

# U.S. Customs and Border Protection



## **NATIONAL CUSTOMS AUTOMATION PROGRAM (NCAP) TEST CONCERNING AUTOMATED COMMERCIAL ENVIRONMENT (ACE) SIMPLIFIED ENTRY: MODIFICATION OF PARTICIPANT SELECTION CRITERIA AND APPLICATION PROCESS**

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

**ACTION:** General notice.

**SUMMARY:** This notice announces modifications to the National Customs Automation Program (NCAP) test concerning the simplified entry functionality in the Automated Commercial Environment (ACE). The test's participant selection criteria are modified to reflect that while importer self-filers must still hold a Customs-Trade Partnership Against Terrorism (C-TPAT) Tier 2 or higher status to be eligible to participate in the test, the C-TPAT status of an importer for whom a customs broker files a Simplified Entry is no longer an eligibility criterion. In addition, the test is no longer limited to nine (9) participants and, for a limited time, CBP is accepting applications from interested parties wishing to participate in the test. Prior applicants who were not accepted to participate in the test must re-apply for consideration.

**DATES:** The Simplified Entry test modifications set forth in this document are effective August 14, 2012. Applications to participate in this test must be received by CBP within 14 business days from August 14, 2012. Comments may be submitted to the Web site indicated in the "**ADDRESSES**" section below at any time throughout the test. The initial phase of the test will run until approximately December 31, 2013.

**ADDRESSES:** Comments or questions concerning this notice and indication of interest in participation in Simplified Entry should be submitted via email to *cbpsimplifiedprocess@dhs.gov*. For a comment, please indicate "*Simplified Entry Federal Register Notice*" in the subject line of your email.

**FOR FURTHER INFORMATION CONTACT:** For policy related questions, contact Steve Hilsen, Trade Policy and Programs, Office of International Trade, at *stephen.hilsen@dhs.gov*. For technical questions, contact Susan Maskell, Client Representative Branch, ACE Business Office, Office of International Trade, at *susan.maskell@dhs.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

#### *In General*

Customs and Border Protection's (CBP's) National Customs Automation Program (NCAP) test concerning Automated Commercial Environment (ACE) Simplified Entry functionality (Simplified Entry) is authorized under § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)), which provides for the testing of NCAP programs or procedures. *See* Treasury Decision (T.D.) 95–21. The procedures and criteria related to participation in Simplified Entry were announced in a notice published in the **Federal Register** on November 9, 2011 (76 FR 69755), and remain in effect unless explicitly changed by this or subsequent notices published in the **Federal Register**.

Simplified Entry allows participants to submit 12 required and three (3) optional data elements to CBP at any time prior to the arrival of the merchandise on the conveyance transporting the cargo to the United States. This data fulfills merchandise entry requirements and allows for earlier release decisions and more certainty for the importer in determining the logistics of cargo delivery. This initial phase of the test will run until approximately December 31, 2013, and is open to entries filed in the air transportation mode only.

#### *Modification to Test Participant Selection Criteria*

In the notice published in the **Federal Register** on November 9, 2011 (76 FR 69755), announcing the initial phase of the Simplified Entry pilot, CBP stated that participation in the test was limited to nine (9) participants comprised of importers holding a Tier 2 or higher Customs-Trade Partnership Against Terrorism (C-TPAT) status (applicable to both importer self-filers and importers for whom an eligible customs broker files a Simplified Entry) and customs brokers who are C-TPAT certified.

This notice announces modifications to the test's participation criteria to reflect that while importer self-filers must still hold a Tier 2

or higher C-TPAT status, the C-TPAT status of an importer for whom a customs broker files a Simplified Entry is no longer an eligibility criterion.

In addition, the Simplified Entry test is no longer restricted to nine (9) participants and is open to all eligible applicants. CBP will endeavor to accept all new eligible applicants on a first come first serve basis; however, if the volume of eligible applicants exceeds CBP's administrative capabilities, CBP will reserve the right to select eligible participants in order to achieve a diverse participant pool in accordance with the selection standards set forth in 76 FR 69755.

#### *Modification to Application Process*

Applications to participate in Simplified Entry must be sent via email to [cbpsimplifiedprocess@dhs.gov](mailto:cbpsimplifiedprocess@dhs.gov) within 14 business days of the date of publication of this notice in the **Federal Register**. Applicants will be notified whether their application is accepted. Prior applicants who were not accepted to participate in the test must re-apply for consideration.

All other procedures and criteria applicable to participation in Simplified Entry, as set forth in 76 FR 69755, remain in effect unless explicitly changed by this or subsequent notices published in the **Federal Register**.

#### *Paperwork Reduction Act*

The collections of information contained in this NCAP test have been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) and assigned OMB number 1651-0024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: August 9, 2012.

ALLEN GINA,  
*Assistant Commissioner,  
Office of International Trade.*

[Published in the Federal Register, August 14, 2012 (77 FR 48527)]

**DEPARTMENT OF THE TREASURY  
19 CFR Parts 12, 163, and 178**

**[Docket No. USCBP-2012-0022]**

**RIN 1515-AD85**

**PROHIBITIONS AND CONDITIONS ON THE  
IMPORTATION AND EXPORTATION OF ROUGH  
DIAMONDS**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations to set forth the prohibitions and conditions that are applicable to the importation and exportation of rough diamonds pursuant to the Clean Diamond Trade Act, as implemented by the President in Executive Order 13312 dated July 29, 2003, and the Rough Diamonds Control Regulations (RDCR) issued by the Office of Foreign Assets Control of the U.S. Department of the Treasury. In addition to restating pertinent provisions of the RDCR, the proposed amendments would clarify that any U.S. person exporting from or importing into the United States a shipment of rough diamonds must retain for a period of at least five years a copy of the Kimberley Process Certificate that currently must accompany such shipments and make the copy available for inspection when requested by CBP. The document also proposes to require formal entry for shipments of rough diamonds.

**DATES:** Comments must be received on or before October 15, 2012.

**ADDRESSES:** You may submit comments, identified by docket number, by *one* of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2012-0022.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC 20229-1179.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Brian Barulich, Regulations and Rulings, Office of International Trade, (202) 325-0059.

## **SUPPLEMENTARY INFORMATION:**

### **Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rulemaking. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rulemaking, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See **ADDRESSES** above for information on how to submit comments.

### **Background**

#### *I. Purpose*

In response to the role played by the illicit trade in diamonds in fueling conflict and human rights violations in certain areas of the world, and to differentiate between the trade in conflict diamonds and the trade in legitimate diamonds, the United States and numerous other countries announced in the Interlaken Declaration of November 5, 2002, the launch of the Kimberley Process Certification Scheme (KPCS) for rough diamonds. Under the KPCS, participating countries

prohibit the importation of rough diamonds from, or the exportation of rough diamonds to, a non-participant and require that shipments of rough diamonds from or to a participating country be controlled through the KPCS. The U.S. Secretary of State is responsible for providing an up-to-date listing of all participants in the KPCS. The most recent listing of participants was published in the **Federal Register** (73 FR 80506) on December 31, 2008.

### *II. Clean Diamond Act and Executive Order*

The Clean Diamond Trade Act (the Act), Public Law 108–19, 117 Stat. 631 (19 U.S.C. 3901 *et seq.*), was enacted on April 25, 2003. Section 4 of the Act requires the President, subject to certain waiver authorities, to prohibit the importation into, or exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the KPCS. Section 5(a) of the Act authorizes the President to issue such proclamations, regulations, licenses, and orders, and conduct such investigations, as may be necessary to carry out the Act. Section 5(b) of the Act sets forth the general recordkeeping requirements that apply to persons seeking to export from or import into the United States any rough diamonds. Section 5(b) specifically provides that any United States person seeking to export from or import into the United States any rough diamonds shall keep a full record of, in the form of reports or otherwise, complete information relating to any act or transaction to which any prohibition imposed under section 4(a) of the Act applies. Section 5(b) further provides that such person may be required to furnish such information under oath, including the production of books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person. In addition to CBP having the authority to apply the customs laws to import violations of the Act, section 8 authorizes CBP and U.S. Immigration and Customs Enforcement (ICE), as appropriate, to assess penalties and enforce the export laws and regulations. *See also* 15 CFR 30.70. Therefore, pursuant to section 8, CBP may assess penalties for export recordkeeping violations. However, CBP notes that the penalties under 19 U.S.C. 1509(a)(1)(A) do not apply to recordkeeping requirements for export documents.

On July 29, 2003, the President issued Executive Order 13312 (published in the **Federal Register** (68 FR 45151) on July 31, 2003) to implement the Act, effective for rough diamonds imported into, or exported from, the United States on or after July 30, 2003.

### *III. Existing Regulations and Requirements*

CBP notes that persons importing into or exporting from the United States a shipment of rough diamonds must comply with the require-

ments of CBP, the Office of Foreign Assets Control (OFAC) of the Department of the Treasury (part 592 of title 31 of the Code of Federal Regulations (31 CFR part 592)), and the U.S. Census Bureau (15 CFR part 30). Such persons should also be aware of any relevant Internet postings, guidance documents, or **Federal Register** notices issued by the U.S. Department of State. Also, it should be noted that ICE can take enforcement action on illegally imported and exported rough diamonds. *See* 19 U.S.C. 3907. Examples of the other government requirements are provided below.

OFAC, acting pursuant to Executive Order 13312 and delegated authority, published in the **Federal Register** (69 FR 56936) the Rough Diamonds Control Regulations (RDCR) (31 CFR part 592) as a final rule on September 23, 2004.

Among the requirements set forth in the RDCR is that all shipments of rough diamonds imported into, or exported from, the United States must be accompanied by an original Kimberley Process Certificate. *See* 31 CFR 592.301(a)(1). The RDCR also requires, pursuant to 31 CFR 592.502, that all importers and exporters of rough diamonds file an annual report with the U.S. Department of State regarding their import and/or export activity and stockpile information.

The U.S. Census Bureau issued notices on December 12, 2005, and April 3, 2007, respectively entitled “Notice of Request for Faxed Submission of Kimberley Process Certificates” and “Revised Notice of Request for Faxed Submission of Kimberley Process Certificates,” requiring importers, brokers, and parties involved in the export of rough diamonds to immediately fax their Kimberley Process Certificates (including voided certificates) to the U.S. Census Bureau upon clearance of their shipments into the commerce of the United States by CBP or upon export of their shipments from the United States, as applicable.

### **Explanation of Amendments**

CBP is proposing to amend the CBP regulations to set forth the prohibitions and conditions that are applicable to the importation into, and the exportation from, the United States of rough diamonds pursuant to the Act, Executive Order 13312, and the RDCR. This document proposes to add a new § 12.152 to 19 CFR part 12 to set forth these prohibitions and conditions.

Because CBP (along with ICE, OFAC, and the U.S. Department of State) is involved in the administration and enforcement of the import and export requirements relating to rough diamonds, CBP believes that it is appropriate and in the interests of the trading community to restate in the CBP regulations certain of the entry, export,

and recordkeeping requirements currently set forth in the RDCR. The RDCR, at 31 CFR 592.301, requires any person importing a shipment of rough diamonds to have the original Kimberley Process Certificate at the time of importation and to present it if demanded by CBP. The RDCR further requires the ultimate consignee to retain the original Certificate for at least five years from the date of importation and to present it to CBP upon demand. *See* 31 CFR 592.301. CBP is proposing to restate these requirements in new § 12.152 and to explicitly incorporate recordkeeping requirements that are implicitly included in the RDCR. Because any person importing a shipment of rough diamonds is required to have the original Certificate at the time of importation (per 31 CFR 592.301), CBP is proposing to amend the regulations to clarify that the Kimberley Process Certificate, which accompanies each shipment, is an entry record that must be maintained for a period of at least five years from the date of importation. Accordingly, the importer must make a copy of the Kimberley Process Certificate available for examination at the request of CBP during that time period. CBP also proposes to specifically add the Kimberley Process Certificate in its Interim (a)(1)(A) list in section IV of the Appendix to part 163 of title 19 of the Code of Federal Regulations (19 CFR). *See* 19 CFR 163.1(f), 163.3 and 163.4.

In accordance with section 5(b) of the Act, CBP is also proposing to require any U.S. persons exporting from the United States a shipment of rough diamonds to retain a copy of the Kimberley Process Certificate accompanying each shipment for a period of at least five years from the date of exportation and make the copy available for examination at the request of CBP. *See* 19 U.S.C. 3904(b).

CBP believes that these recordkeeping requirements will assist it in verifying whether importations of rough diamonds are properly controlled by the KPCS. The legal authority for these proposed requirements are discussed in further detail in the following discussion of each of the paragraphs in proposed new § 12.152, and new § 163.2(b), and the amendments to the Interim (a)(1)(A) list in section IV of the Appendix to part 163.

#### Paragraph (a)

Paragraph (a) provides a brief summary of the KPCS, the Act, Executive Order 13312, and the RDCR. Paragraph (a) also indicates that persons importing into, or exporting from, the United States a shipment of rough diamonds must comply with the requirements of CBP, OFAC, and the U.S. Census Bureau.

#### Paragraph (b)

Paragraph (b) sets forth certain definitions of terms derived from 19 U.S.C. 3902, section 3 of the Act, Annex I of the Kimberley Process Certification Scheme, and subpart C of the RDCR (subpart C of 31 CFR part 592).

#### Paragraph (c)

Paragraph (c) reflects the requirement in § 592.301 of the RDCR (31 CFR 592.301) that a shipment of rough diamonds imported into, or exported from, the United States, must be accompanied by an original Kimberley Process Certificate.

#### Paragraph (d)

Pursuant to the authority provided in 19 U.S.C. 1484 and 1498(a)(1)(B), paragraph (d) requires formal entry when importing a shipment of rough diamonds.

#### Paragraph (e)

Pursuant to the authority provided in 19 U.S.C. 1484(a)(1)(A), paragraph (e) requires brokers, importers, and filers making entry of a shipment of rough diamonds into the United States to either submit through CBP's Automated Broker Interface (ABI) system the unique identifying number of the Kimberley Process Certificate accompanying the shipment or, for non-ABI entries, indicate the certificate number on the CBP Form 7501, Entry Summary, on each applicable line item.

#### Paragraph (f)

Paragraph (f)(1) reflects the requirement in 31 CFR 592.301 that the ultimate consignee of a shipment of rough diamonds imported into the United States must retain the original Kimberley Process Certificate for a period of at least five years from the date of importation and must present the certificate to CBP upon request.

Paragraph (f)(2) reflects the requirement that the U.S. person importing into the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate for a period of at least five years from the date of importation and present the copy to CBP upon request, pursuant to section 5(b) of the Act as well as § 163.4, CBP regulations (19 CFR 163.4), which provides that (with certain exceptions not applicable here) any record required to be made, kept, and rendered for examination and inspection by CBP under § 163.2 or any other provision of this chapter must be kept for five years from the date of entry, if the record relates to an entry, or five years from the date of the activity which required creation of the

record. Section 163.2 identifies importers as persons who must maintain records and render those records for examination by CBP. The Kimberley Process Certificate is a record required for the entry of merchandise, within the meaning of 19 U.S.C. 1509(a)(1)(A) and 19 CFR 163.1(a).

Similarly, paragraph (f)(3) requires any U.S. person exporting a shipment of rough diamonds from the United States to retain a copy of the Kimberley Process Certificate for a period of at least five years from the date of exportation and to present the copy to CBP upon request. This provision is being proposed in accordance with section 5(b) of the Act.

The requirements set forth in paragraphs (f)(2) and (3) are further supported by §§ 501.601 and 592.501 of the OFAC regulations (31 CFR 501.601 and 592.501), which provide, in pertinent part, that every person engaging in any transaction subject to the RDCR and other provisions of 31 CFR chapter V shall keep a full and accurate record of each such transaction engaged in, and such record shall be available for examination for at least five years after the date of such transaction.

In addition, CBP is proposing to amend part 163 by adding to § 163.2(c) a paragraph stating that any U.S. person exporting from the United States any rough diamonds must retain a copy of the Kimberley Process Certificate accompanying each shipment for a period of at least five years from the date of exportation. Section 163.2(c) would also state that failure to retain such records for at least five years may subject the exporter to penalties under 19 U.S.C. 3907.

CBP is also proposing to amend the Interim (a)(1)(A) list in Section IV of the Appendix to part 163 of 19 CFR to add the Kimberley Process Certificate to the list of documents that are required for the entry of special categories of merchandise. Finally, this document proposes to amend the list of control numbers assigned to information collections by the Office of Management and Budget (OMB) (pursuant to the Paperwork Reduction Act), which are set forth in 19 CFR 178.2, to add the information collections used by CBP to determine whether importations of rough diamonds are properly controlled by the KPCS.

### **Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and ben-

efits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation.

The proposed rule seeks to increase CBP’s ability to verify whether importations or exportations of rough diamonds are in compliance with the KPCS. OFAC published the RDCR (31 CFR part 592) requiring the ultimate consignee to retain the original of the Kimberley Process Certificate. The proposed amendments clarify that any U.S. person exporting from or importing into the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate for a period of five years and make this copy available for inspection at the request of CBP or face penalties pursuant to 19 U.S.C. 1509 or 3907. CBP believes the costs of retaining a copy of the Kimberley Process Certificate for five years and producing the copy to CBP upon request to be negligible.

### **Regulatory Flexibility Act**

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

The proposed rule seeks to increase CBP’s ability to verify whether importations or exportations of rough diamonds are in compliance with the KPCS. OFAC published the RDCR (31 CFR part 592) requiring the ultimate consignee to retain the original of the Kimberley Process Certificate, but not requiring this of the importer or the exporter. The proposed amendments clarify that any U.S. person exporting from or importing into the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate for a period of five years and make this copy available for inspection at the request of CBP or face penalties pursuant to 19 U.S.C. 1509 or 3907. Given that this rule will impose a penalty only for noncompliance, it is not feasible to estimate the number of small entities which could be affected by this rule. CBP does not believe any additional professional expertise will be required to adhere to this requirement, as the Kimberley Process Certificate will only need to be stored and presented for examination upon request of CBP. CBP believes the costs of retaining a copy of the Kimberley Process Cer-

tificate for five years and providing the copy to CBP upon request to be negligible. Due to these low compliance costs, CBP subject matter experts believe this regulation will neither increase non-compliance nor result in a substantial number of small entities receiving penalties. CBP did not consider alternatives to the proposed rule for small entities because it does not impose any significant additional operational or labor costs on small entities for compliance. CBP is unaware of any other federal rules which conflict with the requirements of the proposed rule.

Because the penalty for noncompliance may be greater than \$500 (in 1980 dollars), constituting a significant impact for a small entity, the economic impact of noncompliance with this would be considered significant. However, as discussed above CBP subject matter experts do not believe this rule will increase noncompliance with the KPCS for small entities. Thus, CBP does not believe this rule will have a significant impact on a substantial number of small entities. CBP welcomes any comments regarding this assessment. If CBP does not receive any comments contradicting this finding, CBP will certify that this rule will not have a significant economic impact on a substantial number of small entities at the final rule stage.

### **Paperwork Reduction Act**

Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number. The collections of information contained in these regulations are provided for by OMB control number 1505–0198, to cover the requirements concerning CBP Form 7501, and by OMB control number 1651–0076, to cover the recordkeeping requirement.

### **Signing Authority**

This document is being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

### **List of Subjects**

#### *19 CFR Part 12*

Customs duties and inspection, Economic sanctions, Entry of merchandise, Foreign assets control, Exports, Imports, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Sanctions.

### 19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

### 19 CFR Part 178

Administrative practice and procedure, Imports, Reporting and recordkeeping requirement.

## Proposed Amendments to the CBP Regulations

For the reasons set forth above, parts 12, 163, and 178 of title 19 of the Code of Federal Regulations (19 CFR parts 12, 163, and 178) are proposed to be amended as set forth below.

### PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12, CBP regulations, continues to read, and a new specific authority citation for § 12.152 is added to read, as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

\* \* \* \* \*

Section 12.152 also issued under 19 U.S.C. 1484, 1498; the Clean Diamond Trade Act (Pub. L. 108–19, 117 Stat. 631 (19 U.S.C. 3901 *et seq.*)); Executive Order 13312 dated July 29, 2003.

2. In part 12, a new § 12.152 is added to read as follows:

#### **§ 12.152 Prohibitions and conditions on the importation and exportation of rough diamonds.**

(a) *General.* The Clean Diamond Trade Act (Pub. L. 108–19) requires the President, subject to certain waiver authorities, to prohibit the importation into, or exportation from, the United States, of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme. By Executive Order 13312 dated July 29, 2003, published in the **Federal Register** (68 FR 45151) on July 31, 2003, the President implemented the Clean Diamond Trade Act, effective for rough diamonds imported into, or exported from, the United States on or after July 30, 2003. Pursuant to Executive Order 13312, the Office of Foreign Assets Control (OFAC), Department of the Treasury, promulgated the Rough Diamonds Control Regulations (*see* 31 CFR part 592). Any persons importing into or exporting from the United States a shipment of rough diamonds must comply with the requirements of CBP, OFAC, and the U.S. Census Bureau (15 CFR part 30).

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Controlled through the Kimberley Process Certification Scheme.* “Controlled through the Kimberley Process Certification Scheme” means meeting the requirements set forth in 31 CFR 592.301;

(2) *Kimberley Process Certificate.* “Kimberley Process Certificate” means a forgery resistant document that meets the minimum requirements listed in Annex I of the Kimberley Process Certification Scheme, as well as the requirements listed in 31 CFR 592.307;

(3) *Rough diamond.* “Rough diamond” means any diamond that is unworked or simply sawn, cleaved, or bruted and classifiable under subheading 7102.10, 7102.21, or 7102.31 of the Harmonized Tariff Schedule of the United States;

(4) *United States.* “United States”, when used in the geographic sense, means the several states, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(5) *United States person.* “United States person” means:

(i) Any United States citizen or any alien admitted for permanent residence into the United States;

(ii) Any entity organized under the laws of the United States or any jurisdiction within the United States (including its foreign branches); and

(iii) Any person in the United States.

(c) *Original Kimberley Process Certificate.* A shipment of rough diamonds imported into, or exported from, the United States must be accompanied by an original Kimberley Process Certificate.

(d) *Formal Entry Required.* Formal entry is required when importing a shipment of rough diamonds. Formal entry procedures are prescribed in part 142 of this chapter.

(e) *Report of Kimberley Process Certificate Unique Identifying Number.* Customs brokers, importers, and filers making entry of a shipment of rough diamonds must either submit through CBP’s Automated Broker Interface (ABI) system the unique identifying number of the Kimberley Process Certificate accompanying the shipment or, for non-ABI entries, indicate the certificate number on the CBP Form 7501, Entry Summary, on each applicable line item.

(f) *Maintenance of Kimberley Process Certificate.* (1) *Ultimate consignee.* The ultimate consignee identified on the CBP Form 7501, Entry Summary, or its electronic equivalent filed with CBP in connection with an importation of rough diamonds must retain the original Kimberley Process Certificate for a period of at least five years from the date of importation and must make the certificate available for examination at the request of CBP.

(2) *Importer.* The U.S. person that imports into the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate accompanying the shipment for a period of at least five years from the date of importation and must make the copy available for examination at the request of CBP.

(3) *Exporter.* The U.S. person that exports from the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate accompanying the shipment for a period of at least five years from the date of exportation and must make the copy available for examination at the request of CBP.

### **PART 163—RECORDKEEPING**

3. The specific authority citation for part 163 is revised and the general authority citation continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624, also issued under 19 U.S.C. 3904, 3907.

\* \* \* \* \*

4. Section 163.2(c) is revised to read as follows:

#### **§ 163.2 Persons required to maintain records.**

\* \* \* \* \*

(c) *Recordkeeping required for certain exporters. (1) NAFTA.* Any person who exports goods to Canada or Mexico for which a Certificate of Origin was completed and signed pursuant to the North American Free Trade Agreement must also maintain records in accordance with part 181 of this chapter.

(2) *Kimberley Process Certification Scheme.* Any U.S. person (see definition in § 12.152(b)(5)) who exports from the United States any rough diamonds must retain a copy of the Kimberley Process Certificate accompanying each shipment for a period of at least five years from the date of exportation. See 19 CFR 12.152(f)(3). Any U.S. person who exports from the United States any rough diamonds and does not keep records in this time frame may be subject to penalties under 19 U.S.C. 3907.

5. The Appendix to part 163 is amended by adding a new listing under § IV in numerical order to read as follows:

#### **Appendix to Part 163—Interim (a)(1)(A) List**

\* \* \* \* \*

IV. \* \* \*

**§ 12.152 Kimberley Process Certificate for rough diamonds.**

\* \* \* \* \*

**PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS**

6. The authority citation for part 178 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

7. Section 178.2 is amended by adding a new listing to the table in numerical order to read as follows:

**§ 178.2 Listing of OMB control numbers.**

19 CFR Section	Description	OMB Control No.
§ 12.152. ....	Certificate and recordkeeping requirements for the entry of rough diamonds.	1505–0198 and 1651–0076.

DAVID V. AGUILAR,  
*Acting Commissioner,*  
*U.S. Customs and Border Protection.*

Dated: August 10, 2012,

TIMOTHY E. SKUD,  
*Deputy Assistant*  
*Secretary of the Treasury*

[Published in the Federal Register, August 15, 2012 (77 FR 48918)]

**GENERAL NOTICE**

**19 CFR PART 177**

**REVOCAION OF RULING LETTER AND REVOCAION OF TREATMENT RELATING TO CLASSIFICATION OF THE LIVEWIRE FLASH DEVICE**

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

**ACTION:** Notice of revocation of one ruling letter and treatment relating to the classification of the Livewire Flash Device.

**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 Modern-

ization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking one ruling letter concerning the classification of the Livewire Flash Device under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 46, No. 21, on May 16, 2012. CBP received no comments in response to this notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 29, 2012.

**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 is revoking one ruling letter pertaining to the classification of the Livewire Flash Device. Although in this notice

CBP is specifically referring to Headquarters Ruling Letter (HQ) H097095, dated August 2, 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 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 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 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 the 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 is revoking HQ H097095 in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter H126020, 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 the publication in the *Customs Bulletin*.

Dated: August 9, 2012

IEVA K. O'ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H126020

August 9, 2012

CLA-2 OT:RR:CTF:TCM H126020 TNA

CATEGORY: Classification

TARIFF NO.: 8517.62.00

PAUL S. ANDERSON, ESQ.  
SONNENBERG & ANDERSON  
125 SOUTH WACKER DROVE  
SUITE 1825  
CHICAGO, IL 60606

RE: Revocation of HQ H097095; Classification of the SCT Livewire flash device/tuner

DEAR MR. ANDERSON:

This is in response to your request for reconsideration, dated September 23, 2010, made on behalf of SCT, LLC (“SCT”), of Headquarters Ruling Letter (“HQ”) H097095, dated August 2, 2010, which classifies SCT’s Livewire flash device under the Harmonized Tariff Schedule of the United States (“HTSUS”). We have reviewed this ruling and found it to be in error. For the reasons that follow, we hereby revoke HQ H097095. In coming to this conclusion, we have taken into account arguments presented to members of my staff at a meeting in our office on May 26, 2011, and in a supplemental submission dated June 10, 2011.

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 HQ H097095 was published in the *Customs Bulletin*, Vol. 46, No. 21, on May 16, 2012. CBP received no comments in response to this notice.

**FACTS:**

The subject merchandise, SCT’s “Livewire,” (hereinafter “the Livewire”) is a handheld device designed to program the powertrain control module (PCM) of a Ford automobile.<sup>1</sup> It features 128MB of total memory, an internal printed circuit board assembly (“PCBA”), an LCD display with a push/scroll jog wheel, indicator lights, and directional buttons. The product is fitted with a USB plug, which enables connection to an automobile. It retails for approximately \$509-\$569.

The Livewire is used to download (i.e., “flash”) “tunes” onto the vehicle’s PCM. These tunes are essentially the rules that the PCM follows in its onboard activities of regulating and controlling the vehicle’s engine and transmission. The user may use one of 20 pre-loaded performance tunes, which adjust the vehicle’s parameters to increase horsepower or torque, or the pre-loaded fuel economy tune, which adjusts the vehicle’s parameters to maximize fuel efficiency. The user may also download custom tunes onto the Livewire through an authorized SCT dealer or from the SCT website; these

---

<sup>1</sup> The PCM, also referred to as the Engine Control Unit (ECU) or Engine Control Module (ECM), is the computer responsible for monitoring and coordinating a variety of parameters necessary for a motor vehicle engine to function. These parameters depend on the motor vehicle containing the PCM and include valve timing, air/fuel mixture, fuel pump operation, differential, etc. The PCM also stores trouble codes to help in the diagnosis of problems potentially involving these parameters.

custom tunes are developed specifically for a customer's vehicle and performance objectives. The Livewire both downloads (i.e., "flashes") the tune data to the PCM and uploads data received back from the PCM, some of which appears in a digital readout format on its screen. When the Livewire uploads the selected tune onto the PCM, it saves the factory settings, thus allowing the user to restore the PCM to its original configuration whenever desired. Thus, the Livewire functions via active transmission of data, rather than simply reading information.

The Livewire also reads and stores performance data from the PCM. This data-logging function allows the user to monitor the vehicle performance metrics such as horsepower, torque, RPM, quarter-mile elapsed time, and zero-to-sixty time. It can also store and convey historical performance-related data, as well as analyze data from the vehicle PCM and compare it to factory-established norms of each vehicle parameter.

The Livewire is also capable of reading, resetting and clearing diagnostic trouble codes that emanate from the PCM. The codes correspond with electronic components throughout the motor vehicle and provide the user with clues as to what may be causing problems with the motor vehicle as the user communicates with the vehicle manufacturer's service department. These functions are accomplished by way of the code reader and data recorder/monitor that are incorporated into the Livewire.

In HQ H097095, dated August 2, 2010, CBP classified the subject merchandise under subheading 9031.80.80, HTSUS, as: "...checking instruments, appliances and machines, not specified or included elsewhere in [Chapter 90]...: Other instruments, appliances and machines: Other...." In requesting reconsideration, counsel argues that the Livewire is classified in subheading 8517.62.00, HTSUS, as "other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; ...: Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus." In the alternative, counsel advocates for classification in subheading 8517.69.00, HTSUS, as "...other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; ...: Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Other."

#### **ISSUE:**

Whether the Livewire flash device is classified in heading 8517, HTSUS, as "[O]ther apparatus for the transmission or reception of voice, images or other data... other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528," or under heading 9031, HTSUS, as "Measuring or checking... machines, not specified or included elsewhere in [Chapter 90]"?

**LAW AND ANALYSIS:**

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

The HTSUS provisions under consideration are as follows:

- 8517 Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof:
- 9031 Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof:

Legal Note 1(m) to Section XVI, HTSUS, which includes heading 8517, HTSUS, states, in pertinent part, the following:

1. This section does not cover:...

(m) Articles of chapter 90

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

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.

Legal Note 3 to Chapter 90, HTSUS, states in pertinent part, the following:

The provisions of notes 3 and 4 to section XVI apply also to this chapter.

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

The EN to heading 8517, HTSUS, states, in pertinent part, the following:

This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric current or optical wave flowing in a wired network or by electro-magnetic waves in a wireless network. The signal may be analogue or digital. The networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radio-telegraphy, local and wide area networks.

The EN to heading 9031, HTSUS, states, in pertinent part, the following:

(I) MEASURING OR CHECKING INSTRUMENTS,  
APPLIANCES AND MACHINES  
(A)

These include:...

(4) **Apparatus for testing and regulating vehicle motors**, for checking all parts of the ignition system (coils, sparking plugs, condensers, batteries, etc.), for ascertaining the best carburettor setting (by analysing exhaust gases), or for measuring the compression in the cylinders.

In your request for reconsideration, you argue that the Livewire is described by the terms of heading 8517, HTSUS, which provides in part for "...other apparatus for the transmission or reception of voice, images or other data, ...other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528..." by way of GRI 1, Note 1(m) to Section XVI, HTSUS, and Note 3 to Section XVI, HTSUS. You argue that the Livewire's "tune" capacity, in addition to its data logging, diagnostic, and scan tool functions, makes Note 3 applicable, and that, because the "tune" function constitutes the Livewire's principal function, it should be classified in heading 8517, HTSUS.

Note 1(m) to Section XVI directs our analysis to heading 9031, HTSUS, before we can examine the merits of classification under heading 8517, HTSUS. If the subject merchandise is classified in heading 9031, HTSUS, it is excluded from chapter 85, HTSUS, pursuant to Note 1(m). As a result, we first examine whether the Livewire is classified in heading 9031, HTSUS, as a "checking instrument, appliance [or] machine, not specified or included elsewhere in [Chapter 90]." We note that whereas heading 9031, HTSUS, provides for "measuring or checking instruments," there is no dispute that the Livewire is not a measuring device. As a result, we focus on determining whether it can be considered a "checking" device.

The term "checking" of heading 9031, HTSUS, is not defined in the HTSUS or in the ENs. In *United States v. Corning Glass Works*, 66 CCPA 25, 27 (1978), however, the court examined the classification of machines used to inspect drug-containing ampuls for foreign matter in the drug solution, and for defects in the ampuls. See *United States v. Corning Glass Works*, 66 CCPA 25, 26 (1978) ("*Corning Glass Works*"). In deciding whether the merchandise was a checking device, the court examined dictionaries to define the term "check." *Id.* at 27. The court defined "check" as "to inspect and ascertain the condition of, especially in order to determine that the condition is satisfactory; ... investigate and insure accuracy, authenticity, reliability, safety, or satisfactory performance of ...; to investigate and make sure about conditions or circumstances...." *Id.* at 27. Applying that definition, the court found that the provision for "checking instruments" clearly and unambiguously encompassed machines that carried out steps in a process for inspecting ampuls to determine whether they conformed to an imperfection-free standard. *Id.* at 27.<sup>2</sup> Since then, CBP has adopted a correspondingly broad definition of the

<sup>2</sup> We note that *Corning Glass Works*' definition of checking has been carried over to the HTSUS. See *Phototronics, Inc. v. United States*, 659 F.Supp. 2d. 1317, 1323-1324 (Ct. Int'l. Trade 2009).

term “checking.” We have consistently ruled that machines which carry out steps in the process of checking are classifiable under that provision, even if they do not actually perform the checking operation itself. *See* HQ 089391, dated February 6, 1992; HQ 953382, dated April 15, 1993; and HQ H009364, dated November 23, 2009.

Despite its breadth, we agree with SCT that this definition of “checking” does not encompass all of the Livewire’s functions. It is clear that the Livewire is capable of ascertaining the PCM’s current conditions, and that this is a checking function; however, it is not the Livewire’s only function. The Livewire also flashes tunes that change the way the vehicle’s engine works. The tunes function by way of data transfer rather than simply the reading of information. This tune transmission is not a “checking” function because it does not inspect or ascertain the condition of the PCM; nor does it investigate and insure accuracy, authenticity, reliability, safety, or satisfactory performance of the PCM. *See Corning Glass Works*, 66 CCPA 25. The Livewire also does not “carry out steps” in a larger checking process. As a result, it is not completely described by the terms of heading 9031, HTSUS, as a checking device. Thus, we examine other headings.

Note 3 to Section XVI, of which heading 8517, HTSUS, is a part, states 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.

Note 3 to Chapter 90, HTSUS, states that:

The provisions of notes 3 and 4 to section XVI apply also to this chapter.

The subject Livewire is a machine designed to perform multiple functions described in Section XVI, HTSUS, and Chapter 90, HTSUS, such as data transmission (heading 8517, HTSUS); data storage (heading 8471, HTSUS); data reading and recording (heading 8471, HTSUS); and checking (heading 9031, HTSUS). As per Note 3 to Chapter 90, HTSUS, Note 3 to Section XVI, HTSUS, also applies to Chapter 90, HTSUS. As a result, the Livewire, which is a machine designed to perform multiple complementary functions, is classified according to its principal function.

In our view, the flashing of the Livewire’s tunes constitutes its principal function. The Livewire is advertised primarily as a tuner, while its data-monitoring and other capabilities are advertised as incidental to the tuning capacity. SCT’s website describes the good as a “programmer” and highlights its tuning capacity, as follows:

[the Livewire] comes pre-loaded with dyno proven tune files that increase horsepower and torque! Programming your vehicle with one of SCT’s pre-loaded performance or fuel economy tune files is as easy as 1–2–3...With a huge backlit display, the SCT SF3 Power Flash makes it easy to read the Built-In Data Logging or Real Time Monitored Vehicle Data, view popular sensor data such as EGT, Air / Fuel Ratio or any other 0–5 Volt source!

Consumer reviews also show that consumers purchase the Livewire primarily for the tunes, so as to be able to improve such aspects as fuel mileage and other vehicle functions: “it improved my fuel mileage in my diesel and I like the power gain,” one consumer writes. See, e.g., <http://www.autoanything.com/performancechips/61A3576A0A0.aspx>.

At the same time, code readers and data recorders, which are the tools through which the Livewire performs its data storage and diagnostic capabilities, can be purchased separately for far less than the \$509-\$569 for which the Livewire retails. A consumer is therefore unlikely to purchase the Livewire solely for its data storage or diagnostic capabilities. As a result, we find that these functions are secondary to the Livewire’s capacity to flash the tunes, and the tunes constitute the Livewire’s principal function.

Heading 8517, HTSUS, provides for “...other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528.” The tunes function by way of data transfer because they transfer data between the PCM and the Livewire. As a result, we find that the principal function of the Livewire is described by heading 8517, HTSUS.

HQ H097095 relied on prior CBP rulings to classify the Livewire in heading 9031, HTSUS. For example, the Modic III diagnostic computer at issue in NY F81576, dated February 2, 2000, was classified in heading 9031, HTSUS, because it was a diagnostic device used for retrieving trouble codes from the vehicle PCM. While the Modic II performed many functions, its main function was to diagnose faults using its parameter checking function. This is in contrast to the Livewire, whose main function is its tuning function, a function that is described by heading 8517, HTSUS.

HQ H097095 also relied on NY R05134, dated November 20, 2006, and NY N019301, dated November 28, 2007. NY R05134 classified an on-board diagnostics code reader that read its vehicles’ trouble codes and displayed them on an LCD screen. The user manual contained a list of the trouble codes the code reader displayed. NY N019301 classified the Porty EVO III, a device which collects and stores the diagnostic data received from the automobile’s diagnostic equipment, thereby acting as an interface between the automobile and diagnostic equipment. Thus, the only function of the merchandise in these rulings was to receive, collect, store and display data on the way the vehicle functioned, data that allowed the user to ascertain whether the vehicle was functioning properly. By contrast, the Livewire, while it performs these functions, is used mainly to change a vehicle’s performance via a separate mechanism (i.e., the tunes), irrespective of how well the vehicle may be functioning.

Lastly, we acknowledge that the ENs to heading 9031, HTSUS, states that the heading covers measuring or checking devices that test and regulate vehicle motors, such as those for checking all parts of the ignition system. See EN 90.31. Because the subject Livewire’s tunes are used to change many aspects of a car’s functioning, they can be seen as a regulatory function. However, the terms of the heading themselves are of a higher importance than the ENs, and the term “checking,” as it is defined by the court in *Corning Glass Works*, does not encompass all of the Livewire’s functions. As such, the Livewire is not completely described by heading 9031, HTSUS. As a result, as per Note 3 to Section XVI, HTSUS, and Note 3 to Chapter 90,

HTSUS, we find that the subject Livewire is classified in heading 8517, HTSUS, as an "...other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528."

**HOLDING:**

Under the authority of GRI 1, Legal Note 3 to Section XVI, and Legal Note 3 to Chapter 90, HTSUS, the Livewire Flash Device is provided for in heading 8517, HTSUS. Specifically, it is classified under subheading 8517.62.00, HTSUS, as "Telephone sets, including telephones for cellular networks or for other wireless networks; Other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528: Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus." The column one, general rate of duty is 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/tata/hts/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

HQ H097095, dated August 2, 2010, is REVOKED.

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

*Sincerely,*

IEVA K. O'ROURKE

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**GENERAL NOTICE**

**19 CFR PART 177**

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

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

**ACTION:** Revocation of one 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 is revoking one ruling letter concerning the classification of over current detectors under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 47, on November 16, 2011. One comment was received in response to the notice, which is addressed in the ruling.

In addition, whereas the final ruling was published in the *Customs Bulletin*, Vol. 46, No. 28, on July 5, 2012, a second copy of the notice of proposed revocation was published along with it, soliciting a second round of comments. This July 5, 2012 publication of the proposed notice was in error. This final notice serves to advise of the final revocation following the November proposal.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 29, 2012.

**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 nec-

essary 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), notice proposing to revoke NY H80199, dated May 21, 2001, was published on November 16, 2011, in Volume 45, Number 47, of the *Customs Bulletin*. CBP received one comment in response to this notice. Although in this notice CBP is specifically referring to NY H80199, 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 have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the 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.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY H80199 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter ("HQ") H122802, 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.

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

Dated: August 13, 2012

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

Attachment

HQ H122802

May 23, 2012

CLA-2 OT:RR:CTF:TCM H122802 TNA

CATEGORY: Classification

TARIFF NO.: 8543.70.40

MR. TODD KASIRSKI, 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. KASIRSKI:

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.”<sup>1</sup> 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.”

#### ISSUE:

Whether the subject OCDs are classified in heading 8542, HTSUS, as electronic integrated circuits, or in heading 8543, HTSUS, as “Electrical

<sup>1</sup> 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.

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) (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.<sup>2</sup>

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*.

<sup>2</sup> 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/](http://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*

**PROPOSED REVOCATION IN PART OF A RULING LETTER  
AND PROPOSED REVOCATION OF TREATMENT  
RELATING TO THE TARIFF CLASSIFICATION OF CHILI  
POWDER BLENDS**

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

**ACTION:** Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of chili powder blends.

**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 intends to revoke a ruling concerning the tariff classification of chili powder blends. 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 September 28, 2012.

**ADDRESSES:** Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements

to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Michelle Garcia, Tariff Classification and Marking Branch: (202) 325-1115.

## **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, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of chili powder blends. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N024368, dated March 20, 2008 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to

substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N024368, CBP determined that Chili Powder Samples 2 and 4 were classified under heading 2103, HTSUS, as a mixed condiment and mixed seasoning. It is now CBP's position that Sample 2 is classified in subheading 0904.22.76, HTSUS, as "Fruits of the genus *Capsicum* ...crushed or ground: [o]f the genus *Capsicum* (including cayenne Pepper, paprika and red pepper): Other" and that Sample 4 is classified in subheading 0910.91.00, HTSUS, as "Ginger, saffron, tumeric (curcuma), thyme, bay leaves, curry and other spices: Mixtures referred to in note 1(b) to this chapter."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N024368, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H053755, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 13, 2012

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

Attachments

## [ATTACHMENT A]

N024368

March 20, 2008

CLA-2-09:OT:RR:NC:SP:231

CATEGORY: Classification

TARIFF NO.: 0904.20.7600; 2103.90.8000

MS. JENNIFER OSTERHAUS  
McCORMICK & COMPANY, INC.  
18 LOVETON CIRCLE  
SPARKS, MD 21152-6000

RE: The tariff classification of chili powder blends from various countries.

DEAR MS. OSTERHAUS:

In your letter dated March 4, 2008, you requested a tariff classification ruling.

Samples representing six different “chili powder blends” were submitted for our examination. All are reddish powders consisting of ground pepper fruits of the genus *Capsicum* blended with one or more other ingredients. Their respective compositions are indicated below, with numerical percentages (ranges) by weight shown in parentheses following each ingredient.

Sample #1 (“Chili Powder”) consists of chili pepper (94–99) and Sylox (silicon dioxide) (1–5).

Sample #2 (“Chili Powder”) consists of chili pepper (80–90), Sylox (1–5), garlic (5–10), and salt (1–5).

Sample #3 (“Chili Powder”) consists of chili pepper (70–80), Sylox (1–5), garlic (1–5), onion (1–5), and salt (10–15).

Sample #4 (“Chili Powder”) consists of chili pepper (80–90), Sylox (1–5), garlic (1–5), onion (1–5), salt (1–5), and cumin (1–5).

Sample #5 (“Chili Powder”) consists of chili pepper (60–70), Sylox (1–5), garlic (5–10), onion (5–10), and salt (10–15).

Sample #6 (“Chili Seasoning”) consists of chili pepper (65–75), Sylox (1–5), garlic (1–5), onion (1–5), salt (5–10), cumin (1–5), red pepper (1–5), oregano (1–5), and oleo capsicum (1–5).

The applicable subheading for the “Chili Powder” represented by Sample #1 will be 0904.20.7600, Harmonized Tariff Schedule of the United States (HTSUS), which provides for fruits of the genus *Capsicum* ... dried or crushed or ground ... other: ground: other. The general rate of duty will be 5 cents per kilogram.

The applicable subheading for all of the remaining products (samples 2 through 6) will be 2103.90.8000, HTSUS, which provides for mixed condiments and mixed seasonings ... other. The general rate of duty will be 6.4 percent ad valorem.

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

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site [www.fda.gov/oc/bioterrorism/bioact.html](http://www.fda.gov/oc/bioterrorism/bioact.html).

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 Nathan Rosenstein at 646-733-3030.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H053755

CLA-2: OT:RR:CTF:TCM H053755 MG

CATEGORY: Classification

TARIFF NO.: 0904.22.76; 0910.91.00

TERRY A. GLEASON  
BAKER & MCKENZIE LLP  
815 CONNECTICUT AVENUE, NW  
WASHINGTON, DC 20006-4078

RE: Revocation, in part, of NY N024368, dated March 20, 2008; tariff classification of chili powder blends

DEAR MS. GLEASON:

This is in response to your letter, dated January 21, 2009, in which you have requested reconsideration on behalf of your client, McCormick & Company, Inc., of New York Ruling Letter (NY) N024368, dated March 20, 2009, as it pertains to the classification under the Harmonized Tariff Schedule of the United States (“HTSUS”), of two of the six different chili powder blends used in soup-style chili and other seasoning packets. On June 22, 2009, an organoleptic test of the six different chili powder blends was conducted in our office. Based on such test and in accordance with your request for reconsideration and revocation, in part, of NY N024368, CBP has reviewed the classification of Samples 2 and 4 and has determined that the cited ruling is in error.

**FACTS:**

In NY Ruling N024368, CBP considered the classification of six different chili powder blends used in soup-style chili and other seasoning packets. Sample 1 consisted of a blend of chili pepper and sylox (*i.e.*, silicon dioxide) and was classified in subheading 0904.20.76, HTSUS (now 0904.22.76, HTSUS, 2012) as “fruits of the genus *Capsicum* ...dried or crushed or ground...other: ground: other.”

Samples 2 through 6 consist of blends of chili pepper, sylox, and a combination of either salt, garlic, onion, cumin, oregano or oleo capsicum. NY N024368 classified samples 2 through 6 as “mixed condiments and mixed seasonings...other” under subheading 2103.90.80, HTSUS.

All six of the blends are designed for use in items such as chili packets for soup-style chili and other seasoning packets. As McCormick did in its initial ruling request, we were provided with six samples of the different chili powder blends. We were able to taste all six samples consisting of the ground pepper fruits of the genus *Capsicum* blended with one or more ingredients. Similar to Sample 1, Samples 2 and 4 contain significant amounts of chili pepper powder and a small amount of silicon dioxide. In addition to chili pepper powder and silicon dioxide, Sample 2 contains small quantities of salt and garlic, and Sample 4 contains small quantities of salt, garlic, onion and cumin. Their respective compositions are indicated below, with numerical percentages (ranges) by weight shown in parentheses following each ingredient.

Sample #1 (“Chili Powder”) consists of chili pepper (94–99) and Sylox (silicon dioxide) (1–5).

Sample #2 (“Chili Powder”) consists of chili pepper (80–90), Sylox (1–5), garlic (5–10), and salt (1–5).

Sample #4 (“Chili Powder”) consists of chili pepper (80–90), Sylox (1–5), garlic (1–5), onion (1–5), salt (1–5), and cumin (1–5).

As detailed in the chart contained in your letter, which has been afforded confidential treatment, you submit that NY Ruling N024368 warrants reconsideration with respect to the two chili powder blends identified as Samples 2 and 4. Specifically, that Sample 2 is properly classifiable under subheading 0904.20.76, HTUS, (now 0904.22.76, HTSUS), as “Fruits of the genus *Capsicum* ...crushed or ground: [o]f the genus *Capsicum* (including cayenne Pepper, paprika and red pepper): Other” and that Sample 4 is properly classifiable under subheading 0910.91.00, HTUS, as a spice mixture referred to in Note 1(b) of Chapter 9.

### ISSUE:

1) Whether a chili powder blended with salt, garlic, pepper and a flow-agent is classified in heading 0904, HTSUS, as a chili powder or in heading 2103, HTSUS, as a mixed seasoning.

2) Whether a chili powder blended with onion and other ingredients is classified in heading 0910, HTSUS, as a spice mixture or in 2103, HTSUS, as a mixed seasoning.

### LAW AND ANALYSIS:

The HTSUS provisions under consideration are as follows:

0904	Pepper of the genus <i>Piper</i> ; dried or crushed or ground fruits of the genus <i>Capsicum</i> (peppers) or of the genus <i>Pimenta</i> (e.g., allspice):
0904.22	Crushed or ground: Of the genus <i>Capsicum</i> (including cayenne Pepper, paprika and red pepper):
0904.22.20	Paprika
0904.22.76	Other
	* * *
0910	Ginger, saffron, tumeric (curcuma), thyme, bay leaves, curry and other spices:
0910.91.00	Mixtures referred to in note 1(b) to this chapter
	* * *
2103	Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard:
2103.90	Other: Mixed condiments and mixed seasonings:
2103.90.80	Other
	* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. 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 Customs and Border Protection (CBP) 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).

Note 1 to Chapter 9 of the HTSUS provides:

Mixtures of the products of headings 0904 to 0910 are to be classified as follows:

- (a) Mixtures of two or more of the products of the same heading are to be classified in that heading;
- (b) Mixtures of two or more of the products of different headings are to be classified in heading 0910.

The addition of other substances to the products of headings 0904 to 0910 (or to the mixtures referred to in paragraph (a) or (b) above) shall not affect their classification provided the resulting mixtures retain the essential character of the goods of those headings. Otherwise such mixtures are not classified in this chapter; those constituting mixed condiments or mixed seasonings are classified in heading 2103.

The General EN to Chapter 9 of the HTSUS similarly provides that the addition of other substances to the products of heading 09.04 to 09.10, or to mixtures of two or more products of the same or different headings, does not affect their classification provided the resulting mixtures retain the essential character of the goods falling in those headings. The General EN continues:

This applies, in particular, to spices and mixed spices containing added:

- (a) **Diluents** (“spreader” bases) added to facilitate measuring out of the spices and their distribution in the food preparation (cereal flour, ground rusk, dextrose, etc.).
- (b) Food **colourings** (e.g., xanthophyll).
- (c) Products added to intensify or enhance the flavour of the spices (**synergetics**), such as sodium glutamate.
- (d) Substances such as **salt** or **chemical antioxidants** added, usually in small quantity, to preserve the products and prolong their flavouring powers.

Spices (including mixed spices) containing added substances of other Chapters, but themselves having flavouring or seasoning properties, remain in this Chapter **provided** the added quantity does not affect the essential character of the mixture as a spice.

Therefore, for Samples 2 and 4 to be classified in Chapter 9, the addition of non-Chapter 9 ingredients must not change the essential character of the chili powder blends. As such, if the instant merchandise is classifiable in Chapter 9, it can not be described as a mixed seasoning of heading 2103, HTSUS.

#### *I - Sample 2*

As indicated above, Sample 2 is a blend of chili pepper, silicon dioxide, salt and garlic. Under Note 1 and the General EN, the addition of small quantities of silicon dioxide does not preclude the chili powder blend from being

classified in heading 0904, HTSUS, Chapter 9 or subheading 0904.22.76, HTS. In this regard, the silicon dioxide acts as a “diluent” within the meaning of the General EN 2 (a), as it is used as a flow or anti-caking agent in many powdered foods.

Similarly, the addition of small quantities of salt and garlic to the chili pepper does not alter the essential character of the chili powder as a significant majority of Sample 2’s weight and nearly all of its value are attributable to the chili pepper ingredient. See General Explanatory Note 2 (d).

In NY B88084, dated August 18, 1997, CBP classified an Ethiopian spice mixture in subheading 0904.20.76, HTSUS. The Ethiopian spice mixture, identified as “Mitmita,” is described as an orange powder made from a base of hot red pepper with garlic and salt. Also, in NY M82914, dated May 8, 2006, CBP classified “Pepper Blend Seasoning,” which was composed of black pepper, red pepper and sugar in subheading 0904.20.76, HTSUS.

In NY Ruling C87704, dated June 9, 1998, CBP classified a black pepper blend containing 45 grams of pepper and 45 grams of salt in subheading 0904.12.00, HTSUS. In this regard, the weight and value of the chili pepper found in Sample 2 (80–90) far exceeds the 50% content of the black pepper blend in this ruling.

Consistent with our position in the previous rulings, we find that Sample 2 is properly classified under heading 0904, HTSUS, specifically, in subheading 0904.22.76, HTSUS, the provision for as “Fruits of the genus *Capsicum* ...crushed or ground: [o]f the genus *Capsicum* (including cayenne Pepper, paprika and red pepper): Other.”

## II - Sample 4

Sample 4 is a blend of chili pepper, cumin, silicon dioxide, salt, garlic, and onion. Pursuant to Note 1(b) of Chapter 9, you submit that Sample 4 is classified under subheading 0910.91.00, HTSUS. Chili pepper and cumin are both classifiable under different Chapter 9 tariff provisions. As indicated above, chili pepper is properly classified as a spice under subheading 0904.20, HTSUS. Cumin is also classified as a spice under subheading 0909.30, HTSUS.

In NY Ruling B88084, we considered the classification of an Ethiopian spice mixture identified as “Berbere.” The Berbere is described as a reddish-orange powder made from a base of hot red pepper to which garlic, salt and ginger (also classified in Chapter 9) were added. We ruled that the Berbere was classified as a spice mixture of subheading 0910.91.00, HTSUS. In NY 837417, dated March 13, 1989, we classified a spice mixture identified as “Instant Masala” under subheading 0910.91.00, HTSUS. The Instant Masala consisted of cumin seeds, coriander seeds, rock and table salt, red and black pepper, cloves, nutmeg, cinnamon, cardamom, black cardamom, bay leaves and ginger, all Chapter 9 ingredients, except for the salt. In these rulings, the presence of salt and garlic in the Berbere or the presence of the rock and table salt in the Instant Masala did not affect the essential character of these products as spice mixtures of subheading 0910.91.00, HTSUS.

In NY Ruling J86543, dated July 8, 2003, we classified “Ras el Hanout Powder”, which consisted of 25 percent caraway (Chapter 9), 15 percent cumin (Chapter 9), 15 percent coriander (Chapter 9), 10 percent fenugreek (Chapter 9), 10 percent salt (non-Chapter 9), 10 percent curcuma/turmeric (Chapter 9), 5 percent mace (Chapter 9), 5 percent cinnamon (Chapter 9) and

5 percent cloves (Chapter 9), in subheading 0910.91.00, HTS. See NY J86543, dated July 8, 2003. Thus, CBP did not find the salt content of 10 percent significant enough to alter the essential character of the Ras el Hanout Powder as a spice mixture of subheading 0910.91.00, HTSUS.<sup>1</sup>

In some instances, CBP has generally classified the dry mixtures as mixed condiments or mixed seasonings under subheading 2103.90.80, HTSUS. For example, in NY Ruling N003779, dated December 28, 2006, CBP classified a dry mixture identified as “Southern Comfort Jambalaya Flavored Cajun BBQ Rub” in subheading 2103.90.80, HTSUS. This mixture consisted of 42.52 percent red pepper, 30.48 percent rosemary (non-Chapter 9), 10.35 percent cinnamon, 9.15 percent onion powder (non-Chapter 9), 3.15 percent garlic powder (non-Chapter 9), 2.48 percent salt (non-Chapter 9) and 1.87 percent black pepper.

Similarly, in NY Ruling I87879, dated October 31, 2002, we classified McCormick’s dry mixture “Product No. 91888 – R0888 US Chili Seasoning” in subheading 2103.90.80, HTSUS<sup>2</sup>. And, in NY Ruling I85460, dated September 16, 2002, we classified McCormick’s dry mixture “Cajun Seasoning No. 96943” under subheading 2103.90.8000, HTSUS<sup>3</sup>.

Also, in NY I87253, dated October 21, 2002, we classified McCormick’s “Chili Limon Seasoning.” In this ruling, where at least 50 percent of the ingredients were classified outside of Chapter 9, CBP classified the product as a mixed seasoning under 2103.90.8000, HTSUS.

You argue that sample 4 is a mixture of two products of different Chapter 9 headings and that the presence of small quantities of other non-Chapter 9 ingredients do not affect the essential character of Sample 4 as a spice mixture of Chapter 9. We find that (like Sample 2) the silicon dioxide in Sample 4 acts as a diluent, which does not alter the essential character of the Sample. We further find that the addition of small quantities of salt, garlic and onion (which comprise 5–10 percent of the blended product by weight and

---

<sup>1</sup> NY Ruling N024368 classified McCormick Samples 3 and 5, blends having salt contents of between 10 and 15 percent, as “mixed condiments and mixed seasonings...other” under subheading 2103.90.80, HTSUS. You are not arguing classification of Samples 3 and 5 in subheading 2103.90.80, HTSUS, as the salt content is more than 10 percent and alters the essential character of the blends.

<sup>2</sup> The U.S. Chili Seasoning is described as an orange-colored powder composed of 20–30 percent salt (non-Chapter 9), 10–15 percent each of chili pepper powder, paprika, maltodextrin (non-Chapter 9), sugar (non-Chapter 9), and MSG (non-Chapter 9), 5–10 percent dextrose (non-Chapter 9), 1–5 percent each of ground red pepper, caramel color powder (non-Chapter 9), black pepper and onion powder (non-Chapter 9) and one percent or less, each, of calcium silicate (non-Chapter 9), paprika oleoresin (non-Chapter 9), citric acid (non-Chapter 9), vegetable oil (non-Chapter 9), capsicum flavor (non-Chapter 9), soluble turmeric (Chapter 9), “oleo momb” flavoring (non-Chapter 9), onion flavoring (non-Chapter 9), and onion oleoresin (non-Chapter 9).

<sup>3</sup> The ingredient ranges for this product are 20–30 percent each of paprika (Chapter 9) and salt (non-Chapter 9), 10–15 percent each of onion powder (non-Chapter 9) and garlic powder (non-Chapter 9), 5–10 percent each of cayenne pepper (Chapter 9) and lemon juice powder (non-Chapter 9), 5 percent sugar (non-Chapter 9), 1–5 percent each of black pepper (Chapter 9), dextrin (non-Chapter 9), white pepper (Chapter 9), dextrose (non-Chapter 9), oregano (non-Chapter 9), and thyme (Chapter 9), and one percent or less each of coriander (Chapter 9), calcium silicate (non-Chapter 9), paprika oleoresin (non-Chapter 9), black pepper oleoresin (non-Chapter 9), soy bean oil (non-Chapter 9), oleo mombassa chili (non-Chapter 9), phosphate tricalcium TCP (non-Chapter 9), thyme oleoresin bay oil (non-Chapter 9), basil oleoresin (non-Chapter 9), basil oil (non-Chapter 9), silicon dioxide (non-Chapter 9), and bay oleoresin (non-Chapter 9).

less than 1–5 percent of its value) does not alter the essential character of Sample 4 as a Chapter 9 spice mixture and that the two Chapter 9 spices comprise a substantial majority of Sample 4’s weight and value. See Note 1(b) to Chapter 9 and the General EN 2(a) and (d).

The Chapter 21 seasonings referenced in the above cited rulings possess very high percentages of ingredients classified outside of Chapter 9. In this regard, the instant Samples 2 and 4 retain the essential character of a spice in heading 0904 HTSUS and 0910, HTSUS, respectively. Based on the above-cited Chapter Note, General Explanatory Note and prior CBP rulings, we find that samples 2 and 4 are classified as Chapter 9 spice mixtures, and not as mixed seasonings classifiable under heading 2103, HTSUS. Specifically, Sample 4 is classified in subheading 0910.91.00, HTSUS, as “Ginger, saffron, tumeric (curcuma), thyme, bay leaves, curry and other spices: Mixtures referred to in note 1(b) to this chapter.”

#### **HOLDING:**

Accordingly, we find that Sample 2 “Chili Powder” consisting of chili pepper, Sylox, garlic and salt is classified in subheading 0904.22.76, HTSUS, as “Fruits of the genus *Capsicum* ...crushed or ground: [o]f the genus *Capsicum* (including cayenne Pepper, paprika and red pepper): Other.” The general, column one rate of duty is 5 cents per kilogram, *ad valorem*. We further find that Sample 4 “Chili Powder” consisting of chili pepper, Sylox, garlic, onion, salt, and cumin is classified in subheading 0910.91.00,

HTSUS, as “Ginger, saffron, tumeric (curcuma), thyme, bay leaves, curry and other spices: Mixtures referred to in note 1(b) to this chapter.” The general, column one rate of duty is 1.9%, *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 World Wide Web, at <http://www.usitc.gov.tata/hts/>.

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

NY Ruling N024368, dated March 20, 2008 is hereby revoked in part.

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



### **PROPOSED MODIFICATION OF A RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN BEARINGS AND HOUSINGS**

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

**ACTION:** Notice of proposed modification of a ruling letter and proposed revocation of treatment relating to the tariff classification of certain bearings and housings.

**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 proposing to modify a ruling concerning the tariff classification of certain bearings and housings under the Harmonized Tariff Schedule of the United States (“HTSUS”). Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before September 28, 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, 5th floor, 799 9th Street N.W., Washington, D.C., 20229–1179, and may be inspected 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:** 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, this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of a pivot bearing part and a pivot bearings combined with a housing part. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (“NY”) N070076, dated August 25, 2009, set forth as “Attachment A”, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., 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 is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transaction 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 of this notice.

In NY N070076, CBP classified two separate articles—a pivot bearing part and pivot bearings combined with a housing—under heading 7116, HTSUS, which provides for: “[a]rticles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed).” Upon our review of NY N070076, we have determined that the pivot bearing described in that ruling is properly classified under heading 8482, HTSUS, which provides for “[b]all or roller bearings, and parts thereof,” and that the pivot bearings combined with a housing described in that ruling are properly classified under heading 8483, HTSUS, which provides for “[t]ransmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque

converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints); parts thereof.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N070076, and to revoke or modify any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (“HQ”) H088396, set forth as “Attachment B” to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 13, 2012

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

Attachments

## [ATTACHMENT A]

N070076

August 25, 2009

CLA-2-84:OT:RR:NC:N1:102

CATEGORY: Classification

TARIFF NO.: 8483.30.8020, 7116.20.4000

MR. ADAM LEVY  
NNR GLOBAL LOGISTICS  
512 EAST DALLAS ROAD (#400)  
GRAPEVINE, TX 76051

RE: The tariff classification of ball bearings and housings for aircraft instruments from Japan

DEAR MR. LEVY:

In your letter dated July 24, 2009 you requested a tariff classification ruling on behalf of your client United Instruments. Samples and descriptive information were submitted.

The articles in question are described as a pivot bearing, part number 1110-113941, a housing for a pivot bearing, part number 1110-114190, and a pivot bearing combined with a housing, part number 1110-1114510.

The pivot bearing is comprised of steel balls and a sapphire plate that retains the balls. The housing is a manufacture of brass designed to incorporate the pivot bearing. All the articles are for use in aircraft instrumentation.

In your request you suggest that the subject articles are provided for in heading 9014, Harmonized Tariff Schedule of the United States (HTSUS), which provides for parts of aeronautical instrumentation. However, note 1(a) to Chapter 71 of the HTSUS provides in pertinent part that all articles consisting wholly or partly of precious or semi-precious stones (natural, synthetic or reconstructed) are to be classified in Chapter 71. Accordingly, whether or not the pivot bearing and pivot bearing and housing combination, both containing the sapphire, are, prima facie, parts of HTSUS heading 9014 or ball bearings of HTSUS heading 8482, they fall to be classified in sub-heading HTSUS 7116 because they incorporate the sapphire.

Further, we find that the housing, not containing sapphire when presented separately, is provided for in HTSUS heading 8483, which provides for bearing housings. The provision for the housing as an article in HTSUS heading 8483 prevails over the provision for the housing as a part in heading 9014, HTSUS.

The applicable subheading for the brass housing will be 8483.30.8020, HTSUS, which provides for bearing housings, ball or roller type. The rate of duty will be 4.5 percent ad valorem.

The applicable subheading for the pivot bearing and the pivot bearing and housing combined in one piece, both containing the sapphire, will be 7116.20.4000, HTSUS, which provides for other articles of precious or semi-precious stones (natural, synthetic or reconstructed). The rate of duty will be 10.5 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 Kenneth T. Brock at (646) 733-3009.

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

H088396  
CLA-2 OT:RR:CTF:TCM H088396 RES  
CATEGORY: Classification  
TARIFF NO.: 8482.10.5068; 8483.20.8040;  
8483.30.8020

MR. ADAM LEVY  
NNR GLOBAL LOGISTICS  
512 EAST DALLAS ROAD  
#400  
GRAPEVINE, TX 76051

RE: Modification of NY N070076, dated August 25, 2009.

DEAR MR. LEVY:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York (“NY”) Ruling letter N070076, dated August 25, 2009, issued to you on behalf of your client, United Technologies, regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of pivot bearings, pivot bearing housings, and pivot bearings combined with a housing. In NY N070076, CBP classified the pivot bearings and pivot bearings combined with a housing as articles of semi-precious stones under heading 7116, HTSUS, and classified the pivot bearing housings as bearing housings under heading 8483, HTSUS. CBP has determined that NY N070076 was in error with respect to the classification of the pivot bearings and the pivot bearings combined with a housing. Accordingly, we are modifying NY N070076 to reflect the proper classification of the pivot bearings and the pivot bearings combined with a housing.

**FACTS:**

In NY N070076, there are three different articles as issue: pivot bearings, part # 1110–113941; pivot bearing housings, part # 1110–114190; and pivot bearings combined with a housing, part # 1110–114510. All three articles are parts used in an altimeter, which is an aeronautical instrument that measures the altitude of an aircraft above a fixed level. The pivot bearings are comprised of custom-made steel balls with a sapphire plate that retains the balls. The pivot bearing housing assemblies are made of brass. The housing assemblies incorporate the pivot bearings to form the combined housing with bearings assembly that ultimately becomes integrated into the final altimeter product. According to United Instruments, all parts are made-to-order for the company’s own altimeter instruments and are not used in other aeronautical instrument manufacturers’ products.

**ISSUE:**

Whether the pivot bearings are classified under heading 9014, HTSUS, as parts of aeronautical instruments, or under heading 8482, HTSUS, as ball bearings?

Whether the pivot bearing housings and the pivot bearings combined with a housing part are classified under heading 7116, HTSUS, as articles of precious stones, under heading 9014, HTSUS, as parts of navigational instruments, or under heading 8483, HTSUS, as bearing housings/housed bearings?

**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 HTSUS 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 following HTSUS provisions are under consideration:

- |      |   |
|------|---|
| 7116 | Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed):   |
| 8482 | Ball or roller bearings, and parts thereof:   |
| 8483 | Transmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints); parts thereof: |
| 9014 | Direction finding compasses; other navigational instruments and appliances; parts and accessories thereof:  |

The applicable part of Legal Note 3(k) to Chapter 71, HTSUS, for the merchandise at issue is as follows:

3. This chapter does not cover:

\* \* \*

(k) . . . machinery, mechanical appliances or electrical goods, or parts thereof, of section XVI. . . .

\* \* \* \* \*

The applicable Legal Notes to Section XVI, HTSUS, for the merchandise at issue are as follows:

1. This section does not cover:

\* \* \*

(f) Precious or semiprecious stones (natural, synthetic or reconstructed) of headings 7102 to 7104, or articles wholly of such stones of heading 7116, except unmounted worked sapphires and diamonds for styli (heading 8522);

\* \* \*

2. Subject to 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546, or 8547) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

\* \* \* \* \*

The applicable Legal Notes to Chapter 90, HTSUS, for the merchandise at issue are as follows:

\* \* \* \* \*

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

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

\* \* \* \* \*

The articles at issue in NY L070076 are analyzed separately in light of the legal notes above and specifically of the Legal Note 3(k) to Chapter 71, HTSUS.

**Pivot Bearings: part # 1110–113941**

The pivot bearings were classified in NY N070076 under heading 7116, HTSUS, because of the sapphire plate that was part of the pivot bearings. Upon further examination, it is noted that these pivot bearings are themselves classifiable under a specific provision for bearings under Section XVI, specifically under heading 8482, HTSUS. Pursuant to Legal Note 3(k) to Chapter 71, the pivot bearings are precluded from classification under Chapter 71 because they are articles classifiable under Section XVI. Furthermore, Note 1(f) to Section XVI does not preclude classification in heading 8482 because the articles are not “wholly of such stones of heading 7116.”

United Instruments asserted, in its original ruling request, that the pivot bearings should be classified under heading 9014, HTSUS, because they are parts of aeronautical instruments. Although, the pivot bearings at issue here are parts of altimeters, which are aeronautical instruments classifiable in Chapter 90, the pivot bearings are precluded from classification under Chapter 90 on account of Legal Note 2(a) to Chapter 90 which directs that parts and accessories of goods of Chapter 84 are to be classified in their respective headings. Pursuant to Legal Note 2(a) to Chapter 90, a specific provision for an article classifiable in Chapter 84 prevails over a general parts provision for instruments classifiable in Chapter 90. In addition, Legal Note 2(a) to Section XVI directs that a part that is a good in a heading of Chapter 84 is classified in its respective heading. Therefore, the pivot bearings are properly classified under heading 8482, HTSUS, which specifically provides for ball or roller bearings.

**Pivot Bearing Housings: part # 1110–114190**

In NY N070076, the pivot bearing housings were classified under heading 8483, HTSUS, because they did not contain sapphire and because a bearing

housing is specifically provided for in a provision under heading 8483. United Instruments asserted, in its original ruling request, that the bearing housings should be classified under heading 9014, HTSUS, because they are parts of aeronautical instruments. However, as explained *supra*, pursuant to Legal Note 2(a) to Chapter 90, a specific provision for an article classifiable under Chapter 84 prevails over a general parts provision for instruments classifiable in Chapter 90. In addition, Legal Note 2(a) to Section XVI directs that a part that is a good in a heading of Chapter 84 is classified in its respective heading. Therefore, the pivot bearing housings were properly classified in NY N070076 under heading 8483, HTSUS, which specifically provides for bearing housings.

**Pivot Bearing Combined With Housing: part # 1110-114510**

The part containing pivot bearings combined with a housing was classified under heading 7116, HTSUS, in NY N070076. Like the pivot bearings themselves, the presence of a sapphire plate does not preclude classification in Section XVI. Therefore, the pivot bearings combined with a housing is properly classified under heading 8483, HTSUS, which specifically provides for housed bearings. (See Note 2(a) to Chapter 90, HTSUS).

**HOLDING:**

Pursuant to GRI 1, Legal Note 3(k) to Chapter 71, Legal Note 2(a) to Section XVI, and Legal Note 2(a) to Chapter 90, the pivot bearings, part # 1110-113941, articles at issue are classified under heading 8482, specifically, subheading 8482.10.5068, HTSUSA, as “[b]all or roller bearings, and parts thereof; [b]all bearings: [o]ther: [o]ther.” The general, column one, rate of duty is 9 percent *ad valorem*.

Pursuant to GRI 1, Legal Note 2(a) to Section XVI, and Legal Note 2(a) to Chapter 90, the pivot bearing housings, part # 1110-114190, articles at issue are classified under heading 8483, specifically, subheading 8483.30.8020, HTSUSA, as “[t]ransmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints); parts thereof: [b]earing housings; plain shaft bearings: [o]ther: [b]earing housings: [b]all or roller bearing type.” The general, column one, rate of duty is 4.5 percent *ad valorem*.

Pursuant to GRI 1, Legal Note 3(k) to Chapter 71, Legal Note 2(a) to Section XVI, and Legal Note 2(a) to Chapter 90, the pivot bearings combined with a housing, part # 1110-114510, article at issue is classified under heading 8483, specifically, subheading 8483.20.8040, HTSUSA, as “[t]ransmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints); parts thereof: [h]oused bearings, incorporating ball or roller bearings: [o]ther: [i]ncorporating ball bearings.” The general, column one, rate of duty is 4.5 percent *ad valorem*.

**EFFECTS ON OTHER RULINGS:**

NY N070066, dated August 25, 2009, is modified in accordance with the above.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

  
**PROPOSED REVOCATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF TOBACCO WRAPPERS**

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

**ACTION:** Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of certain tobacco wrappers.

**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 proposing to revoke a ruling concerning the tariff classification of certain tobacco wrappers under the Harmonized Tariff Schedule of the United States (“HTSUS”). Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before September 28, 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, 5th floor, 799 9th Street N.W., Washington, D.C., 20229–1179, and may be inspected during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0188.

**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, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of “Brownies Original Tobacco Wrappers”. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (“NY”) C82943, dated January 13, 1998, set forth as “Attachment A”, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., 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 is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transaction 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 of this notice.

In NY C82943, CBP classified “Brownies Original Tobacco Wrappers” under heading 4813, HTSUS, which provides for: “[c]igarette paper, whether or not cut to size or in the form of booklets or tubes.” Upon our review of NY C82943, we have determined that the “Brownies Original Tobacco Wrappers” described in that ruling are properly classified under heading 2403, HTSUS, which provides for “[o]ther manufactured tobacco and manufactured tobacco substitutes; ‘homogenized’ or ‘reconstituted’ tobacco; tobacco extracts and essences.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY C82943, and to revoke or modify any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (“HQ”) H073917, set forth as “Attachment B” to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 13, 2012

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

Attachments

## [ATTACHMENT A]

NY C82943

January 13, 1998

CLA-2-48:RR:NC:SP:234 C82943

CATEGORY: Classification

TARIFF NO.: 4813.90.0000

MR. KONRAD W. ADDERLEY  
BROWN SACK TRADING COMPANY  
217 EAST 86TH STREET  
NEW YORK, N.Y. 10028

RE: The tariff classification of cigarette paper from Germany.

DEAR MR. ADDERLEY:

In your letter dated December 22, 1997, you requested a tariff classification ruling.

A sample was submitted and will be retained for reference. It is a small paperboard dispenser package containing ten loose 2 1/8" x 3 7/8" sheets of a paper-like product identified as "Brownies Original Tobacco Wrapper". The sheets have a brown color, and are said to be composed of 75.37% homogenized tobacco (also known as tobacco foil), 8.07% methylcellulose, and 14.58% carrier T6 (a teabag-like paper used to carry or hold tobacco). The sheets are said to be used for the hand-rolling of loose tobacco filler into cigarettes.

The applicable subheading for the "Brownies" wrappers, when imported in the above-described size, format and quantity, will be 4813.90.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other (than certain enumerated) cigarette paper. The rate of duty will be 2.9%.

You also inquired about the sufficiency of the country-of-origin marking on the product. One panel of the submitted sample package bears the phrase "Made in Germany," in clear 1/8" white characters on a brown background. This marking is acceptable if it is not covered or obscured when the item is offered for sale. (A flap on the package is capable of covering the marking, but the intended position and/or sealing of this flap is not clear to us. The purpose of marking is to inform the prospective ultimate purchaser of the country of origin upon casual examination of the item. Such marking should be easily found, and should not require manipulations such as the opening of a sealed package.)

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 Carl Abramowitz at 212-466-5733.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

H073917

CLA-2 OT:RR:CTF:TCM H073917 RES

CATEGORY: Classification

TARIFF NO.: 2403.91.2000

MR. KONRAD W. ADDERLEY  
BROWN SACK TRADING COMPANY  
217 EAST 86TH STREET  
NEW YORK, NY 10028

RE: Revocation of New York Ruling Letter C82943, dated January 13, 1998.

DEAR MR. ADDERLEY:

This is in regard to New York (“NY”) Ruling Letter C82943, issued to you on January 13, 1998, regarding the classification of tobacco wrappers, under the Harmonized Tariff Schedule of the United States (“HTSUS”). In NY C82943, Customs and Border Protection (“CBP”) classified the tobacco wrappers as cigarette paper, under heading 4813, HTSUS. We have reconsidered this ruling and determined that the tobacco wrappers are properly classified under heading 2403, HTSUS, which provides for “homogenized” or “reconstituted” tobacco suitable for use as wrapper tobacco.”

**FACTS:**

The following facts were set forth in NY C82943:

A sample was submitted and will be retained for reference. It is a small paperboard dispenser package containing ten loose 2 1/8” x 3 7/8” sheets of paper-like product identified as “Brownies Original Tobacco Wrapper”. The sheets have a brown color, and are said to be composed of 75.37% homogenized tobacco (also known as tobacco foil), 8.07% methylcellulose, and 14.58% carrier T6 (a teabag-like paper used to carry or hold tobacco). The sheets are said to be used for the hand-rolling of loose tobacco filler into cigarettes.

**ISSUE:**

Whether the tobacco wrappers are classified under heading 2403, HTSUS, as homogenized or reconstituted tobacco suitable for use as wrapper tobacco or under heading 4813, HTSUS, as cigarette paper?

**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.

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

2403      Other manufactured tobacco and manufactured tobacco substitutes;  
            “homogenized” or “reconstituted” tobacco; tobacco extracts and essences:

4813 Cigarette paper, whether or not cut to size or in the form of booklets or tubes:

Note 1 to Chapter 24, HTSUS, states in pertinent part:

1. The term “*wrapper tobacco*”, as used in this chapter, means that quality of leaf tobacco which has the requisite color, texture and burn, and is of sufficient size for cigar wrappers, and the term “*filler tobacco*” means all other leaf tobacco.

\* \* \* \* \*

(Emphases in original).

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 EN’s to heading 2403 provide in pertinent part the following:

This heading covers:

\* \* \* \* \*

- (6) “**Homogenised**” or “**reconstituted**” **tobacco** made by agglomerating finely divided tobacco from tobacco leaves, tobacco refuse or dust, whether or not on a backing (e.g., sheet of cellulose from tobacco stems), generally put up in the form of rectangular sheets or strip. It can be either used in the sheet form (as a wrapper) or shredded/chopped (as a filler).

\* \* \* \* \*

(Emphases in original). The relevant ENs to Chapter 48, HTSUS, are the following:

\* \* \* \* \*

Paper consists essentially of the cellulosic fibres of the pulps of Chapter 47 felted together in sheet form. Many products, such as certain tea-bag materials, consist of a mixture of these cellulose fibres and of textile fibres (in particular man-made fibres as defined in Note 1 to Chapter 54). Where the textile fibres predominate by weight, the products are not regarded as paper and are classified as nonwovens . . . .

\* \* \* \* \*

The pertinent ENs to Chapter 47 are as follows:

\* \* \* \* \*

General

The pulp of this Chapter consists essentially of cellulose fibres obtained from various vegetable materials, or from waste textiles of vegetable origin.

\* \* \*

Other materials used for making pulp include:

- (1) Cotton liners.
- (2) Recovered (waste and scrap) paper or paperboard.
- (3) Rags (particularly cotton, linen or hemp) and other textile wastes such as old ropes.
- (4) Straw, esparto, flax, ramie, jute, hemp, sisal, bagasse, bamboo and various other grasses and reeds.

\*                    \*                    \*                    \*                    \*

The tobacco wrappers at issue in NY C82943 are composed of three different materials: homogenized tobacco, methylcellulose, and a material called “carrier T6”. Homogenized tobacco is a mixture of chopped scrap tobacco that is held together by the methylcellulose, which acts as an adhesive.<sup>1</sup> The chopped scrap tobacco is mashed into a pulp and then it is reconstituted with the methylcellulose. The “carrier T6” material is a teabag-like paper that is added as part of the wrapper sheet. The tobacco wrappers are thicker than non-homogenized tobacco cigarette rolling papers and are used to make cigarillos by adding loose short filler tobacco in the tobacco wrapper and rolling into a cylinder like shape.<sup>2</sup>

The wrappers were originally classified as cigarette papers under heading 4813, HTSUS, because the importer stated that the wrappers were to be used for hand-rolling of loose tobacco filler into cigarettes. The tariff term “paper” is not defined in the Chapter 48, HTSUS, legal notes. However, the ENs to Chapter 48 indicate that “paper” consists of cellulosic fibres of the pulps of Chapter 47. The wrappers do not meet the definition of “paper” as they are composed of homogenized tobacco, which is not a pulp of Chapter 47. Thus, the tobacco wrappers would not be classified under heading 4813, HTSUS, because the articles are composed of homogenized/reconstituted tobacco which is not a material used for making pulp for classification purposes.

Rather, EN(6) to heading 2403 describes homogenized/reconstituted tobacco as an agglomeration of various tobacco materials that may be on a backing and is fabricated and sold in the form of rectangular sheets. The tobacco wrappers here meet this description of homogenized/reconstituted tobacco, which is *eo nomine* classifiable under heading 2403. Furthermore, pursuant to Note 1 of Chapter 24, the homogenized /reconstituted tobacco used in the Brownies product is considered wrapper tobacco because it possesses a brown color, rough texture, slow burning quality, and is made into sufficient sized wrappers for use as cigarillos. A wrapper for cigars may be composed of materials in addition to tobacco and still be considered a tobacco wrapper as long as it contains a substantial amount of tobacco, does not lose

<sup>1</sup> See <http://www.cigaraficionado.com/glossary/index/word/M> (last visited August 17, 2011); for a historical background of homogenized tobacco, see also <http://www.time.com/time/magazine/article/0,9171,862262,00.html> (last visited August 17, 2011).

<sup>2</sup> See <https://www.rollingpapers.com/cgi/commerce.cgi?preadd=action&key=5928> (last visited August 17, 2011). A “cigarillo” is a small cigar made of short filler tobacco (See <http://tobacconistuniversity.org/glossary.asp#267> (last visited August 17, 2011)).

its tobacco character (e.g., taste, aroma, identifiable chemical compounds), and is of a color consistent with that of the natural leaf tobaccos traditionally used as a wrapper for American cigars. *See* ATF Ruling 73–72<sup>3</sup>; 26 U.S.C. § 5702. The methylcellulose and T6 in the instant articles act as binders and backing to form the tobacco sheets and do not alter the character of the reconstituted tobacco wrappers.

Therefore, the Brownies Original Tobacco Wrappers are classified under heading 2403, HTSUS, as “[o]ther manufactured tobacco and manufactured tobacco substitutes; ‘homogenized’ or ‘reconstituted’ tobacco; tobacco extracts and essences.”

**HOLDING:**

By the application of GRI 1, the Brown’s Original Tobacco Wrappers are classified under subheading 2403.91.2000, HTSUSA, which provides for “[o]ther manufactured tobacco and manufactured tobacco substitutes; ‘homogenized’ or ‘reconstituted’ tobacco; tobacco extracts and essences: [o]ther: ‘[h]omogenized’ or ‘reconstituted’ tobacco: [s]uitable for use as wrapper tobacco.” The general, column one, rate of duty is 62 cents/kg.

**EFFECTS ON OTHER RULINGS:**

NY C82943, dated January 13, 1998, is revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

---

<sup>3</sup> Located at <http://www.ttb.gov/rulings/73-22.htm> (last visited May 2, 2012).

