

U.S. Customs Service

General Notices

GENERAL PROGRAM TEST EXPANDED AND EXTENDED: QUOTA PREPROCESSING

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces that the quota preprocessing program test, which provides for the electronic processing of certain quota-class apparel merchandise prior to arrival of the importing carrier, will be expanded to all Customs ports and the duration of the program test will be extended until December 31, 2004.

The quota preprocessing program test is currently being conducted at a selected number of Customs ports and was set to expire on December 31, 2002. The program test is being expanded to all ports and the duration of the test extended so that Customs can continue to evaluate the program's effectiveness on a greatly increased scale pending the initiation and completion of a rulemaking process that will seek to establish the program permanently through appropriate amendments to the Customs Regulations. Public comments concerning any aspect of the program test as well as applications to participate in the test are requested.

DATES: The expansion of the test to all Customs ports is effective on October 9, 2002. The expanded program test is scheduled to run until December 31, 2004. Applications to participate in the test and comments concerning the test will continue to be accepted throughout the testing period.

ADDRESSES: Written comments regarding this notice or any aspect of the program test should be addressed to Stephen Silvestri, Quota Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Room 5.3-D, Washington, D.C. 20229, or may be sent via e-mail to Stephen.Silvestri@customs.treas.gov. An application to participate in the program test must be sent to the Customs port(s) (Attention: program coordinator for quota preprocessing) where the applicant intends to submit quota entries for preprocessing. If necessary, information on Customs port addresses may be obtained by contacting the Customs website at www.customs.gov (Office Locations).

FOR FURTHER INFORMATION CONTACT: Stephen Silvestri, Quota Branch, (202-927-5397).

SUPPLEMENTARY INFORMATION:

On July 24, 1998, Customs published a general notice in the Federal Register (63 FR 39929) announcing the limited testing, pursuant to the provisions of § 101.9(a), Customs Regulations (19 CFR 101.9(a)), of a new operational procedure regarding the electronic processing of quota-class apparel merchandise. The test was initially to be conducted at the ports located in New York/Newark and Los Angeles.

Quota preprocessing permits certain quota entries (merchandise classifiable in chapter 61 or 62 of the Harmonized Tariff Schedule of the United States (HTSUS)) to be filed, reviewed for admissibility, and to have their quota priority and status determined by Customs prior to arrival of the carrier; similar to the method of preliminary review by which non-quota entries are currently processed. The purpose of quota preprocessing is to reduce Customs processing time for qualified quota entries and to expedite the release of the subject merchandise to the importer. To this end, participants in quota preprocessing have been allowed to submit quota entries to Customs up to 5 days prior to vessel arrival or after the wheels are up on air shipments.

The July 24, 1998, Federal Register notice principally described the new procedure, specified the eligibility and application requirements for participation in the program test, and noted the acts of misconduct for which a participant in the test could be suspended and disqualified from continued participation in the program.

The initial test of the quota preprocessing procedure began on September 15, 1998, and was intended to continue for a six-month period that expired on March 14, 1999. However, on March 25, 1999, and on January 6, 2000, Customs published general notices in the Federal Register (64 FR 14499 and 65 FR 806, respectively) that extended the program test through 1999 and 2000. In addition, on November 30, 2000, Customs published another general notice in the Federal Register (65 FR 71356), further extending the program test through December 31, 2002.

These respective extensions of the test procedure were undertaken so that Customs could further evaluate the effectiveness of the program and determine whether the program test should be expanded to other ports. Consequently, by a notice published in the Federal Register (66 FR 66018) on December 21, 2001, the test was in fact expanded to a selected number of additional ports in order to enable Customs to further study the program's effectiveness and determine whether the program should be established nationwide on a permanent basis through appropriate amendments to the Customs Regulations.

Specifically, the additional ports selected to participate in the expanded program test pursuant to the December 21, 2001, Federal Register notice were: Atlanta; Boston seaport; Logan Airport, Boston; Buffalo-Niagara Falls; Champlain-Rouses Point; Chicago; Columbus; Memphis;

Miami; Miami International Airport; Newport/Portland, Oregon (the area port of Portland); Puget Sound (the ports of Seattle; and Seattle/Tacoma International Airport); San Francisco seaport; and San Francisco International Airport.

The expansion of the test to these ports was determined by the volume of quota lines of apparel merchandise entered at these ports. Because two of the additional ports selected to participate in the program test received shipments by land (Buffalo-Niagara Falls; and Champlain-Rouses Point), Customs allowed quota entries in these circumstances to be presented to Customs after the carrier departed from its location in Canada destined for the U.S. border.

PROGRAM TEST TO BE FURTHER EXPANDED AND ITS DURATION EXTENDED

In addition to the previously noted ports where the test is ongoing, Customs has now determined that the program test should be expanded to all Customs ports effective as of October 9, 2002, and that the duration of the program test should be extended until December 31, 2004. The test is being further expanded and the duration of the test extended so that Customs can continue to evaluate the program's effectiveness on a greatly increased scale pending the initiation and completion of a rule-making process that will seek to establish the program permanently through appropriate amendments to the Customs Regulations.

ELIGIBILITY CRITERIA AND APPLICATION REQUIREMENTS FOR THE PROGRAM TEST

The eligibility criteria and application requirements for participation in this latest expansion of the quota preprocessing program test are set out below. They are largely repeated from the December 21, 2001, Federal Register notice, albeit revised as appropriate to reflect the further expansion of the test. Prospective applicants may also consult the December 21, 2001, Federal Register notice as well as the July 24, 1998, Federal Register notice for a more detailed discussion of the quota preprocessing program.

IMPORTER/ENTRY ELIGIBILITY CRITERIA

Customs will only accept consumption entries of apparel merchandise subject to quota (types 02 and 07) for preprocessing which meet the following criteria:

- (1) The entry must contain at least one line classifiable in chapter 61 or 62 of the Harmonized Tariff Schedule of the United States (HTSUS);
- (2) The quota category for the line must be less than 90% full;
- (3) The entry must be filed using the Automated Broker Interface (ABI);
- (4) Payment must be made electronically through the Automated Clearinghouse (ACH); and
- (5)(a) An importer must use a carrier that is operational on the Automated Manifest System (AMS) through which the carrier will transmit the estimated date of arrival for the quota shipment to Customs, as heretofore required under the program test; however,

(5)(b) For an importer entering merchandise at a land border port of entry where an AMS carrier is not available, the importer may transmit the estimated date of arrival for the quota shipment to Customs through ABI when transmitting the entry/entry summary data for the shipment to Customs.

In this latter regard, Customs port directors at land border ports will be responsible for monitoring the availability of AMS carriers at these ports to ensure that option (5)(b) is only exercised when appropriate. It is noted that, at present, most carriers on the land borders, especially those on the Southern border, are non-AMS. The requirement that an importer use an AMS carrier was imposed initially so that the estimated date of arrival of a preprocessed quota shipment could be provided to Customs electronically. Since the quota preprocessing prototype was begun, however, Customs has determined that, in those circumstances where an AMS carrier is not otherwise available, an importer may transmit the estimated date of arrival of a quota shipment through ABI when transmitting the entry/entry summary data for the shipment to Customs.

If an importer submits a quota entry for preprocessing and the entry does not meet the criteria set forth above in items “(1)” through “(5)(a)” or “(5)(b)” as applicable, the entry summary will be rejected and the filer may not resubmit the entry summary to Customs until after the carrier has arrived. Upon arrival of the carrier, merchandise covered by a preprocessed entry will be released unless Customs decides to perform an examination. In this respect, the fact that merchandise has been processed under the quota preprocessing program will not interfere with or impede Customs ability to examine the merchandise upon its arrival, should such an examination be found to be warranted. If an examination of the merchandise is necessary, the examination will occur during the port’s regular inspectional hours.

APPLICATION TO PARTICIPATE IN QUOTA PREPROCESSING

An importer wishing to participate in quota preprocessing must submit a written application to the attention of the program coordinator for quota preprocessing at each port where the applicant intends to submit quota entries for preprocessing. The application must include the following information:

1. The specific port(s) included under the program where entries of the quota merchandise are intended to be made;
2. The importer of record number(s), including suffix(es), and a statement of the importer’s/filer’s electronic filing capabilities; and
3. Names and addresses of any entry filers, including Customs brokers, that will be electronically filing entries at each port under the program on behalf of the importer/participant.

Applicants will be notified in writing of their selection or nonselection to participate in quota preprocessing. An applicant denied participation may appeal in writing to the port director at the port where the application was denied.

Current participants in quota preprocessing that also wish to file entries under the program at any additional ports must notify, in writing, the additional port(s) at least 5 working days before submitting entries at such port(s). Also, for those that are selected to participate in the test, the July 24, 1998, Federal Register notice should be consulted regarding the acts of misconduct that may result in a participant being suspended from the program and the extent to which a participant may appeal a proposed suspension from the program.

Dated: August 30, 2002.

JAYSON P. AHERRN,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, September 9, 2002 (67 FR 57271)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, September 4, 2002.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

MICHAEL T. SCHMITZ,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF CAR
SEAT POCKETS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letter and revocation of treatment relating to tariff classification of car seat pockets.

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 intends to revoke a ruling letter pertaining to the tariff classification of certain car seat pockets under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before October 18, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 572-8780.

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 Customs 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 Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs 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 Customs intends to revoke a ruling letter pertaining to the classification of certain car seat pockets. Although in this notice Customs is specifically referring to one ruling, NY 180344, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases 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 Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY I80344 dated April 11, 2002, set forth as Attachment A to this document, Customs classified certain car seat pockets in subheading 8708.29.50, HTSUS, as: "Parts and accessories of the motor vehicles of headings 8701 to 8705: * * * Other parts and accessories of bodies (including cabs): * * * Other: * * * Other."

It is now Customs position that the car seat pockets are classified in subheading 9401.90.10, HTSUS, as: "Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: * * * Parts: Of seats of a kind used for motor vehicles." Proposed HQ 965728 revoking NY I80344 is set forth as Attachment B.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY I80344 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 965728. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: August 30, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, April 11, 2002.

CLA-2-87:RR:NC:MM:101 I80344
Category: Classification
Tariff No. 8708.29.5060

MS. MARSHA L. DAWSON
IMPORT MANAGER
GRACO CHILDREN'S PRODUCTS, INC.
P.O. Box 100
Elverson, PA 19520

Re: The tariff classification of a *Plastic and Mesh Pocket* for a car seat from China.

DEAR MS. DAWSON:

In your letter dated March 28, 2002 you requested a tariff classification ruling.

You submitted drawings and photographs of a Plastic and Mesh Pocket to attach to children's car seats. They are designed to hold bottles, juice boxes, snacks, etc. They have a frame made of polypropylene—copolymer and then nylon cording for the pocket.

The applicable subheading for the *Plastic and Mesh Pocket* will be 8708.29.5060, Harmonized Tariff Schedule of the United States (HTS), which provides for *Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other * * * Other*. The rate of duty will be 2.5% *ad valorem*.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646-733-3008.

ROBERT SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965728 GOB
Category: Classification
Tariff No. 9401.90.10

MARSHA L. DAWSON
IMPORT MANAGER
GRACO CHILDREN'S PRODUCTS INC.
P.O. Box 100
Elverson, PA 19520

Re: Revocation of NY I80344; Car Seat Pockets.

DEAR MS. DAWSON:

This is in reply to your letter of May 28, 2002, in which you request that we reconsider NY I80344 issued to you on April 11, 2002, by the Director, National Commodity Specialist Division, with respect to the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of a plastic and mesh pocket for a car seat ("car seat pocket").

Facts:

The article at issue was described as follows in NY I80344:

* * * a Plastic and Mesh pocket to attach to children's car seats. They are designed to hold bottles, juice boxes, snacks, etc. They have a frame made of polypropylene—copolymer and then nylon cording for the pocket.

In your letter of August 19, 2002, you state:

This letter will confirm that the mesh cupholders * * * are not being sold as a separate item * * *

The Mesh Cupholder Model #P1931 is currently being used on our Cargo series of car seats (#8489 series). The Model #P1930 Mesh Cupholder is currently being used on our Comfort Sport series of car seats (Series #8431 & 8432) * * *

We have included these cupholders [with the car seats] to make travel for the child more user friendly and to provide additional features for the car seats.

The product information in the file provides as follows for both the Accel/Comfort Sport Carseat Mesh pocket (P1930) and the Cargo Booster Seat Mesh Pockets (P1931):

Materials:	Plastic Frame:	Polypropylene—copolymer
	Fabric Component:	Nylon fabric
		0.06" thick high density polyethylene (HDPE)
		plastic insert
		Polyester Mesh 300 Denier
		Polyester Binding
		0.08" Diameter Nylon cording

The car seat pockets are essentially plastic tray frames that hook onto the front of car seats. There are notches or holes in the car seat which line up with "teeth" in the car seat

holder. A mesh pocket forms the center of the tray. The shape of the plastic frame is slightly different for each of the two models.

You state that the car seats referenced above (series 8431, 8432, and 8489) are only sold with the subject car seat pockets. Other models of car seats are sold without car seat pockets.

In NY I80344, Customs classified the car seat pocket in subheading 8708.29.50, HTSUS. We have that reviewed the classification and have determined that it is incorrect. This ruling sets forth the correct classification.

Issue:

What is the classification under the HTSUS of the car seat pockets?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRI’s”). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI’s may then be applied. GRI 2 is not applicable here. GRI 3(a) provides in pertinent part that where goods are *prima facie* classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description.

The Harmonized Commodity Description and Coding System Explanatory Notes (“EN’s”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN’s 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.

The HTSUS provisions under consideration are as follows:

8708	Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs):
8708.29	Other:
8708.29.50	Other
*	*
*	*
*	*
*	*
*	*
*	*
9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
9401.90	Parts:
9401.90.10	Of seats of a kind used for motor vehicles

When Customs classified the car seat pockets in subheading 8708.29.50, HTSUS, in NY I80344, it was on the basis that the car seat pockets were *accessories* of the motor vehicles of headings 8701 to 8705. Heading 8708, HTSUS, covers: “Parts and accessories of the motor vehicles of headings 8701 to 8705.” The superior language to heading 8708.21.00, HTSUS, through subheading 8708.29.50, HTSUS, covers: “Other parts and accessories of bodies (including cabs).” In order for the car seat pockets to be described in heading 9401, HTSUS, the goods must be *parts* of seats, i.e., heading 9401, HTSUS, does not include accessories. A crucial inquiry, therefore, is whether the car seat pockets are parts of car seats.

In *Bauerhin Technologies Limited Partnership v. United States*, 110 F.3d 774 (C.A.F.C. 1997), *aff’g* 914 F. Supp. 554, 19 CIT 1441 (1995), the court addressed the issue as to whether certain canopies for child seats were “parts” as that term is used in the HTSUS. In trying to reconcile earlier cases with respect to what constituted a “part,” the court stated in pertinent part:

The parties seem to take differing positions regarding whether *Willoughby Camera* [21 C.C.P.A. 322 (1933)] or *Pompeo* [43 C.C.P.A. 9 (1955)] is the controlling precedent for determining whether an imported item is or is not a “part” within the meaning of the tariff schedules. We conclude that these cases are not inconsistent and must be read together. As set forth in *Willoughby Camera*, an “integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article” is surely a part for classification purposes. 21 C.C.P.A. at 324. However, that test is not exclusive. *Willoughby Camera* does not address the situation where an imported item is dedicated solely for use with an article. *Pompeo* addresses that scenario and states that such an item can also be classified as a part.

Reconciling *Willoughby Camera* with *Pompeo*, we conclude that where, as here, an imported item is dedicated solely for use with another article and is not a separate and

distinct commercial entity, *Pompeo* is closer precedent and *Willoughby Camera* thus does not apply. See *Gallagher & Ascher Co. v. United States*, 52 C.C.P.A. 11, 15–16 (1964) (noting that *Trans Atlantic Co. v. United States*, 48 C.C.P.A. 30 (1960), expressly limited the rule in *Willoughby* “to fact situations of the precise type which the court there had before it”). Under *Pompeo*, an imported item dedicated solely for use with another article is a “part” of that article within the meaning of the HTSUS. The canopies in this case are dedicated solely for use with the child safety seats. They are neither designed nor sold to be used independently. Therefore, the canopies are properly considered parts under the HTSUS.

We believe the *Bauerhin* case is instructive and “on point” here. Similar to the canopies in *Bauerhin*, the car seat pockets in this protest are dedicated solely for use with the respective car seats; they are neither designed nor sold to be used independently. Also, the specific car seats with which the car seat pockets are sold are not sold without the subject car seat pockets. Accordingly, we find that the *Pompeo* analysis as articulated in *Bauerhin* applies here. Therefore, the car seat pockets are described in heading 9401, HTSUS, as parts of seats. Pursuant to GRI 3(a), heading 9401, HTSUS, provides a more specific description of the car seat pockets than does heading 8708, HTSUS. Accordingly, at GRI 3, we find that the car seat pockets are provided for in heading 9401, HTSUS, and are classified in subheading 9401.90.10, HTSUS, as: “Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: * * * Parts: Of seats of a kind used for motor vehicles.”

Holding:

At GRI 3, the car seat pockets (models P1930 and P1931) are classified in subheading 9401.90.10, HTSUS, as: “Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: * * * Parts: Of seats of a kind used for motor vehicles.”

Effect on Other Rulings:

NY I80344 is revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
RHODORSIL® HYDROFUGENT 68

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the tariff classification of Rhodorsil® Hydrofugent 68.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of Rhodorsil® Hydrofugent 68, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before October 18, 2002.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings. Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Comments submitted may be inspected at the U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 572-8784.

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 Customs 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 Customs 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 Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of bulk importations of Rhodorsil® Hydrofugent 68. Although in this notice Customs is specifically referring to New York ruling (NY) 829883, dated May 20, 1988, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the

merchandise subject to this notice, should advise Customs 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, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importation of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions, or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importation of merchandise subsequent to this notice.

In NY 829883 it was determined that Rhodorsil® Hydrofugent 68 products were classifiable in subheading 3809.91.00, HTSUS, which provides for "[f]inishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included: [o]ther: [o]f a kind used in the textile or like industries." NY 829883 is set forth as Attachment A.

The instant merchandise, 100% siloxane polymer, is a liquid silicone used in the manufacture of paper coatings, cylinder head gaskets and as a water repellent. It is specifically provided for in subheading 3910.00.00, HTSUS, as "[s]ilicones in primary forms" and is therefore excluded from classification in heading 3809, HTSUS.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY 829883, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 965738 (Attachment B to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 30, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, May 20, 1988.
CLA-2-04:S:N:N1:235 829883
Category: Classification
Tariff No. 3809.91.0000

MR. R. C. MEOLA
CORPORATE DISTRIBUTION SERVICES
RHONE-POULENC INC.
CN 5266
Princeton, NJ 88543-5266

Re: The tariff classification of Rhodorsil Hydrofugent 68 from France.

DEAR MR. MEOLA:

In your letter dated April 24, 1988, you requested a tariff classification ruling under the Harmonized Tariff Schedule of the United States (HTS), which is scheduled to replace the Tariff Schedules of the United States (TSUS) in 1988. Public notice of the exact date will be given.

According to your letter, Rhodorsil Hydrofugent 68 is composed of polymethylhydrogensiloxane.

The applicable HTS subheading for the Rhodorsil Hydrofugent 68 will be 3809.91.0000, which provides for textile agents. The rate of duty will be _____ percent ad valorem.

This classification represents the present position of the Customs Service regarding the dutiable status of the merchandise under the HTS. If there are changes before enactment this advice may not continue to be applicable.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs Officer handling the transaction.

JEAN F. MAGUIRE,
*Acting Area Director,
New York Seaport.*

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA-2 RR:CR:GC 965738 AM
Category: Classification
Tariff No. 3910.00.00

MS. NORA H. BAHR
RHODIA, INC.
CN 7500
Cranbury, NJ 08512

Re: NY 829883 revoked: Rhodorsil® Hydrofugent 68.

DEAR MS. BAHR:

This is in reference to New York Ruling Letter (NY) 829883, dated May 20 1988, addressed to Rhone-Poulenc Inc., concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of Rhodorsil® Hydrofugent 68. Rhone-Poulenc Inc. underwent a name change to Rhodia, Inc. in 1998. In NY 829883, it was determined that Rhodorsil® Hydrofugent 68 was classifiable in subheading

3809.91.00, HTSUS, which provides for “[f]inishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included: [o]ther: [o]f a kind used in the textile or like industries.”

We have reconsidered NY 829883, and find the classification for the subject merchandise in NY 829883 to be incorrect.

Facts:

The subject merchandise, Rhodorsil® Hydrofugent 68, is a clear liquid silicone resin composed of polymethylhydrogensiloxane (CAS 63148-57-2) with a molecular weight range of 2500-3200. Rhodorsil® Hydrofugent 68 is used as used in the manufacture of paper coatings, cylinder head gaskets and as a water repellent.

Issue:

Is the instant merchandise classifiable as a silicone in primary form or as a textile agent?

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUSA. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The following HTSUS provisions are relevant to the classification of this product:

3809 Finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included:

* * * * *

3910 Silicones in primary forms:

EN 38.09 states that the heading includes, *inter alia*, “(A)(13) [w]ater-repellent agents, generally consisting of aqueous emulsions of water-repellent products (such as waxes or lanolin) stabilised by cellulose ethers, gelatin, glue, organic surface-active agents, etc., and containing added soluble salts of, for example, aluminium or zirconium. This group of products also includes preparations based on silicones and on fluorine derivatives.” Furthermore, the heading explicitly excludes “(g) [e]mulsions, dispersions or solutions of polymers (heading 32.09 or Chapter 39).”

EN 39.10 states, in pertinent part, the following:

The silicones of this heading are non-chemically defined products containing in the molecule more than one silicon-oxygen-silicon linkage, and containing organic groups connected to the silicon atoms by direct silicon-carbon bonds.

They have a high stability and may be either liquid, semi-liquid or solid. The products include silicone oils, greases, resins and elastomers.

(1) Silicone oils and greases are used as lubricants remaining stable at high or low temperatures, as water-repellent impregnating products, as dielectric products, as foam inhibitors, as mould release agents, etc. * * *.

(2) Silicone resins are used mainly in the manufacture of varnishes, insulating or water-proof coatings, etc., where stability at high temperature is required. They are also used in the preparation of laminates with glass fibre, asbestos or mica as the reinforcing material, as flexible moulds and for electrical encapsulation.

The instant product is 100% siloxane polymer. It is not like the products described in EN 38.09 *supra*. It is not an aqueous emulsion, it is not stabilized and it does not contain solu-

ble salts. Moreover, if classifiable as a silicone polymer of Chapter 39, HTSUS, it is specifically excluded from classification in heading 3809, HTSUS.

The instant merchandise is a liquid silicone used in the manufacture of paper coatings, cylinder head gaskets and as a water repellent. EN 39.10 specifies such products as classifiable in heading 3910, HTSUS, the provision for “[s]ilicones in primary forms.”

Holding:

Rhodorsil® Hydrofugent 68 is classified in subheading 3910.00.00, HTSUS, the provision for “[s]ilicones in primary forms.”

Effect on Other Rulings:

NY 829883 is revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

WITHDRAWAL OF PROPOSED MODIFICATION OF RULING
LETTER AND REVOCATION OF TREATMENT RELATING TO
CLASSIFICATION OF MEMORY CARDS FOR VIDEO GAME
MACHINES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of withdrawal of proposed modification of ruling letter and revocation of treatment relating to tariff classification of memory cards for video game machines.

SUMMARY: This notice advises interested parties that Customs is withdrawing its proposal to modify a ruling letter pertaining to the classification of memory cards for video game machines and revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed revocation was published in the CUSTOMS BULLETIN of August 14, 2002, Vol. 36, No. 33, 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).

EFFECTIVE DATE: September 18, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Peter Beris, General Classification Branch, 202-572-8789.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the CUS-

TOMS BULLETIN on August 14, 2002, proposing to revoke NY 813932, dated August 23, 1995, which classified, among other items, a memory card for the Sony PlayStation video game console under subheading 9504.10.00, HTSUS, which provides for articles for arcade, table or parlor games * * * parts and accessories thereof: video games of a kind used with a television receiver * * * parts and accessories thereof. Subsequent to the publication of the notice, we have had an opportunity to re-examine the reasoning for the proposed revocation, and now find that the original analysis was correct.

Therefore, this notice advises interested parties that Customs is withdrawing its proposed revocation of the ruling set forth above.

NY 813932 will remain in full force and effect.

Dated: August 30, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO THE TARIFF CLASSIFICATION
OF TEXTILE FRIENDSHIP BRACELETS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a ruling letter and revocation of treatment relating to the tariff classification of certain textile friendship bracelets.

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 is proposing to revoke a ruling letter related to the classification of certain textile friendship bracelets under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Similarly, Customs intends to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before October 18, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at U.S. Customs Service, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements

to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Textile Branch (202) 572-8821.

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 Customs 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 Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs 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 Customs intends to revoke a ruling letter relating to the classification of certain textile friendship bracelets. Although in this notice Customs is specifically referring to Headquarters Ruling Letter (HQ) 088332, dated March 19, 1991, this notice covers any rulings on such merchandise which may exist but have not been specifically identified. Customs 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 issues subject to this notice, should advise Customs during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States An-

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

In HQ 088332, dated March 19, 1991 (which was named in error as a modification), Customs reclassified a textile bracelet in subheading 5609.00.1000, HTSUSA, which provides for "articles of yarn, strip or the like of heading 5404 or 5405, twine cordage, rope or cables, not elsewhere specified or included: of cotton."

Customs has reviewed this ruling and, with regard to the classification of this merchandise, has determined that the ruling is in error. Accordingly, we intend to revoke HQ 088332, as we find that the textile friendship bracelet is classifiable in subheading 6217.10.9510, HTSUSA, which provides for "other made up clothing accessories; parts of garments or of clothing accessories, other than those in heading 6212: accessories: other: other, of cotton."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 088332 (see "Attachment A" to this document) and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 964977 (see "Attachment B" to this document).

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 29, 2002.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, March 19, 1991.
CLA-2 CO:R:C:T 088332 JS
Category: Classification
Tariff No. 5609.00.1000

MARTY LANGTRY
CASTELAZO & ASSOCIATES
5420 West 104th Street
Los Angeles, CA 90045

Re: Modification of HQ 086975; Textile Bracelet; Article of Yarn.

DEAR MR. LANGTRY:

Headquarters Ruling Letter (HRL) 086975, issued to you on behalf of Pangea Imports on July 24, 1990, classified a textile bracelet as a clothing accessory under heading 6217 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Upon further review, we determine that ruling to be in error.

Facts:

Although no sample was provided with the present request, the merchandise at issue has been previously inspected by Customs; thus, the description contained in HRL 086975 will suffice in this instance.

In your letter of November 14, 1990, you request reconsideration of the above ruling and submit various arguments on behalf of classification within headings 7117, or in the alternative, heading 5609, HTSUSA. With regard to Chapter 71 Note 3(f), you state your belief that textile articles are not necessarily articles of Section XI, and should not, therefore, be excluded from this chapter.

Issue:

Whether textile bracelets are considered clothing accessories of heading 6217, HTSUSA, articles of yarn of heading 5609, HTSUSA, or jewelry of heading 7117, HTSUSA?

Law and Analysis:

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

Although classification of the present item as a bracelet of heading 7117, HTSUSA, seems, at least, prima facie logical, Chapter Note 3(f) expressly bars goods of Section XI (textiles and textile articles). This means that all textiles and textile articles are excluded from Chapter 71 because such textiles and articles thereof are, ipso facto, articles of Section XI. We thus reiterate that, since the friendship bracelet is made of cotton textile, it may not be considered for classification within heading 7117, HTSUSA.

The remaining issue is whether this article, which is used as a bracelet, may be considered "other made up clothing accessories" of heading 6217, HTSUSA. The Explanatory Notes (EN), the official interpretation of the tariff at the international level, state that heading 6217 covers made up textile clothing accessories * * * not specified or included in other headings of this Chapter or elsewhere in the Nomenclature. In addition, it provides a list of examples that include items such as belts, collars, pockets, lanyards, etc.

Although a bracelet may be likened to a lanyard, GRI 2(a) provides that when goods are classifiable under two headings, the more specific description shall be preferred to the more general description. It is Customs position that the term "an article of cordage" describes the subject merchandise more specifically than the term "other made up clothing accessories." Therefore, pursuant to GRI 2(a), the subject merchandise is properly classified in heading 5609, HTSUSA, as an article of yarn.

Heading 5609, HTSUSA, provides for, inter alia, articles of yarn. EN 56.09 states that this heading covers articles of the yarns of Chapters 50 to 55, as well as yarns, cordage, rope, etc., cut to length and looped at one or both ends, or fitted with tags, rings, hooks, etc. The bracelet at issue is formed by cutting lengths of yarn which are twisted or braided, and looped at one end. Since cotton is encompassed by Chapter 52 and the present article is

constructed in the manner of the cordage or rope described by the terms of this heading, classification of the present merchandise in heading 5609, HTSUSA, is appropriate.

Holding:

Classification of the bracelet at issue is classified under heading 5609.00.1000, HTSUSA, which provides for articles of yarn, strip or the like of heading 5404 or 5405, twine cordage, rope or cables, not elsewhere specified or included: of cotton, dutiable at the rate of 5.8 percent ad valorem.

In order to assure uniformity in Customs classification of this merchandise and eliminate uncertainty, we are modifying HRL086975 to reflect the above classification effective with the date of this letter. However, if after your review, you disagree with the legal basis for our decision, we invite you to submit any argument you might have with respect to this matter for our review. Any submission you wish to make should be received within 30 days of the date of this letter.

HRL 086975 is modified accordingly pursuant to 19 C.F.R. §177.9(d). This modification is not to be applied retroactively to HRL 086975 (19 C.F.R. §177.9(d)(2) (1989)) and will not, therefore, affect the transaction for importation of your client's merchandise under that ruling. However, for the purposes of future transactions in merchandise of this type, including that for which the present classification was requested, HRL 086975 will not be valid precedent. We recognize that pending transactions may be adversely affected by this modification, in that current contracts for importation arriving at a port subsequent to the release of HRL 086975 will be classified under this ruling. If such a situation arises, your client may, at its discretion, notify this office and apply for relief from the binding effects of the new ruling as may be dictated by the circumstances. However, please be advised that in some instances involving import restraints, such relief may require separate approvals from other government agencies.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available we suggest your client check, close the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact its local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Operations Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 964977 TF
Category: Classification
Tariff No. 6217.10.9510

MARTY LANGTRY
CASTELAZO & ASSOCIATES
5420 West 104th Street
Los Angeles, CA 90045

Re: Revocation of HQ 088332; classification of a textile bracelet.

DEAR MR. LANTRY:

In HQ 088332, dated March 19, 1991 (which was named in error as a modification), Customs reclassified a textile bracelet in subheading 5609.00.1000, HTSUSA, which provides

for “articles of yarn, strip or the like of heading 5404 or 5405, twine cordage, rope or cables, not elsewhere specified or included: of cotton.”

We have reviewed this ruling and found it to be in error. Therefore, this ruling revokes HQ 088332.

Facts:

The subject textile bracelet was previously classified in HQ 086975 dated July 24, 1990 in subheading 6217.10.0010, HTSUSA, which provided for “other made up clothing accessories, * * *, accessories, of cotton.”

The subject bracelet is manufactured in Guatemala and is represented as a friendship bracelet made of 100 percent cotton yarn. It is composed of blue, pink and green yarns which are woven into a narrow strip approximately nine centimeters long and then braided into two strands about 14 centimeters long. It is fastened by pulling one strand through a loop in one end and tying it to the other strand.

Issue:

What is the correct classification of the subject textile friendship bracelet within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. Where goods cannot be classified solely on the basis of GRI 1, and if the headings or notes do not require otherwise, the remaining GRIs, 2 through 6, may be applied.

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

HQ 088332, dated March 19, 1991, Customs reclassified the subject article in heading 5609. Heading 5609, HTSUSA, covers, *inter alia*, articles of twine, cordage, rope or cables, not elsewhere specified or included. The EN to heading 5609 provides that the heading includes:

* * * articles of twine, cordage, rope or cables of heading 56.07, other than those covered by a more specific heading in the Nomenclature.

It includes yarns, cordage, rope, etc., cut to length and looped at one or both ends, or fitted with tags, rings, hooks, etc., (e.g. shoe laces, clothes lines, towing ropes), ships' fenders, unloading cushions, rope ladders, loading slings, dish “cloths” made of a bundle of yarns folded in two and bound together at the folded end, etc.

The EN also explains that the heading does not cover, among other things, textile fabrics and articles made from such fabrics, which are classified in their appropriate headings.

In HQ 086609, dated April 12, 1990, Customs considered two headings, 5609 as an “article of cordage” and 6217 as “other made up clothing accessories” to classify a polypropylene cord bracelet. The cord was to be imported from the West Indies either in cut pieces ready to make the tie, or on spools to be cut and tied and returned to the U.S. Customs excluded heading 6217 as the cord, in its condition as imported, was more appropriately classified pursuant to GRI 3(a), which provides for classifying merchandise under the heading with the more specific description, in heading 5609, which provides for “an article of cordage.”

In this instance, the bracelet is a type of jewelry. Chapter 71, HTSUSA, encompasses, among other things, imitation jewelry. Imitation jewelry is defined in Note 11, Chapter 71 as:

Articles of jewelry within the meaning of paragraph (a) of note 9 above (but not including buttons or other articles of heading 9606, or dress combs, hair slides or the like, or hairpins, of heading 9615), not incorporating natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

Articles of jewelry are described in Note 9 to Chapter 71, in pertinent part, as follows:

- a) Any small objects of personal adornment (gem-set or not) (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia)

* * * * *

The subject bracelet is jewelry, that is a small article of personal adornment, within the meaning of Note 9 to Chapter 71. It also meets the terms of Note 11 of Chapter 71, as an article of imitation jewelry. However, Note 3(g) to Chapter 71, HTSUSA, excludes “Goods of section XI (textiles and textile articles)” from classification within that chapter. As the subject bracelet is made of textile, it is excluded from classification within Chapter 71.

We now consider heading 6217, HTSUSA, which provides for other made up clothing accessories. The term accessory is not defined in the Tariff or the Explanatory Notes. *Merriam-Webster’s New Collegiate Dictionary*, (10th Edition), defines “accessory” as “a thing of secondary or subordinate importance;” or “an object or device not essential in itself but adding to the beauty, convenience, or effectiveness of something else.” The definition of accessory includes articles that add to the beauty of something else. Although one may view jewelry as purely decorative in nature, Customs does not find this a prohibition to classify jewelry as accessories of heading 6217. For example, in New York Ruling Letter 858606, dated December 18, 1990, Customs determined that a children’s woven nylon wrist bracelet, which was essentially a piece of jewelry that accented or completed clothing, met the definition of accessory and classified the bracelet in heading 6217. We find that in this instance, this determination is applicable.

Further, Customs has long held that textile bracelets can be considered clothing accessories.¹ In HQ 955385, dated April 13, 1994, Customs considered both heading 6217 and 6307 for classifying a yellow, woven textile wrist bracelet with a hook and loop fastener and a person’s name embroidered upon it in a contrasting color. By application of GRI 1, the article was classified in heading 6217 on the basis that the merchandise was made wholly of textile material and excluded by Note 3(f) to Chapter 71.

In this instance, the subject article is made of 100 percent woven cotton yarn into a narrow strip and then braided into two strands. We do not find heading 5609 to be applicable because the article is not of cord but of woven cotton fabric. Further, heading 6307 is not applicable because it is a residual provision for “other made up articles of textiles” within Section XI that are not more specifically provided elsewhere within the Tariff. In the instant case, the subject bracelet is not *ejusdem generis* within the enumerated articles of heading 5609, and heading 6217 covers the article more specifically and is more appropriate than heading 6307.

Therefore, based on the foregoing, we conclude that the article at issue is more suitable for classification within heading 6217, HTSUSA.

Holding:

HQ 088332, dated March 19, 1991 (which was erroneously labeled a modification) is hereby revoked. At GRI 1, the textile friendship bracelet is classified in subheading 6217.10.9510, HTSUSA, which provides for “other made up clothing accessories; parts of garments or of clothing accessories, other than those in heading 6212: accessories: other: other, of cotton.” The general column one duty rate is 14.8 percent *ad valorem*.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office. The *Status Report on Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

¹ For example, some rulings where textile bracelets have been classified as “Other made up clothing accessories” are: NY 182882, dated June 27, 2002 (woven 100% cotton fabric bracelet sewn on 100% PVC backing); NY F85284, dated April 17, 2000 (woven cotton fabric bracelet decorated with flower like items on the front with hook and loop closure); NY F85283, dated April 14, 2000 (woven cotton fabric bracelet with hook and loop closure); NY C80969, dated October 23, 1997, classifying in pertinent part, a 100% cotton rope bracelet made from fabric).

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF MULTI- FUNCTIONAL DIGITAL OFFICE MACHINES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letters, and treatment relating to tariff classification of multifunctional digital office machines.

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 is revoking seven ruling letters pertaining to the tariff classification of multifunctional digital office machines under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation was published on July 24, 2002, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Peter Beris, General Classification Branch, at (202) 572-8789.

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

Pursuant to Customs obligations, a notice was published on July 24, 2002, in Vol. 36, No. 30 of the CUSTOMS BULLETIN, proposing to revoke New York Ruling Letters (NY) 892321; F80927; E81729; E80322; E82212; E80009; and D87961 pertaining to the tariff classification of certain multifunctional digital office machines. Three (3) comments were received in response to this notice. Two commenters, while not disputing the position taken by Customs, requested clarification as to the meanings of the terms "optional controller" and "optional printer controller." The other commenter, while agreeing with Customs decision to reclassify certain multi-function digital office machines from heading 9009, HTSUS, felt that they should be classified under heading 8471, HTSUS, as "units" of ADP machines, despite the fact that they are not connectable to ADP machines at the time of their importation. This commenter also asked for clarification as to the meaning of the terms "optional controller" and "optional printer controller." These comments will be discussed in the text of the rulings hereinafter cited.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY 892321; NY D87961; NY E80009; NY E80322; NY E81729; NY E82212; and NY

F80927, in order to reflect the proper classification of the merchandise pursuant to the analysis in HQ 965527; HQ 965636; HQ 965679; HQ 965680; HQ 965681; HQ 965682; and HQ 965697, which are set forth as Attachments A through G to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

Dated: August 30, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, August 30, 2002.

CLA-2 RR: CR: GC 965527 TPB
Category: Classification
Tariff No. 8472.90.80

MR. RAYMOND VALDES
RICOH CORPORATION
*5 Dedrick Place
West Caldwell, NJ 07006*

Re: Ricoh MV715 Multi-function Digital Office Machine; Fax, Copier, Optional Printer Interface; NY 892321 Revoked.

DEAR MR. VALDES:

This is in reference to NY 892321, issued to you on December 8, 1993, in response to your letter of November 19, 1993 to the Director, Customs National Commodity Specialist Division, New York, requesting a tariff classification ruling on the Ricoh MV715 multi-function digital office machine under the Harmonized Tariff Schedule of the United States ("HTSUS").

NY 892321 classified the MV715 multi-function digital office machine under subheading 9009.12.00, HTSUS. We have had an opportunity to review this classification, and now believe it to be incorrect for the reasons explained below. This ruling also provides the correct classification for the Ricoh MV715.

Facts:

The product at issue is a multi-function digital office machine, model Ricoh MV715, which combines the functions of a high-speed laser fax hub and digital copying apparatus. In its imported condition, the MV715 functions as a stand alone digital fax/copier. A printer interface is an optional item for the MV715. This would allow the MV715 to function as an ADP laser printer, however, this is not in the machine at time of importation.

In facsimile mode, the Ricoh MV715 fax/copier is designed as a laser hub for fax networks, and other applications. Its high speed modem transmits documents to other 14.4 kilobytes per second ("kbps") machines, in six seconds per letter-size page, over regular telephone lines. The MV715 multifunction digital office machine permits users to scan documents into memory while the unit is printing, receiving or sending documents from memory.

In copying mode, the MV715 has a platen-type digital scanner, which allows it to scan books and other bulky items. Individual documents may also be scanned through the document feeder. It has variable magnification from 25% to 400% in 1% increments and has an output of 15 pages per minute.

The HTSUS provisions under consideration are as follows:

- | | |
|------|---|
| 8443 | Printing machinery used for printing by means of printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof: |
| 8472 | Other office machines (for example hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines): |
| 8517 | Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunications for carrier-current line systems or for digital line systems * * * |
| 9009 | Photocopying apparatus incorporating an optical system or of the contact type and thermocopying apparatus; parts and accessories thereof: |

Issue:

What is the classification of the Ricoh MV715 multi-function digital office machine?

Law and Analysis:

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

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

As imported, the Ricoh MV715 is a multi-function digital office machine that has the capability to transmit and receive faxes via a built in modem and to scan documents and convert them to digital signals, which the MV715 can store in temporary memory. The MV715 can either transmit stored documents via the fax, or print them via the attached laser print engine. The print function, in this case, is a necessary component to both the fax and scanning capabilities of the MV715.

Heading 9009, HTSUS, provides for “photocopying apparatus incorporating an optical system or of the contact type and thermocopying apparatus; parts and accessories thereof.” EN 90.09(A) states that an optical system projects an optical image of an original document on to a light sensitive surface, and components for the developing and printing of the image. With this in mind, it is the opinion of Customs that all photo-copying apparatus of heading 9009, whether electrostatic, contact or thermal design, operate by means of exposing (1) a photosensitive material or surface with (2) light that is reflected directly from the object to be copied. This process produces an “optical image” to produce a copy.

An optical image is the optical counterpart of an object, produced by an optical device (as a lens or mirror); the image is formed by the light rays from a light source that traverse an optical system. The optical image of an object is produced by the light distribution coming from each point of the object at the image plane of an optical system. See *McGraw-Hill Multimedia Encyclopedia of Science and Technology, Version 2.1*. A photocopying apparatus functions by a process which places an optical image, reflected from the object, onto a photosensitive surface.

Multi-function digital machines, or “copiers”, incorporate an optical reader, or scanner coupled with an output device to print onto paper that which has been scanned or recorded. An optical reader cannot produce a photo-copy from an optical image. It does not operate by the reflection and exposure of an optical image onto a photosensitive surface. Instead, optical readers operate with a CCD chip to scan and convert individual points of light from an object into a digital data file. Therefore, consideration of heading 9009 is excluded by the terms of the heading.

Note 3 to Section XVI provides that:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

In this case, the MV715 is a composite machine, which is composed of a fax machine and a digital copier. These two machines are adapted for the purpose of performing two alternative functions (i.e., faxing and copying).

The MV715 cannot be classified under heading 8443, HTSUS, because it does not meet the terms of the heading. It does not print by any of the methods described in that heading, but rather through laser technology. Therefore, the headings under consideration are 8472, HTSUS, which provides for office printers other than those of heading 8443 or 8471; and heading 8517, HTSUS, which provides for facsimile machines. Following Note 3 to Section XVI, HTSUS, this composite machine will be classified by its principal function.

To assist in determining the principal function of a machine, we examine a number of factors, and while no one is determinative, they are indicative of principal function. After conducting independent research (ex., researching web-sites retailing new and used digital machines; examining advertising brochures; etc.), we believe that it is the printing performed by the digital copier that imparts the principal function of this multi-function digital office machine. Therefore, pursuant to Section XVI, Note 3, HTSUS, the MV715 will be classified as if it consisted solely as a digital copier of heading 8472, HTSUS.

The MV715 meets the terms of heading 8472, HTSUS. It is an office machine other than those that are classifiable in earlier headings of chapter 84, or in heading 9009, HTS. Therefore, the Ricoh MV715 is properly classified under 8472.90.80, HTSUS, which provides for office printing machines other than those of heading 8443 or 8471, HTSUS.

One commenter claimed that the MFD machine should nonetheless be classified under heading 8471 as a matter of act and law. That submission claimed that because the MFD copier may be connected to an ADP machine through the aforementioned absent printer controllers that it still meets the requirements of Note 5 (B)(b), HTSUS, in that it is connected to the CPU of an ADP machine, not directly, but through one or more other units (i.e., the printer controller). However, as mentioned above, in its condition as imported, the Ricoh MV715 does not come with this printer controller. It is imported as a complete and fully functional MFD copier, and therefore, is classified as such.

Furthermore, the comments submitted indicate that all printers for data processing systems require a controller board in order to connect to the central processing unit of the system and that this controller board is a conduit for the transmission and reception of information. Even if we were to accept, *arguendo*, that because the MFD copier may at some future point in time be connected to an ADP machine through the optional printer controller, and accept that that would be enough to satisfy the requirement of Note 5(B)(b), the MFD copier would still fail to satisfy the requirements of Note 5(B)(c), because, by the commenters own admission, without the card, the copier is not able to accept or deliver data in a form which can be used by the system. It is the role of the printer card to facilitate this communication.

As described in the "Facts" section above, an optional printer controller adapts as digital copier so that it may be used as a printer for an ADP machine or system. These cards are not standard equipment and may be added post importation. Should importers have any further questions as to this classification of specific goods consequent to this notice, they may write to the National Commodity Specialist Division, New York, for a ruling.

Holding:

At GRI 1 the principal function of a multi-function digital office machine that can fax and copy is that of copying. Thus, the proper classification of the multi-function digital office machine is under subheading 8472.90.80, HTSUS, which provides for other office machines * * * other * * * printing machines other than those of heading 8443 or 8471.

Effects on Other Rulings:

NY 892321 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
 U.S. CUSTOMS SERVICE,
 Washington, DC, August 30, 2002.
 CLA-2 RR: CR: GC 965636 TPB
 Category: Classification
 Tariff No. 8472.90.80

MR. FUSAE NARA
 WINTHROP, STIMSON, PUTNAM & ROBERTS
 One Battery Park Plaza
 New York, NY 10004

Re: Sharp Electronics; AR-335; AR-5132; Multi-function Digital Office Machine; Copier; Optional Printer Interface; NY D87961 Revoked.

DEAR MR. NARA:

This is in reference to NY D87961, issued to you on February 25, 1999, in response to your letter of February 12, 1999 to the Director, Customs National Commodity Specialist Division, New York, requesting a tariff classification ruling on the Sharp models AR-335 and AR-5132 multi-function digital office machines under the Harmonized Tariff Schedule of the United States ("HTSUS").

NY D87961 classified the multi-function digital office machines under subheading 8471.60.6100, HTSUS. We have had an opportunity to review this classification, and now believe it to be incorrect for the reasons explained below. This ruling also provides the correct classification for the Sharp AR-335 and AR-5132.

Facts:

The products at issue are multi-function digital office machines, Sharp models AR-335 and AR-5132. They are describe in NY D87961 as follows:

The merchandise under consideration involves the models AR-5132 and AR-335 digital copier/printers which incorporate a laser printer engine. Both models are designed to be used as output units in an automatic data processing (ADP) machine environment, in addition to functioning as a copier.

When an optional controller board is attached, the AR-5132 and the AR-335 function as a printer. Documents can be printed from a personal computer directly connected to the parallel port of either model or from personal computers connected to model AR-5132 or model AR-335 by means of a local area network (LAN).

The AR-5132 features 400 dots per inch (dpi) resolution and is capable of printing more than 20 pages per minute when printing on standard letter size paper. The resolution of the AR-335 is 600 dpi. It is also capable of printing more than 20 pages of standard letter size paper per minute.

The AR-5132 and AR-335 multifunctional digital copier/printers also function as digital copiers. When used as copiers, the merchandise produces black and white copies with 256 levels of gradation. The digital copier incorporates a scanning mechanism that reads the document to be copied, which is converted into digital signals which are then fed to the internal printer memory. A copy of the document is then printed from the internal printer memory by using the laser print mechanism. Thus when the subject multifunction equipment is used as a digital copier, the system uses the same laser printer engine that is used for printing documents when the product is used as a printer.

* * * * *

A printer interface is an optional item for both machines. This interface would allow them to function as ADP laser printers. However, this part is not in the machines at time of importation.

The HTSUS provisions under consideration are as follows:

- | | |
|------|---|
| 8443 | Printing machinery used for printing by means of printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof: |
| 8471 | Automatic data processing machines, and units thereof; magnetic or optical readers, machines for transcribing data onto media in coded form and machines for processing such data, not elsewhere specified or included: |

- 8472 Other office machines (for example hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines):

Issue:

What is the classification of the Sharp AR-335 and 5132 multi-function digital office machines?

Law and Analysis:

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

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

As imported, the AR-335 and AR-5132 are digital imaging systems, which scan documents and store them as digital information in memory. The data is then printed via a connected print engine. Classification of units of ADP machines is governed by the terms of Legal Note 5 to Chapter 84, HTSUS, which provides in relevant part as follows:

(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being part of an complete system if it meets all the following conditions:

(a) * * *

(b) It is connectable to the central processing unit either directly or through one or more other units; and

(c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

(C) * * *

(D) Printers, keyboards, X-Y co-ordinate devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and (B)(c) above, are in all cases to be classified as units of heading No. 8471.

(E) * * *

The information provided for the AR-335 and AR-5132 indicate that in order for them to function as ADP printers, an optional controller board is required. Therefore, the machines do not meet the conditions laid out in Note 5(B)(b) to Chapter 84, HTSUS, because they are not connectable to an ADP system at the time of their importation.

Prior to January 1, 2002, these types of machines were classifiable under heading 8443, HTSUS, as printing machines. See HQ 957981, dated July 9, 1997, classifying a four color digital printer under heading 8443; and HQ 959651, also dated July 9, 1997, classifying similar merchandise under heading 8443. However, the terms of that heading have been amended so that digital print machines can no longer be classified under that heading.

Because these digital printers do not meet the terms of note 5(B) to chapter 84, nor do they meet the terms of heading 8443, HTSUS, they are classified under heading 8472, specifically under subheading 8472.90.80, which provides for other office machines, other printing machines, other than those of heading 8443 or 8471.

Holding:

For the reasons stated above, classification of the Sharp models AR-335 and 5132 multi-function digital office machines is under subheading 8472.90.80, HTSUS, which provides for other office machines * * * other * * * printing machines other than those of heading 8443 or 8471.

Effects on Other Rulings:

NY D87961 is revoked.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
 U.S. CUSTOMS SERVICE,
 Washington, DC, August 30, 2002.
 CLA-2 RR: CR: GC 965679 TPB
 Category: Classification
 Tariff No. 8472.90.80

MR. R. BRIAN BURKE
 RODE & QUALEY
 55 West 39th Street
 New York, NY 10018

Re: Konica Model 7410; Multi-function Digital Office Machine; Fax; Copier; Optional Printer Interface; NY E80009 Revoked.

DEAR MR. BURKE:

This is in reference to NY E80009, issued to you on April 1, 1999, in response to your letter of March 30, 1999 to the Director, Customs National Commodity Specialist Division, New York, requesting a tariff classification ruling on the Konica Model 7410 multi-function digital office machines under the Harmonized Tariff Schedule of the United States ("HTSUS").

NY E80009 classified the multi-function digital office machine under subheading 8471.60.5200, HTSUS. We have had an opportunity to review this classification, and now believe it to be incorrect for the reasons explained below. This ruling also provides the correct classification for the Konica 7410.

Facts:

The product at issue is a multi-function digital office machine, Konica Model 7410. It is describe in NY E80009 as follows:

The merchandise under consideration involves a Konica Model 7410 that is basically a combination digital printer/copier/fax machine. This machine is designed to meet the needs of a small workgroup or a home based business, and features a powerful 600x600 dpi, and a 12 pages per minute digital laser print engine.

The digital laser print engine of this model 7410 is used both for printing from the ADP system as well as input from the scanner. The machine is Macintosh compatible through a third party device, and the optional GDI Windows printing configuration allows printing from any Windows application. It can also be networked through an optional Ethernet print server. * * *.

The 7410 also functions as a stand-alone copier at the rate of 12 copies per minute through the 30-page automatic document feeder on 8.5" x 11" plain paper. The 7410 also copies at a rate of 10 copies per minute from the platen.

It is also a high quality plain paper fax machine, since it incorporates a 14.4 modem, 300x300 print resolution, that runs at 6 second transmission speed. * * *.

* * * * *

The HTSUS provisions under consideration are as follows:

- 8443 Printing machinery used for printing by means of printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof:
- 8471 Automatic data processing machines, and units thereof; magnetic or optical readers, machines for transcribing data onto media in coded form and machines for processing such data, not elsewhere specified or included:
- 8472 Other office machines (for example hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines):
- 8517 Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunications for carrier-current line systems or for digital line systems * * *

Issue:

What is the classification of the Konica 7410 multi-function digital office machine?

Law and Analysis:

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

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

As imported, the 7410 is a multi-function digital office machine that has the capability to transmit and receive faxes via a built in modem and to scan documents and convert them to digital signals, which it can store in temporary memory. The 7410 can either transmit stored documents via the fax, or print them via the attached laser print engine. The print function, in this case, is a necessary component to both the fax and scanning capabilities of the multifunction machine.

Note 3 to Section XVI provides that:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

In this case, the 7410 is a composite machine, which is composed of a fax machine and a digital copier. These two machines are adapted for the purpose of performing two alternative functions (i.e., faxing and copying). To assist in determining the principal function of a machine, we examine a number of factors, and while no one is determinative, they are indicative of principal function. After conducting independent research, we believe that it is the printing performed by the digital copier that imparts the principal function of this multi-function digital office machine.

The 7410 prints via a connected laser print engine. Classification of units of ADP machines is governed by the terms of Legal Note 5 to Chapter 84, HTSUS, which provides in relevant part as follows:

(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being part of an complete system if it meets all the following conditions:

(a) * * *

(b) It is connectable to the central processing unit either directly or through one or more other units; and

(c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

(C) * * *

(D) Printers, keyboards, X-Y co-ordinate devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and (B)(c) above, are in all cases to be classified as units of heading No. 8471.

(E) * * *

The information provided for the 7410 indicates that in order for it to function as an ADP printer, optional controllers are required. Therefore, the 7410 does not meet the conditions laid out in Note 5(B)(b) to Chapter 84, HTSUS, because it is not connectable to an ADP machine at the time of its importation.

Prior to January 1, 2002, this type of machine was classifiable under heading 8443, HTSUS, as a printing machine. See HQ 957981, dated July 9, 1997, classifying a four-color digital printer under heading 8443; and HQ 959651, also dated July 9, 1997, classifying similar merchandise under heading 8443. However, the terms of that heading have been amended so that digital print machines can no longer be classified under that heading.

Because this digital printer does not meet the terms of note 5(B) to chapter 84, nor does it meet the terms of heading 8443, HTSUS, it is classified under heading 8472, specifically under subheading 8472.90.80, which provides for other office machines, other printing machines, other than those of heading 8443 or 8471.

Holding:

At GRI 1 the principal function of a multi-function digital office machine that can fax and copy is that of copying. Thus, for the reasons stated above, classification of the Konica Model 7410 multi-function digital office machine is under subheading 8472.90.80, HTSUS, which provides for other office machines * * * other * * * printing machines other than those of heading 8443 or 8471.

Effects on Other Rulings:

NY E80009 is revoked.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, August 30, 2002.
CLA-2 RR: CR: GC 965680 TPB
Category: Classification
Tariff No. 8472.90.80

MR. RAYMOND VALDES
RICOH CORPORATION
5 Dedrick Place
West Caldwell, NJ 07006

Re: Ricoh Aficio 340; Ricoh Aficio 350; Ricoh Aficio 450; Ricoh Aficio 550; Ricoh Aficio 650; Multi-function Digital Office Machine; Fax; Copier; Optional Printer Interface; NY E80322 Revoked.

DEAR MR. VALDES:

This is in reference to NY E80322, issued to you on April 9, 1999, in response to your letter of April 2, 1999 to the Director, Customs National Commodity Specialist Division, New York, requesting a tariff classification ruling on the Ricoh Aficios, models 340, 350, 450, 550 and 650 multi-function digital office machines under the Harmonized Tariff Schedule of the United States ("HTSUS").

NY E80322 classified the multi-function digital office machines under subheading 8471.60.5100, HTSUS. We have had an opportunity to review this classification, and now believe it to be incorrect for the reasons explained below. This ruling also provides the correct classification for the Ricoh Aficios.

Facts:

The products at issue are multi-function digital office machines, Ricoh Aficio models 340, 350, 450, 550 and 650. They are describe in NY E80322 as follows:

The merchandise under consideration involves five models of multifunctional printer/copier/fax units which are known as "Ricoh Aficio" 340, 350, 450, 550 and 650 (Aficios). These machines are multifunctional imaging devices which perform printing, copying, scanning, and facsimile functions, and can be connected to an automatic data processing (ADP) system via optional printer controllers.

* * * * *
All machines are multifunctional imaging apparatus that perform printing, copying, scanning and facsimile functions, and are specifically designed to be used as output units for laser printing. With optional printer controllers, each model in the Aficio series is capable of operating in a Local Area Network or client/server workgroup environment with printer server.
* * * * *

The Aficios produce digital black and white output at 600 x 600 dots per inch (dpi), with 65 graduations per dot. The Aficios 340/350 print at 35 ppm; the 450, 45 ppm; the 550 55ppm; and the 650 65 ppm. Each employs laser print engines (electrographic process) * * *

These machines are capable of performing printing, copying, and facsimile functions, and are in one common housing.

* * * * *

The HTSUS provisions under consideration are as follows:

- | | |
|------|---|
| 8443 | Printing machinery used for printing by means of printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof: |
| 8471 | Automatic data processing machines, and units thereof; magnetic or optical readers, machines for transcribing data onto media in coded form and machines for processing such data, not elsewhere specified or included: |
| 8472 | Other office machines (for example hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines): |
| 8517 | Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunications for carrier-current line systems or for digital line systems * * * |

Issue:

What is the classification of the five Ricoh Aficio multi-function digital office machines?

Law and Analysis:

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

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

As imported, the Aficios are multi-function digital office machines that have the capability to transmit and receive faxes via a built in modem and to scan documents and convert them to digital signals, which they can store in temporary memory. The Aficios can either transmit stored documents via the fax, or print them via the attached laser print engine. The print function, in this case, is a necessary component to both the fax and scanning capabilities of the multifunction machine.

Note 3 to Section XVI provides that:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

In this case, the Aficios are composite machines, which are composed of a fax machine and a digital copier. These two machines are adapted for the purpose of performing two alternative functions (i.e., faxing and copying). To assist in determining the principal function of a machine, we examine a number of factors, and while no one is determinative, they are indicative of principal function. After conducting independent research, we believe that it is the printing performed by the digital copier that imparts the principal function of these multi-function digital office machines.

The Aficios print via a connected laser print engine. Classification of units of ADP machines is governed by the terms of Legal Note 5 to Chapter 84, HTSUS, which provides in relevant part as follows:

(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being part of an complete system if it meets all the following conditions:

- (a) * * *
- (b) It is connectable to the central processing unit either directly or through one or more other units; and
- (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

(C) * * *

(D) Printers, keyboards, X-Y co-ordinate devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and (B)(c) above, are in all cases to be classified as units of heading No. 8471.

(E) * * *

The information provided for the Aficios indicates that in order for them to function as ADP printers, optional controllers are required. Therefore, they do not meet the conditions laid out in Note 5(B)(b) to Chapter 84, HTSUS, because they are not connectable to ADP machines at the time of their importation.

Prior to January 1, 2002, these types of machines were classifiable under heading 8443, HTSUS, as a printing machine. See HQ 957981, dated July 9, 1997, classifying a four-color digital printer under heading 8443; and HQ 959651, also dated July 9, 1997, classifying similar merchandise under heading 8443. However, the terms of that heading have been amended so that digital print machines can no longer be classified under that heading.

Because these digital printers do not meet the terms of note 5(B) to chapter 84, nor do they meet the terms of heading 8443, HTSUS, they are classified under heading 8472, specifically under subheading 8472.90.80, which provides for other office machines, other printing machines, other than those of heading 8443 or 8471.

Holding:

At GRI 1 the principal function of a multi-function digital office machines that can fax and copy is that of copying. Therefore, classification of the Aficios 340, 350, 450, 550 and 650 multi-function digital office machines is under subheading 8472.90.80, HTSUS, which provides for other office machines * * * other * * * printing machines other than those of heading 8443 or 8471.

Effects on Other Rulings:

NY E80322 is revoked.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, August 30, 2002.
CLA-2 RR: CR: GC 965681 TPB
Category: Classification
Tariff No. 8472.90.80

MR. RAYMOND VALDES
RICOH CORPORATION
5 Dedrick Place
West Caldwell, NJ 07006

Re: Ricoh 355; Ricoh 455; Multi-function Digital Office Machine; Fax, Copier, Optional Printer Interface; NY E81729 Revoked.

DEAR MR. VALDES:

This is in reference to NY E81729, issued to you on May 12, 1999, in response to your letter of April 30, 1999 to the Director, Customs National Commodity Specialist Division, New York, requesting a tariff classification ruling on the Ricoh 355 and Ricoh 455 multi-function digital office machines under the Harmonized Tariff Schedule of the United States ("HTSUS").

NY E81729 classified the multi-function digital office machines under subheading 8471.60.5100, HTSUS. We have had an opportunity to review this classification, and now believe it to be incorrect for the reasons explained below. This ruling also provides the correct classification for the Ricoh 355 and Ricoh 455.

Facts:

The products at issue are multi-function digital office machines, models Ricoh Aficio 355 and Aficio 455. They are describe in NY E81729 as follows:

These machines are multifunctional imaging devices, which perform printing, copying, scanning, and facsimile functions, and can be connected to an automatic data processing (ADP) machine via optional printer controllers.

* * * * *

All machines are multifunctional imaging apparatus that perform printing, copying, scanning and facsimile functions, and are specifically designed to be used as output units for laser printing. With optional printer controllers, each model in the Aficio series is capable of operating in a Local Area Network or client/server workgroup environment with printer server.

The Aficios produce digital black and white output at 600 x 600 dots per inch (dpi), with 65 graduations per dot. The Aficios 355 and 455 print at 35 pages per minute. Each uses laser print engines (electrographic process) * * *

The Aficios 355 and 455 are capable of performing printing, copying, and facsimile functions, and are in one common housing.

* * * * *

The HTSUS provisions under consideration are as follows:

- 8443 Printing machinery used for printing by means of printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof:
- 8471 Automatic data processing machines, and units thereof; magnetic or optical readers, machines for transcribing data onto media in coded form and machines for processing such data, not elsewhere specified or included:
- 8472 Other office machines (for example hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines):
- 8517 Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunications for carrier-current line systems or for digital line systems * * *

Issue:

What is the classification of the Ricoh Aficios 355 and 455 multi-function digital office machines?

Law and Analysis:

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

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

As imported, the Aficios are multi-function digital office machines that have the capability to transmit and receive faxes via a built in modem and to scan documents and convert them to digital signals, which they can store in temporary memory. The Aficios can either transmit stored documents via the fax, or print them via the attached laser print engine. The print function, in this case, is a necessary component to both the fax and scanning capabilities of the multifunction machines.

Note 3 to Section XVI provides that:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

In this case, the Aficios are composite machines, which are composed of a fax machine and a digital copier. These two machines are adapted for the purpose of performing two alternative functions (i.e., faxing and copying). To assist in determining the principal function of a machine, we examine a number of factors, and while no one is determinative, they are indicative of principal function. After conducting independent research, we believe that it is the printing performed by the digital copier that imparts the principal function of these multi-function digital office machines.

The Aficios print via a connected laser print engine. Classification of units of ADP machines is governed by the terms of Legal Note 5 to Chapter 84, HTSUS, which provides in relevant part as follows:

(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being part of a complete system if it meets all the following conditions:

(a) * * *

(b) It is connectable to the central processing unit either directly or through one or more other units; and

(c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

(C) * * *

(D) Printers, keyboards, X-Y co-ordinate devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and (B)(c) above, are in all cases to be classified as units of heading No. 8471.

(E) * * *

The information provided for the Ricoh Aficios indicates that in order for them to function as ADP printers, optional controllers are required. Therefore, the Aficios do not meet the conditions laid out in Note 5(B)(b) to Chapter 84, HTSUS, because they are not connectable to ADP machines at the time of their importation.

Prior to January 1, 2002, these types of machines were classifiable under heading 8443, HTSUS, as printing machines. See HQ 957981, dated July 9, 1997, classifying a four-color digital printer under heading 8443; and HQ 959651, also dated July 9, 1997, classifying similar merchandise under heading 8443. However, the terms of that heading have been amended so that digital print machines can no longer be classified under that heading.

Because these digital printers do not meet the terms of note 5(B) to chapter 84, nor do they meet the terms of heading 8443, HTSUS, they are classified under heading 8472, spe-

cifically under subheading 8472.90.80, which provides for other office machines, other printing machines, other than those of heading 8443 or 8471.

Holding:

At GRI 1 the principal function of multi-function digital office machines that can fax and copy is that of copying. Thus, classification of the Ricoh Aficio 355 and 455 multi-function digital office machines is under subheading 8472.90.80, HTSUS, which provides for other office machines * * * other * * * printing machines other than those of heading 8443 or 8471.

Effects on Other Rulings:

NY E81729 is revoked.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, August 30, 2002.
CLA-2 RR: CR: GC 965682 TPB
Category: Classification
Tariff No. 8472.90.80

MR. R. BRIAN BURKE
RODE & QUALEY
*55 West 39th Street
New York, NY 10018*

Re: Konica Model 7065; Multi-function Digital Office Machine; Copier; Optional Printer Interface; NY E82212 Revoked.

DEAR MR. BURKE:

This is in reference to NY E82212, issued to you on May 18, 1999, in response to your letter of May 13, 1999 to the Director, Customs National Commodity Specialist Division, New York, requesting a tariff classification ruling on the Konica Model 7065 multi-function digital office machine under the Harmonized Tariff Schedule of the United States ("HTSUS").

NY E82212 classified the multi-function digital office machine under subheading 8471.60.5100, HTSUS. We have had an opportunity to review this classification, and now believe it to be incorrect for the reasons explained below. This ruling also provides the correct classification for the Konica 7065.

Facts:

The product at issue is a multi-function digital office machine, Konica Model 7065. It is describe in NY E82212 as follows:

The merchandise under consideration involves the "Konica" model 7065 that is basically a combination digital printer/copier. This multifunctional digital printer/copier can be interfaced to an automatic data processing (ADP) system through the optional IP-303 print controller.

The "Konica" model 7065 multifunctional digital printer/copier features a powerful digital laser print engine that permits a selectable print resolution from 400 to 600 dots per inch (DPI). This high speed dual beam laser print engine can print up to 65 pages per minute and 400 DPI resolution.

* * * * *

The HTSUS provisions under consideration are as follows:

8443 Printing machinery used for printing by means of printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet

- printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof:
- 8471 Automatic data processing machines, and units thereof; magnetic or optical readers, machines for transcribing data onto media in coded form and machines for processing such data, not elsewhere specified or included:
- 8472 Other office machines (for example hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines):

Issue:

What is the classification of the Konica 7065 multi-function digital office machine?

Law and Analysis:

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

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

As imported, the 7065 is a digital imaging system, which scans documents and stores them as digital information in memory. The data is then printed via a connected print engine. Classification of units of ADP machines is governed by the terms of Legal Note 5 to Chapter 84, HTSUS, which provides in relevant part as follows:

(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being part of a complete system if it meets all the following conditions:

(a) * * *

(b) It is connectable to the central processing unit either directly or through one or more other units; and

(c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

(C) * * *

(D) Printers, keyboards, X-Y co-ordinate devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and (B)(c) above, are in all cases to be classified as units of heading No. 8471.

(E) * * *

The information provided for the 7065 indicates that in order for it to function as an ADP printer, an optional IP-303 print controller is required. Therefore, the 7065 does not meet the conditions laid out in Note 5(B)(b) to Chapter 84, HTSUS, because it is not connectable to an ADP machine at the time of importation.

Prior to January 1, 2002, this type of machine was classifiable under heading 8443, HTSUS, as a printing machine. See HQ 957981, dated July 9, 1997, classifying a four color digital printer under heading 8443; and HQ 959651, also dated July 9, 1997, classifying similar merchandise under heading 8443. However, the terms of that heading have been amended so that digital print machines can no longer be classified under that heading.

Because this digital printer does not meet the terms of note 5(B) to chapter 84, nor does it meet the terms of heading 8443, HTSUS, it is classified under heading 8472, specifically under subheading 8472.90.80, which provides for other office machines, other printing machines, other than those of heading 8443 or 8471.

Holding:

For the reasons stated above, classification of the Konica Model 7065 multi-function digital office machine is under subheading 8472.90.80, HTSUS, which provides for other

office machines * * * other * * * printing machines other than those of heading 8443 or 8471.

Effects on Other Rulings:

NY E82212 is revoked.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, August 30, 2002.
CLA-2 RR: CR: GC 965697 TPB
Category: Classification
Tariff No. 8472.90.80

MR. RAYMOND VALDES
RICOH CORPORATION
5 *Dedrick Place*
West Caldwell, NJ 07006

Re: Ricoh 150; Ricoh 180; Multi-function Digital Office Machine; Fax; Copier; Optional Printer Interface; NY F80927 Revoked.

DEAR MR. VALDES:

This is in reference to NY F80927, issued to you on December 27, 1999, in response to your letter of December 5, 1999 to the Director, Customs National Commodity Specialist Division, New York, requesting a tariff classification ruling on the Ricoh 150 and Ricoh 180 multi-function digital office machines under the Harmonized Tariff Schedule of the United States ("HTSUS").

NY F80927 classified the multi-function digital office machines under subheading 8471.60.5200, HTSUS. We have had an opportunity to review this classification, and now believe it to be incorrect for the reasons explained below. This ruling also provides the correct classification for the Ricoh 150 and Ricoh 180.

Facts:

The products at issue are multi-function digital office machines, models Ricoh Aficio 150 and 180. They are describe in NY F80927 as follows:

These machines are multifunctional digital imaging devices that perform printing, copying, and facsimile functions, and can be connected to an automatic data processing (ADP) system via optional printer controllers.

This Ricoh 150 unit is a multifunctional digital imaging system that performs printing and copying functions, specifically designed to be used as an output unit for laser printing. With optional printer controllers, this model in this Aficio series is capable of operating in a Local Area Network or client/server workgroup environment with printer server.

* * * * *
The Ricoh Aficio 180 unit is a multifunctional digital imaging system that performs printing, copying and facsimile functions specifically designed to be used [*sic*] as an output unit for laser printing. With optional printer controllers, this model in this Aficio series is capable of operating in a Local Area Network or client/server workgroup environment with print server.

A printer interface is an optional item for both machines. This interface would allow them to function as ADP laser printers. However, this part is not in the machines at time of importation.

The distinguishing feature between the two models is that the Aficio 180 has additional facsimile functions, which allow it to transmit documents at 33.3Kbps.

The HTSUS provisions under consideration are as follows:

- 8443 Printing machinery used for printing by means of printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof:
- 8471 Automatic data processing machines, and units thereof; magnetic or optical readers, machines for transcribing data onto media in coded form and machines for processing such data, not elsewhere specified or included:
- 8472 Other office machines (for example hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines):
- 8517 Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunications for carrier-current line systems or for digital line systems * * *

Issue:

What is the classification of the Ricoh Aficio 150 and 180 multi-function digital office machines?

Law and Analysis:

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

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

We will first consider the classification of the Ricoh Aficio 150. The Aficio 150 is a digital imaging system, which scans documents and stores them as digital information in memory. The data is then printed via a connected print engine. Classification of units of ADP machines is governed by the terms of Legal Note 5 to Chapter 84, HTSUS, which provides in relevant part as follows:

(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being part of an complete system if it meets all the following conditions:

- (a) * * *
- (b) It is connectable to the central processing unit either directly or through one or more other units; and
- (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

(C) * * *

(D) Printers, keyboards, X-Y co-ordinate devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and (B)(c) above, are in all cases to be classified as units of heading No. 8471.

(E) * * *

The information provided for the Ricoh Aficio 150 indicates that in order for it to function as an ADP printer, optional controllers are required. Therefore, the Aficio 150 does not meet the conditions laid out in Note 5(B)(b) to Chapter 84, HTSUS, because it is not connectable to an ADP machine at the time of importation.

Prior to January 1, 2002, these types of machines were classifiable under heading 8443, HTSUS, as printing machines. See HQ 957981, dated July 9, 1997, classifying a four color digital printer under heading 8443; and HQ 959651, also dated July 9, 1997, classifying similar merchandise under heading 8443. However, the terms of that heading have been amended so that digital print machines can no longer be classified under that heading.

Because these digital printers do not meet the terms of note 5(B) to chapter 84, nor do they meet the terms of heading 8443, HTSUS, they are classified under heading 8472, spe-

cifically under subheading 8472.90.80, which provides for other office machines, other printing machines, other than those of heading 8443 or 8471.

We next turn our attention to the Ricoh Aficio 180. As imported, the Aficio 180 is a multi-function digital office machine that has the capability to transmit and receive faxes via a built in modem and to scan documents and convert them to digital signals, which it can store in temporary memory. The Aficio 180 can either transmit stored documents via the fax, or print them via the attached laser print engine. The print function, in this case, is a necessary component to both the fax and scanning capabilities of the multifunction machine.

Note 3 to Section XVI provides that:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

In this case, the Aficio 180 is a composite machine, which is composed of a fax machine and a digital copier. These two machines are adapted for the purpose of performing two alternative functions (i.e., faxing and copying).

As in the case with the Aficio 150 above, the Aficio 180 cannot be classified under heading 8471, HTSUS, because it is not connectable to an ADP machine without the addition of an optional printer interface, which is not incorporated into the machine at the time of its importation. Similarly, the Aficio 180 cannot be classified under heading 8443, HTSUS, either, because it does not meet the terms of the heading. The Aficio 180 does not print by any of the methods described in that heading, but rather through laser technology. Therefore, the headings under consideration are 8472, HTSUS, which provides for office printers other than those of heading 8443 or 8471; and heading 8517, HTSUS, which provides for facsimile machines. Following Note 3 to Section XVI, HTSUS, this composite machine will be classified by its principal function.

To assist in determining the principal function of a machine, we examine a number of factors, and while no one is determinative, they are indicative of principal function. After conducting independent research, we believe that it is the printing performed by the digital copier that imparts the principal function of this multi-function digital office machine. Therefore, pursuant to Section XVI, Note 3, HTSUS, the Aficio 180 will be classified as if it consisted solely of a digital copier of heading 8472, HTSUS.

The Aficio 180 meets the terms of heading 8472, HTSUS. It is an office machine other than those that are classifiable in earlier headings of chapter 84, or in heading 9009, HTS. Therefore, it is properly classified under 8472.90.80, HTSUS, which provides for office printing machines other than those of heading 8443 or 8471, HTSUS.

Holding:

For the reasons stated above, the classification of the Ricoh Aficio 150 and 180 multi-function digital office machines is under subheading 8472.90.80, HTSUS, which provides for other office machines * * * other * * * printing machines other than those of heading 8443 or 8471.

Effects on Other Rulings:

NY F80927 is revoked.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTERS AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF HOME THEATER
SOUND SYSTEMS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of three ruling letters and treatment relating to the tariff classification of home theater sound 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 Customs is revoking three ruling letters pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of home theater sound systems and revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed action was published in the CUSTOMS BULLETIN on July 31, 2002. No comments were received in response to this notice.

EFFECTIVE DATE: This modification is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Commercial Rulings Division, (202) 572–8782.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the CUSTOMS BULLETIN, Vol. 36, No. 31, proposing to revoke NY G85405 dated December 27, 2000, PD C87740 dated May 29, 1998, and NY G88344 dated March 16, 2001, pertaining to the tariff classification of home theater systems. No comments were received in response to this notice.

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, Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's failure to have advised the Customs Service 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 their agents for importations of merchandise subsequent to the effective date of this final notice.

In NY G85405 (December 27, 2000), Customs found that a TSS-1 Home Theater Sound System was classified in subheading 8518.50.00, HTSUS, as an electric sound amplifier set.

In PD C87740 (May 29, 1998), Customs found that a CinemaStation System amplifier and speaker system was classified in subheading 8518.29.80, HTSUS, as loudspeakers, whether or not mounted in their enclosures, other.

In NY G88344 (March 16, 2001), Customs found that an Onkyo Model GXW-5.1 amplifier and speaker system was classified in subheading 8518.29.80, HTSUS, as loudspeakers, whether or not mounted in their enclosures, other.

Customs has reviewed the matter and determined that the correct classification of the amplifier and speaker systems is in subheading 8518.40.20, HTSUS, which provides for audio-frequency electric amplifiers, other.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY G85405, PD C87740, and NY G88344, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters HQ 964940 (Attachment A), HQ 965762 (Attachment B) and HQ 965763 (Attachment C), respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

Dated: September 3, 2002.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, September 3, 2002.
CLA-2 RR:CR:GC 964940 KBR
Category: Classification
Tariff No. 8518.40.20

DENNIS HECK
YAMAHA CORPORATION OF AMERICA
*6600 Orangethorpe Avenue
P.O. Box 6600
Buena Park, CA 90622-6600*

Re: Reconsideration of NY G85405; Home Theater Sound System.

DEAR MR. HECK:

This is in reference to your letter dated March 6, 2002, in which you requested reconsideration of New York Ruling Letter (NY) G85405, issued to you by the Customs National Commodity Specialist Division, on December 27, 2000, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a home theater sound system. We have reviewed G85405 and have determined that the classification provided is incorrect.

Pursuant to section 625(c)(1), 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), a notice was published on July 31, 2002, in Vol. 36, No. 31 of the CUSTOMS BULLETIN, proposing to modify NY G85405. No comments were received in response to this notice. This ruling modifies NY G85405 by providing the correct classification for the home theater sound system.

Facts:

NY G85405 concerns the Yamaha TSS-1 Home Theater Sound System. The system consists of: a YST-SR601 amplifier/sound processor unit with 48 watt total power output and built-in Dolby Digital, DTS and Dolby Pro-Logic decoding, powered by an AC/DC adapter; a 5 inch subwoofer; and five satellite speakers each containing a single 2 inch speaker. The system is designed to turn a personal computer (PC), television, DVD or portable stereo into a "surround sound" system. All the components of the system are imported, and will be sold, in the same carton.

In NY G85405, it was determined that the home theater sound system was a electric sound amplifier set, classifiable under subheading 8518.50.00, HTSUS. Yamaha subsequently informed Customs that the home theater sound system did not contain a microphone. You believe that the home theater sound system should be classified under subheading 8518.40.20, HTSUS, as an audio-frequency electric amplifier. We have reviewed that ruling and determined that the classification of the home theater sound system is incorrect. This ruling sets forth the correct classification.

Issue:

What is the proper classification under the HTSUS of the subject home theater sound system?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8518	Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones, earphones and combined microphone/speaker sets; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof: Loudspeakers, whether or not mounted in their enclosures:
8518.21	Single loudspeakers, mounted in the same enclosure
8518.22.00	Multiple loudspeakers, mounted in the same enclosure
8518.40	Audio-frequency electric amplifiers:
8518.40.20	Other
8518.50.00	Electric sound amplifier sets

The TSS-1 Home Theater Sound System is comprised of three components, the amplifier/sound processor, the subwoofer speaker, and the satellite speakers. EN 85.18(E) describes the term "electronic sound amplifier set" as consisting of three articles: a microphone, an audio-frequency amplifier, and loudspeakers. The home theater sound system does not contain a microphone. Therefore, we believe that classification of the instant goods in subheading 8518.50.00, HTSUS, is incorrect.

There is no disagreement that the home theater system under consideration, Yamaha TSS-1, is classified in heading 8518. The question is whether these goods form a set put up for retail sale. For the instant case, applying GRI 6 at the subheading level, two provisions at the same level of subdivision within heading 8518 describe the home theater sound system in part, amplifiers and loudspeakers. We turn to GRI 3(b) which states that when goods are *prima facie* classifiable under two or more (sub)headings, classification shall be effected as follows:

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

EN (X) for GRI 3(b), states that "[f]or the purposes of this Rule, the term 'goods put up in sets for retail sale' shall be taken to mean goods which:

(a) consist of at least two different articles which are, *prima facie*, classifiable in different headings * * *, (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards)."

Here, the TSS-1 Home Theater Sound System has multiple components of different subheadings; is packaged for the specific activity of providing a sound system for a television, DVD, PC, or portable stereo; and is packaged in one box for retail sale directly to the consumer without repacking. Therefore, it qualifies as a set pursuant to GRI 3(b). *See* HQ 085577 (January 10, 1990).

GRI 3(b) states that sets are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. Under EN (VIII) to GRI 3(b), the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Customs has taken the position that, in an essential character analysis for purposes of GRI 3(b), the role of the constituent materials or components in relation to the use of the goods is generally of primary importance, but the other factors listed in EN (VIII) for GRI 3(b) should also be considered, as applicable (*see, e.g.*, HQ 961095 dated July 20, 1998; HQ 962047 dated May 17, 1999).

The question is which component of the system provides the essential character to the set. The amplifier/sound processor is considered the “heart” of a home theater system. *See Howstuffworks.com*, “How Home Theater Works”, by Tom Harris. The amplifier/sound processor provides the power to drive the speakers and subwoofer. The amplifier/sound processor receives a signal from an input device such as a television or DVD player, interprets, decodes and amplifies the signal and sends it to the speakers, and is equipped for Dolby Digital, DTS and Dolby Pro-Logic inputs. It has a master volume control to determine the level of output the speakers produce.

However, the purpose of a home theater system is to provide the listener with a “movie theater” quality “surround sound”. The listener uses six speakers to receive sound as if that sound is occurring all around the room. The listener desires the vibrations provided by the subwoofer to get the “feel” of the action.

We find that the TSS-1 Home Theater Sound System does not have one essential character. Both the amplifier/sound processor and the speakers merit equal consideration. Therefore, pursuant to GRI 3(c), the TSS-1 Home Theater Sound System is classifiable under the subheading which occurs last in numerical order, subheading 8518.40.20, HTSUS, as an audio-frequency electric amplifier, other.

Holding:

Pursuant to GRI 3(c), the TSS-1 Home Theater Sound System is classified in subheading 8518.40.20, HTSUS, an audio-frequency electric amplifier, other.

Effect on Other Rulings:

NY G85405, dated December 27, 2000, is REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, September 3, 2002.
CLA-2 RR:CR:GC 965762 KBR
Category: Classification
Tariff No. 8518.40.20

DENNIS HECK
YAMAHA CORPORATION OF AMERICA
*6600 Orangethorpe Avenue
P.O. Box 6600
Buena Park, CA 90622-6600*

Re: Reconsideration of PD C87740; Home Theater Sound System.

DEAR MR. HECK:

This is in reference to Port Decision (PD) C87740, issued to you by the Port Director at Otay Mesa, on May 29, 1998, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a home theater sound system. We have reviewed PD C87740 and have determined that the classification provided is incorrect.

Pursuant to section 625(c)(1), 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 Agree-

ment Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published on July 31, 2002, in Vol. 36, No. 31 of the CUSTOMS BULLETIN, proposing to modify PD C87740. No comments were received in response to this notice. This ruling modifies PD C87740 by providing the correct classification for the home theater sound system.

Facts:

PD C87740 concerns the Yamaha AV-S7 CinemaStation System. The system consists of a control center/center channel speaker unit, a subwoofer/200 watt power amplifier, and four satellite speakers. The control center allows the user to command the various functions, such as Cinema DSP, HiFi DSP, and Dolby Pro Logic. Although the control center/center channel speaker has the infra-red remote control receiver and LED indicator lights, the actual signal processor is located within the same cabinet as the amplifier and subwoofer. The amplifier generates 200 watts of total power, with 50 watts going to the subwoofer and 30 watts to each of the five speakers. The systems is designed to turn a television into a "surround sound" system. All the components of the system are imported, and will be sold, in the same carton.

In PD C87740, it was determined that the home theater sound system was classifiable as loudspeakers, whether or not mounted in their enclosures, other, under subheading 8518.29.80, HTSUS. We have reviewed that ruling and determined that the classification of the home theater sound system is incorrect. This ruling sets forth the correct classification.

Issue:

What is the proper classification under the HTSUS of the subject home theater sound system?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8518	Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones, earphones and combined microphone/speaker sets; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof:
	Loudspeakers, whether or not mounted in their enclosures:
8518.21	Single loudspeakers, mounted in the same enclosure
8518.22.00	Multiple loudspeakers, mounted in the same enclosure
8518.40	Audio-frequency electric amplifiers:
8518.40.20	Other
8518.50.00	Electric sound amplifier sets

The AV-S7 CinemaStation System is comprised of three components, the control center/speaker unit, the subwoofer speaker/200 watt amplifier with signal processor, and the satellite speakers. EN 85.18(E) describes the term "electronic sound amplifier set" as consisting of three articles: a microphone, an audio-frequency amplifier, and loudspeakers. The home theater sound system does not contain a microphone. Therefore, we believe that classification of the instant goods in subheading 8518.50.00, HTSUS, is incorrect.

There is no disagreement that the home theater system under consideration, Yamaha AV-S7, is classified in heading 8518. The question is whether these goods form a set put up for retail sale. For the instant case, applying GRI 6 at the subheading level, two provisions at the same level of subdivision within heading 8518 describe the home theater sound system in part, amplifiers and loudspeakers. We turn to GRI 3(b) which states that when

goods are *prima facie* classifiable under two or more (sub)headings, classification shall be effected as follows:

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

EN (X) for GRI 3(b), states that “[f]or the purposes of this Rule, the term ‘goods put up in sets for retail sale’ shall be taken to mean goods which:

(a) consist of at least two different articles which are, *prima facie*, classifiable in different headings * * *; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).”

Here, the AV-S7 CinemaStation System has multiple components of different subheadings; is packaged for the specific activity of providing a sound system for a television, and is packaged in one box for retail sale directly to the consumer without repacking. Therefore, it qualifies as a set pursuant to GRI 3(b). *See* HQ 085577 (January 10, 1990).

GRI 3(b) states that sets are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. Under EN (VIII) to GRI 3(b), the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Customs has taken the position that, in an essential character analysis for purposes of GRI 3(b), the role of the constituent materials or components in relation to the use of the goods is generally of primary importance, but the other factors listed in EN (VIII) for GRI 3(b) should also be considered, as applicable (*see, e.g.*, HQ 961095 dated July 20, 1998; HQ 962047 dated May 17, 1999).

The question is which component of the system provides the essential character to the set. The amplifier/sound processor is considered the “heart” of a home theater system. *See Houstuffworks.com*, “How Home Theater Works”, by Tom Harris. The amplifier and signal processor provide power to drive the speakers and subwoofer. The signal processor receives a signal from an input device such as a television, interprets, decodes and amplifies the signal and sends it to the speakers, and is equipped to decode Cinema DSP, HiFi DSP and Dolby Pro-Logic inputs.

However, the purpose of a home theater system is to provide the listener with a “movie theater” quality “surround sound”. The listener uses five speakers to receive sound as if that sound is occurring all around the room. The listener desires the vibrations provided by the subwoofer to get the “feel” of the action.

We find that the AV-S7 CinemaStation System does not have one essential character. Both the amplifier and control center, and the speakers merit equal consideration. Therefore, pursuant to GRI 3(c), the AV-S7 CinemaStation System is classifiable under the subheading which occurs last in numerical order, subheading 8518.40.20, HTSUS, as an audio-frequency electric amplifier, other.

Holding:

Pursuant to GRI 3(c), the AV-S7 CinemaStation System is classified in subheading 8518.40.20, HTSUS, an audio-frequency electric amplifier, other.

Effect on Other Rulings:

NY G85405, dated December 27, 2000, is REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 3, 2002.
CLA-2 RR:CR:GC 965763 KBR
Category: Classification
Tariff No. 8518.40.20

MR. KENT SUNAKODA
IMPORT MANAGER
JAMES J. BOYLE & CO.
OCENA IMPORT & EXPORT
*2525 Corporate Place, #100
Monterey Park, CA 91754*

Re: Reconsideration of NY G88344; Home Theater Sound System.

DEAR MR. SUNAKODA:

This is in reference to a ruling, New York Ruling Letter (NY) G88344, issued to you on behalf of Onkyo USA Corporation, by the Customs National Commodity Specialist Division, on March 16, 2001, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a home theater sound system. We have reviewed G88344 and have determined that the classification provided is incorrect.

Pursuant to section 625(c)(1), 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), a notice was published on July 31, 2002, in Vol. 36, No. 31 of the CUSTOMS BULLETIN, proposing to modify NY G88344. No comments were received in response to this notice. This ruling modifies NY G88344 by providing the correct classification for the home theater sound system.

Facts:

NY G88344 concerns the Onkyo Dolby digital/DTS 5.1ch (Model GXW-5.1) home theater speaker system. The system consists of: a subwoofer and five 10 watt amplified satellite speakers. The subwoofer has a built in Dolby digital/DTS decoder and a six channel signal processor and a 25 watt amplifier. The system is designed to turn a personal computer (PC), television, DVD or portable stereo into a "surround sound" system. All the components of the system are imported, and will be sold, in the same carton.

In NY G88344, it was determined that the home theater sound system was classifiable as loudspeakers, whether or not mounted in their enclosures, other, under subheading 8518.29.80, HTSUS. We have reviewed that ruling and determined that the classification of the home theater sound system is incorrect. This ruling sets forth the correct classification.

Issue:

What is the proper classification under the HTSUS of the subject home theater sound system?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8518 Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones, earphones and combined

microphone/speaker sets; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof:

	Loudspeakers, whether or not mounted in their enclosures:
8518.21	Single loudspeakers, mounted in the same enclosure
8518.22.00	Multiple loudspeakers, mounted in the same enclosure
8518.40	Audio-frequency electric amplifiers:
8518.40.20	Other
8518.50.00	Electric sound amplifier sets

The Model GXW-5.1 home theater speaker system is comprised of two components, the subwoofer speaker with the built in amplifier/sound processor, and the satellite speakers. EN 85.18(E) describes the term “electronic sound amplifier set” as consisting of three articles: a microphone, an audio-frequency amplifier, and loudspeakers. The home theater sound system does not contain a microphone. Therefore, we believe that classification of the instant goods in subheading 8518.50.00, HTSUS, is incorrect.

There is no disagreement that the home theater system under consideration, Model GXW-5.1, is classified in heading 8518. The question is whether these goods form a set put up for retail sale. For the instant case, applying GRI 6 at the subheading level, two provisions at the same level of subdivision within heading 8518 describe the home theater sound system in part, amplifiers and loudspeakers. We turn to GRI 3(b) which states that when goods are *prima facie* classifiable under two or more (sub)headings, classification shall be effected as follows:

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

EN (X) for GRI 3(b), states that “[f]or the purposes of this Rule, the term ‘goods put up in sets for retail sale’ shall be taken to mean goods which:

(a) consist of at least two different articles which are, *prima facie*, classifiable in different headings * * *; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).”

Here, the Model GXW-5.1 home theater sound system has multiple components of different subheadings; is packaged for the specific activity of providing a sound system for a television, DVD, PC, or portable stereo; and is packaged in one box for retail sale directly to the consumer without repacking. Therefore, it qualifies as a set pursuant to GRI 3(b). See HQ 085577 (January 10, 1990).

GRI 3(b) states that sets are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. Under EN (VIII) to GRI 3(b), the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Customs has taken the position that, in an essential character analysis for purposes of GRI 3(b), the role of the constituent materials or components in relation to the use of the goods is generally of primary importance, but the other factors listed in EN (VIII) for GRI 3(b) should also be considered, as applicable (*see, e.g.*, HQ 961095 dated July 20, 1998; HQ 962047 dated May 17, 1999).

The question is which component of the system provides the essential character to the set. The amplifier/sound processor is considered the “heart” of a home theater system. See *Howstuffworks.com*, “How Home Theater Works”, by Tom Harris. The amplifier/sound processor provides the power to drive the speakers and subwoofer. The amplifier/sound processor receives a signal from an input device such as a television or DVD player, interprets, decodes and amplifies the signal and sends it to the speakers, and is equipped for Dolby Digital, DTS and Dolby Pro-Logic inputs. It has a master volume control to determine the level of output the speakers produce.

However, the purpose of a home theater system is to provide the listener with a “movie theater” quality “surround sound”. The listener uses 5 speakers to receive sound as if that sound is occurring all around the room. The listener desires the vibrations provided by the subwoofer to get the “feel” of the action.

We find that the Model GXW-5.1 home theater sound system does not have one essential character. Both the amplifier/sound processor and the speakers merit equal consideration. Therefore, pursuant to GRI 3(c), the Model GXW-5.1 home theater sound system is classifiable under the subheading which occurs last in numerical order, subheading 8518.40.20, HTSUS, as an audio-frequency electric amplifier, other.

Holding:

Pursuant to GRI 3(c), the Model GXW-5.1 home theater sound system is classified in subheading 8518.40.20, HTSUS, an audio-frequency electric amplifier, other.

Effect on Other Rulings:

NY G88344, dated March 16, 2001, is REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)