

# U.S. Customs and Border Protection



## **REVOCAION OF RULING LETTERS AND REVOCAION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF MOTORIZED UTILITY VEHICLES**

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

**ACTION:** Notice of withdrawal of revocation of three ruling letters and revocation of treatment relating to tariff classification of motorized utility vehicles.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CBP”) is withdrawing its revocation of three rulings, HQ 965246, dated November 6, 2001, HQ 964598, dated November 13, 2001, and NY H87834, dated January 28, 2002, concerning the tariff classification of motorized utility vehicles under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is withdrawing its intent to revoke any treatment previously accorded by CBP to substantially identical transactions. Notice of the revocation was published in the *Customs Bulletin* Vol. 45, No. 35, on August 24, 2011.

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

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed revocations was published in the *Customs Bulletin* Vol. 40, No. 33, on August 9, 2006.

The final notice of revocation was published on August 24, 2011, in Volume 45, Number 35, of the *Customs Bulletin*. This publication was made in error. CBP is hereby withdrawing the notice of revocation of HQ 965246, HQ 964598, and NY H87834 as well as the accompanying rulings, HQ W968312 and HQ W968313.

Dated: August 31, 2011

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 LIQUID DISPENSING  
SYSTEMS**

**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 liquid dispensing systems.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) intends to revoke a ruling concerning the tariff classification of liquid

dispensing systems 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 October 14, 2011.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street N.W., Washington, D.C., 20229, 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 intends to revoke one ruling letter pertaining to the tariff classification of four bench-top liquid dispensing systems, identified as the Equator GX1, Equator GX8, Equator HTS,

and Equator HTS/2 systems. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (“NY”) N035872, dated August 20, 2008, 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 intends 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 N035872, CBP classified four liquid dispensing systems under heading 8424, HTSUS, which provides for: “[m]echanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: other appliances: other.” Upon our review of NY N035872, we have determined that the merchandise described in that ruling is properly classified under heading 8479, HTSUS, which provides for: “[m]achines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: other machines and mechanical appliances: other: other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N035872, 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”) H103965, 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 31, 2011

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

Attachments

## [ATTACHMENT A]

August 20, 2008  
CLA-2-84:OT:RR:NC:N1:106  
CATEGORY: Classification  
TARIFF NO.: 8424.89.0000

PATTI CORDO, DIRECTOR OF IMPORT  
AMERICAN CARGO EXPRESS, INC.  
432 DIVISION STREET  
ELIZABETH, NJ 07201

RE: The tariff classification of mechanical dispersing equipment from Ireland

DEAR Ms. CORDO:

In your letter dated August 12, 2008 you requested a tariff classification ruling on behalf of your client Labcyte Inc of Sunnyvale, California.

The items under consideration are four (4) bench-top liquid handling products incorporating Deerac Fluidics spot on technology.

You state in your ruling request that each of the machines include a custom designed robotic platform, control software and spot stations. The machines perform high speed, non-contact, low volume pipetting onto all well plate formats. The pipetting mechanism allows for the dispensation of volumes in the range of 50nl to 20ul.

The first item has been identified as the Equator GX1 system. This system uses a single-channel dispenser for the low to medium use lab. It can aspirate reagent from a single reservoir or plate and dispense the reagent across the reaction plate.

The second item has been identified as the Equator GX8 system. This system uses eight channels which allow for more flexibility. You state that each channel can aspirate and dispense reagents at a different volume.

The third item has been identified as the Equator HTS system. This system can dispense DMSO, aqueous buffers, protein solutions and cell and bead suspensions. In addition it can be configured with a number of reservoirs; these can include disposable troughs to stirred reservoirs for cells and beads.

The final item has been identified as the Equator HTS/2 system. This system is designed for automated and hand towed automated plate positions. Both plate positions are accessible to the robotic arms which enables unattended operation. The two plate positions can be used as source and destination plate positions, or as dual destination plates using a separate on deck reagent reservoir.

The applicable subheading for the Equator GX1, Equator GX8, Equator HTS and Equator HTS/2 will be 8424.89.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Mechanical appliances (whether or not hand operated) for...dispersing...liquids...: Other appliances: Other". The rate of duty will be 1.8%.

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 Mark Palasek at (646) 733-3013.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

H103965  
CLA-2 OT:RR:CTF:TCM H103965 RES  
CATEGORY: Classification  
TARIFF NO.: 8479.89.98

PATTI CORDO  
DIRECTOR OF IMPORT  
AMERICAN CARGO EXPRESS, INC.  
435 DIVISION STREET  
ELIZABETH, NJ 07201

RE: Revocation of NY N035872, dated August 20, 2008.

DEAR Ms. CORDO:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York (“NY”) Ruling letter N035872, dated August, 20, 2008, regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of the Equator GX1, Equator GX8, Equator HTS, and Equator HTS/2 mechanical liquid dispensing systems from Ireland. The machines were classified as mechanical appliances for dispersing liquids under heading 8424, HTSUS. We have determined that NY N035872 was in error.

**FACTS:**

In NY N035872, the products were described as follows:

The machines perform high speed, non-contact, low volume pipetting onto all well plate formats. The pipetting mechanism allows for the dispensation of volumes in the range of 50nl to 20ul.

The first item has been identified as the Equator GX1 system. This system uses a single-channel dispenser for the low to medium use lab. It can aspirate reagent from a single reservoir or plate and dispense the reagent across the reaction plate.

The second item has been identified as the Equator GX8 system. This system uses eight channels which allow for more flexibility. You state that each channel can aspirate and dispense reagents at a different volume.

The third item has been identified as the Equator HTS system. This system can dispense DMSO, aqueous buffers, protein solutions and cell and bead suspensions. In addition it can be configured with a number of reservoirs; these can include disposable troughs to stirred reservoirs for cells and beads.

The final item has been identified as the Equator HTS/2 system. This system is designed for automated and hand towed automated plate positions. Both plate positions are accessible to the robotic arms which enables unattended operation. The two plate positions can be used as source and destination plate positions, or as dual destination plates using a separate on deck reagent reservoir.

**ISSUE:**

Whether the mechanical liquid dispensing machines are classifiable under heading 8479, HTSUS, as “machines and mechanical appliances having individual functions”, or under heading 8424, HTSUS, as “mechanical appliances for projecting, dispersing, or spraying liquids [.]”?

**LAW AND ANALYSIS:**

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

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

The following HTSUS provisions are under consideration:

- |            |  |
|------------|--|
| 8424       | Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: |
| 8424.89    | Other appliances:  |
| 8424.89.00 | Other  |
| 8479       | Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:  |
|            | Other machines and mechanical appliances:  |
| 8479.89    | Other:   |
| 8479.89.98 | Other  |

The functions performed under heading 8424—projecting, dispersing, or spraying liquids—are different than the function of dispensing a liquid. According to lexicographic authority, the definition of disperse is to spread or distribute widely from a fixed or constant source, to scatter, to distribute more or less evenly throughout a medium.<sup>1</sup> The definition of dispense is to deal out in portions.<sup>2</sup> A machine that takes a pre-selected fixed volume from a larger reservoir of liquid and then transfers that smaller fixed volume to a different receiving receptacle, such as a vial tray, clearly performs the func-

<sup>1</sup> See <http://www.merriam-webster.com/dictionary/disperse> (last visited August 25, 2011).

<sup>2</sup> See <http://www.merriam-webster.com/dictionary/dispense> (last visited August 25, 2011).

tion of dispensing and not dispersing. Additionally, the functions that the bench-top liquid dispensing machines perform are not the same as any of the machines and tools listed in 8424, i.e. fire extinguishers, steam and sand blasting machines, irrigation sprayers, piston pump sprays, and spray guns, which project, spray, or disperse liquids or solids. In comparison to other rulings involving heading 8424, HTSUS, the Equator liquid dispensing systems do not perform the functions of projecting, dispersing or, spraying as other merchandise have performed these functions. *See* NY N087656, dated January 7, 2010 (dispensing a fragrance using a fan throughout a room); HQ W968211, dated February 6, 2007 (finding that a device that contains an aerosol can and presses on the can's button at specific intervals is spraying and dispersing a liquid); HQ 966611, dated January 7, 2007 (classifying a canister as part of a system that sprays a liquid on a windshield under heading 8424). In contrast, the Equator liquid dispensing systems take small quantities of liquid from a larger reservoir of liquid and dole/dispense the liquid into a smaller reservoir. *Cf.* NY N074200, dated September 4, 2009 (a container that uses a push-button pump to dispense a liquid from a reservoir to a sponge does not perform the functions of projecting, dispersing, or spraying a liquid); NY N052375, dated March 17, 2009 (a glue gun that expels a hot glue liquid performs the function of dispensing and not projecting, dispersing, or spraying).

Furthermore, CBP has consistently classified pipetting and other similar systems that aspirate and dispense liquids under heading 8479. *See Rainin Instrument C. Inc. v. United States*, 27 C.I.T. 1619 (2003) (classifying a hand operated pipetting apparatus under heading 8479). *See also* NY L80994, dated December 20, 2004 (classifying similar pipetting systems, the Equator TM NS 101 and Equator TM NS 808, manufactured by the same company, Deerac Fluidics under heading 8479); NY J87394, dated August 8, 2003 (classifying an electronic pipetting machine under heading 8479); and HQ 957301, dated January 18, 1995 (classifying a pipetting machine under heading 8479).

Therefore, because the function of dispensing is not covered by heading 8424 and because CBP has consistently classified similar liquid dispensing systems under heading 8479, the four Equator model liquid dispensing systems in NY N035872 are classified under subheading 8479.89.98, HTSUS, as “[m]achines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: [o]ther machines and mechanical appliances: [o]ther: [o]ther”

#### **HOLDING:**

Pursuant to GRI 1, the Equator model liquid dispensing systems at issue here are classified under the subheading 8479.89.98, HTSUS, as “[m]achines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other”. Articles classified under this subheading are subject to a general rate of duty of 2.5 percent *ad valorem*

**EFFECTS ON OTHER RULINGS:**

NY N035872, dated August 20, 2008, is revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**CORRECTION OF CLERICAL ERROR IN A RULING  
LETTER RELATING TO THE TARIFF CLASSIFICATION OF  
CERTAIN BATTERY-OPERATED PAINT ROLLERS**

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

**ACTION:** Notice of correction of a clerical error in a published ruling letter relating to tariff classification of certain battery-operated paint rollers.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is correcting a clerical error in a ruling letter relating to the tariff classification of certain battery-operated paint rollers under the Harmonized Tariff Schedule of the United States (HTSUS). The ruling letter at issue was published in the *Customs Bulletin*, Vol. 45, No. 31, on July 27, 2011.

**EFFECTIVE DATE:** This action is effective upon publication.

**FOR FURTHER INFORMATION CONTACT:** Aaron Marx, Tariff Classification and Marking Branch: (202) 325–0195.

**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.

This notice advises interested parties that CBP is correcting a clerical error in one ruling letter pertaining to the tariff classification of certain battery-operated paint rollers. In this notice, CBP is specifically referring to Headquarters Ruling Letter (HQ) H050436, dated July 11, 2001, and published in the *Customs Bulletin*, Vol. 45, No. 31, on July 27, 2011.

In HQ H050436, CBP determined that certain battery operated paint rollers were classified in heading 9603, HTSUS, by operation of General Rule of Interpretation (GRI) 1. Specifically, CBP classified the product in subheading 9603.40.20, HTSUS, which provides for "Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees): Paint, distemper, varnish or similar brushes (other than brushes of subheading 9603.30); paint pads and rollers: Paint rollers".

Due to a clerical error, the third full paragraph of *Customs Bulletin*, Vol. 45, No. 31, page 4, reads as follows:

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 J80608 and NY M84902 was published on May 11, 2011, in Volume 45, Number 20, of the Customs Bulletin. CBP received no comments in response to this notice.

Instead, this paragraph should read as follows:

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 N042191 and NY 870922 was published on June 1, 2011, in Volume 45, Number 23, of the Customs Bulletin. CBP received no comments in response to this notice.

CBP is modifying HQ H050436 within 60 days of its publication to correct this clerical error. The corrected version of HQ H050436 is set out as an attachment to this notice.

Dated: August 31, 2011

IEVA K. O'ROURKE

*for*

MYLES B. HARMON

*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H050436  
CLA-2 OT:RR:CTF:TCM H050436 AMM  
CATEGORY: Classification  
TARIFF NO.: 9603.40.20

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

RE: Modification of New York Ruling Letter N042191; Revocation of New York Ruling Letter 870922; Classification of Battery-Operated Paint Rollers

DEAR MR. PETERSON,

This is in reference to the request for reconsideration of New York Ruling Letter (NY) N042191, dated November 20, 2008, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a battery-operated paint roller identified as the “TurboRoll Battery Paint Roller” (TurboRoll). In that ruling, Customs and Border Protection (CBP) classified the TurboRoll under heading 9603, HTSUS, which provides in relevant part for “[P]aint pads and rollers”, by application of General Rule of Interpretation (GRI) 3(b). We have reviewed NY N042191 and found it to be incorrect. Accordingly, for the reasons set forth below, we intend to modify that ruling.

CBP also intends to revoke NY 870922, dated February 21, 1992, regarding the classification of the Wagner Cordless Power Roller (Cordless Roller) under the HTSUS. In that ruling, CBP classified the Cordless Roller under heading 8413, HTSUS (1992), which provides for “[O]ther reciprocating pumps”, by application of GRI 3(b).

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 N042191 and NY 870922 was published on June 1, 2011, in Volume 45, Number 23, of the Customs Bulletin. CBP received no comments in response to this notice.

**FACTS:**

In NY N042191, CBP described the TurboRoll as follows:

This roller features a 24 inch rigid plastic cylinder with a duckbill valve on one end, a plastic plunger that travels inside the cylinder, a plunger head that contains two sealing o-rings, a battery-operated handle and a roller arm with a nine inch roller nap. The roller operates by having a continuous flow of paint moved through the cylinder by the action of the motorized pump.

A sample of the TurboRoll was submitted. A picture is included below:





acting” pumps utilise the thrust or suction of one end of the piston only; “double-acting” types pump at both ends of the piston thus using both the forward and reverse strokes. In simple “lift” pumps the liquid is merely raised by suction and discharged against atmospheric pressure. In “force” pumps, the compression stroke is used, in addition to the suction stroke, to force the liquid to heights or against pressure. Multi-cylinder pumps are used for increased output. The cylinders may be either in line or in a star shape.

\* \* \*

The EN to Heading 96.03 states, in pertinent part:

(F) PAINT PADS AND ROLLERS; SQUEEGEES (OTHER THAN ROLLER SQUEEGEES)

Paint rollers consist of a roller covered with lambskin or other material mounted on a handle.

\* \* \*

In NY N042191, you argued that the TurboRoll was properly classified as a pump in heading 8413, HTSUS. CBP determined that the TurboRoll was classified pursuant to GRI 3(b) as a composite good under heading 9603, HTSUS, specifically under subheading 9603.40.20, HTSUS, which provides for “[P]aint pads and rollers; ... : [P]aint pads and rollers: Paint rollers”. CBP found that the essential character was imparted by the paint roller component that actually applies the paint to the surface being painted.

In *Wagner Spray Tech Corp., Inc., v. United States*, 493 F. Supp. 2d 1265, (Ct. Int’l. Trade 2007), the Court of International Trade (CIT) considered the classification of paint rollers identified as the “Paint-N-Roll”, “PaintMate Plus”, “StainMate”, and “Trim-It”. CBP had previously described these articles in the following manner:

Although each model differs slightly both in appearance and individual characteristics, they operate essentially on the same principle. By inserting a fill tube into a can of paint or stain and subsequently attaching it to the bottom of the product’s arm and opening the fill valve, a vacuum is created which draws the liquid into a reservoir located within the arm. This is done by pulling back on a plunger at the handle, forcing in the liquid. Once the reservoir is full, the valve is closed, the liquid is under pressure, and the product is ready for use. In the Paint-N-Roll Plus, the liquid is dispensed by pushing forward a plunger that forces it through the device’s nozzles and onto the roller. In the remaining three models, a trigger is used to dispense a controlled amount of liquid from the reservoir onto the pad or roller. In all four models it is the pad or roller that dispenses the paint or stain onto a surface.

See Headquarters Ruling Letter (HQ) 966933, dated April 27, 2004.

Heading 9603, HTSUS, is an *eo nomine* provision, in that it identifies “paint rollers” by name. According to the CIT in *Wagner*:

An *eo nomine* provision describes goods according to their common and commercial meaning. A court may rely upon its own understanding of the terms used consult lexicography or other reliable sources to define the

tariff term. In addition, an *eo nomine* provision that names an article without terms of limitation, absent evidence of a contrary legislative intent, is deemed to include all forms of the article. Furthermore, an article which has been improved or amplified but whose essential characteristic is preserved or only incidentally altered is not excluded from an unlimited *eo nomine* statutory designation.

*Wagner*, 493 F. Supp. 2d at 1269–1270 (internal citations and quotations omitted). The CIT went on to define a “paint roller” as “one that consists typically of a rotating cylinder ... covered with an absorbent material and mounted on a handle so that the cylinder can be dipped into paint or otherwise ... be supplied with paint and rolled over a flat surface ... so as to apply the paint.” *Wagner*, 493 F. Supp. 2d at 1271 (citing *Webster’s Third New Int’l Dictionary* (1986) at 1622).

With respect to the products at issue in *Wagner*, the CIT also noted that:

Each *Wagner* product contains a paint pad or a paint roller, which resembles a conventional pad or roller, and the function of each product is identical to traditional pads and rollers, to spread paint onto surfaces. **The method by which this is accomplished does not warrant classification based only on component parts of the products, nor does it render the products *prima facie* classifiable in more than one heading.**

*Wagner*, 493 F. Supp. 2d at 1271 (emphasis added). Noting that “an *eo nomine* designation includes all forms of the product, including improved forms” (*Id.*, at 1271, citing *Chevron Chemical Co. v. United States*, 59 F. Supp. 2d 1361 (Ct. Int’l. Trade 1999)), the CIT held that “[h]eading 9603 properly classifies the products according to their common and commercial meaning as paint pads or rollers, albeit amplified by the patented *Wagner* roller core and handle.” *Wagner*, 493 F. Supp. 2d at 1271.

Like the products considered in *Wagner*, the TurboRoll is a “paint roller” as defined above. It consists of a rotating cylinder covered with an absorbent material, which is mounted on a handle so that the cylinder can be supplied with paint and rolled over a flat surface. *See Wagner*, 493 F. Supp. 2d at 1271. The TurboRoll is an improved version of the traditional paint roller in that it contains a mechanism which supplies paint directly to the absorbent material on the rotating cylinder. The user no longer has to repeatedly dip the rotating cylinder in a tray of paint to coat the absorbent surface. However, its function is identical to traditional rollers – it is used to spread paint onto surfaces. As stated by the CIT, “[t]he method by which this is accomplished does not warrant classification based on only component parts of the products, nor does it render the products *prima facie* classifiable in more than one heading.” *Id.* Therefore, the TurboRoll is properly classified by operation of GRI 1 in heading 9603, HTSUS, specifically under subheading 9603.40.20, HTSUS, which provides for: “[P]aint pads and rollers; ... : [P]aint pads and rollers: Paint rollers”.

Inasmuch as this good is described in full by heading 9603, HTSUS, as a paint roller, its classification under heading 8413, HTSUS, by GRI 3(b) is precluded.

Our analysis also applies to the classification of Wagner's Cordless Roller, a hand-held paint roller fitted with a battery-operated pump, which we classified in NY 870922 under heading 8413, HTSUS, specifically in subheading 8413.50.00, the provision for "Other reciprocating positive displacement pumps." As the Cordless Roller is substantially similar to the TurboRoll, we find that it is properly classified by operation of GRI 1 under heading 9603, HTSUS, as a paint roller, based on all of the foregoing.

**HOLDING:**

By application of GRI 1, the TurboRoll Battery Paint Roller is classified under heading 9603, HTSUS, specifically in subheading 9603.40.20, HTSUS, which provides in relevant part for "Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees): Paint, distemper, varnish or similar brushes (other than brushes of subheading 9603.30); paint pads and rollers: Paint rollers". The column one, general rate of duty is 7.5% *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

In accordance with the above analysis, NY N042191, dated November 20, 2008, is hereby MODIFIED and NY 870922, dated February 21, 1992, is hereby REVOKED.

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

*Sincerely,*

IEVA K. O'ROURKE

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED MODIFICATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF PLASTIC TOILET  
SEATS WITH BIDET APPARATUSES AND HEATING  
ELEMENTS**

**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 plastic toilet seats with bidet apparatuses and heating elements.

**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 plastic toilet seats with bidet apparatuses and heating elements 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 October 14, 2011.

**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 Regulations and Rulings, 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 plastic toilet seats with bidet apparatuses and heating elements. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (“NY”) B83505, dated April 21, 1997, 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 B83505, CBP classified two models of plastic toilet seats with bidet apparatuses and heating elements under heading 8516, HT-SUS, which provides for: “[e]lectric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for

example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof.” Upon our review of NY B83505, we have determined that the merchandise described in that ruling is properly classified under heading 3922, HTSUS, which provides for: “[b]aths, shower baths, washbasins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware, of plastics.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY B83505, 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”) H165016, 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 31, 2011

IEVA K. O’ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

[ATTACHMENT A]

NY B83505

April 21, 1997

CLA-2-85:RR:NC:MM:113 B83505

CATEGORY: Classification

TARIFF NO.: 8516.10.0080; 3922.20.0000

MR. JIM IZRA  
LIZDALE KNITTING MILLS, INC.  
8000 COOPER AVENUE  
GLENDALE, NY 11385

RE: The tariff classification of the Bidan from Israel

DEAR MR. IZRA:

In your letter dated March 21, 1997, you requested a tariff classification ruling.

The merchandise is the Bidan, a personal hygiene appliance with a plastic seat that will be installed on a toilet. Similar to a bidet, the Bidan performs cleansing functions by spraying water and blowing air. The spray is produced by the normal water pressure in the home. Three models of the Bidan are available, two of which contain a heating element to warm the water and air. The Bidan Turbo rinses with warm water and dries with warm air. The Warm Water Bidan rinses with warm water at an adjustable temperature. The Ordinary Bidan does not have any mechanical features or a heating element, and only rinses with water at its natural temperature.

The applicable subheading for the Bidan Turbo and Warm Water Bidan will be 8516.10.0080, Harmonized Tariff Schedule of the United States (HTS), which provides for electric instantaneous or storage water heaters and immersion heaters, other water heaters and immersion heaters. The general duty rate will be 1.5 percent *ad valorem*.

Articles classifiable under subheading 8516.10.0080, HTS, which are products of Israel are entitled to duty free treatment under the United States-Israel Free Trade Area Implementation Act upon compliance with all applicable regulations.

The applicable subheading for the Ordinary Bidan will be 3922.20.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for baths, shower baths, washbasins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware, of plastics, lavatory seats and covers. The general duty rate will be 6.3 percent *ad valorem*.

Articles classifiable under subheading 3922.20.0000, HTS, which are products of Israel are entitled to duty free treatment under the United States-Israel Free Trade Area Implementation Act upon compliance with all applicable regulations.

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 James Smyth at 212-466-2084.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Chief,*

*Metals & Machinery Branch*

*National Commodity Specialist Division*

[ATTACHMENT B]

HQ H165016  
CLA-2 OT:RR:CTF:TCM H165016 RES  
CATEGORY: Classification  
TARIFF NO.: 3922.20.0000

MR. JIM IZRA LIZDALE  
KNITTING MILLS, INC.  
8000 COOPER AVENUE  
GLENDALE, NEW YORK 11385

RE: Modification of New York Ruling Letter B83505, dated April 21, 1997.

DEAR MR. LIZDALE:

This is in regard to New York (“NY”) Ruling Letter B83505, issued to you on April 21, 1997, regarding the classification of toilet seats with bidet apparatuses and heating elements, under the Harmonized Tariff Schedule of the United States (“HTSUS”). In NY B83505, Customs and Border Protection (“CBP”) classified two toilet seats with bidet apparatuses and heating elements as storage water heaters, under heading 8516, HTSUS. We have reconsidered this ruling and determined that the toilet seats with bidet apparatuses and heating elements are classified under heading 3922, HTSUS, as plastic toilet seats and covers.

**FACTS:**

In NY B83505, there were three different articles at issue: the Bidan Turbo, the Warm Water Bidan, and the Ordinary Bidan. All three articles are plastic toilet seats and covers that have a bidet apparatus, which is connected to the toilet seat, and performs cleansing functions by spraying water and blowing air. The Bidan Turbo has heating elements which warm the water used for rinsing and drying with warm air. The Warm Water Bidan also has heating elements which warm the water used for rinsing at an adjustable temperature. The Ordinary Bidan does not have any heating functions and rinses with water at room temperature. The Bidan Turbo and Warm Water Bidan were classified as electric instantaneous storage water heaters under heading 8516, HTSUS, while the Ordinary Bidan was classified under heading 3922, HTSUS, as a toilet seat and cover because it did not perform the function of heating water.

This reconsideration of NY B83505 is limited to the classification of the Bidan Turbo and the Warm Water Bidan merchandise.

**ISSUE:**

Whether the plastic toilet seats and covers with bidet apparatuses and heating elements (Bidan Turbo and Warm Water Bidan) are classified under heading 3922, HTSUS, as a plastic toilet seat and cover or under heading 8516, HTSUS, as a water heater?

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be “determined according to the terms of the headings and any relative section or chapter notes.” In the event that the goods cannot be classified

solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI 2 through 6 may be applied in order.

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

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

- 3922 Baths, shower baths, sinks, washbasins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware, of plastics:
- 8516 Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:

With regard to classification of an imported article pursuant to GRI 1, we consider a HTSUS heading or subheading an *eo nomine* provision when it describes an article by a specific name. *Camelbak Products, LLC v. United States*, No. 2010–1420, 2011 U.S. App. LEXIS 12385, at \*8–9 (Fed. Cir. June 11, 2011) (citing *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999)). Absent limitation or contrary legislative intent, an *eo nomine* provision “include[s] all forms of the named article” even improved forms. *Id.* However, whether an improved version of an article is classifiable within an *eo nomine* provision depends on an analysis of whether the new version is merely an improvement or whether it is, instead, a change in the identity of the article described in the HTSUS. *Id.* An article which has been improved or had features added, but whose essential characteristic is preserved or only incidentally altered is not excluded from an unlimited *eo nomine* statutory designation. *Casio, Inc. v. United States*, 73 F.3d 1095, 1098 (Fed. Cir. 1996).

The two Bidan articles at issue here are installed on toilets either initially as seats or to replace whatever toilet seat and cover is already there. The essential characteristic of a toilet seat is to enable a person to sit on a toilet in order to use it, hence, a toilet seat is made for sitting on. A plastic toilet seat with cover would be classified according to GRI 1 under heading 3922, HTSUS, which is an *eo nomine* provision covering such articles. The language of this heading specifically enumerates lavatory seats and covers, describing them by name and not by use. A lavatory, by definition, is a toilet or a bathroom.<sup>1</sup> Thus, a lavatory seat and cover encompasses seats and covers for articles in the heading such as toilets and bidets. Nothing limits

<sup>1</sup> A lavatory is another word for toilet and for a bathroom in general. *See* <http://www.merriam-webster.com/dictionary/lavatory> (last visited Apr. 15, 2010).

heading 3922, HTSUS, lavatory seats and covers to just simple seats and covers. Heading 3922, HTSUS, is broad enough to include seats and covers that may come with additional components and features such as a seat warmer, an automatic opening cover, or even a bidet apparatus as part of the seat. As long as an item has the essential characteristic of a lavatory seat and cover, it does not matter what additional features the seat and cover has. Simply replacing a basic toilet seat and cover with a more fancy and feature laden seat and cover does not exclude such a replacement from being classified under heading 3922, HTSUS. Thus, the threshold issue is whether the added bidet features and the seat and water heating features of the Bidans change the identity of these articles from being toilet seats and covers classifiable under heading 3922, HTSUS.

The Bidan Turbo and the Warm Water Bidan, which are essentially toilet seats and covers with an apparatus that provides bidet functions, also have the additional features of providing the functions of heated water and a heated seat. Although these Bidan articles have attached apparatuses that provide bidet functions and have components that provide heated water and a heated seat, the primary characteristic of the Bidan articles is that of a toilet seat and cover. The bidet apparatus of the Bidans is not a separate apparatus that attaches to a pre-existing seat of a toilet. Instead, the Bidans themselves would completely replace whatever seats and covers were previously on a toilet. Even if the various features stop functioning—spraying water, heating the seat, or warming the water—the Bidans would still be useable as a toilet seat and provide the functionality and usability of a complete toilet seat. Likewise, a person unfamiliar with the Bidans, i.e., a house guest, would not have to know how to use the bidet functions or other features in order to simply use the toilet and, moreover, the Bidans provide the toilet seat to enable such a person to use the toilet. Furthermore, upon examination, the Bidans are clearly identifiable as toilet seats and covers that simply have additional components. Thus, the addition of the various components that provide these features merely improves a toilet seat and cover but does not change the identity of the Bidan articles as they are described in heading 3922, HTSUS, as toilet seats and covers.

A third article in NY B83505 with the trade name of “Ordinary Bidan” was classified under heading 3922, HTSUS, as a toilet seat and cover. The Ordinary Bidan was classified as a lavatory seat and cover. The added feature to the Ordinary Bidan of providing a water sprayer for cleansing purposes does not alter the fact that the primary purpose of this article is still to enable a person to sit on a toilet in order to use the toilet regardless of whether one takes advantage of the water sprayer.

In summary, because the Bidan Turbo and the Warm Water Bidan are plastic toilet seats with covers and the added bidet, water heater, and seat heater features are improvements that do not change the identity and essential characteristic of the articles as being toilet seats, the articles are *eo nomine* classifiable under heading 3922, HTSUS. This conclusion is consistent with the classification in NY B83505 of the Ordinary Bidan in heading 3922, HTSUS.

Therefore, the Bidan Turbo and the Warm Water Bidan are classifiable under heading 3922, HTSUS, as “[b]aths, shower baths, sinks, washbasins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware, of plastics.”

**HOLDING:**

Pursuant to GRI 1, the Bidan Turbo and the Warm Water Bidan are classified under subheading 3922.20.0000, HTSUS, which provides for “[b]aths, shower baths, sinks, washbasins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware, of plastics: [l]avatory seats and covers.” The general, column one, rate of duty is 6.3% *ad valorem*.

**EFFECTS ON OTHER RULINGS:**

NY B83505, dated April 21, 1997, is modified.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

◆◆◆◆◆

**PROPOSED MODIFICATION OF RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF NACELLES FOR WIND  
TURBINES**

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

**ACTION:** Notice of proposed modification of ruling letter and proposed modification of treatment relating to the tariff classification of nacelles for wind turbines

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to modify one ruling letter relating to the tariff classification of nacelles for wind turbines under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before October 14, 2011.

**ADDRESSES:** Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations

and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W. (Mint Annex), Washington, D.C. 20229. Submitted comments may be inspected at the above-identified address during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Aaron Marx, Tariff Classification and Marking Branch: (202) 325-0195

**SUPPLEMENTARY INFORMATION:**

**Background**

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP intends to modify one ruling letter pertaining to the tariff classification of nacelles for wind turbines. Although in this notice, CBP is specifically referring to the modification of Headquarters Ruling Letter (HQ) H024848, dated December 4, 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.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In HQ H024848, CBP determined that the nacelle at issue was classified in heading 8502, HTSUS, specifically under subheading 8502.31.00, HTSUS, which provides for "Electric generating sets and rotary converters: Other generating sets: Wind-powered", by application of GRI 1. It is now CBP's position that the subject merchandise was properly classified under subheading 8502.31.00, HTSUS, but that it should have been classified therein by application of GRI 1 and GRI 2(a).

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify HQ H024848, and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the nacelle according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H148455, 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 24, 2011

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

Attachments

[ATTACHMENT A]

HQ H024848

December 4, 2008

CLA-2 OT: RR: CTF: TCM H024848 JER

CATEGORY: Classification

TARIFF NO.: 8412.90; 8502.31

PORT DIRECTOR  
PORT OF PORTLAND  
U.S. CUSTOMS AND BORDER PROTECTION  
8337 NE ALDERWOOD ROAD  
PORTLAND, OR 97220

RE: Classification of components of Wind Turbine Generator upon withdrawal from a Foreign Trade Zone; Internal Advice

DEAR PORT DIRECTOR:

This is in response to your memorandum, dated February 4, 2008, in which you requested internal advice, in accordance with U.S. Customs and Border Protection (“CBP”) Regulations, Part 177.11 (19 C.F.R. §177), regarding the classification of certain wind turbine components being imported by Suzlon Wind and Energy Corporation, Inc. (“Suzlon”), under the Harmonized Tariff Schedule of the United States (“HTSUS”). Part 177.11 (19 C.F.R. §177) states that “advice or guidance as to the interpretation or proper application of the Customs and related laws with respect to a specific Customs Service field offices from the Headquarters Office at any time whether the transaction is prospective, current or completed.” Suzlon previously received a prospective ruling regarding the classification of the subject wind turbine component parts when such are not being imported from a Free Trade Zone. New York Ruling Letter (“NY”) N021063, dated January 9, 2008, classified the subject wind turbine components in separate HTSUS headings as follows: the nacelle assembly was classified in heading 8502, HTSUS; the hub, nose cone and blades were classified in heading 8412, HTSUS; and the tower was classified in heading 7308, HTSUS. Suzlon is currently entering the components in accordance with NY 021063.

The Port is seeking internal advice pertaining to the proper classification of the subject wind turbine components upon their withdrawal from a Foreign Trade Zone and formal entry into the U.S. Territory.

**FACTS:**

The subject merchandise is described as components of a wind turbine generator which include: a nacelle assembly, a hub, blades and a nose cone. The nacelle assembly is a structure that houses a generator, gearbox, rotor shaft, main frame and bed plate among other components. It is primarily responsible for converting wind energy into electrical energy. The hub is the component that fits onto the end of the nacelle assembly. It is made of cast iron and shaped into spheres. The primary function of the hub is to hold the blades in place. The nose cone is installed to the hub and provides access to the hub. The nose cone protects the hub from the elements and improves aerodynamics by speeding up air flow as it approaches the blades. The blades are made of a fiberglass epoxy and measure 43.35 meters in length. They fit into the hub and move in response to wind energy. The wind turbine

generator is mounted to a tower and stands 77.5 meters in height. The sections are bolted together and the wind turbine generator is secured to the top.

According to counsel for the importer, the components are separately purchased by Suzlon and are invoiced separately. However, the subject merchandise will be admitted to the Foreign Trade Zone ("FTZ") upon arrival from a single vessel. The wind turbine generator and the components thereof will be separately entered for consumption as Non-Privileged Foreign Status merchandise. Counsel states that because of the size and weight of the individual parts that some cannot share truck space with other parts. Counsel also states that due to applicable state and federal transportation regulations, truck carriers are limited to certain roads and delivery routes because of load weight. This necessitates separate withdrawal from the FTZ. For example, the blades must be transported separately, one blade at a time and can take several days to reach the same destination as the hub and nose cones. Further, counsel states that the components are often intended for different customers. Prior to entry, the wind turbine and its related parts do not undergo further assembly, disassembly, manufacturing or production while in the FTZ.

#### **ISSUE:**

At issue is the proper classification of the component parts of the subject wind turbine generator when withdrawn from an FTZ and entered for consumption separately on separate days into U.S. Territory. Specifically, whether entries which due to their size or nature necessitate split shipments or shipments in an unassembled or disassembled condition and separate conveyances, should be treated as a single entry.

#### **LAW AND ANALYSIS:**

FTZs are established under the authority of the Foreign Trade Zones Act of 1934, as amended, 19 U.S.C. 81a-81u. Section 81c provides for the admission of merchandise into a FTZ and its treatment and shipment to U.S. Customs Territory. Section 81c(a) explains that:

[f]oreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in this chapter, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this chapter, and be exported . . .

For tariff classification purposes, goods are admitted not entered, into an FTZ. Only after such goods are withdrawn from the FTZ and enter U.S. Customs Territory, are they deemed entered for purposes of tariff classification. Classification of articles entered from an FTZ is, in part, dependent upon whether the articles have Privileged Foreign Status ("PF") or Non-Privileged Foreign Status ("NPF"). As previously stated, the subject merchandise is entered under NPF status. Under Section 146.65(a)(2) of the CBP Regulations (19 CFR 146.65(a)(2)), NPF status merchandise is subject to tariff classification in accordance with its character, condition and quantity as constructively transferred to customs territory at the time of entry or when an entry summary is filed with CBP.

NPF status is a residual provision which applies to foreign merchandise which does not have the status of privileged foreign merchandise or zone-restricted merchandise or is deemed as waste. See 19 C.F.R. §146.42 (a). Insofar as, the subject merchandise has NPF status, it is not subject to classification upon admission into the FTZ. Moreover, under 19 C.F.R. §146.32, goods may only be admitted into an FTZ upon submission of Customs Form 214 (“Application for Foreign Trade Zone Admission and/or Status Designation”). Classification of such goods are governed by their status at the time that application is submitted.<sup>1</sup> The instant merchandise holds NPF status therefore they may be classified separately upon admission to the FTZ despite arriving on the same vessel.

You ask whether the subject merchandise which is withdrawn, entered and transported separately from the FTZ, should be classified in its entirety as a single unassembled or disassembled entity pursuant to 19 U.S.C. 1484 (j)(1).

19 U.S.C. 1484 (j)(1), provides in pertinent part that:

(j) Treatment of multiple entries of merchandise as single transaction

In the case of merchandise that is purchased and invoiced as a single entity but - -

- (1) is shipped in an unassembled or disassembled condition in separate shipments due to the size or nature of the merchandise, or
- (2) is shipped in separate shipments due to the inability of the carrier to include all of the merchandise in a single shipment ...

... the Customs Service may, upon application by the importer in advance, treat such separate shipments for entry purposes as a single transaction.

Section 1484 does not apply to the instant case because (1) the subject merchandise is both invoiced and purchased separately and (2) under the above provision, providing a single entry for separate conveyances is at the importer’s election.

A single entry for unassembled or disassembled entities imported on multiple conveyances is provided for in 19 C.F.R. § 141.58, which states the following:

Sec. 141.58 Single entry for separately arriving portions of unassembled or disassembled entities.

(a) *At election of importer of record.* At the election of the importer of record, an unassembled or disassembled entity arriving on multiple conveyances as contemplated under section 484(j)(1), Tariff Act of 1930 (19 U.S.C. 1484(j)(1)), may be processed as a single entry, as prescribed under the procedures set forth in this section.

(b) *Unassembled or disassembled entities covered.* An unassembled or disassembled entity for purposes of this section is an entity which: (1)

<sup>1</sup> 19 C.F.R. Section(s) 146.14–44 contemplate four status types under which merchandise admitted into an FTZ may fall, which include: Privileged foreign status; non-privileged foreign status; domestic status and zone-restricted status.

Cannot, due to its size or nature, be shipped on a single conveyance, and is thus imported in an unassembled or disassembled condition [.]

As Section 141.58 (19 C.F.R. §141.58) explains, treating disassembled or unassembled arriving on multiple conveyances is at the election of the importer. Accordingly, there is nothing in the regulations or in the statutes which require an importer to file a single entry for unassembled or disassembled merchandise arriving on multiple shipments or which make mandatory the treatment of separate shipments as a single transaction. More importantly, however, the instant merchandise is not an unassembled or disassembled good insofar as the imported components are often sold separately and will be shipped on separate conveyances.

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

The HTSUS provisions under consideration are as follows:

8412	Other engines and motors, and parts thereof:
8412.90	Parts:
8412.90.90	Other
8412.90.9080	Other
8502	Electric generating sets and rotary converters:
	Generating sets with compression-ignition internal combustion piston engines (diesel or semi-diesel engines):
	Other Generating sets:
8502.31.00	Wind powered....

Section XVI Note 2 provides as follows:

2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) 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 84.09, 84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.22, 85.29, 85.38 and 85.48) are in all cases to be classified in their respective headings; [Emphasis added].
  - (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 84.79 or 85.43) are to be classified with the machines of that kind or in heading 84.09, 84.31, 84.48,

84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 85.17 and 85.25 to 85.28 are to be classified in heading 85.17.

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 (August 23, 1989).

The ENs to heading 8502, HTSUS, explain the classification of (wind) generating sets. Specifically, EN 85.02 provides:

#### (I) ELECTRIC GENERATING SETS

The expression “generating sets” applies to the combination of an electric generator and any prime mover **other than an electric motor** (e.g., hydraulic turbines, steam turbines, wind engines, reciprocating steam engines, internal combustion engines). Generating sets consisting of the generator and its prime mover which are mounted (or designed to be mounted) together as one unit or on a common base (see the General Explanatory Note to Section XVI), are classified here **provided** they are presented together (even if packed separately for convenience of transport).

#### PARTS

**Subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the machines of this heading are classified in **heading 85.03**.

In the instant case, the nacelle assembly, which consists in part of a generator, gearbox, rotor shaft, main frame and bed plate, meets the terms of heading 8502, HTSUS, as a generating set as described in the ENs to heading 8502, HTSUS. The hub, nose cone and blades are principally used with and are integral components of the wind turbine generator without which the wind turbine generator could not function. Moreover, they are not more specifically provided for elsewhere. In accordance with Note 2 (b) to Section XVI, HTSUS, the hub, nose cone and blades are classified in heading 8412, HTSUS, as parts suitable for use solely or principally for wind engines. This position is consistent with NY N021063 as well as rulings NY N007816, dated March 28, 2007, NY M80880, dated April 17, 2006, and Headquarters Ruling Letter (“HQ”) H023502, dated July 8, 2008, in which CBP classified blades for wind turbines as parts, under heading 8412, HTSUS.

#### **HOLDING:**

By application of GRI 1 and Note 2 (b) to Section XVI, the hub, the nose cone and the blades are classified in heading 8412, HTSUS. They are specifically provided for under subheading 8412.90.9080, which provides for: “Other engines and motors and parts thereof: Parts: Other: Other.” The column one, general rate of duty is Free.

By application of GRI 1, the nacelle assembly is classified in heading 8502, HTSUS. It is specifically provided for under subheading 8502.31.00, HTSUS,

which provides for: “Electric generating sets and rotary converters: Other Generating sets: Wind powered.” The column one, general rate of duty is 2.5% *ad valorem*.

You should advise the importer of this decision. This decision should be mailed by your office to the importer no later than 60 days from the date of this letter. On that date, Regulations and Rulings of the Office of International Trade, will take steps to make the decision available to CBP personnel, and to the public on the CBP Home Page on the World Wide Web at [www.cbp.gov](http://www.cbp.gov), by means of the Freedom of Information Act, and other methods of public distribution.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## [ATTACHMENT B]

HQ H148455  
CLA-2 OT:RR:CTF:TCM H148455 AMM  
CATEGORY: Classification

TARIFF NO.: 8502.31.00, 8412.90.90

MR. SYDNEY H. MINTZER  
MAYER BROWN LLP  
1909 K St. NW  
WASHINGTON, DC 20006

RE: Modification of Headquarters Ruling Letter H024848; Classification of Components of a Wind Turbine Generator Upon Withdrawal from a Foreign Trade Zone

DEAR MR. MINTZER,

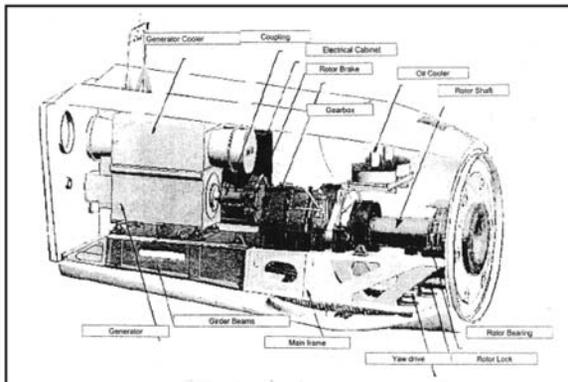
This is in reference to Headquarters Ruling Letter (HQ) H024848, dated December 4, 2008, issued to Suzlon Wind and Energy Corporation, Inc. (Suzlon), regarding the classification by U.S. Customs and Border Protection (CBP) of certain wind turbine components (namely, the blade assembly and nacelle) under the Harmonized Tariff Schedule of the United States (HTSUS) upon their withdrawal from a Foreign Trade Zone (FTZ) and formal entry into U.S. territory. We have reviewed HQ H024848 and found it to be incorrect with respect to the classification of the nacelle. For the reasons set forth below, we intend to modify that ruling.

**FACTS:**

The wind turbine at issue, the Suzlon S88 2.1 MW Wind Turbine, converts wind energy into useful electrical energy. It is composed of three major components: the nacelle, blade assembly, and a 77.5 meter tall metal tower. In HQ H024848, CBP considered the classification of the nacelle and the individual components of the blade assembly (i.e., the hub, nose cone, blades, and pitch system) upon their withdrawal from an FTZ and formal entry into U.S. territory.

*A. The Nacelle*

The nacelle of the Suzlon S88 2.1 MW Wind Turbine is a lozenge-shaped housing which contains mechanical equipment and electronics necessary to convert the rotational energy of a shaft into useful electrical energy. It rests on top of a metal tower, which stands 77.5 meters tall. The nacelle consists of a main frame, a rotor, a rotor shaft, a rotor bearing with housing, a gear box, an oil pump, a mechanical hydraulic brake system, a generator coupling, a generator system, and a yaw system. A cutaway diagram of the nacelle, taken from your submission dated December 14, 2007, showing which components are included, is pictured below:



The blade assembly, which consists of the blades, hub, nose cone, and pitch system, is attached to the front of the nacelle.

### *B. The Blade Assembly*

The wind turbine's hub, nose cone, blades, and pitch system, are collectively referred to as the blade assembly. The hub, which attaches directly to the nacelle, is made of cast iron and shaped into spheres. Its primary function is to hold the blades in place. The nose cone, which is attached to the hub, protects the hub from the elements and improves aerodynamics by speeding up air flow as it approaches the blades. The blades are made of a fiberglass epoxy and measure 43.35 meters in length. The pitch system, housed inside the hub, rotates the blades to optimize wind capture.

### *C. Withdrawal from an FTZ*

The wind turbine's nacelle and blade assembly are separately purchased and separately invoiced by Suzlon, but they are admitted together into an FTZ upon arrival from a single vessel. While at the FTZ, those components are not further assembled, disassembled, manufactured, or produced. On occasion, the components are withdrawn separately and on separate days from the FTZ (e.g. when the size and weight of the components is so great that they require individual shipping, or when intended for different customers).

#### **ISSUE:**

- I. What is the proper classification of the wind turbine's nacelle under the HTSUS?
- II. What is the proper classification of the wind turbine's blade assembly under the HTSUS?
- III. Upon withdrawal from an FTZ and entry for consumption, separately on separate days into U.S. territory, are the wind turbine's blade assemblies and nacelles to be classified separately or as a single unassembled or disassembled entity?

**LAW AND ANALYSIS:***I. Classification of the Nacelle*

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

The 2011 HTSUS provisions at issue are as follows:

8502            Electric generating sets and rotary converters:

                  Other generating sets:

8502.31.00            Wind-powered

-----

8503.00            Parts suitable for use solely or principally with the machines of heading 8501 or 8502:

                  Other:

8503.00.95            Other

GRI 2(a) states:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

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 EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN (I) to GRI 2(a) states:

The first part of Rule 2(a) extends the scope of any heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, provided that, as presented, it has the essential character of the complete or finished article.

The General EN to Section XVI (which covers headings 8502 and 8503), states:

(IV) INCOMPLETE MACHINES  
(See General Interpretative Rule 2(a))

Throughout the Section any reference to a machine or apparatus covers not only the complete machine, but also an incomplete machine (i.e., an assembly of parts so far advanced that it already has the main essential

features of the complete machine). Thus a machine lacking only a fly-wheel, a bed plate, calender rolls, tool holders, etc., is classified in the same heading as the machine, and not in any separate heading provided for parts. Similarly a machine or apparatus normally incorporating an electric motor (e.g., electro-mechanical hand tools of heading 84.67) is classified in the same heading as the corresponding complete machine even if presented without that motor.

The EN to heading 84.12 states, in pertinent part:

(D) WIND ENGINES (WINDMILLS)

This group includes all power units (wind engines or wind turbines), which directly convert into mechanical energy the action of the wind on the blades (often of variable pitch) of a propeller or rotor.

Usually mounted on a fairly tall metal pylon, the propellers or rotors have an arm perpendicular to their plane, forming a vane, or some similar device for orientating the apparatus according to the direction of the wind. The motive force is generally transmitted by reduction gearing through a vertical shaft to the power take-off shaft at ground level ...

\* \* \*

Electric generator units composed of wind motors mounted integrally with an electric generator (including those for operation in aircraft slip-streams) are excluded (heading 85.02).

The EN to heading 85.01 states, in pertinent part:

(II) ELECTRIC GENERATORS

Machines that produce electrical power from various energy sources (mechanical, solar, etc.) are classified here, provided they are not more specifically covered by any other heading of the Nomenclature.

\* \* \*

Electric generators may be hand- or pedal-operated, but usually they have prime movers (e.g., hydraulic turbines, steam turbines, wind engines, reciprocating steam engines, internal combustion piston engines). However, this heading only covers generators when presented without prime movers.

\* \* \*

The EN to heading 85.02 states, in pertinent part:

(I) ELECTRIC GENERATING SETS

The expression 'generating sets' applies to the combination of an electric generator and any prime mover other than an electric motor (e.g., hydraulic turbines, steam turbines, wind engines, reciprocating steam engines, internal combustion engines). Generating sets consisting of the generator and its prime mover which are mounted (or designed to be mounted) together as one unit or on a common base (see the General Explanatory Note to Section XVI), are classified here provided they are presented together (even if packed separately for convenience of transport).

\* \* \*

## PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the machines of this heading are classified in heading 85.03.

Heading 8502, HTSUS, provides for “Electric generating sets”. EN 85.02 states that “[t]he expression ‘generating sets’ applies to the combination of an electric generator and any prime mover other than an electric motor (e.g., ... wind engines, ...).” Furthermore, EN 85.01 explains that “electric generators” are “[m]achines that produce electrical power from various energy sources (mechanical, solar, etc.) ...”.

The term “prime mover,” however, is not defined in the HTSUS or in the ENs. When a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (C.C.P.A. 1982); *Simod*, 872 F.2d at 1576. The *Merriam-Webster Online Dictionary* defines the term “prime mover” as “1.a: an initial source of motive power (as an engine) designed to receive and modify force and motion as supplied by some natural source and apply them to drive other machinery (as a waterwheel, turbine, or steam engine).” See <<http://www.m-w.com>> (last viewed on August 18, 2011).

EN 85.02 lists “wind engines” as an example of a prime mover. According to EN 84.12, wind engines are “power units ... which directly convert into mechanical energy the action of the wind on the blades (often of variable pitch) of a propeller or rotor.” The process is as follows: wind energy is captured by the rotor blades, hub, and nose cone. The pitch system and yaw drive both optimize this function, by rotating the blades or the nacelle housing, respectively. The kinetic energy is converted into a force which turns the rotor and rotor shaft. Once the wind energy has been converted into rotational energy of the rotor shaft, this force is transmitted to the generator through the gear box and brake system. See James Manwell, et. al., *Wind Energy Explained: Theory, Design, and Application*, 2nd Ed., 3–5 (Wiley Publ., 2009). The rotor bearing and main frame support the weight of these components, and ensure proper alignment.

The wind engine of the instant wind turbine is comprised of the following components: the rotor, rotor blades, pitch system, nose cone, hub, rotor shaft, rotor bearing, gear box, brake system, mainframe, nacelle housing, and yaw system. The point where the shaft is attached to the generator, at the generator coupling, represents the boundary of the “prime mover,” because that is the exact point at which the rotational mechanical energy is fed into the generator, and the force of the wind is applied to drive other machinery.

The instant nacelle includes a generator, which converts the rotational mechanical energy of the rotor shaft into useful electrical power. However, it is imported with only part of its prime mover (i.e., the wind turbine). The imported nacelle contains most of the component parts of a wind engine (namely, the rotor, rotor shaft, rotor bearing, gear box, brake system, main

frame, nacelle housing, and yaw system). However, it lacks the blades, pitch system, nose cone, and hub. As such, it cannot be classified under heading 8502, HTSUS, as an electric generating set, by application of GRI 1.

GRI 2(a) provides that “[a]ny reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, [it] has the essential character of the complete or finished article.” Therefore, the instant nacelle will be properly classified as a generating set under heading 8502, HTSUS, if it has the essential character of the complete or finished article.

The term “essential character” under GRI 2(a) applies to articles that are imported substantially complete. CBP has consistently interpreted the term to mean the attribute that serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the good; the aggregate of distinctive component parts that establishes the identity of an article as what it is, its very essence. See *HQ 967975, dated March 24, 2006*. “*Factors found to be relevant in other contexts are the significance of the imported components or their role in relation to the use or overall functioning of the completed article and, to the extent that it validates that comparison, the cost or value of the completed article versus the cost or value of the imported merchandise.*” See *HQ 967894, dated October 26, 2005 (classifying a motor vehicle which lacked its engine and transmissions a motor vehicle of heading 8703, HTSUS)*. See also *HQ 962985, dated December 13, 1999*; *HQ 962690, dated September 22, 1999* (both classifying three-wheeled, battery-operated, motorized golf carts, which lacked rear wheels and batteries, as motor vehicles of heading 8704).

The overall function of a wind turbine is to capture kinetic wind energy and convert that energy into useful electricity. This process requires three steps: “[s]teady wind speeds turn a wind turbine’s blades, which then turn the turbine’s generator, which is then used to generate electricity.” See David Craddock, *Renewable Energy Made Easy*, 92–93 (Atlantic Publ. 2008).

In its condition as imported, the instant nacelle contains most of the components necessary to capture wind energy and convert it into useful electrical energy. It contains the rotor, rotor shaft, yaw system, and nacelle housing, all of which, together with the separately-imported blade assembly, convert wind energy into rotational mechanical energy. It contains the rotor shaft, gear box, brake system, generator coupling, and rotor bearing, all of which transmit the rotational mechanical energy to the generator. Finally, it contains the generator, which is responsible for converting that rotational energy into useful electrical energy.

It is CBP’s position that, when taken together, the imported nacelle has the essential character of an electric generating set because constitutes the aggregate of distinctive parts that establish its identity for what it is, *i.e.*, an electric generating set, because it contains a generator and most of the parts of the prime mover. Thus, the nacelle is classifiable as an electric generating set in heading 8502, HTSUS, pursuant to GRI 2(a).

Inasmuch as the instant nacelle is properly classified in heading 8502, HTSUS, as an electric generating set, it is precluded from classification under heading 8503, HTSUS, as “Parts suitable for use solely or principally with the machines of heading ... 8502”.

## II. Classification of the Blade Assembly Components

The 2011 HTSUS provisions at issue are as follows:

8412 Other engines and motors, and parts thereof:

8412.90 Parts:

8412.90.90 Other

-----  
8503.00 Parts suitable for use solely or principally with the machines of heading 8501 or 8502:

Other:

8503.00.95 Other

Note 2 to Section XVI, HTSUS, states, in pertinent part:

Subject to note 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;

(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate ...

\* \* \*

In HQ H024848, CBP classified the wind turbine's hub, nose cone, pitch system, and blades – all of which are blade assembly components – in heading 8412, HTSUS, which provides for “Other engines and motors, and parts thereof”, pursuant to GRI 1. They were specifically classified under subheading 8412.90.90, HTSUS, as parts of wind engines.

The courts have considered the nature of “parts” under the HTSUS and two distinct though not inconsistent tests have resulted. *See Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774, 779. The first, articulated in *United States v. Willoughby Camera Stores*, 21 C.C.P.A. 322 (1933) requires a determination of whether the imported item is “an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” *Bauerhin*, 110 F.3d at 778 (quoting *Willoughby Camera*, 21 C.C.P.A. 322, 324). The second, set forth in *United States v. Pompeo*, 43 C.C.P.A. 9 (1955), states that an imported item “dedicated solely for use” with another article is a part of that article provided that, “when applied to that use,” the article will not

function without it. *Pompeo*, 43 C.C.P.A. 9, 14. Under either line of cases, an imported item is not a part if it is “a separate and distinct commercial entity.” *ABB, Inc. v. United States*, 28 Ct. Int’l Trade 1444, 1452–53 (2004); *Bauerhin*, 100 F. 3d at 1452–32. “A subpart of a particular part of an article is more specifically provided for as a part of the part than as a part of the whole.” *Mitsubishi Electronics America v. United States*, 19 CIT 378, 383 n.3 (Ct. Int’l. Trade 1995).

Applying *Bauerhin*, we affirm CBP’s conclusion that the instant hub, nose, cone, pitch system, and blades are “parts” of the wind turbine’s wind engine. Indeed the blade assembly is indispensable to the wind engine (as it captures the wind energy used to propel the wind engine to which it is attached). In addition, it is dedicated for use solely with wind engines. Therefore, as no heading in the HTSUS describes the blade assembly, the components of the instant blade assembly (i.e., the hub, nose cone, pitch system, and blades) are properly classified under heading 8412, HTSUS, in accordance with Note 2(b) to Section XVI, HTSUS, as parts suitable for use solely with a wind engine.

This position is consistent with HQ H023502, dated July 8, 2008, NY N021063, dated January 9, 2008, NY N007816, dated March 28, 2007, and NY M80880, dated April 17, 2006.

### *III. Withdrawal of the Blade Assemblies and Nacelles from an FTZ*

FTZs are established under the authority of the Foreign Trade Zones Act of 1934, as amended, 19 U.S.C. §§81a-81u. Section 81c provides for the admission of merchandise into a FTZ and its treatment and shipment to U.S. Customs Territory. Section 81c(a) explains that:

[F]oreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in this chapter, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this chapter, and be exported . . .

For tariff classification purposes, goods are “admitted,” not “entered,” into an FTZ. Only after such goods are withdrawn from the FTZ and enter U.S. territory, are they deemed entered for purposes of tariff classification. Classification of articles entered from an FTZ is, in part, dependent upon whether the articles have Privileged Foreign (PF) Status or Non-Privileged Foreign (NPF) status. As previously stated, the subject merchandise is entered under NPF status. Under Section 146.65(a)(2) of the CBP Regulations (19 C.F.R. §146.65(a)(2)), NPF status merchandise is subject to tariff classification in accordance with its character, condition and quantity as constructively transferred to customs territory at the time of entry or when an entry summary is filed with CBP.

NPF status is a residual provision which applies to foreign merchandise which does not have the status of privileged foreign merchandise or zone-restricted merchandise or is deemed as waste. *See* 19 C.F.R. §146.42(a). Insofar as the subject merchandise has NPF status, it is not subject to classification upon admission into the FTZ. Moreover, under 19 C.F.R. §146.32, goods may only be admitted into an FTZ upon submission of Cus-

toms Form 214 (“Application for Foreign Trade Zone Admission and/or Status Designation”). Classification of such goods is governed by their status at the time that application is submitted.<sup>1</sup> The instant products hold NPF status, and may therefore be classified separately upon admission to the FTZ despite arriving on the same vessel.

In HQ H024848, CBP considered whether the instant blade assemblies and nacelles should be classified separately or as a single unassembled or disassembled entity pursuant to 19 U.S.C. §1484(j)(1) upon withdrawal from an FTZ. CBP found that the importer may elect to do either.

19 U.S.C. §1484(j)(1), provides, in pertinent part, that:

(j) Treatment of multiple entries of merchandise as single transaction

In the case of merchandise that is purchased and invoiced as a single entity but - -

(1) is shipped in an unassembled or disassembled condition in separate shipments due to the size or nature of the merchandise, or

(2) is shipped in separate shipments due to the inability of the carrier to include all of the merchandise in a single shipment (at the instruction of the carrier),

the Customs Service may, upon application by the importer in advance, treat such separate shipments for entry purposes as a single transaction.

Section 1484 does not apply to the instant case because (1) the subject merchandise is both invoiced and purchased separately and (2) under the above provision, providing a single entry for separate conveyances is at the importer’s election.

A single entry for unassembled or disassembled entities imported on multiple conveyances is provided for in 19 C.F.R. §141.58, which states, in pertinent part:

Single entry for separately arriving portions of unassembled or disassembled entities.

(a) *At election of importer of record.* At the election of the importer of record, an unassembled or disassembled entity arriving on multiple conveyances as contemplated under section 484(j)(1), Tariff Act of 1930 (19 U.S.C. 1484(j)(1)), may be processed as a single entry, as prescribed under the procedures set forth in this section.

(b) *Unassembled or disassembled entities covered.* An unassembled or disassembled entity for purposes of this section is an entity which:

(1) Cannot, due to its size or nature, be shipped on a single conveyance, and is thus imported in an unassembled or disassembled condition;

\* \* \*

<sup>1</sup> 19 C.F.R. §§146.14–44 contemplates four status types under which merchandise admitted into an FTZ may fall, which include: Privileged foreign status; non-privileged foreign status; domestic status and zone-restricted status.

As Section 141.58 explains, treating dissembled or unassembled entities arriving on multiple conveyances is at the election of the importer. Accordingly, there is nothing in the regulations or in the statutes which require an importer to file a single entry for unassembled or dissembled merchandise arriving on multiple shipments or which make mandatory the treatment of separate shipments as a single transaction. More importantly, however, the instant merchandise is not an unassembled or disassembled good insofar as the imported components are often sold separately and will be shipped on separate conveyances. As such, we affirm HQ H024848 and find that Suzlon may elect to enter the instant blade assemblies and nacelles separately or as a single unassembled or disassembled entity, after they are withdrawn from an FTZ.

**HOLDING:**

By application of GRI 2(a), the nacelle is classified under heading 8502, HTSUS, specifically under subheading 8502.31.00, HTSUS, which provides for: “Electric generating sets and rotary converters: Other generating sets: Wind-powered”. The column one, general rate of duty is 2.5% *ad valorem*.

By application of GRI 1 and Note 2(b) to Section XVI, HTSUS, the blade assembly and its components are classified under heading 8412, HTSUS, specifically under subheading 8412.90.90, HTSUS, which provides for: “Other engines and motors and parts thereof: Parts: Other”. The column one, general rate of duty is free.

Suzlon may elect to enter the instant blade assemblies and nacelles separately or as a single unassembled or disassembled entity, after they are withdrawn from an FTZ.

Duty rates are provided for your convenience and are subject to change.

**EFFECT ON OTHER RULINGS:**

HQ H024848, dated December 4, 2008, is hereby MODIFIED, in accordance with the analysis contained herein.

*Sincerely,*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

