g., milling, boring, lapping).

Where it is not possible to determine the principal function, and where, as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretative Rule 3 (c) . . .

There is no dispute that the Nightstick is classifiable at GRI 1, in heading 8513, HTSUS, as a portable electric lamp designed to function by its own source of energy. It is also clear that the good is described by subheading 8513.10, HTSUS, as a “lamp.” The issue arises at the 8-digit level. Therefore, we begin the analysis using GRI 6. The issue is whether, at GRI 6, the article is a flashlight or an “other” portable electric lamp.

Note 3 to Section XVI, HTSUS, provides that, unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function. In a number of rulings, CBP has

applied the definition of the term “flashlight” set forth in *Sanyo Electric Inc. v. United States*, 496 F.Supp. 1311, 1315, 84 Cust. Ct. 167 (1980), which determined that a flashlight is a small, battery-operated, portable electric light. CBP has also added to that definition by ruling that a flashlight is normally held in the hand by the housing, and that a flashlight’s primary function is to project a beam of light. See, e.g., HQ 967480, dated June 2, 2005; HQ 964495, dated February 12, 2001; HQ 952559, dated March 3, 1993; HQ 951855, dated July 24, 1992; and HQ 084852, dated March 28, 1990. Since the device in question projects a beam of light, is battery-operated, and is capable of being held in the hand by its housing, it meets the definition of a flashlight.

In addition to being held by hand and operating as a conventional flashlight, the Nightstick is also capable of (1) being placed on any flat, ferrous surface and mounted with its included magnet; (2) being hung from any stable protrusion that can fit within its hook attachment; or (3) being stood on its side by using its stand attachment. When in any of the above positions, the Nightstick’s LED bank (on the Nightstick’s side) and its LED bulb (on one end of the Nightstick) can operate alone or simultaneously. The LED bank casts a wide area light (referred to as a “floodlight” in Protestant’s submission), while the LED bulb casts a focused beam. CBP has previously ruled that when a portable, battery-operated lamp is primarily utilized for hands-free work, rather than carried in the hand, classification under subheading 8513.10.20, HTSUS, is precluded. See NY F81663, dated January 26, 2000.

Here, the Nightstick can function both as a flashlight and as an area light. Therefore, it is a multi-function machine, and the remaining issue is whether the device’s principal function is that of a flashlight or an “other” type of portable, battery-operated lamp, pursuant to Note 3 to Section XVI.

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

The Nightstick is compact and cylindrical, with sculpted finger grooves for a positive grip. It is battery-operated, but may also be powered via the AC adapter attachment. Whether held in the hand, placed upon a stable surface, or hung from something, it is able to cast light from one of its ends via a LED bulb (and surrounding reflector under a clear lens), and is also able to cast light (a flood light) via a bank of LEDs on its housing.

You assert that the lumens produced by the floodlight function (120 lm) compared to that produced by the flashlight function (65 lm) compels a finding that the principal function of the product will be as a floodlight. You also state that the LED bank has more utility than the flashlight because it provides a “flood of light,” which allows its user to work hands-free and it is not marketed or displayed as a typical “consumer flashlight.”¹

We find the measurement of lumens to be an inconclusive factor when comparing the utility of the two functions. A lumen is a measure of the power of light perceived by the human eye and dictates how much light is cast upon a surface. Floodlights typically need to produce a much wider beam of light than a flashlight; therefore, it follows that the lumens produced by a floodlight will be greater than that of a flashlight in order for the floodlight to cover that larger area. With regard to the marketing and display of the product, the product is advertised as a “Flashlight • Floodlight • Dual-light” for “PORTABLE LIGHTING ANYTIME • ANYWHERE.” Its marketing literature does not conclusively tout one function over the other.

Furthermore, a consumer can choose to use the flashlight function alone (as evidenced by your submission showing the flashlight function employed so), or the floodlight alone, or both functions simultaneously. This is true whether the device is held in the hand, placed upon a floor or other stable, horizontal surface using the stand attachment, or hung using the hook attachment. The attachments allow for hands-free use of the light, but are not required for the light to function, are designed to be easily removable and, when attached, do not interfere with the user’s grip on the housing or the flashlight function.

You have not addressed the economic practicality of using the task light as a flashlight or a flood light. However, we note the subject task light can be purchased through the major online retailer Amazon.com for approximately \$41. However, prices of comparable flashlights and floodlights on that site vary wildly above and below that price, apparently based upon power, brand, casings, LED and reflector technology, etc. We note the same with regard to “floodlights.” Therefore, we are unable to make a useful comparison of the different flashlights and floodlights and reach a conclusion with regard to the economic practicality of using the task light as a flashlight or floodlight.

Considering the above, we conclude that while the Nightstick exhibits the general physical characteristics of a flashlight, it is also marketed, sold and can be used in a manner that is inconsistent with flashlights. While the device in question, in both its flashlight and flood light modes, projects a beam of light (albeit a wider beam when using the “floodlight” function), is battery-operated and is capable of being held in the hand by its housing, it also functions as something beyond that of a flashlight due to the capabilities imparted by the magnetic mount, combination hook/stand and LED bank. Therefore, we cannot determine its principal function.

In accordance with GRI 3(c), when goods cannot be classified by reference to GRI 3(a) or 3(b), they are to be classified in the heading that occurs last in numerical order among those that equally merit consideration in determin-

¹ You reference an “informal survey” that purportedly indicates that users of the product purchased the product for its floodlight capabilities but have submitted no evidence of said survey.

ing their classification. Therefore, classification of the Nightstick will be as subheading 8513.10.40, HTSUS, which provides for other portable, battery-operated electric lamps.

HOLDING:

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CHILDREN'S DRESS-UP VESTS

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of children's dress-up vests.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") is revoking a ruling concerning the tariff classification of children's dress-up vests under the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed modification was published on January 4, 2012, in the Customs Bulletin, Volume 46, Number 2. No comments were received in response to this notice.

DATES: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 4, 2012.

FOR FURTHER INFORMATION CONTACT: Robert Shervette, Office of International Trade, Tariff Classification and Marking Branch, at (202) 325-0274.

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"), become effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on January 4, 2012, in the Customs Bulletin, Volume 46, Number 2, proposing to revoke one ruling letter pertaining to the tariff classification of children's dress-up vests. Although in the proposed notice, CBP is specifically referring to the revocation of New York Ruling Letter ("NY") N097116, dated April 9, 2010, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised 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 intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transaction should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision of this notice.

In NY N097116, CBP classified children's dress-up vests under heading 6217, HTSUS, which provides for: "[o]ther made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212." Upon our review of NY N097116, we have determined that the merchandise described in that ruling is properly classified under heading 9505, HTSUS, which provides for: "[f]estive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N097116, and revoking or modifying any other ruling not specifically identified to reflect the proper classification of the subject merchandise accord-

ing to the analysis contained in Headquarters Ruling Letter (“HQ”) H105997, set forth as an Attachment to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: June 8, 2012

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H105997

June 4, 2012

CLA-2 OT:RR:CTF:TCM H105997 RES**CATEGORY:** Classification**TARIFF NO.:** 9505.90.60

MS. JENNIFER S. OKERLUND
SENIOR CORPORATE COUNSEL
TARGET CUSTOMS BROKERS, INC.
7000 TARGET PARKWAY NORTH
NCD-0456
BROOKLYN PARK, MN 55445

RE: Revocation of New York Ruling N097116, dated April 9, 2010; classification of children's dress-up vests from China

DEAR MS. OKERLUND:

This is in response to your letter dated May 11, 2010, on behalf of Target Corporation ("Target") requesting reconsideration of New York Ruling Letter ("NY") N097116 issued on April 9, 2010, regarding the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of children's dress-up vests. The merchandise in NY N097116 was classified under heading 6217, HTSUS. We have reviewed NY N097116 and determined it is incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on January 4, 2012, in Volume 46, Number 2, of the *Customs Bulletin*. No comments were received.

FACTS:

The subject vests are composed of 100% nonwoven polypropylene fabric and are worn over clothing. They have the dimensions of 16.5" x 19.25", are pulled over the head, feature a rounded neckline, have oversized armholes with open sides and a hook/loop strip closure, and hemmed edges. The side and bottom seams feature a 1/3" folded hem that contains 8-stitches per inch. The vests come in four different styles that distinguish the wearer as a member of a police, fire rescue, army, or construction crew. Each style is created by the vests' coloring and by simple screen-printing of designs and words that identify what the wearer is dressed up as. The vests retail in the importer's stores for \$1.00.

Target submitted a request on March 3, 2010, to CBP for a binding ruling on the classification of the children's dress-up vests at issue here. CBP classified the vests in NY N097116 under heading 6217, HTSUS, as other clothing accessories. On May 11, 2010, Target submitted to CBP a request for reconsideration of NY N097116. The importer asserts that the vests are properly classified under heading 9505, HTSUS, as festive articles.

ISSUE:

Whether the children's dress-up vests at issue are classified under heading 6217, HTSUS, as other clothing accessories or under heading 9505, HTSUS, as festive, carnival or other entertainment articles?

LAW AND ANALYSIS:

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

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the Harmonized System at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

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

| | |
|------|---------------------------------------------------------------------------------------------------------------------------------------|
| 6217 | Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: |
| 9505 | Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: |

The two classifications under consideration here fall under chapters 62 and 95 of the HTSUS. Chapter 62, which is part of Section XI (“Textiles and Textile Articles”), covers “Articles of Apparel and Clothing Accessories, not Knitted or Crocheted.” Note 1(t) to Section XI states that the section does not cover “Articles of chapter 95 (for example, toys, games, sports requisites; parts and nets).” Chapter 95 covers “Toys, Games and Sports Equipment; Parts and Accessories Thereof.” Note 1(e) to Chapter 95 states that the chapter does not cover “Sports clothing or fancy dress, of textiles, of chapter 61 or 62.” The ENs for heading 62.17 state in pertinent part:

This heading covers made up textile clothing accessories, **other than** knitted or crocheted, not specified or included in other headings of this Chapter or elsewhere in the Nomenclature. The heading also covers parts of garments or of clothing accessories, not knitted or crocheted, **other than** parts of articles of **heading 62.12**.

* * * * *

The applicable part of the ENs for 95.05 provides:

This heading covers:

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

* * *

(3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (**not being** articles of pastiche – **heading 67.04**), and paper hats. However, the heading **excludes** fancy dress of textile materials, of **Chapter 61** or **62**.

* * * * *

CBP, in previous rulings regarding textile costume articles, has consistently interpreted the legal notes and ENs to mean that such articles are classifiable under heading 9505 as “festive articles” if the textile costumes: have a flimsy nature and construction; are lacking in durability; and are generally recognized as not being normal articles of apparel.

In Headquarters Ruling (“HQ”) 961447, dated July 22, 1998, in response to a domestic interested party petition concerning the classification of certain textile costumes, CBP affirmed the classification of five textile costumes in HQ 959545, dated June 2, 1997. In HQ 961447, CBP classified four textiles costumes under heading 9505, HTSUS, as festive articles, and a fifth textile costume under heading 6209, HTSUS, as wearing apparel. CBP cited the ENs to 95.05 as support for assessing the durability of textile costumes in determining whether such articles are classifiable in Chapter 95. CBP noted that characteristics weighing in favor of non-durability and flimsy construction of textile costumes include styling features such as: a simple pull-on type of garment; the lack of zippers, inset panels, darts, or hoops; and edges of a garment that have been left raw and exposed, i.e. not hemmed. The four textile costumes at issue in HQ 961447 that were found to be festive articles had these styling features. While, in regard to the fifth textile costume at issue in HQ 961447 that CBP determined not to be classifiable as a festive article, CBP cited the type of sewing used to construct it, the durable bias tape used to cap the ruffled collar, wrists, and ankles, the lack of raw and exposed edges, and the substantiality of the sewing on the elastic at the wrist and ankles as styling features supporting that the article was well-constructed and durable. In addition, other rulings also cite examples of features that are indicative of substantial and durable garments, such as zipper closures, a fitted bodice with darts, a clown suit with a fabric encased wire hoop, petal shaped panels sewn into a waistline, and sheer/decorative panels sewn into the seams of costumes. See HQ 957948 and 957952, both dated May 7 1996, HQ H046715, dated March 16, 2009, and HQ H08260, dated June 3, 2009.

Furthermore, the Court of Appeals for the Federal Circuit (“CAFC”) affirmed CBP’s analytical approach in regard to the classification of textile costumes as festive articles. In *Rubie’s Costume Company v. United States*, 337 F.3d 1350 (Fed. Cir. 2003), the CAFC affirmed CBP’s analysis and classification of textile costumes in HQ 961447. The CAFC concluded that “textile costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel, are classifiable as ‘festive articles.’” *Rubie’s Costume Co.*, 337 F.3d at 1360.

In addition, the features and characteristics used to distinguish between textile costumes classifiable as “festive articles” of Chapter 95, HTSUS, and “fancy dress” of Chapters 61 or 62, HTSUS, has been set forth in the CBP Informed Compliance Publication (ICP), *What Every Member of the Trade Community Should Know About: Textile Costumes under the HTSUS*, August 2006 (“Textile Costumes under the HTSUS”). As noted in this publication, CBP generally considers four areas in making classification determinations for textile costumes: “styling”, “construction”, “finishing touches”, and “embellishments”. With regard to styling, the examples provided in the ICP note that a “well-made” article of Chapter 61 or 62, HTSUSA, would have two

layers of fabric, pleats, and facing fabrics (two or more layers of fabric/linings). Examples of well-made construction elements include an assessment of the neckline and seams. The ICP notes that costumes that are *well-made* may have embroidery and trimmings, and appliqués that have been sewn to the fabric.

From previous CBP rulings, the court in *Rubie's Costume Co.*, and the ICP, the pertinent factors used in analyzing whether a textile costume is of a flimsy nature and non-durable construction include: styling, construction, finishing touches, and embellishments. Although not explicitly enumerated, but implied, are other factors such as comparison of an article to other analogous durable and non-durable items, cleaning durability, disposability, *etc.* Applying these factors, we can determine whether children's dress-up vests are festive articles. A physical examination of samples of the children's dress-up vests at issue here in light of these factors is as follows:

Styling: There are no zippers, pockets, buttons, inset panels, intricate stitching, or other tailoring elements on the vests at issue. The vests simply consist of a single layer of woven fabric on the front and back panel.

Construction: The vests are made up of two parts of nonwoven material which are stitched together at the shoulders with a single basic straight stitch that appears to be fairly sturdy. The neck and the arm holes are sewn with a visible overlock stitching, of which the loops of the stitching are loose enough that they can be pulled on and loosened with one's fingers or when in use, can easily be snagged on something and ripped or pulled apart. Even though there are no raw edges in the neck or arm holes, the looseness and visibility of the overlock stitching, according to the ICP, are indicative of flimsy construction. Overall, the construction of the vests is a factor that weighs in favor of flimsy construction and non-durability.

Finishing Touches: There are no raw or exposed edges in the vests' construction. The side and bottom edges of the vest have a 1/3 inch folded hem with a single basic stitch that is securely sewn. Similar to the ends of the stitches with the shoulder stitches, the ends of the folded hem are loose and not tightly secured. In addition, the vests lack any closures that are reflective of being well-made, such as zippers or buttons with button holes. Instead, the vests have small hook and loop tabs that act as closures. Such small closures are supportive of a flimsy construction and lack of durability. Finally, the tension of the overlock stitching on the neck and the arm holes is loosely sewn. Overall, the vests have features that are indicative of flimsy construction such as loose ends of the stitching, small hook and loop tab closures, and the looseness of the overlock stitching.

Embellishments: Two of the sample dress-up vests have screen-printed stripes on them. One dress-up vest labeled as "construction" on the front has two orange-yellow stripes perpendicular to a single horizontal stripe

on both the front and back of the vest. A second dress-up vest labeled as “fire rescue” on the front has a single yellow and silver stripe on the front and back of the vest.

Work safety vests in general have styling and construction features, which are considered well-made, such as a separate piece of trim that is sewn around all the edges of safety vests with sturdy stitching, a front opening with a substantial hook and loop or zippered closure, high visibility fabric, strips of highly reflective material sewn onto the vests, etc. In comparison, the children’s dress up vests lack the trim around the edges and have overlock stitching instead and have loose threading along the end of the seam stitches, while the stitching of the conventional safety vests is tightly secured at the ends.

Therefore, given a consideration of the instant garment as a whole, along with its styling, construction, finishing touches, and embellishments, CBP finds that the vests are of a flimsy and non-durable construction. Hence, the children’s dress-up vests are classifiable as “festive articles” in heading 9505, HTSUS.

Therefore, upon reconsideration CBP has determined that the classification in NY N097116 of the children’s dress-up vests in heading 6217, HTSUS, is incorrect. The children’s dress-up vests are properly classified in heading 9505, HTSUS, as “[f]estive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof.”

HOLDING:

Pursuant to GRI 1, the children’s dress-up vests are classified under sub-heading 9505.90.6000, HTSUSA, as “[f]estive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: [o]ther: [o]ther.” Articles classified under this subheading are duty free.

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

EFFECTS ON OTHER RULINGS:

NY N097116, dated April 9, 2010, is revoked.

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

Sincerely,

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF ROOFTOP AIR CONDITIONERS**

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

ACTION: Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of rooftop air conditioners

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) is proposing to revoke a ruling letter relating to the tariff classification of rooftop air conditioners, under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation of NY M87553 was published on November 30, 2011, in the *Customs Bulletin*, Volume 45, Number 49. CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 4, 2012.

FOR FURTHER INFORMATION CONTACT: John Rhea, Tariff Classification and Marking Branch: (202) 325-0035.

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, a notice was published on November 30, 2011, in the *Customs Bulletin*, Volume 45, No. 49, proposing to revoke a ruling letter pertaining to the tariff classification of certain mass flow controllers, under the Harmonized Tariff Schedule of the United States (HTSUS). Although in the proposed notice, CBP specifically proposed the revocation of New York Ruling Letter (“NY”) M87553, dated November 6, 2006, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised 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 is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In the above mentioned ruling CBP determined that the rooftop air conditioning unit was classified under subheading 8415.82, HTSUS, as a self-contained air conditioning machine, incorporating a refrigerating unit. CBP now believes that the rooftop air conditioner units are properly classified in subheading 8415.20, HTSUS, as an air-conditioning machine of a kind used for persons, in a motor vehicle. Specifically, the rooftop air conditioners are classified under subheading 8415.20.00, HTSUS, which provides for: “Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated: parts thereof: of a kind used for persons, in motor vehicles.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY M87553 and any other ruling not specifically identified, to reflect the proper classification of the certain rooftop air conditioning units according to the analysis contained in proposed Headquarters Ruling Letters (“HQ”) H008507, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 4, 2012

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H008507

June 4, 2012

CLA-2 OT:RR:CTF:TCM H008507JER**CATEGORY:** Classification**TARIFF NO.:** 8415.20

JOHN M. PETERSON, ESQ.
NEVILLE PETERSON, LLP
17 STATE STREET, 19TH FLOOR
NEW YORK, NY 10004

RE: Revocation of New York Ruling Letter M87553;
Classification of the Brisk Air Rooftop Air Conditioner

DEAR MR. PETERSON:

This letter is in response to your request of March 9, 2007, for reconsideration of New York Ruling Letter (NY) M87553, dated November 6, 2006, classifying the subject “Brisk Roof Top Air Conditioner” under subheading 8415.82.01, of the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY M87553 and found it to be incorrect. For the reasons set forth in this ruling, we are revoking NY M87553.

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, 2186 (1993), notice of the proposed revocation of NY M87553 was published on November 30, 2011, in the *Customs Bulletin*, Volume 45, Number 49. No comments were received in response to the proposed revocation.

FACTS:

NY M87553 described the subject merchandise as follows:

The article in question is described as the “Model Brisk” air conditioner used primarily for recreational travel trailers. The units are designed for installation through an existing roof vent or through a ceiling utilizing wood framing materials. The units are self-contained and have cooling capacities that range from 11,000 to 15,000 BTU (3.22 to 4.39 kW/hour). Descriptive information was submitted.



Exhibit B of the March 9, 2007 submission describes the subject merchandise as the: “DUO-THERM® BRISK AIR ROOFTOP AIR CONDITIONER.” Exhibit D of the submission describes the merchandise as the: “**Dometic DUO-THERM** Model 6003 Roof-Top Air Conditioner” and notes that: “This air conditioner is specifically designed for installation on the roof of a recreational vehicle (RV)...it is preferred that the air conditioner be installed on a relatively *flat and level* roof section measured with the RV parked on a level surface...an 8° slant on either side or front or back is acceptable.”

ISSUE:

Whether the “Brisk Roof Top Air Conditioner” is classifiable as a self-contained window or wall type in subheading 8415.10.30, HTSUS, or as a air conditioning machine of a kind used for persons, in a motor vehicle in subheading 8415.20.00, HTSUS, or as a other than year-round unit, incorporating a refrigeration unit, self-contained type, in subheading 8415.82.01, HTSUS.

LAW AND ANALYSIS:

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

GRI 6 provides that the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only those subheadings at the same level are comparable.

The 2006 HTSUS provisions under consideration are as follows:

| | |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8415 | Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated: parts thereof: |
| 8415.10 | Window or wall types, self-contained or “split-system”: |
| 8415.10.30 | Self-contained |
| | * * * |
| 8415.20.00 | Of a kind used for persons, in motor vehicles |
| | * * * |
| | Other, except parts: |
| | * * * |
| 8415.82.01 | Other, incorporating a refrigerating unit: Self-contained machines and remote condenser type air conditioners other than year-round units... |

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 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 84.15 provides, in pertinent part, as follows:

Subheading Explanatory Notes.

Subheading 8415.10

This subheading covers air conditioning machines of window or wall types, self-contained or “split-system”.

The self-contained type air conditioning air conditioners are in the form of single units encompassing all required elements and being self-contained.

The “split-system” type air conditioners are ductless and utilize a separate evaporator for each area to be air conditioned (e.g., each room).

* * *

Subheading 8415.20

This subheading covers equipment which is intended mainly for passenger motor vehicles of all kinds, but which may also be fitted in other kinds of motor vehicles, for air conditioning the cabs or compartments in which persons are accommodated.

There is no dispute that by application of GRI 1, the subject “Brisk Roof Top Air Conditioner” (hereinafter, Roof-Top Model) is classified in heading 8415, HTSUS, which provides for: “Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated.” At issue is classification at the six-digit level by application of GRI 6.

In your submission, you contend that the subject merchandise should be classified in subheading 8415.10, HTSUS, as a self-contained window or wall type air conditioning machine, or in the alternative, in subheading 8415.20, HTSUS, as an air conditioning machine of a kind used for persons, in a motor vehicle. Specifically, you assert that the use of the word “type” suggests that subheading 8415.10, HTSUS, is broad in scope and intended for goods to be classified according to their construction, styling and capabilities rather than a literal interpretation of the phrase “window or wall types.” In support of this position, you offer NY R02265, dated August 10, 2005, which classified a self-contained climate control unit in subheading 8415.10, HTSUS, despite the fact that it was mounted inside of a door (rather than in a window or wall).

EN 84.15 explains that subheading 8415.10, HTSUS, includes window or wall air conditioning machines, which are either self-contained or “split-system.” Self-contained window or wall type air conditioners are mounted into an opening in a window or wall, which are both vertical surfaces. The design of the drainage system for an A/C unit mounted vertically differs from those which are mounted horizontally. This design distinguishes window or wall type A/C units from the instant merchandise.¹

¹ In your March 9, 2007 submission on page 4, it explicitly states that “This air conditioner is specifically designed for installation on the roof of a recreational vehicle (RV).” The submission further describes the subject merchandise as a “Roof-Top Air Conditioner” which should be installed on a “flat and level roof section.” *Id.* at 1 and 4. Specifications in Exhibit D of your submission explain that an “8° slant on either side or front or back is acceptable for all units.” *id.* at 4.

While the subject Roof-Top Model is a self-contained A/C unit it is not designed to be mounted or installed in a vertical surface such as a window, wall or door. As such, we find that the subject Roof-Top Model is not classifiable in subheading 8415.10, HTSUS, as a window or wall type A/C unit.

Alternatively, you argue that the subject Roof-Top Model is classifiable in subheading 8415.20, HTSUS as an air-conditioning machine of a kind used for persons, in a motor vehicle. We agree. At the GRI 6 level, the subheadings of heading 8415, HTSUS, provide for “air-conditioning machines...of a kind used for persons in a motor vehicle.” CBP has previously classified AC units used in motor vehicles under subheading 8415.20, HTSUS. For instance, we classified a climate control system for vehicle truck cabs in subheading 8415.20, HTSUS. See NY M81991, dated April 26, 2006. In that ruling, the merchandise was designed to be integrated into and dependent upon the vehicle’s heating and ventilation system, thus making use of the vehicle’s air ducts, vents, automotive fans, radiator and power source. While the subject Roof-Top Model is an independent ventilation and cooling system, its independent design does not preclude it from classification under subheading 8415.20, HTSUS. As the ENs to subheading 8415.20, HTSUS, explain, “[t]his subheading covers equipment which...may also be fitted in other kinds of motor vehicles, for air conditioning the cabs or compartments in which persons are accommodated.” A recreational vehicle (RV) is a kind of motor vehicle for tariff classification purposes. As we noted in *Vehicles, Parts and Accessories Under the HTSUS*, Informed Compliance Publication (May 2009):

The term “vehicle” is derived from the Latin word “*vehiculum*.” It means a carriage or conveyance. The type of vehicles which go in Chapter 87 are, **for the most part**, those whose main function is to transport people or things from one place to another (three exceptions: tractors, special purpose motor vehicles and armored fighting vehicles).

In the instant case, the RV is used to transport and accommodate people. Moreover, the principal purpose of the subject merchandise is to provide air conditioning in a compartment of an RV in which persons are accommodated. Accordingly, we find that the terms of subheading 8415.20, HTSUS “air-conditioning machines...of a kind used for persons in a motor vehicle”, describes the subject merchandise.

HOLDING:

By application of GRI 1, the subject Brisk Roof Top Air Conditioner is classified in heading 8415, HTSUS. It is specifically classified at GRI 6 in subheading 8415.20.00, HTSUS, which provides for: “Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated: parts thereof: of a kind used for persons, in motor vehicles.” The 2006 column one, general rate of duty was 1.4% *ad valorem*.

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 www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY M87553, dated November 6, 2006, is hereby revoked. In accordance with 19 USC §1625 (c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF A HEADQUARTERS
RULING LETTER (“HRL”) H064378 RELATING TO THE
USE OF THE TRANSACTION VALUE METHOD FOR
PURPOSES OF THE CALCULATION OF REGIONAL VALUE
CONTENT UNDER THE NAFTA**

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

ACTION: Proposed modification of a Headquarters ruling letter and revocation of treatment relating to the use of the transaction value method for purposes of calculating the regional value content under the NAFTA.

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 modify Headquarters Ruling Letter (“HRL”) H064378, dated December 18, 2009 (set forth as Attachment A), relating to the use of the transaction value method for purposes of calculating the regional value content under the NAFTA if there is no sale for export between the parties to the transaction. Comments are invited on the correctness of the intended actions.

EFFECTIVE DATE: Written comments should be received on or before August 6, 2012.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., Fifth Floor, Washington DC 20229–1177. 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, Trade and Commercial Regulations Branch, at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Yuliya A. Gulis, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202) 325–0042.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

In HRL H064378, the importer proposed to use the transaction value method to satisfy the regional value content and base the transaction value on the domestic sale between Hubbell Lighting, a U.S. importer, and a U.S. customer. The importer argued that since in HRL H028880, CBP determined that the U.S. clients of a maquiladora operation in Mexico were the “producers” for purposes of completing the NAFTA Certificate of Origin, the U.S. importer should be considered a “producer” as defined in NAFTA regulations, and the U.S. customer should be considered the buyer for purposes of the regional value content calculation as well. CBP found that the price actually paid or payable, as defined by the NAFTA Rules of Origin regulations, would be the price paid by the U.S. customer to the U.S. importer, and, therefore, the U.S. importer could choose to satisfy the regional value content on the basis of the domestic sale by satisfying the 60 percent regional value content requirement using transaction value set forth in the tariff shift rule for the imported fixtures. CBP characterized the issue to be the definition of the “producer” for purposes of the regional value content calculation. However, the real issue is whether the transaction value method may be used in calculating the regional value content. Upon review of this matter, CBP is proposing to take the position that even though under certain circum-

stances, the U.S. clients of a maquiladora may be considered “producers” for purposes of filing the certificate of origin, the transaction value method may not be used to satisfy the RVC requirements in HRL H064378 because according to the facts presented by the importer, there is no sale between the maquiladora in Mexico and the U.S. importer, as required by Section 2(1) of Schedule III, NAFTA Rules of Origin Regulations. Therefore, pursuant to 19 CFR Pt. 181, Part III, Section 6(6), the net cost method must be used to calculate the regional value content.

Thus, according 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 intends to modify HRL H064378, dated December 18, 2009 (set forth as Attachment A), relating to the use of the transaction value method for purposes of calculating the regional value content under the NAFTA if there is no sale for export between the parties to the transaction. Within this revocation, CBP is proposing that based on the facts presented, the U.S. importer must use the net cost method to determine if the imported merchandise is originating under NAFTA.

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 intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved with 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.

Accordingly, pursuant to 19 U.S.C. §1625(c)(1), CBP intends to modify HRL H064378 and any other ruling not specifically identified, to reflect the proposed changes according to the analysis contained in proposed HRL H092539, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to modify or 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: June 14, 2012

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ HO64378

December 18, 2009

CLA-2 OT:RR:CTF:VS HO64378 KSG

MICHAEL E. MURPHY, ESQ.
BAKER & MCKENZIE LLP
815 CONNECTICUT AVENUE NW
WASHINGTON, D.C. 20006-4078

Re: Definition of “producer” for purposes of NAFTA; transaction value

DEAR MR. MURPHY:

This is in response to a letter dated May 26, 2009, on behalf of Hubbell Lighting, requesting a ruling concerning the eligibility of certain lighting fixtures for preferential tariff treatment under the North American Free Trade Agreement (“NAFTA”). Hubbell Lighting had sent a previous letter dated December 9, 2008, to CBP concerning the same matter good. Because insufficient information was submitted in the initial letter, CBP had responded in an information letter, H048150, dated April 21, 2009. A conference was held on this matter at Headquarters. A subsequent submission dated September 16, 2009, is also considered as part of this file.

FACTS:

This case involves a three-light bath bracket lighting fixture to be used for commercial or residential homes. The product is manufactured in Mexico from metal, electrical, and glass parts produced in Mexico and China. You state that the imported lighting fixture is classified in subheading 9405.10.60 of the Harmonized Tariff Schedule of the United States (“HTSUS”). You also state that the non-originating materials from China, which consist of the socket ring, glass holder, glass shade, stem pipe, cross arm, reinforcing metal plate, finial cap, mounting screw, screw ground and ground wire with lug are classified in subheading 9405.99, HTSUS. Further, you state that the Mexican-origin electrical socket is classified in subheading 8536.69, HTSUS. We assume for the purposes of this ruling that the tariff classifications you have provided are correct.

The lighting fixture is assembled at a maquiladora in Mexico. You state that the maquiladora is related to Hubbell Lighting, a U.S. company and the importer in this case. You also state that the maquiladora does not own the equipment used to produce the lighting or the materials assembled into the finished lighting fixture. These items are owned by Hubbell Lighting. The maquiladora provides the labor to assemble the lighting fixtures. Hubbell pays the maquiladora a fee for the assembly of the lighting fixtures. There are three Hubbell employees, a Director of Manufacturing, the Materials Manager, and a Product Innovation Manager that provide direct supervisory control of the workers in Mexico. Hubbell also has an engineering manager on site. Hubbell Lighting pays the maquiladora for all utilities, facilities fees, and insurance costs incurred during the assembly process and any other expenses incurred in connection with running the assembly plant. Further, you state that Hubbell Lighting is responsible for supplying CBP with any information that is requested by CBP in connection with the importation of the goods into the U.S.

The imported lighting fixtures are sold by Hubbell Lighting to an unrelated U.S. customer/distributor.

For valuation purposes, the imported lighting fixtures are entered based on computed value.

ISSUE:

What is the proper method of calculation of the regional value content under the North American Free Trade Agreement (“NAFTA”) for the imported article.

LAW AND ANALYSIS:

The imported lighting fixtures will be eligible for the “Special” “MX” rate of duty provided they are NAFTA “originating” goods under General Note 12(b), HTSUS, and qualify to be marked as a product of Mexico under the marking rules. General Note 12(b), HTSUS, provides, in pertinent part:

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as goods originating in the territory of a NAFTA party only if—

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that— (A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein,

The lighting fixtures are classified in subheading 9405.10, HTSUS. Pursuant to the tariff shift rule set forth in GN 12(t), HTSUS, goods of subheading 9405.10 through 9405.60, require either a chapter change or a change from subheading 9405.91 through 9405.99 provided that there is a regional value content of not less than 60 percent where the transaction value is used or 50 percent where the net cost method is used for a good to be considered “originating.”

You state that there is no chapter change in this case. The various imported parts undergo the subheading change required for the second rule. In addition to the subheading change, the imported lighting fixtures would only be originating if the regional value content rule is satisfied. You propose to use transaction value to satisfy the regional value content and base the transaction value on the sale between Hubbell Lighting and a U.S. customer. Pursuant to Section 6, Part III of the NAFTA Rules of Origin Regulations (“ROR”), 19 CFR Pt. 181, App., the exporter or producer could choose either transaction value or the net cost method for the purposes of calculating the regional value content.

You cited to Headquarters Ruling Letter (“HRL”) H028880, dated June 16, 2008, in support of your argument that Hubbell Lighting is the “producer” for the purposes of NAFTA.

Section II of the ROR states that the transaction value of a good “shall be the price actually paid or payable for the good, which is the total payment made or to be made by the buyer or for the benefit of the producer.” A buyer is defined in Schedule III, section 1, as “a person who purchases a good from the producer.” A producer is defined in Schedule III as “the producer of the good being valued.” A producer is defined in section 2 as “a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles a good.”

In HRL H028880, CBP ruled that in that case, U.S. clients of a maquila were the “producers” for the purposes of completing the NAFTA Certificate of Origin. Counsel in that case argued that because of the facts presented, the essential purposes of the NAFTA Certificate of Origin would be undermined by listing the maquila as producers on the Certificates of Origin. The information required in the Certificate of Origin would require the person completing it to have actual knowledge of factual information including the tariff classification of the finished good and information to demonstrate that the specific rule of origin is satisfied. This information includes facts that the maquiladora would not have, such as cost information.

We concur with counsel that Hubbell Lighting would be considered a “producer” as defined in the NAFTA regulations. The U.S. customer would be considered the buyer. The price “actually paid or payable” as defined in the NAFTA Rules of Origin regulations would be the price paid by the U.S. customer to Hubbell Lighting. Hubbell Lighting could choose to satisfy the regional value content by showing that it can satisfy the 60 percent of the transaction value standard set forth in the tariff shift rule for the imported fixtures. However, we note that the price used for the purposes of calculating the regional value content would not be utilized for the purposes of valuation of the imported lighting fixtures, because the definition of transaction value set forth in 19 U.S.C. 1401a differs from the NAFTA definition. **HOLDING:**

Hubbell Lighting is considered the producer for the purposes of NAFTA. The price between the U.S. customer and Hubbell Lighting would be considered the transaction value for purposes of calculating the NAFTA regional value content of the imported light fixtures. However, we note that the price used for the purposes of calculating the regional value content would not be utilized for the purposes of valuation of the imported lighting fixtures, because the definition of transaction value set forth in 19 U.S.C. 1401a differs from the NAFTA definition. A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP official handling the transaction.

Sincerely,

MONIKA R. BRENNER,
Chief,

Valuation and Special Programs Branch

[ATTACHMENT B]

HQ H092539
OT:RR:CTF:VS H092539 YAG
CATEGORY: Classification

MR. MICHAEL E. MURPHY, ESQ.
BAKER & MCKENZIE LLP
815 CONNECTICUT AVENUE NW
WASHINGTON, D.C. 20006-4078

RE: Modification of Headquarters Ruling Letter (“HRL”) H064378; use of the transaction value method for purposes of the North American Free Trade Agreement (“NAFTA”) Regional Value Content (“RVC”) calculation

DEAR MR. MURPHY:

This letter is to inform you that the U.S. Customs and Border Protection (“CBP”) has reconsidered HRL H064378, issued to your client, Hubbell Lighting, on December 18, 2009, concerning the use of the price between the U.S. customer and Hubbell Lighting for purposes of the NAFTA RVC calculation. We have reviewed that ruling and found this section to be in error. Therefore, this ruling modifies HRL H064378.

FACTS:

This case involves a three-light bath bracket lighting fixture used in commercial or residential homes. The product is assembled at the maquiladora in Mexico from metal, electrical, and glass parts produced in Mexico and China. The imported lighting fixture is classified in subheading 9405.10 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Pursuant to H064378, the non-originating materials from China, which consist of the socket ring, glass holder, glass shade, stem pipe, cross arm, reinforcing metal plate, finial cap, mounting screw, screw ground, and ground wire with lug, are classified in subheading 9405.99, HTSUS. Further, the Mexican-origin electrical socket is classified in subheading 8536.69, HTSUS.

The maquiladora is related to Hubbell Lighting, a U.S. company and the importer of record. Hubbell Lighting owns the equipment and materials used in the production of the lighting fixtures. The maquiladora provides the labor to assemble the lighting fixtures. The U.S. importer simply pays the maquiladora a fee for the assembly. Additionally, there are three Hubbell employees, a Director of Manufacturing, the Materials Manager, and a Product Innovation Manager that provide direct supervisory control of the workers in Mexico. Hubbell also has an engineering manager on site. Hubbell Lighting pays the maquiladora for all utilities, facilities fees, and insurance costs incurred during the assembly process and any other expenses incurred in connection with running the assembly plant. Further, Hubbell Lighting is responsible for supplying any information that is requested by CBP in connection with the importation of the goods into the United States. The imported lighting fixtures are sold by Hubbell Lighting to unrelated U.S. customers/distributors and are entered into the United States on the basis of the computed value method of appraisalment.

ISSUE:

What is the proper method of calculation of the RVC under the NAFTA for the imported article?

LAW AND ANALYSIS:

The imported lighting fixtures will be eligible for the “Special” “MX” rate of duty provided they are NAFTA “originating” goods under GN 12(b), HTSUS, and qualify to be marked as a product of Mexico under the marking rules. GN 12(b), HTSUS, provides, in pertinent part:

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as goods originating in the territory of a NAFTA party only if –

- (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or
- (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that –
 - (A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s), and (t) of this note or the rules set forth therein.

The lighting fixtures are classified in subheading 9405.10, HTSUS. According to GN 12(t), HTSUS, in order to be originating a good must undergo a change in classification, satisfy a regional value content requirement, or both. For goods classified under subheadings 9405.10 through 9405.60, HTSUS, GN 12(t) requires either: (1) a change from any other chapter; or (2) a change to 9405.10 through 9405.60 from subheadings 9405.91 through 9405.99, HTSUS, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than 60 percent where the transaction value is used, or 50 percent where the net cost method is used.

According to the facts submitted, there is no chapter change in this case. However, the various imported parts undergo the subheading change required for the second rule. In addition to the subheading change, the imported lighting fixtures would only be originating if the RVC rule is satisfied as well.

In HRL H064378, you proposed to use the transaction value method to satisfy the RVC and base the transaction value on the domestic sale between Hubbell Lighting, a U.S. importer, and a U.S. customer. You argued that since CBP determined in HRL H028880 that the U.S. clients of a maquila operation in Mexico were the “producers” for purposes of completing the NAFTA Certificate of Origin, the U.S. importer should be considered a “producer” as defined by the NAFTA regulations and the U.S. customer should be considered the buyer for purposes of the RVC calculation. In HRL H064378 we accepted your argument and found that the price actually paid or payable, as defined in the NAFTA Rules of Origin regulations, would be the price paid by the U.S. customer to the U.S. importer, and, therefore, the U.S. importer could choose to satisfy the 60 percent transaction value RVC on the basis of that domestic sale. We now reconsider our decision in HRL H064378, and we find that the issue in HRL H064378 was mischaracterized.

In HRL H028880, CBP ruled that the U.S. clients of a maquila were the “producers” for purposes of completing the NAFTA Certificate of Origin because of the control the U.S. clients had over the manufacturing process in Mexico, namely, directly engaging in the assembly, processing, and/or manufacture of the goods exported from Mexico. HRL H028880 did not specify the value or the method to be used for purposes of RVC calculations under NAFTA although the U.S. clients were considered to be the “producers.” We reaffirm our decision in HRL H028880; however, we note that even though the U.S. clients of a maquila may be considered “producers” for the purposes of filing the certificate of origin under certain circumstances, the transaction value method cannot be used to satisfy the RVC requirements in HRL H064378.

Pursuant to Section 6, Part II of the NAFTA Rules of Origin Regulations (“NAFTA ROR”), 19 CFR Pt. 181, App., the exporter or producer may choose either transaction value or the net cost method for purposes of calculating the RVC. Even before we consider the definition of the transaction value of a good, specified in Section 3, Schedule II of the NAFTA ROR, we have to determine whether the transaction value method of calculating the RVC is acceptable under NAFTA. Therefore, the issue in this case is not the definition of the “producer” for purposes of the RVC calculations, but a broader determination of whether the transaction value method may be used in calculating the RVC. According to your submission, dated September 16, 2009, there is no sale between the maquiladora operation in Mexico and the U.S. importer. The U.S. importer simply pays the maquiladora a fee for the assembly, which provides the labor to assemble the lighting fixtures, and the maquiladora does not own the equipment or materials used to produce the lighting fixtures. These items are owned by Hubbell Lighting. We note that pursuant to 19 CFR Pt. 181, Part III, Section 6(6), the net cost method must be used to calculate RVC if: (a) there is no transaction value for the good under section 2(1) of Schedule III . . . Section 2(1) of Schedule III, NAFTA ROR, states that “there is no transaction value for a good where the good is not the subject of a sale.” Therefore, since there is no sale between the maquiladora in Mexico and the U.S. importer, transaction value is not applicable in this case, and the net cost method must be used to calculate the RVC under NAFTA.

You claim that HRL 548380, dated October 23, 2003, supports the proposition that the dutiable value should be based on the transaction between Hubbell Lighting and its U.S. customers. Please note that HRL 548380 did not involve NAFTA. In determining that the transaction between the U.S. affiliate and its U.S. customers could be used for valuation purposes, CBP considered the following facts: maquiladora in Mexico did not manufacture any products unless there were specific orders from the U.S. affiliate’s customers; merchandise was not manufactured for inventory purposes; the maquiladora in Mexico supplied shipping documents to import the merchandise from Mexico to the United States; and most importantly, the invoice prepared by the maquiladora in Mexico was the only invoice the U.S. affiliate’s customer in the United States received and paid based on the prices shown on the invoice prepared by the maquiladora. Additionally, in HRL 548380, we found that there was a sale for exportation to the United States because the merchandise was manufactured in Mexico in direct response to an order placed by the U.S. customer, and the maquiladora prepared the shipping documents and invoices on behalf of the U.S. affiliate and shipped the mer-

chandise to the U.S. customers who paid the invoice price. Thus, in HRL 548380, the transactions between the maquiladora in Mexico and the U.S. customers were the only viable transaction for export, and the role of the U.S. importer was not truly examined. None of these facts are present in this case. In this case, Hubbell Lighting simply ships the lighting fixtures to the United States once it sells them to an unrelated U.S. customer, and since it is a domestic sale, it cannot be considered a sale for exportation to the United States for the purposes of calculating RVC under NAFTA.

Therefore, to use transaction value to calculate RVC under NAFTA, there must be a transaction value for appraisal purposes. If there is no sale for exportation, transaction value cannot be used to calculate RVC under NAFTA. Thus, we find that even though Hubbell Lighting may be the “producer” for purposes of filing the certificate of origin, the importer must use the net cost method to calculate the RVC under NAFTA, since the goods are clearly not the subject of a sale between the maquiladora operation in Mexico and Hubbell Lighting and transaction value is not the appropriate method of appraisal of the imported merchandise.

HOLDING:

Based on the facts presented, we find that the U.S. importer must use the net cost method to determine if the imported merchandise is originating under NAFTA.

EFFECT ON OTHER RULINGS:

HRL H064378, dated December 18, 2009, is hereby MODIFIED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

GENERAL NOTICE

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF OVER CURRENT DETECTORS

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the classification of Over Current Detectors.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB proposes to revoke a ruling concerning the classification of Over Current Detectors (OCDs) under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB proposes to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before August 6, 2012

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, 799 9th Street, N.W., 5th Floor Washington, D.C. 20229–1179. Comments submitted may be inspected at 799 9th St. N.W. 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 revoke a ruling pertaining to the classification of Over Current Detectors. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) H80199, dated May 21, 2001 (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 substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY H80199, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H122802. (*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: May 23, 2012

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

NY H80199

May 21, 2001

CLA-2-85:RR:NC:MM:109 H80199

CATEGORY: Classification

TARIFF NO.: 8542.30.0090

MR. TODD KAZMIRSKI
PRESIDENT
ISOSENSE, INC.
P.O. BOX # 7316
CAVE CREEK, AZ 85327

RE: The tariff classification of Over Current Detectors

DEAR MR. KAZMIRSKI:

In your letter dated April 18, 2001, you requested a tariff classification ruling.

The merchandise is described in your letter as Over Current Detectors (OCD). These items are electronic micro assemblies- ISoSense 50A OCD. The OCD is packaged and ready for assembly. The OCD will be mounted to a printed circuit board. They are designed to be mounted on a printed circuit board similar to a resistor, capacitor or integrated circuit and are assembled into a particular product. Applications for this merchandise include MRI machines, treadmills, motor controllers, inverters and power supplies and various types of electrical conversion. The output of the OCD is DIGITAL while the current it senses is ANALOG. All components are DISCRETE.

The device detects a specific current level in an electrical conductor routed through the detector's aperture. When a current equal to or greater than the detector's trip level is detected in the conductor, the output of the detector goes from a high state to a low state. The assembly has three discrete parts: a Hall effect switch, a gapped magnetic core and a plastic case. An electrical current flowing in a conductor routed through the aperture of the detector creates a magnetic field in the core. The core acts to focus the flux in the gap where the Hall switch is positioned in the assembly. Since the magnetic field density in the gap is proportional to the electric current in the aperture, the Hall switch can be programmed to trip the current level by adjusting the length of the air gap. At the current trip level, the output of the Hall switch goes from high digital state to low. The signal is typically used to momentarily shut down power transistors to constrain electrical current levels in the circuit.

There are two electrical elements in the assembly: the Hall Switch and the magnetic core. The microassembly performs one electrical function that is to detect a specific current level. The assembly contains one integrated circuit, the Hall effect switch. On May 9, 2001, a telephone conversation with you confirmed that this OCD is a mixed signal (analog/digital). The OCD is intended to be used for protection against over current events in power conversion equipment. Samples of this merchandise were submitted to this office

The applicable subheading for the Over Current Detectors will be 8542.30.0090, Harmonized Tariff Schedule of the United States (HTS), which

provides for “Electronic integrated circuits and microassemblies; parts thereof: Other monolithic integrated circuits: Other, including mixed signals (analog/digital): Other.”

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 Linda M. Hackett at 212-637-7048.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H122802

May 23, 2012

CLA-2 OT:RR:CTF:TCM H122802 TNA**CATEGORY:** Classification**TARIFF NO.:** 8543.70.40

MR. TODD KASMIRSKI, PRESIDENT
ISOSENSE, INC.
P.O. BOX #7316
CAVE CREEK, AZ 85327

RE: Revocation of NY H80199; Classification of Hall-Effect Over Current Detectors

DEAR MR. KASMIRSKI:

This letter is in reference to New York Ruling Letter (“NY”) H80199, issued to IsoSense, Inc. (“IsoSense”) on May 21, 2001, concerning the tariff classification of IsoSense 50A Over Current Detectors (“OCDs”). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the OCDs under subheading 8542.30.00, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Electronic integrated circuits and microassemblies; parts thereof: Other monolithic integrated circuits.”¹ We have reviewed NY H80199 and found it to be in error. For the reasons set forth below, we hereby revoke NY H80199.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY H80199 was published on November 16, 2011, in Volume 45, Number 47, of the *Customs Bulletin*. CBP received one comment in response to this notice.

FACTS:

The IsoSense 50A OCDs are Hall-Effect type current sensors-devices that protect power electronic circuits by signaling when current in the circuit has exceed a designated trip point. The OCDs are designed to be mounted to a printed circuit board. Applications for this merchandise include MRI machines, treadmills, motor controllers, inverters, power supplies and various types of electrical conversion apparatus. The output of the OCD is digital while the current it senses is analog.

The basic principle of the Hall-effect is that when a current-carrying conductor is placed into a magnetic field, a voltage will be generated perpendicular to both the current and the field. Thus, when subjected to a magnetic field, Hall-effect type sensors respond to the physical quantity to be sensed (e.g., the current) with an electrical signal that is proportional to the magnetic field strength, which it then supplies to the product to which it is incorporated.

In NY H80199, CBP classified the OCDs under subheading 8542.30.00, HTSUS, as: “Electronic integrated circuits and microassemblies; parts thereof: Other monolithic integrated circuits.”

¹ We note that subheading 8542.30.00, HTSUS, was a subheading of the 2001 HTSUS that became subheading 8548.90.01, HTSUS, after the 2007 changes to the tariff schedule.

ISSUE:

Whether the subject OCDs are classified in heading 8542, HTSUS, as electronic integrated circuits, or in heading 8543, HTSUS, as “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof”?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

| | |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8542 | Electronic integrated circuits; parts thereof: |
| | Electronic integrated circuits: |
| 8542.31.00 | Processors and controllers, whether or not combined with memories, converters, logic circuits, amplifiers, clock and timing circuits, or other circuits |
| 8543 | Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: |
| | * * * |
| 8543.70 | Other machines and apparatus: |
| | * * * |
| 8543.70.40 | Electric synchros and transducers; flight data recorders; defrosters and demisters with electric resistors for aircraft |

Legal Note 8 to Chapter 85, HTSUS, provides, in pertinent part, that: For the purposes of headings 8541 and 8542:

(a) “*Diodes, transistors and similar semiconductor devices*” are semiconductor devices the operation of which depends on variations in resistivity on the application of an electric field;

(b) “*Electronic integrated circuits*” are:

- (i) Monolithic integrated circuits in which the circuit elements (diodes, transistors, resistors, capacitors, inductances, etc.) are created in the mass (essentially) and on the surface of a semiconductor or compound semiconductor material (for example, doped silicon, gallium arsenide, silicon germanium, iridium phosphide) and are inseparably associated...

For the classification of the articles defined in this note, headings 8541 and 8542 shall take precedence over any other heading in the Nomenclature, except in the case of heading 8523, which might cover them by reference to, in particular, their function.

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

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

The EN to heading 8542, HTSUS, provides, in pertinent part:

The articles of this heading are defined in Note 8 (b) to the Chapter.

Electronic integrated circuits are devices having a high passive and active element or component density, which are regarded as single units (see Explanatory Note to heading 85.34, first paragraph concerning elements or components to be regarded as “passive” or “active”). However, electronic circuits containing only passive elements are **excluded** from this heading...

Electronic integrated circuits include:

(I) **Monolithic integrated circuits.**

These are microcircuits in which the circuit elements (diodes, transistors, resistors, capacitors, inductances, etc.) are created in the mass (essentially) and on the surface of a semiconductor material (doped silicon, for example) and are therefore inseparably associated. Monolithic integrated circuits may be digital, linear (analogue) or digital-analogue.

Monolithic integrated circuits may be presented:

- (i) Mounted, i.e., with their terminals or leads, whether or not encased in ceramic, metal or plastics. The casings may be cylindrical, in the form of parallelepipeds, etc.
- (ii) Unmounted, i.e., as chips, usually rectangular, with sides generally measuring a few millimetres.
- (iii) In the form of undiced wafers (i.e., not yet cut into chips).

Monolithic integrated circuits include:

- (i) Metal oxide semiconductors (MOS technology).
- (ii) Circuits obtained by bipolar technology.
- (iii) Circuits obtained by a combination of bipolar and MOS technologies (BIMOS technology)...

Except for the combinations (to all intents and purposes indivisible) referred to in Parts (II) and (III) above concerning hybrid integrated circuits and multichip integrated circuits, the heading also **excludes** assemblies formed by:

- (a) Mounting one or more discrete components on a support formed, for example, by a printed circuit;
- (b) Adding one or more other devices, such as diodes, transformers, or resistors to an electronic microcircuit; or
- (c) Combinations of discrete components or combinations of electronic microcircuits other than multichip-type integrated circuits.

The EN to heading 8543, HTSUS, provides, in pertinent part:

This heading covers all electrical appliances and apparatus, **not falling** in any other heading of this Chapter, **nor covered more specifically** by a heading of any other Chapter of the Nomenclature, nor excluded by the operation of a Legal Note to Section XVI or to this Chapter. The principal electrical goods covered more specifically by other Chapters are electrical machinery of **Chapter 84** and certain instruments and apparatus of **Chapter 90**.

The electrical appliances and apparatus of this heading must have individual functions. The introductory provisions of Explanatory Note to heading 84.79 concerning machines and mechanical appliances having individual functions apply, *mutatis mutandis*, to the appliances and apparatus of this heading.

The EN to heading 8479, HTSUS, provides, in pertinent part: The following are to be regarded as having “individual functions”:

(B) Mechanical devices which cannot perform their function unless they are mounted on another machine or appliance, or are incorporated in a more complex entity, **provided** that this function:

(i) is distinct from that which is performed by the machine or appliance whereon they are to be mounted, or by the entity wherein they are to be incorporated, and

(ii) does not play an integral and inseparable part in the operation of such machine, appliance or entity.

In NY H80199, CBP classified the subject OCDs in heading 8542, HTSUS, as monolithic integrated circuits. Legal Note 8 to Chapter 85, HTSUS, defines electronic integrated circuits and their components. Note 8(b)(i) to Chapter 85, HTSUS, provides that “monolithic integrated circuits” are electronic ICs in which the circuit elements are created in the mass and on the surface of a semiconductor or compound semiconductor material and are inseparably associated from that material *See* Note 8(b)(i). Note 8 further defines “diodes, transistors and similar semiconductor devices” as “...semiconductor devices whose operation depends on variations in resistivity on the application of an electric field.” *See* Note 8(a) to Chapter 85.

The subject merchandise contains three distinct parts: a Hall effect sensor, a gapped magnetic core, and a plastic case. While we acknowledge that the subject merchandise contains a monolithic integrated circuit (i.e., the Hall-effect sensor), the entire package is not classified as one, because it contains a magnetic core - a component that is not an inseparably associated circuit element, as required by Note 8(b)(1) to Chapter 85, HTSUS. As a result, the OCDs cannot be classified as a monolithic integrated circuit in heading 8542, HTSUS.

Heading 8543, HTSUS, provides for electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85. There is no dispute that the subject OCDs are electrical machines and apparatus, and our discussion above has eliminated them from classification elsewhere in Chapter 85, HTSUS. Furthermore, they have individual functions in that they are designed to be mounted on an integrated circuit board but perform a separate function from that circuit board- i.e., the detection of the magnetic field and response with an electric current. At the same time,

the Hall-effect switch can be removed from the circuit board and does not play an integral role in the way the circuit board functions. Thus, it can be regarded as having an individual function. See EN 84.79.

Subheading 8543.70.40, HTSUS, provides in part for electric synchros and transducers. The term transducer is not defined in the text of the HTSUS or in the ENs. When not so defined, terms are construed in accordance with their common and commercial meaning, which are presumed to be the same. *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. In HQ 964599, dated December 22, 2000, in considering the classification of optical encoders, we examined the term transducer and determined that it encompasses devices which convert variations in one energy form into corresponding variations in another, usually electrical form. See also HQ 967134, dated July 20, 2004; HQ 967103, dated July 20, 2004. The subject OCD measures changes in the magnetic field and changes them to electric signals so as to protect against over currents in power conversion equipment. As such, it meets the terms of heading 8543, HTSUS, and subheading 8543.70.40, HTSUS, in particular.

Furthermore, CBP has consistently classified similar Hall-effect gear-tooth sensors as transducers under heading 8543, HTSUS. For example, in HQ 967134, CBP classified a sensor composed of a monolithic IC, an aluminum-nickel-cobalt (AlNiCo) magnet, and three electrical conductor wires, all encased in a black plastic housing, in subheading 8543.89.40, HTSUS, as a transducer. See also HQ 967103, dated July 20, 2004. As a result, the subject merchandise is classified as a transducer in heading 8543, HTSUS.²

The comment that CBP received in response to the proposed revocation discussed an imported article that is similar to the subject OCD, and questioned the applicability of the proposed revocation to its merchandise. The commenter explained the ways in which its merchandise is distinguishable from the subject OCD, and argued that its merchandise should remain classified in subheading 8542.39.00, HTSUS, even if this revocation of NY H80199 becomes final. Based on the product specifications submitted, however, we do not have enough information to confirm that the commenter's merchandise is distinguishable from the subject OCD. The commenter is welcome to request a binding ruling or internal advice regarding the classification of its merchandise.

HOLDING:

Under the authority of GRI 1, the IsoSense 50A Over Current Detectors are classified in subheading 8543.70.40, HTSUS, which provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Electric synchros and transducers; flight data recorders; defrosters and demisters with electric resistors for aircraft." The 2011 column one general rate of duty is 2.6% *ad valorem*.

² We note that subheading 8543.89.40, HTSUS, which was a subheading of the 2004 tariff when HQ 967134 and 967103 were decided, is now subheading 8543.70.40, HTSUS, in the 2010 HTSUS.

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

EFFECT ON OTHER RULINGS:

NY H80199, dated May 21, 2001, is REVOKED.

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

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF STACKING DRAWERS

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to tariff classification of plastic stacking drawers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking New York Ruling Letter (NY) N042968, dated November 26, 2008, relating to the tariff classification of plastic stacking drawers under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* Vol. 46, No. 2, on January 4, 2012. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 4, 2012.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N042968 was published on January 4, 2012, in Volume 46, Number 2, of the *Customs Bulletin*. No comments were received in response to this notice.

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

In NY N042968, CBP determined that plastic stacking drawers were classified in heading 3924, HTSUS, as household articles of plastic.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N042968 and revoking or modifying any other ruling not specifically identified, in order to reflect the proper classification of plastic stacking drawers in heading 9403, HTSUS, according to the analysis contained in Headquarters Ruling Letter (HQ) H086941, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: June 14, 2012

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H086941

June 14, 2012

CLA-2 OT:RR:CTF:TCM H086941 CkG

CATEGORY: Classification

TARIFF NO: 9403.70.80

Ms. GERI DAVIDSON
THE CONTAINER STORE
500 FREEPORT PKWY
COPPELL, TX 75019

RE: Reconsideration of NY N042968; classification of plastic stacking drawers

DEAR Ms. DAVIDSON:

This is in response to your letter of November 10, 2009, requesting the reconsideration of New York Ruling Letter (NY) N042968, issued on November 26, 2008. CBP ruled in this decision that separately imported plastic stacking drawers were classified in heading 3924, HTSUS, as household articles of plastic. You request classification in heading 9403, HTSUS, as articles of furniture.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N042968 was published on January 4, 2012, in Volume 46, Number 2, of the *Customs Bulletin*. No comments were received in response to the proposed notice.

FACTS:

The merchandise consists of three polystyrene (PS) rectangular plastic drawer units, imported in different height sizes as follows:

SKU# 10049054 – Small Stacking Drawer Smoke. This item measures 12–1/2 inches by 20–1/2 inches by 6 inches in height

SKU# 10049071 – Medium Stacking Drawer Smoke. This item measures 12–1/2 inches by 20–1/2 inches by 8 inches in height.

SKU# 10049072 – Large Stacking Drawer Smoke. This item measures 12–1/2 inches by 20–1/2 inches by 12 inches in height.

Each drawer unit is designed to stack one on the other and has interlocking edges which secure the drawers to each other and locking them into place, thus forming a free standing drawer system. The drawers have a smoke coloring and are tinted. Articles that will be stored in the drawer will be visible from outside the drawer.

ISSUE:

Whether the stackable drawers are classifiable as household articles of plastic of heading 3924, HTSUS, or articles of furniture of heading 9403, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the 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:

| | |
|-------------|------------------------------------------------------------------------------------------------|
| 3924: | Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: |
| 3924.90: | Other: |
| 3924.90.56: | Other. * * * * |
| 9403: | Other furniture and parts thereof: |
| 9403.70: | Furniture of plastics: |
| 9403.70.80: | Other. * * * * |

Note 2(x) to Chapter 39 provides as follows:

This chapter does not cover...articles of Chapter 94 (for example, furniture, lamps and lighting fittings, illuminated signs, prefabricated buildings).

Note 2 to Chapter 94 provides, in pertinent part, as follows:

The articles (other than parts) referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground.

The following are, however, to be classified in the above-mentioned headings even if they are designed to be hung, to be fixed to the wall or to stand one on the other:

- (a) Cupboards, bookcases, other shelved furniture and unit furniture;

* * * *

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

The General Notes to the EN to Chapter 39 state that "heading 39.26 is a residual heading which covers articles, not specified elsewhere or included, of plastics or of other materials of headings 39.01 to 39.14."

General (EN) (4)(B)(i) to Chapter 94, HTSUS, reads as follows:

For the purposes of this Chapter, the term 'furniture' means:

(B) The following:

- (i) Cupboards, bookcases, other shelved furniture and unit furniture, designed to be hung, to be fixed to the wall or to stand one on the other or side by side, for holding various objects or articles (books, crockery, kitchen utensils, glassware, linen, medicaments, toilet articles, radio or television receivers, ornaments, etc.) and separately presented elements of unit furniture.

EN 94.03 provides, in pertinent part:

This heading covers furniture and parts thereof, **not covered** by the previous headings. It includes furniture for general use (e.g., cupboards, show-cases, tables, telephone stands, writing-desks, escritorios, book-cases, and other shelved furniture, etc.), and also furniture for special uses.

The heading includes furnitures for:

(1) **Private dwellings, hotels, etc.**, such as: cabinets, linen chests, bread chests, log chests; chests of drawers, tallboys; pedestals, plant stands; dressing-tables; pedestal tables; wardrobes, linen presses; hall stands, umbrella stands; side-boards, dressers, cupboards; food-safes; bedside tables; beds (including wardrobe beds, camp-beds, folding beds, cots, etc.); needlework tables; foot-stools, fire screens; draught-screens; pedestal ashtrays; music cabinets, music stands or desks; play-pens; serving trolleys (whether or not fitted with a hot plate).

* * * *

Classification within Chapter 39 is subject to Legal Note 2(x), which excludes articles of Chapter 94 from classification in Chapter 39. Therefore, if the instant drawers are classifiable in heading 9403, HTSUS, they are excluded from classification in any of the provisions of Chapters 39, even if described therein. We will therefore first address the classification in Chapter 94 of the instant merchandise.

Legal Note 2 to Chapter 94 states that “the articles (other than parts) referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground.” General EN 4(A) to Chapter 94 defines furniture as: “[a]ny ‘movable’ articles ... which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings and other places.”

Although the individual drawer units are imported and presented separately, they are designed to be used as a free standing drawer system, with each drawer interlocking with and standing on the one below. Thus, while only the bottom drawer will be placed on the ground, the interlocked drawers constitute a single, movable unit designed for placing on the floor or ground, which has the utilitarian purpose of storing clothing and other personal items. The drawer set is also of a class or kind with those articles enumerated in EN 94.03 which are designed for a similar purpose, such as chests of drawers and dressers.

Note 2 to Chapter 94 further states that cupboards, bookcases and other shelved or unit furniture remains in that Chapter even if designed to stand one on the other. While the term “unit furniture is not defined in the tariff or ENs, CBP has consistently held that “unit furniture” refers to different elements of furniture which are designed and intended to be used to create one unit. See *e.g.*, HQ 966672, dated March 8, 2004; HQ 950246, dated November 22, 1991; NY N013745, dated July 10, 2007; NY N003710, dated December 4, 2006. In *StoreWALL, LLC v. United States*, the Court of International Trade further defined “unit furniture” as follows:

- (a) [**6] fitted with other pieces to form a larger system or which is itself composed of smaller complementary items,
- (b) designed to be hung, to be fixed to the wall, or to stand one on the other

or side by side, and

(c) assembled together in various ways to suit the consumer's individual needs to hold various objects or articles, but

(d) excludes other wall fixtures such as coat, hat and similar racks, key racks, clothes brush hangers, and newspaper racks.

See StoreWALL, LLC v. United States, 675 F. Supp. 2d 1200 (Ct. Int'l Trade 2009), *aff'd* 644 F.3d 1358 (Fed. Cir. 2011).

Each drawer may thus be considered to be a separately presented element of unit furniture pursuant to the General EN to heading 9403, HTSUS. That the individual drawers are designed to stand on each other therefore does not take them out of heading 9403, HTSUS.

Based on the above discussion, the instant drawers are classified as furniture of heading 9403, HTSUS.

HOLDING:

By application of GRI, the instant drawers are classified in heading 9403, HTSUS, specifically in subheading 9403.70.80, HTSUS, which provides for "Other furniture and parts thereof: Furniture of plastics: Other." The 2012 column one, general rate of duty is Free.

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

EFFECT ON OTHER RULINGS:

NY N042968, dated November 26, 2008, is hereby revoked.

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division

GENERAL NOTICE**19 CFR PART 177****NOTICE OF REVOCATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF NICKEL BOLTS**

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

ACTION: Notice of revocation of ruling letter and revocation of treatment concerning the tariff classification of nickel bolts.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of nickel bolts under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on November 30, 2011, in the Customs Bulletin, Vol. 45, No. 49. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 4, 2012

FOR FURTHER INFORMATION CONTACT: Dwayne S. Rawlings, Tariff Classification and Marking Branch, (202) 325–0092.

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 that emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 45, No. 49, on November 30, 2011, proposing to revoke New York Ruling Letter (NY) N058237 pertaining to the tariff classification of nickel bolts. No comments were received in response to the notice. As stated in the proposed notice, this action will cover any ruling on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N058237, CBP classified certain nickel bolts in heading 8414, HTSUS, specifically in subheading 8414.90.41, HTSUS, which provides for other parts of other compressors. It is now CBP's position that the nickel bolts are properly classified in subheading 7508.90.50, HTSUS, which provides for "Other articles of nickel: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N058237 and any other ruling not specifically identified, in order to reflect the proper analysis contained in Headquarters Ruling (HQ) H080821

(Attachment). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 14, 2012

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

HQ H080821

June 14, 2012

CLA-2 OT:RR:CTF:TCM H080821 DSR

CATEGORY: Classification

TARIFF NO.: 7508.90.50

MS. DIANNE JONES
TEXAS AERO ENGINE SERVICES, LLC
2100 EAGLE PARKWAY
FORT WORTH, TX 76177

RE: Revocation of NY N058237, dated May 13, 2009; subheading 7508.90.50, HTSUS; tariff classification of a nickel bolt

DEAR MRS. JONES:

This letter is in reference to New York Ruling Letter (NY) N058237, issued to you on May 13, 2009, regarding the classification under the 2009 Harmonized Tariff Schedule of the United States (HTSUS) of a nickel bolt used to join components within the compressor shaft assembly of a turbine engine. The ruling classified the article under subheading 8414.90.41, HTSUS, which provides for “Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof: Parts: Of compressors: Other: Other.” CBP has reviewed the tariff classification of the subject nickel bolt and has determined that the cited ruling is in error.

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 45, No. 49, on November 30, 2011, proposing to revoke NY N058237. No comments were received in response to the notice.

FACTS:

The bolt in question is identified as part number BLT5541, and described as an “odd shaped” bolt made of nickel. Based upon the information made available, the specialized bolt is used to join components within the compressor shaft assembly of a turbine engine.

ISSUE:

Whether the nickel bolt in question is classified under heading 7318, HTSUS, as a bolt, or similar article, of iron or steel; under 7508, HTSUS, as an “other” article of nickel; or under heading 8414, HTSUS, as a part of a compressor.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's 2 through 6 may then be applied in order. In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are gener-

ally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

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

7318 Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel:

* * * *

7508 Other articles of nickel

* * *

7508.90 Other:

* * *

7508.90.50 Other.

* * * *

8414 Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof:

* * *

8414.90 Parts:

Of compressors:

* * *

8414.90.41 Other.

* * * *

Heading 8414, HTSUS, is found within Section XVI, HTSUS, and covers, *inter alia*, “air or other gas compressors ... and parts thereof.” General Note 2(a), Section XVI, HTSUS, states that, subject to General Note 1 of that section, parts that are goods included in any of the headings of Chapter 84 are to be classified in their respective headings. General Note 1(g) to Section XVI, HTSUS, states that Section XVI does not cover “parts of general use, as defined in Note 2 to Section XV, of base metal ...”

General Note 2(a) to Section XV, HTSUS, defines “parts of general use” as “articles of heading ... 7318 and *other similar articles of other base metals.*” (emphasis added).¹ Heading 7318, HTSUS, describes, in part, “screws, bolts, nuts ... and similar articles of iron or steel ...” Nickel is a base metal, and the subject bolt is composed of nickel. Thus, reading these Notes together, if we determine that the nickel bolt is a part of general use that is similar to bolts of iron or steel of heading 7318, HTSUS, the nickel bolt cannot be classified as a “part” under heading 8414, HTSUS.

Examples of base metal parts of general use classified under heading 7318, HTSUS, include bolts and nuts (including bolt ends), screw studs and other screws for metal (whether or not threaded or tapped). *See* EN 73.18(A). A bolt is generally defined as a pin or a rod that is designed to hold things together or in place. *Hafele America Co., Ltd. v. United States*, 870 F. Supp. 352, 355–56 (Ct. Intl. Trade 1994); *see also* HQ 963662, dated October 25, 2000 (acoustical toggle bolts that acted as fasteners designed so that one end

¹ The expression “base metals” includes nickel. *See* General Note 3, Section XV, HTSUS.

is secured in a surface leaving a protuberance to which something else is attached classified under heading 7318, HTSUS). In addition, in HQ 966789, dated June 21, 2004, CBP deliberated the classification of an oil bolt used in motor vehicles and motorcycles. The bolt was threaded at one end and had a hex-shaped head for applying torque. It was designed to allow the unimpeded flow of brake fluid between a brake hose assembly and a motor vehicle braking system. In spite of the characteristic that allowed the unimpeded flow of oil, CBP concluded that the oil bolt was used as a fastener, as opposed to functioning as a part with a discrete application that makes adjustments in motor vehicles and, thus, was classifiable as a screw of iron or steel under heading 7318, HTSUS. *See also Honda of America Mfg., Inc. v. United States*, 625 F. Supp. 2d 1324 (Ct. Intl. Trade 2009) (upholding HQ 966789).

The nickel bolt in question simply joins components within the compressor shaft assembly of a turbine engine and is similar in function to the iron or steel bolts that are covered by subheading 7318, HTSUS. It thus meets the definition of a “part of general use” as described by General Note 2(a) to Section XV, HTSUS. According to General Explanatory Note (C), Section XV, HTSUS:

[P]arts of general use (as defined in Note 2 to this section) presented separately are not considered as parts of articles, but are classified in the headings of this Section appropriate to them. This would apply, for example, in the case of bolts specialized for central heating radiators or springs specialized for motor cars. The bolts would be classified in heading 73.18 (as bolts) and not in heading 73.22 (as parts of central heating radiators). The springs would be classified in heading 73.20 (as springs) and not in heading 87.08 (as parts of motor vehicles).

Thus, a nickel bolt that is presented separately and is a “part of general use,” even if specialized for joining a compressor shaft assembly, would be classified in the heading of Section XV that is appropriate to the bolt, as opposed to a heading that covers “parts” of such an assembly. Reading the above General EN together with General Note 1(g) to Section XVI, HTSUS, which states that Section XVI does not cover “parts of general use, as defined in Note 2 to Section XV, of base metal ...,” we find that the nickel bolt is excluded from classification under heading 8414, HTSUS, which covers parts of air compressors. The bolt is also excluded from classification under heading 7318, HTSUS, because it is composed of nickel, rather than iron or steel.

Chapter 75, HTSUS, provides for nickel and articles comprised thereof. There is no specific provision within Chapter 75 that describes the subject bolt by name or use. However, a “basket” provision – heading 7508, HTSUS – provides for “Other articles of nickel.” *See* EN 73.18(B)(4) (stating that the group covers nickel bolts of the types described in the Explanatory Notes to heading 73.18). Reference to a “basket” provision of the tariff is proper only when no other provision describes the merchandise more specifically. *See Hafele, supra*, at 357. Thus, it is now the position of CBP that the nickel bolt in NY N058237 is classified in heading 7508, HTSUS, specifically in sub-heading 7508.90.50, HTSUS, which provides for “Other articles of nickel: Other: Other.

HOLDING:

By application of GRI 1, the subject merchandise identified as part number BLT5541 is classifiable under heading 7508, HTSUS. Specifically, it is classifiable under subheading 7508.90.50, HTSUS, which provides for “Other articles of nickel: Other: Other.” The column one, general rate of duty is 3%. Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at *www.usitc.gov*.

EFFECT ON OTHER RULINGS:

NY N058237, dated May 13, 2009, is hereby revoked.

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

Sincerely,

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

AGENCY INFORMATION COLLECTION ACTIVITIES:**Voluntary Customer Survey**

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

ACTION: 60-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on a proposed information collection requirement concerning a Voluntary Customer Survey. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13)

DATES: Written comments should be received on or before August 20, 2012, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: 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. 3505(c)(2)). 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) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval.

All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

Title: Voluntary Customer Survey.

OMB Number: 1651-0135.

Abstract: Customs and Border Protection (CBP) plans to conduct a customer survey of international travelers seeking entry into the United States at the twenty highest volume airports in order to determine perceptions of the arrival process at our ports of entry. This voluntary customer survey will be conducted using short computer or verbal surveys of travelers as they move through entry processing areas. Travelers who do not speak English will be given a written version of the survey in their language and may submit their responses in writing. The survey will include questions about wait times, ease of entry processing, and the level of communication, efficiency and professionalism of CBP officers. The results and analysis of the survey responses will be used to identify actionable items to improve services to the traveling public with respect to the entry processes for travelers arriving at United States air ports of entry.

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

Type of Review: Extension (without change).

Affected Public: Individuals, Travelers.

Estimated Number of Respondents: 21,000.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 1,743.

Dated: June 14, 2012.

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

[Published in the Federal Register, June 19, 2012 (77 FR 36566)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Cargo Container and Road Vehicle Certification for Transport Under Customs Seal

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

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

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: Cargo Container and Road Vehicle for Transport under Customs Seal. 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. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (77 FR 21577) on April 10, 2012, 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.

DATES: Written comments should be received on or before July 16, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this 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 U.S. 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, 799 9th Street NW., 5th Floor, Washington, DC. 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Cargo Container and Road Vehicle for Transport under Customs Seal.

OMB Number: 1651-0124.

Form Number: None.

Abstract: The United States is a signatory to several international Customs conventions and is responsible for specifying the technical requirements that containers and road vehicles must meet to be acceptable for transport under Customs seal. Customs and Border Protection (CBP) has the responsibility of collecting information for the purpose of certifying containers and vehicles for international transport under Customs seal. A certification of compliance facilitates the movement of containers and road vehicles across international territories. The procedures for obtaining a certification of a container or vehicle are set forth in 19 CFR part 115.

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 Respondents: 25.

Estimated Number of Annual Responses per Respondent: 120.

Estimated Time per Response: 3.5 hours.

Estimated Total Annual Burden Hours: 10,500.

Dated: June 12, 2012.

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

AGENCY INFORMATION COLLECTION ACTIVITIES:**User Fees**

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

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning User Fees. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before August 14, 2012, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177.

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, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: 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. 3505(c)(2)). 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 burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments

will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: User Fees.

OMB Number: 1651-0052.

Form Number: CBP Forms 339A, 339C and 339V.

Abstract: The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA—Pub. L. 99-272; 19 U.S.C. 58c) authorizes the collection of user fees by CBP. The collection of these fees requires submission of information from the party remitting the fees to CBP. This information is submitted on three forms including the CBP Form 339A for aircraft at http://forms.cbp.gov/pdf/cbp_form_339a.pdf; CBP Form 339C for commercial vehicles at http://forms.cbp.gov/pdf/cbp_form_339c.pdf; and CBP Form 339V for vessels at http://forms.cbp.gov/pdf/cbp_form_339v.pdf. The information on these forms may also be filed electronically at <https://dtops.cbp.dhs.gov/>. This collection of information is provided for by 19 CFR 24.22.

In addition, CBP requires express consignment courier facilities (ECCFs) to file lists of couriers using the facility in accordance with 19 CFR 128.11. ECCFs are also required to file a quarterly report in accordance with 19 CFR 24.23(b)(4).

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours to allow for a change in the number of ECCF's.

Type of Review: Extension (with change).

Affected Public: Businesses.

CBP Form 339A—Aircraft

Estimated Number of Respondents: 15,000.

Estimated Number of Annual Responses: 15,000.

Estimated Time per Response: 16 minutes.

Estimated Total Annual Burden Hours: 4,005.

CBP Form 339C—Vehicles

Estimated Number of Respondents: 50,000.

Estimated Number of Annual Responses: 50,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 16,500.

CBP Form 339V—Vessels

Estimated Number of Respondents: 10,000.

Estimated Number of Annual Responses: 10,000.

Estimated Time per Response: 16 minutes.

Estimated Total Annual Burden Hours: 2,670.

ECCF Quarterly Report

Estimated Number of Respondents: 18.

Estimated Number of Annual Responses: 72.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 144.

ECCF Application and List of Couriers

Estimated Number of Respondents: 3.

Estimated Number of Annual Responses: 12.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 6.

Dated: June 12, 2012.

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

[Published in the Federal Register, June 15, 2012 (77 FR 35992)]


AGENCY INFORMATION COLLECTION ACTIVITIES:**Application and Approval To Manipulate, Examine, Sample,
or Transfer Goods**

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

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the: Application and Approval to Manipulate, Examine, Sample, or Transfer Goods. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before August 20, 2012, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229-1177.

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, 799 9th Street NW., 5th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: 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). 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 cost burden 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 Office of Management and Budget (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: CBP 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 that is 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 the form identifies the merchandise for which action is being

sought and specifies in detail what operation is to be performed. The form may also be approved as a blanket application to manipulate for a period of up to 1 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: June 14, 2012.

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

[Published in the Federal Register, June 19, 2012 (77 FR 36567)]