

U.S. Customs Service

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 12-2001)

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

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of November 2001. The last notice was published in the CUSTOMS BULLETIN on December 19, 2001.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Ronald Reagan Building, 3rd floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Intellectual Property Rights Branch, (202) 927-2330.

Dated: December 21, 2001.

JOANNE ROMAN STUMP
Chief,
Intellectual Property Rights Branch.

The list of recordations follow:

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
COPO100164	20011130	20121130	BRONCO CIGARETTES	ROBERT GIELCHINSKY	N
SUBTOTAL RECORDATION TYPE 1					
TKM0100561	20011101	20100328	STOLICHNAYA LIMONNAYA VODKA	ALLIED DOMECCQ INT'L HOLDINGS BV	N
TKM0100562	20011101	20091116	STOLICHNAYA OHRANU	ALLIED DOMECCQ INT'L HOLDINGS BV	N
TKM0100563	20011101	20060721	STOLICHNAYA OHRANU	ALLIED DOMECCQ INT'L HOLDINGS BV	N
TKM0100564	20011101	20080721	STOLI RAZBERI	ALLIED DOMECCQ INT'L HOLDINGS BV	N
TKM0100565	20011101	20081124	STOLI STRASBERI	ALLIED DOMECCQ INT'L HOLDINGS, BV	N
TKM0100566	20011101	20100828	DESITIN	PFIZER INC.	N
TKM0100567	20011106	20051128	LV	LOUIS VUITTON MALLETTIER	N
TKM0100568	20011106	20060806	LOUIS VUITTON	LOUIS VUITTON MALLETTIER	N
TKM0100569	20011106	20110602	ROCA	BROWN & HALEY	N
TKM0100570	20011106	20080818	ROUND FLOWER	LOUIS VUITTON MALLETTIER	N
TKM0100571	20011106	20080804	POINTY FLOWER	LOUIS VUITTON MALLETTIER	N
TKM0100572	20011106	20100627	LV	LOUIS VUITTON MALLETTIER	N
TKM0100573	20011107	20050124	LV MONOGRAM	ALLIED DOMECCQ INT'L HOLDINGS BV	N
TKM0100574	20011107	20040821	STOLICHNAYA	ALLIED DOMECCQ INT'L HOLDINGS BV	N
TKM0100575	20011107	20090225	STOLICHNAYA	ALLIED DOMECCQ INT'L HOLDINGS BV	N
TKM0100576	20011107	20030705	STOLI	ALLIED DOMECCQ INT'L HOLDINGS BV	N
TKM0100577	20011107	20090919	PRIVET (AND DESIGN)	THEP PADUNG PORN COCONUT CO. LTD	N
TKM0100578	20011107	20041016	CHAO KOH	RECDOTON CORPORATION	N
TKM0100579	20011107	20041106	RECDOTON	RECDOTON CORPORATION	N
TKM0100580	20011107	20050110	CANE DESIGN	CHANEL INC.	N
TKM0100581	20011107	20100905	CHANEL CLASSIC BOTTLE	CHANEL INC.	N
TKM0100582	20011113	20050628	CREST	THE PROCTOR & GAMBLE COMPANY	N
TKM0100583	20011113	20050309	CRESA	THE PROCTOR & GAMBLE COMPANY	N
TKM0100584	20011119	20050309	SUNSAH	ALTA HAMMOND WINTER	N
TKM0100585	20011119	20100622	LUGER	STOEGER INC.	N
TKM0100586	20011120	20110116	AP	RECDOTON AUDIO CORPORATION	N
TKM0100587	20011123	20060921	WAYFARER	LUXOTTICA LEASING S.P.A.	N
TKM0100588	20011123	20081101	RAY-BAN	LUXOTTICA LEASING S.P.A.	N
TKM0100589	20011123	20070820	RAY-BAN STYLIZED	LUXOTTICA LEASING S.P.A.	N
TKM0100590	20011123	20050219	RAY-BAN IN SLANTED SCRIPT WITH SERRATED	LUXOTTICA LEASING S.P.A.	N
TKM0100591	20011123	20080103	RAY-BAN	LUXOTTICA LEASING S.P.A.	N
TKM0100592	20011123	20110306	ROCAMEAR	COMET INTERCONTINENTAL, INC.	N
TKM0100593	20011127	20110820	CC MONOGRAM DESIGN	CHANEL INC.	N
TKM0100594	20011129	20110801	STUSSY	STUSSY, INC.	N
TKM0100595	20011130	20111117	AMERICAN EXPRESS WORLD SERVICE DESIGN	AMERICAN EXPRESS COMPANY	N
TKM0100596	20011130	20090112	AE	AMERICAN EXPRESS COMPANY	N
TKM0100597	20011130	20070812	AMERICAN EAGLE OUTFITTERS	RETAIL ROYALTY COMPANY	N
TKM0100598	20011130	20110514	HIVID	RETAIL ROYALTY COMPANY	N
TKM0100599	20011130	20070812	NORVASC	HOFFMANN-LA ROCHE	N
TKM0100600	20011130	20071215	ZOLOFT	PFIZER INC.	N
TKM0100601	20011130	20020728	ZITHROMAX	PFIZER INC.	N
TKM0100602	20011130	20020721	DIFLUCAN	PFIZER INC.	N
TKM0100603	20011130	20080920	GAME BOY	NINTENDO OF AMERICAN INC.	N
TKM0100604	20011130	20101113	RADIA	NINTENDO OF AMERICAN INC.	N
TKM0100605	20011130	20091130	RADIA	RADIA MEDICAL IMAGING INC.	N

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U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN NOVEMBER 2001

REC NUMBER EFF DT EXP DT NAME OF COP, TMK, TNN OR MSK OWNER NAME RES

SUBTOTAL RECORDATION TYPE 44

TOTAL RECORDATIONS ADDED THIS MONTH 45

PAGE
DETAIL 2

**DISTRIBUTION OF CONTINUED DUMPING AND
SUBSIDY OFFSET TO AFFECTED DOMESTIC PRODUCERS**

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

ACTION: Notice of intent to distribute offset for Fiscal Year 2001.

SUMMARY: Pursuant to the Continued Dumping and Subsidy Offset Act of 2000, this document is Customs notice of intention to distribute assessed antidumping or countervailing duties (known as the continued dumping and subsidy offset) for Fiscal Year 2001 in connection with certain antidumping duty orders or findings or countervailing duty orders that were not previously listed in the notice of intent to distribute the offset for Fiscal Year 2001 that was published in the Federal Register on August 3, 2001. This document sets forth those additional antidumping duty orders or findings and countervailing duty orders that were not previously listed, together with the affected domestic producers associated with each order or finding who are potentially eligible to receive a distribution. This document also provides the instructions for affected domestic producers to file written certifications to claim a distribution in relation to the listed orders or findings and the dollar amount of the offset for each order or finding that is available for distribution.

DATES: Written certifications to obtain a continued dumping and subsidy offset under a particular order or finding must be received by March 18, 2002.

ADDRESSES: Written certifications should be addressed to: Assistant Commissioner, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, 3rd Floor, Washington, D.C. 20229 (ATTN: Jeffrey J. Laxague).

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Laxague, Office of Regulations and Rulings, (202-927-0505).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA") was enacted on October 28, 2000, as part of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 ("Act"). The provisions of the CDSOA are contained in Title X (sections 1001-1003) of the Act.

The CDSOA, in section 1003 of the Act, amended Title VII of the Tariff Act of 1930, by adding a new section 754 (codified at 19 U.S.C. 1675c) in order to provide that assessed duties received pursuant to a countervailing duty order, an antidumping duty order, or an antidumping duty

finding under the Antidumping Act of 1921, must be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such an order or finding. The term “affected domestic producer” means any manufacturer, producer, farmer, rancher or worker representative (including associations of such persons) that—

(A) Was a petitioner or interested party in support of a petition with respect to which an antidumping order, a finding under the Antidumping Act of 1921, or a countervailing duty order has been entered, and

(B) Remains in operation.

The distribution that these parties may receive is known as the continued dumping and subsidy offset.

LIST OF ORDERS OR FINDINGS AND AFFECTED DOMESTIC PRODUCERS

It is the responsibility of the U.S. International Trade Commission (USITC) to ascertain and timely forward to Customs a list of the affected domestic producers that are potentially eligible to receive an offset in connection with an order or finding.

To this end, it is noted that the USITC previously supplied Customs with the list of individual antidumping and countervailing duty cases for Fiscal Year 2001, and the affected domestic producers associated with each case that were potentially eligible to receive an offset. These cases were the subject of a notice of intent to distribute the continued dumping and subsidy offset for Fiscal Year 2001 that was published in the Federal Register (66 FR 40782) on August 3, 2001.

However, a number of antidumping and countervailing duty cases were not included on the previously-supplied list of cases that were subject to a distribution of the continued dumping and subsidy offset for Fiscal Year 2001. Accordingly, this notice essentially constitutes a supplement to the August 3, 2001, Federal Register notice for the purpose of listing the additional antidumping duty orders or findings or countervailing duty orders that are subject to a distribution of the offset for Fiscal Year 2001.

CUSTOMS REGULATIONS IMPLEMENTING THE CDSOA

It is noted that Customs published a final rule in the Federal Register (66 FR 48546) on September 21, 2001, as T.D. 01-68, which was effective as of that date, in order to implement the CDSOA. The final rule added a new subpart F to part 159 of the Customs Regulations (19 CFR part 159, subpart F (§§ 159.61-159.64)).

NOTICE OF INTENT TO DISTRIBUTE OFFSET

This document announces Customs intention to distribute to affected domestic producers the assessed antidumping or countervailing duties that were available for distribution in Fiscal Year 2001 in connection with those antidumping duty orders or findings or countervailing duty orders that are listed in this document. While § 159.62(a), Customs Regulations (19 CFR 159.62(a)), provides that Customs will publish a notice of intention to distribute assessed duties at least 90 days before the end

of a fiscal year, this notice is being published at this time because it came to Customs attention that not all parties were listed in the original notice. In the future, it is not expected that supplemental notices of intent will be published.

CERTIFICATIONS; SUBMISSION AND CONTENT

To obtain a distribution of the offset under a given order or finding, an affected domestic producer must submit a certification to Customs, indicating that the producer desires to receive a distribution.

As required by § 159.62(b), Customs Regulations (19 CFR 159.62(b)), this notice provides the specific instructions for filing a certification under § 159.63 to claim a distribution. Also, as required by § 159.62(b), for purposes of determining whether it is worthwhile to file a certification in a given case, this notice includes the dollar amount for each listed order or finding that is available for distribution.

A successor to a company appearing on the list of affected domestic producers in this notice, or a member company of an association that appears on the list of affected domestic producers in this notice, where the member company does not appear on the list, should also consult § 159.61(b)(1)(i) or 159.61(b)(1)(ii), Customs Regulations, respectively (19 CFR 159.61(b)(1)(i) or 159.61(b)(1)(ii)), concerning whether and, if so, the additional procedures under which such party may file a certification to claim an offset.

Specifically, to obtain a distribution of the offset under a given order or finding, each affected domestic producer must timely submit a certification, in triplicate, to the Assistant Commissioner, Office of Regulations and Rulings, Headquarters, containing the required information detailed below as to the eligibility of the producer to receive the requested distribution and the total amount of the distribution that the producer is claiming. The certification must enumerate the qualifying expenditures incurred by the domestic producer since the issuance of an order or finding and it must demonstrate that the domestic producer is eligible to receive a distribution as an affected domestic producer.

As provided in § 159.63(b), Customs Regulations (19 CFR 159.63(b)), certifications to obtain a distribution of an offset must be received by Customs 60 days after the date of publication of the notice of intent in the Federal Register.

While there is no established format for a certification, the certification must contain the following information:

1. The date of this Federal Register notice;
2. The Commerce case number;
3. The case name (Product/country);
4. The name of the domestic producer and any name qualifier, if applicable (for example, any other name under which the domestic producer does business or is also known);
5. The address of the domestic producer (if a post office box, the secondary street address must also be included);

6. The Internal Revenue Service (IRS) number (with suffix) of the domestic producer, employer identification number, or social security number, as applicable;
7. The specific business organization of the domestic producer (corporation, partnership, sole proprietorship);
8. The name(s) of any individual(s) designated by the domestic producer as the contact person(s) concerning the certification, together with the phone number(s) and/or facsimile transmission number(s) and electronic mail (email) address(es) for the person(s);
9. The total dollar amount claimed;
10. The dollar amount claimed by category, as described in the section below entitled "Amount Claimed for Distribution";
11. A statement of eligibility, as described in the section below entitled "Eligibility to Receive Distribution"; and
12. A signature by a corporate officer legally authorized to bind the producer.

AMOUNT CLAIMED FOR DISTRIBUTION

In calculating the amount of the distribution being claimed as an offset, the certification must enumerate the total amount of qualifying expenditures certified by the domestic producer, and the amount certified by category.

Qualifying expenditures which may be offset by a distribution of assessed antidumping and countervailing duties encompass those expenditures that are incurred after the issuance of an antidumping duty order or finding or a countervailing duty order, and prior to its termination, provided that such expenditures fall within any of the following categories: (1) Manufacturing facilities; (2) Equipment; (3) Research and development; (4) Personnel training; (5) Acquisition of technology; (6) Health care benefits for employees paid for by the employer; (7) Pension benefits for employees paid for by the employer; (8) Environmental equipment, training, or technology; (9) Acquisition of raw materials and other inputs; and (10) Working capital or other funds needed to maintain production.

Additionally, these expenditures must be related to the production of the same product that is the subject of the order or finding, with the exception of expenses incurred by associations which must relate to a specific case (§ 159.61(c), Customs Regulations (19 CFR 159.61(c))).

ELIGIBILITY TO RECEIVE DISTRIBUTION

As noted, the certification must contain a statement that the domestic producer desires to receive a distribution and is eligible to receive the distribution as an affected domestic producer.

Where a party is listed as an affected domestic producer on more than one order or finding covering the same product and files a separate certification for each order or finding using the same qualifying expenditures as the basis for distribution in each case, each certification must list all the other orders or findings where the producer is claiming the

same qualifying expenditures (§ 159.63(b)(3)(ii), Customs Regulations (19 CFR 159.63(b)(3)(ii))).

Moreover, as required by 19 U.S.C. 1675c(b)(1) and § 159.63(b)(3)(iii), the statement must include information as to whether the domestic producer remains in operation and continues to produce the product covered by the particular order or finding under which the distribution is sought. If a domestic producer is no longer in operation, or no longer produces the product covered by the order or finding, the producer would not be considered an affected domestic producer entitled to receive a distribution.

In addition, as required by 19 U.S.C. 1675c(b)(5) and § 159.63(b)(3)(iii), the domestic producer must state whether it has been acquired by a company or business that is related to a company that opposed the antidumping or countervailing duty investigation that resulted in the order or finding under which the distribution is sought. If a domestic producer has been so acquired, the producer would again not be considered an affected domestic producer entitled to receive a distribution.

The certification must be executed and dated by a party legally authorized to bind the domestic producer and it must state that the information contained in the certification is true and accurate to the best of the certifier's knowledge and belief under penalty of law, and that the domestic producer has records to support the qualifying expenditures being claimed (see section below entitled "Verification of Certification").

REVIEW AND CORRECTION OF CERTIFICATION

A certification that is submitted in response to this notice of distribution may be reviewed before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for qualifying expenditures, including the amount claimed for distribution, appear to be correct. A certification that is found to be materially incorrect or incomplete will be returned to the domestic producer, as provided in § 159.63(c), Customs Regulations (19 CFR 159.63(c)). It is the sole responsibility of the domestic producer to ensure that the certification is correct, complete and satisfactory so as to demonstrate the entitlement of the domestic producer to the distribution requested. Failure to ensure that the certification is correct, complete and satisfactory will result in the domestic producer not receiving a distribution.

VERIFICATION OF CERTIFICATION

Certifications are subject to Customs verification. Because of this, parties are required to maintain records supporting their claims for a period of three years after the filing of the certification (see § 159.63(d), Customs Regulations (19 CFR 159.63(d))). The records must be those that are normally kept in the ordinary course of business; these records must support each qualifying expenditure enumerated in the certification; and they must support how the qualifying expenditures are deter-

mined to be related to the production of the product covered by the order or finding.

DISCLOSURE OF INFORMATION IN
CERTIFICATIONS; ACCEPTANCE BY PRODUCER

The name of the affected domestic producer, the total dollar amount claimed by that party on the certification, as well as the total dollar amount that Customs actually disburses to that company as an offset, will be available for disclosure to the public, as specified in § 159.63(e), Customs Regulations (19 CFR 159.63(e)). To this extent, the submission of the certification is construed as an understanding and acceptance on the part of the domestic producer that this information will be disclosed to the public. Alternatively, a statement in a certification that this information is proprietary and exempt from disclosure will result in Customs rejection of the certification.

LIST OF ORDERS OR FINDINGS AND RELATED DOMESTIC PRODUCERS

The list of individual antidumping duty orders or findings and countervailing duty orders is set forth below, together with the affected domestic producers associated with each order or finding that are potentially eligible to receive an offset. Also, the amount of the offset available for distribution with respect to each listed order or finding appears in parentheses immediately below the Commerce case number for the order or finding.

<i>Commerce Case Number</i>	<i>Commission Case Number</i>	<i>Product/Country</i>	<i>Petitioners/Supporters</i>
A-588-015 (\$24,311,452.01)	AA 1921-66	Television receivers/Japan	AGIV (U.S.A.) Casio Computer CBM America Citizen Watch Funai Electric Hitachi Industrial Union Department, AFL-CIO Matsushita Mitsubishi Electric NEC Orion Electric J.C. Penney Philips Electronics Philips Magnavox P.T. Imports Sanyo Sharp Toshiba Toshiba America Consumer Products Victor Company of Japan Montgomery Ward Zenith Electronics

<i>Commerce Case Number</i>	<i>Commission Case Number</i>	<i>Product/Country</i>	<i>Petitioners/Supporters</i>
A-580-008 (\$45,669.05)	731-TA-134	Color television receivers/Korea	Independent Radionic Workers of America International Brotherhood of Electrical Workers International Union of Electrical Radio and Machine Workers Industrial Union Department, AFL-CIO Committee to Preserve American Color Television (members were the 4 labor organizations identified above and Allied Industrial Workers of America, International Union; American Flint Glass Workers Union of North America; Communications Workers of America; Corning Glass Works; Glass Bottle Blowers' Association of the United States and Canada; International Association of Machinists; Owens-Illinois; United Furniture Workers of America; United Steelworkers of America; and Wells-Gardner Electronics)
A-583-009 (\$1,025.82)	731-TA-135	Color television receivers/Taiwan	Independent Radionic Workers of America International Brotherhood of Electrical Workers International Union of Electrical, Radio and Machine Workers Industrial Union Department, AFL-CIO

<i>Commerce Case Number</i>	<i>Commission Case Number</i>	<i>Product/Country</i>	<i>Petitioners/Supporters</i>
			Committee to Preserve American Color Television (members were the 4 labor organizations identified above and Allied Industrial Workers of America, International Union; American Flint Glass Workers Union of North America; Communications Workers of America; Corning Glass Works; Glass Bottle Blowers' Association of the United States and Canada; International Association of Machinists; Owens-Illinois; United Furniture Workers of America; United Steelworkers of America; and Wells-Gardner Electronics)
A-122-006 (\$13,533.77)	AA1921-49	Steel jacks/ Canada	No petition at the Commission; Commerce service list identifies: Bloomfield Manufacturing (formerly Harrah Manufacturing) Seaburn Metal Products
A-588-029 (\$65,301.74)	AA1921-85	Fish netting of manmade fiber/ Japan	No petition at the Commission; Commerce service list identifies: Jovanovich Supply LFSI Trans-Pacific Trading
A-588-038 (\$168,261.66)	AA1921-98	Bicycle speedometers/Japan	No petition at the Commission; Commerce service list identifies: Avocet Cat Eye Diversified Products N.S. International Sanyo Electric Stewart-Warner
A-588-055 (\$53.99)	AA1921-154	Acrylic sheet/ Japan	Polycast Technology

<i>Commerce Case Number</i>	<i>Commission Case Number</i>	<i>Product/Country</i>	<i>Petitioners/Supporters</i>
C-351-037 (\$2,471.93)	104-TAA-21	Cotton yarn/ Brazil	Harriet & Henderson Yarns LaFar Industries American Yarn Spinners Association
A-588-005 (\$572.91)	731-TA-48	High power microwave amplifiers/ Japan	Aydin MCL
A-122-401 (\$256.98)	731-TA-196	Red raspberries/ Canada	Rader Farms Ron Roberts Shuksan Frozen Food Northwest Food Producers' Association Oregon Caneberry Commission Red Raspberry Member Group Washington Red Raspberry Commission
A-588-405 (\$49,294.92)	731-TA-207	Cellular mobile telephones/ Japan	E.F. Johnson Motorola
C-421-601 (\$407.22)	701-TA-278	Fresh cut flowers/ Netherlands	Burdette Coward Gold Coast Uanko Nursery Hollandia Wholesale Florist Manatee Fruit Monterey Flower Farms Topstar Nursery California Floral Council Floral Trade Council Florida Flower Association
A-301-602 (\$32,909.01)	731-TA-329	Fresh cut flowers/ Colombia	Burdette Coward Gold Coast Uanko Nursery Hollandia Wholesale Florist Manatee Fruit Monterey Flower Farms Topstar Nursery California Floral Council Floral Trade Council Florida Flower Association
A-331-602 (\$385.01)	731-TA-331	Fresh cut flowers/ Equador	Burdette Coward Gold Coast Uanko Nursery Hollandia Wholesale Florist Manatee Fruit Monterey Flower Farms Topstar Nursery California Floral Council Floral Trade Council Florida Flower Association

<i>Commerce Case Number</i>	<i>Commission Case Number</i>	<i>Product/Country</i>	<i>Petitioners/Supporters</i>
A-201-601 (\$24,291.74)	731-TA-333	Fresh cut flowers/Mexico	Burdette Coward Gold Coast Uanko Nursery Hollandia Wholesale Florist Manatee Fruit Monterey Flower Farms Topstar Nursery California Floral Council Floral Trade Council Florida Flower Association
A-401-603 (\$412.84)	731-TA-354	Stainless steel hollow products/Sweden	AL Tech Specialty Steel Allegheny Ludlum Steel ARMCO Carpenter Technology Crucible Materials Damacus Tubular Products Specialty Tubing Group
A-508-604 (\$376.92)	731-TA-366	Industrial phosphoric acid/Israel	Albright & Wilson FMC Hydrite Chemical Monsanto Stauffer Chemical
A-588-802 (\$8,407.02)	731-TA389	3.5" microdisks/Japan	Verbatim
A-588-809 (\$70,398.66)	731-TA-426	Small business telephone systems/Japan	American Telephone & Telegraph Comdial Eagle Telephonic
A-583-806 (\$10,079.58)	731-TA-428	Small business telephone systems/Taiwan	American Telephone & Telegraph Comdial Eagle Telephonic
A-580-803 (\$12,773.12)	731-TA-427	Small business telephone systems/Korea	American Telephone & Telegraph Comdial Eagle Telephonic
A-570-811 (\$957.34)	731-TA-497	Tungsten ore concentrates/China	Curtis Tungsten U.S. Tungsten

<i>Commerce Case Number</i>	<i>Commission Case Number</i>	<i>Product/Country</i>	<i>Petitioners/Supporters</i>
A-427-804 (\$59,480.21)	731-TA-553	Hot-rolled lead & bismuth carbon steel products/France	Bethlehem Steel Inland Steel Industries USS/Kobe Steel
C-427-805 (\$11,868.38)	701-TA-315	Hot-rolled lead & bismuth carbon steel products/France	Bethlehem Steel Inland Steel Industries USS/Kobe Steel

Dated: January 11, 2002.

DOUGLAS M. BROWNING,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

[Published in the Federal Register, January 17, 2002 (67 FR 2511)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, January 16, 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.

DOUGLAS M. BROWNING,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION
OF ELECTRICAL SIGNALING EQUIPMENT FOR MOTOR
VEHICLES

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of electrical signaling equipment for motor vehicles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of the "Parking Assistant", and to revoke any treatment Customs has previously accorded to substantially identical transactions. This article is for use with motor vehicles and determines the distance between the device and a given object and emits an audible signal to alert the driver. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before March 1, 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. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927-0760.

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), 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 based on the premise 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 rights and responsibilities 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, 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 declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other 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 relating to the tariff classification of the Parking Assistant. Although in this notice Customs is specifically referring to one ruling, NY F87653, 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 identified. Any party who has received an interpretative 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 importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the 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 importations of merchandise subsequent to this notice.

In NY F87653, dated June 21, 2000, the Parking Assistant for use with motor vehicles was held to be classifiable as other electric sound signaling apparatus, in subheading 8531.80.90, HTSUS. This ruling was based on the fact that the device emitted an audible beep to warn the driver as the vehicle came nearer an object. NY F87653 is set forth as "Attachment A" to this document.

It is now Customs position that because the Parking Assistant is believed to be principally used with motor vehicles, it is properly classified as electrical signaling equipment of a kind used for motor vehicles, in subheading 8512.30.00, HTSUS. Pursuant to 19 U.S.C. 1625(c)(1)), Customs intends to revoke NY F87653 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis in HQ 965368, which is set forth as "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: January 10, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, June 21, 2000.
CLA-2-85:RR:NC:1:112 F87653
Category: Classification
Tariff No. 8531.80.9040

MR. ROBERT J. RESETAR
PORSCHE CARS NORTH AMERICA, INC.
980 Hammond Drive
Atlanta, GA 30328

Re: The tariff classification of a "Parking Assistant" from Germany.

DEAR MR. RESETAR:

In your letter dated May 18, 2000 you requested a tariff classification ruling.

As indicated by the submitted information and literature, the "Parking Assistant" is a device to assist the driver of a vehicle when backing into parking spaces. It consists of four parking assist sensors located on the rear bumper, and a control unit located under the driver's seat. The sensors emit and receive ultrasonic waves at regular intervals. These waves are transmitted back to the control unit, which triangulates the distance between the vehicle and an object behind it. An audible beep is emitted by the control unit and the signal increases as the vehicle gets closer to an object. It continues to increase in frequency until, at a certain point, the signal becomes continuous.

The applicable subheading for the "Parking Assistant" will be 8531.80.9040, Harmonized Tariff Schedule of the United States (HTS), which provides for other electric sound signaling apparatus. The rate of duty will be 1.3 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist David Curran at 212-637-7049.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
 U.S. CUSTOMS SERVICE,
Washington, DC.
 CLA-2 RR:CR:GC 965368 JAS
 Category: Classification
 Tariff No. 8512.30.00

MR. ROBERT RESETAR
 PORSCHE CARS NORTH AMERICA, INC.
 980 Hammond Drive
 Atlanta, GA 30328

Re: NY F87653 Revoked; Parking Assistant.

DEAR MR. RESETAR:

In NY F87653, which the Director of Customs National Commodity Specialist Division, New York, issued to you on June 21, 2000, the Parking Assistant, a device to assist drivers when backing vehicles into parking spaces, was found to be classifiable in subheading 8531.80.90, Harmonized Tariff Schedule of the United States (HTSUS), as other electric sound signaling apparatus. We have reconsidered this classification and now believe that it is incorrect.

Facts:

The Parking Assistant was described in NY F87653 as consisting of four sensors located on the rear bumper, and a control unit mounted under the driver's seat, the apparatus powered by the vehicle's electrical system. The sensors emit and receive ultrasonic waves at regular intervals. These waves are transmitted back to the control unit which triangulates the distance between the vehicle and an object behind it. The control unit emits an audible beep, presumably for the benefit of the driver, with the signal increasing to a continuous sound as the vehicle gets closer to an object. The actual distance from the object, however, is not displayed numerically.

The HTSUS provisions under consideration are as follows:

8512	Electrical lighting or signaling equipment (excluding articles of heading 8539), windshield wipers, defrosters and demisters, of a kind used for cycles or motor vehicles; parts thereof:
8512.30.00	Sound signaling equipment
*	* * * * *
8531	Electric sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof:
8531.80	Other apparatus:
8531.80.90	Other

Issue:

Whether the Parking Assistant is a good of heading 8512.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings

and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. *See* T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

By its terms, heading 8531 excludes electric sound signaling apparatus of heading 8512. The qualifying language in heading 8512 "of a kind used for cycles or motor vehicles" denotes a provision governed by principal use, i.e., the use at or immediately prior to the date of importation of the goods of that class or kind to which an article belongs. The ENs on p. 1461 list horns, sirens and other electrical sound signaling appliances as being within the scope of heading 8512. It is reasonable and logical to conclude that the audible "beep" emitted by the control unit in the Parking Assistant qualifies as a type of sound signaling substantially similar to that produced by horns and sirens. Moreover, while a sample of the Parking Assistant is not currently available, our examination of substantially similar devices, their packaging and accompanying literature, leads us to conclude that the Parking Assistant belongs to a class or kind of sound signaling equipment principally used with motor vehicles. *See HQ 964660 and HQ 964661*, both dated January 4, 2001, motor vehicle alarm systems believed to be substantially similar to the Parking Assistant.

Holding:

Under the authority of GRI 1 the Parking Assistant is provided for in heading 8512. It is classifiable in subheading 8512.30.00, HTSUS. NY F87653, dated June 21, 2000, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTER
RELATING TO ENTRY OF PILOT CARS

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

ACTION: Notice of proposed modification of ruling letter.

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 Implementation Act (Pub.L. 103-182, 107 Stat. 2057) this notice advises interested parties that Customs intends to modify one ruling pertaining to the entry of pilot cars in the United States. Comments are invited on the correctness of the proposed modification.

DATE: Comments must be received on or before March 1, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Entry Procedures and Carriers Branch, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Glen E. Vereb, Entry Procedures and Carriers Branch, Office of Regulations and Rulings (202) 927-2320.

SUPPLEMENTAL 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), this notice advises interested parties that Customs intends to modify one ruling pertaining to the use of Canadian pilot cars in the United States. Customs invites comments on the correctness of the proposed modification.

Section 141.4, Customs Regulations (19 CFR 141.4), provides that entry as required by title 19, United States Code, section 1484(a) (19 U.S.C. 1484(a)), shall be made of every importation whether free or dutiable and regardless of value, except for intangibles and articles specifically exempted by law or regulation from the requirements for entry.

In Headquarters ruling letter (HRL) 114914, dated January 12, 2000, Customs held that Canadian pilot cars escorting Canadian trucks carrying wide loads from Canada to points in the United States and subsequently returning to Canada after the load is delivered are not exempt from formal entry. HRL 114914 is set forth as Attachment A to this document.

Upon further review of HRL 114914, we have concluded that such pilot cars can be entered informally pursuant to sections 148.23(c) and 143.23(a), Customs Regulations (19 CFR 148.23 and 143.23(a)). Customs does retain the right to demand formal entry of these pilot cars pursuant to section 143.22, Customs Regulations (19 CFR 143.22) if, in the discretion of the port director, formal entry is warranted.

Therefore, Customs intends to modify HRL 114914 so that Canadian pilot cars may be entered informally subject to the discretion of the port director to demand a formal entry. Proposed HRL 115532 is set forth in Attachment B to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: January 11, 2002.

LARRY L. BURTON,

Chief,

Entry Procedures and Carriers Branch.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, January 12, 2000.
BOR-4-04-RR:IT:EC 114914 GEV
Category: Carriers

PAUL R. LANDRY
PRESIDENT
BRITISH COLUMBIA TRUCKING ASSOCIATION
#1-1610 Krevet Way
Port Coquitlam, British Columbia, Canada V3C 5W9

Re: Instruments of International Traffic; Pilot Cars; 19 U.S.C. § 1322.

DEAR MR. LANDRY:

This is in response to your letter dated December 20, 1999, seeking clarification regarding the treatment by the U.S. Customs Service of Canadian pilot cars. Our ruling on this matter is set forth below.

Facts:

Canadian pilot cars are required by law to escort Canadian-based trucks carrying wide loads from Canada to points in the United States. The pilot cars subsequently return to Canada after the load is delivered.

Issue:

Whether Canadian pilot cars are exempt from formal entry.

Laws and Analysis:

Section 141.4, Customs Regulations (19 CFR § 141.4), provides that entry as required by title 19, United States Code, § 1484(a) (19 U.S.C. § 1484(a)), shall be made of every importation whether free or dutiable and regardless of value, except for intangibles and articles specifically exempted by law or regulations from the requirements for entry. Since Canadian pilot cars are not so exempted, they are subject to entry and payment of any applicable duty. With respect to the latter, we note that such vehicles are exempt from duty pursuant to Chapter 87, Harmonized Tariff Schedule of the United States, Annotated (HTSUSA).

Vehicles and other instruments of international traffic may be entered without entry and payment of duty under the provisions of 19 U.S.C. § 1322. To qualify as instruments of international traffic, trucks having their principal base of operations in a foreign country must be arriving in the United States with merchandise destined for points in the United States, or arriving empty or loaded for the purpose of taking merchandise out of the United States (see 19 CFR § 123.14(a)).

Section 10.41(d), Customs Regulations (19 CFR § 10.41(d)), provides, in part, that any foreign-owned vehicle brought into the United States as an element of a commercial transaction, except as provided at § 123.14(c) (pertaining to the use of foreign-based vehicles in local traffic in the United States), is subject to treatment as an importation of merchandise from a foreign country and a regular entry therefor shall be made.

Pursuant to a request for internal advice received from the former Regional Commissioner of Customs, Pacific Region, dated January 29, 1975, regarding this matter, Headquarters issued a response dated April 1, 1975 (file no. 101502), which provided that “* * * pilot cars do not qualify for admission under this provision [19 CFR § 123.14] because they do not carry merchandise or passengers between the United States and Canada. Admission of foreign-owned pilot cars as instruments of international traffic is not warranted and should no [sic] longer be permitted.”

With respect to the applicability of § 10.41(d) to the use of Canadian pilot cars as described above, the aforementioned internal advice further provided that whether an article is used as “an element of a commercial transaction” depends upon the circumstances of each case, and the term thus is not susceptible of authoritative definition. Generally the courts have defined a commercial activity, in its broadest sense, to include any type of business or activity which is carried on for a profit. *Caribbean Steamship Co. v. Le Societe Navale Caennaise*, 140 F.Supp. 16, 21 (1966). The internal advice held that the use of Canadian pilot cars as described above is “an element of a commercial transaction” within the meaning of that regulatory provision.

Advice furnished by Headquarters in response to a request therefor represents the official position of the U.S. Customs Service with respect to the application of the Customs laws to the facts of a specific transaction and, absent a request for reconsideration by the requesting field office, is to be applied by the field office in its disposition of the Customs transaction in question. (19 CFR § 177.11(b)(6)) To date, Headquarters has received no such request for reconsideration.

Accordingly, Customs position regarding the treatment of Canadian pilot cars as set forth in the above-cited internal advice remains unchanged. Such vehicles are subject to formal entry.

Holding:

Canadian pilot cars are not exempt from formal entry.

JERRY LADERBERG,
Chief,
Entry Procedures and Carriers Branch.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
BOR-4-04-RR:IT:EC 115532 GEV
Category: Carriers

PAUL R. LANDRY
PRESIDENT
BRITISH COLUMBIA TRUCKING ASSOCIATION
#1-1610 Kreet Way
Port Coquitlam, British Columbia, Canada V3C 5W9

Re: Pilot Cars; Entry; 19 U.S.C. 1498.

DEAR MR. LANDRY:

This is in response to your letter dated December 20, 1999, seeking clarification regarding the treatment by the U.S. Customs Service of Canadian pilot cars. Our ruling on this matter is set forth below.

Facts:

Canadian pilot cars are required by law to escort Canadian-based trucks carrying wide loads from Canada to points in the United States. The pilot cars subsequently return to Canada after the load is delivered.

Issue:

Whether Canadian pilot cars are exempt from entry.

Laws and Analysis:

Section 141.4, Customs Regulations (19 CFR 141.4), provides that entry as required by title 19, United States Code, 1484(a) (19 U.S.C. 1484(a)), shall be made of every importation whether free or dutiable and regardless of value, except for intangibles and articles specifically exempted by law or regulations from the requirements for entry. Since Canadian pilot cars are not so exempted, they are subject to entry and payment of any applicable duty. In regard to entry, this may be done informally pursuant to sections 148.23(c) and 143.23(a), Customs Regulations (19 CFR 148.23(c) and 143.23(a)). However, Customs does retain the right to demand formal entry pursuant to section 143.22, Customs Regulations (19 CFR 143.22) if, in the discretion of the port director, formal entry is warranted. With respect to duty assessment, we note that such vehicles are exempt from duty pursuant to Chapter 87, Harmonized Tariff Schedule of the United States, Annotated (HTSUSA).

Vehicles and other instruments of international traffic may be entered without entry and payment of duty under the provisions of 19 U.S.C. 1322. To qualify as instruments of

international traffic, trucks having their principal base of operations in a foreign country must be arriving in the United States with merchandise destined for points in the United States, or arriving empty or loaded for the purpose of taking merchandise out of the United States (see 19 CFR 123.14(a)).

Section 10.41(d), Customs Regulations (19 CFR 10.41(d)), provides, in part, that any foreign-owned vehicle brought into the United States as an element of a commercial transaction, except as provided at section 123.14(c) (pertaining to the use of foreign-based vehicles in local traffic in the United States), is subject to treatment as an importation of merchandise from a foreign country and a regular entry therefor shall be made.

Pursuant to a request for internal advice received from the former Regional Commissioner of Customs, Pacific Region, dated January 29, 1975, regarding this matter, Headquarters issued a response dated April 1, 1975 (file no. 101502), which provided that “* * * pilot cars do not qualify for admission under this provision [19 CFR 123.14] because they do not carry merchandise or passengers between the United States and Canada. Admission of foreign-owned pilot cars as instruments of international traffic is not warranted and should not [sic] longer be permitted.”

With respect to the applicability of section 10.41(d) to the use of Canadian pilot cars as described above, the aforementioned internal advice further provided that whether an article is used as “an element of a commercial transaction” depends upon the circumstances of each case, and the term thus is not susceptible of authoritative definition. Generally the courts have defined a commercial activity, in its broadest sense, to include any type of business or activity which is carried on for a profit. *Caribbean Steamship Co. v. Le Societe Navale Caennaise*, 140 F.Supp. 16, 21 (1966). The internal advice held that the use of Canadian pilot cars as described above is “an element of a commercial transaction” within the meaning of that regulatory provision.

Advice furnished by Headquarters in response to a request therefor represents the official position of the U.S. Customs Service with respect to the application of the Customs laws to the facts of a specific transaction and, absent a request for reconsideration by the requesting field office, is to be applied by the field office in its disposition of the Customs transaction in question. (19 CFR 177.11(b)(6)) To date, Headquarters has received no such request for reconsideration.

Accordingly, Customs position regarding the treatment of Canadian pilot cars as set forth in the above-cited internal advice remains unchanged. Such vehicles are subject to entry which may be done informally pursuant to the above-cited regulatory authority.

Holding:

Canadian pilot cars are not exempt from entry, however, this may be done informally pursuant to 19 CFR 148.23(c) and 143.23(a). However, Customs does retain the right to demand formally entry pursuant to 19 CFR 143.22.

LARRY L. BURTON,
Chief,
Entry Procedures and Carriers Branch.

REVOCATION OF RULING LETTERS AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF BUOYANCY
COMPENSATORS

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

ACTION: Notice of revocation of ruling letters and treatment relating to tariff classification of buoyancy compensators.

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 two ruling letters pertaining to the tariff classification of buoyancy compensators under the Harmonized Tariff Schedule of the United States (HTSUS). Customs is also revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published on December 12, 2001, in Volume 35, Number 28, of the CUSTOMS BULLETIN. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Joe Shankle, Textiles Branch, (202) 927-2379.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on 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, notice proposing to revoke New York Ruling letters (NY) E82612, dated June 14, 2000, and NY F83415,

dated March 22, 2000, and to revoke any treatment accorded to substantially identical merchandise was published in the December 12, 2001, CUSTOMS BULLETIN, Volume 35, Number 50. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which 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 (19 U.S.C. 1625 (c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions that is contrary to the position set forth in this notice. This treatment may, among other reasons, have been 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 HTSUS. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was 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 this final decision.

In NY E82612, Customs classified a buoyancy compensator jacket under subheading 6210.50.5055, HTSUSA, which provides in pertinent part, for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Other women's or girls' garments: Of man-made fibers: Other * * * Other." The buoyancy compensator was described as a jacket composed of a shell of woven 100% nylon coated on the inside with polyurethane. The buoyancy compensator was designed for diving, having an inflatable bladder, woven polypropylene straps, a buoyancy compensator hose retainer, a rear adjustable buckle, strap and harness for air tanks, and a padded inner back for comfort.

In NY F83415, dated March 22, 2000, Customs classified five buoyancy compensator jackets under subheading 6211.43.0091, HTSUSA, which provides, in pertinent part, for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls: Of man-made fibers, Other." The buoyancy compensators were described as jackets used during underwater diving. All of the jackets were made of a woven 100% nylon fabric. All had features such as a carry handle, stainless steel rings, inflatable/deflatable bladders, weight pockets with dump ability, accessory clips, adjustable arms, chest and waist straps, hose retainer, storage pockets, utility rings and padded backs.

It is now Customs position that buoyancy compensators of the type discussed herein, are classifiable under subheading 9506.29.0040, HTSUSA, which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof: Other, Other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY E82612, NY F83415, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) 965312 and HQ 965313 (Attachments A and B 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 that is contrary to the position set forth in this notice.

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

Dated: January 14, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, January 14, 2002.

CLA-2 RR:CR:TE 965312 JFS
Category: Classification
Tariff No. 9506.29.0040

MR. OR MRS. J. WOOLLEY
TABATA USA, INC.
2380 Mira Mar Ave.
Long Beach, CA 90815

Re: Revocation of NY E82612, dated June 14, 1999; Classification of Buoyancy Compensator Jacket; Dive Equipment; Chapter 95; Not Wearing Apparel.

DEAR MR. OR MRS. WOOLLEY:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) E82612, issued to you on June 14, 1999, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a buoyancy compensator. After review of that ruling, it has been determined that the classification the buoyancy compensator in subheading 6210.50.5055, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY E82612.

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 Agree-

ment Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY E2612 was published on December 12, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 50. As explained in the notice, the period within which to submit comments on this proposal was until January 11, 2002. No comments were received in response to this notice.

Facts:

The item that is the subject of this revocation is known as a buoyancy compensator. It was classified in subheading 6210.50.5055, HTSUSA, which provides, in pertinent part, for “Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Other women’s or girls’ garments: Of man-made fibers: Other * * * Other.” The buoyancy compensator was described in NY E82612 as follows:

The submitted sample is a B.C. Jacket (buoyancy compensator jacket) which is composed of a shell of woven 100% nylon fabric coated inside with polyurethane. The jacket is used for scuba diving and features woven polypropylene straps, a buoyancy compensator hose retainer, a rear adjustable buckle, strap and harness for air tanks, and a padded inner back for comfort. The jacket’s buoyancy compensator is adjustable and can be easily inflated and deflated. There is a wide adjustable cummerbund with hook and loop closure, an adjustable shoulder buckle with a quick-release feature, and two flap side pockets with hook and loop closure.

Issue:

Is the buoyancy compensator classifiable as dive equipment under subheading 9506.29.0040, HTSUSA?

Analysis:

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

Chapter 62 covers articles of apparel that are not knitted or crocheted. In order to classify the buoyancy compensator in Chapter 62, HTSUSA, it must be considered wearing apparel. Buoyancy compensators are designed to be worn and, therefore, fall generally within the class or kind of articles considered wearing apparel. See *Arnold v. United States*, 147 U.S. 494, 496 (1892). See also HQ 952204, dated April 12, 1993. However, all things worn by humans are not necessarily wearing apparel. See *Dynamics Classics, Ltd. v. United States*, Slip. Op. 86–105, 10 C.I.T. 666 (Oct. 17, 1986) (plastic suits used for weight reduction inappropriate for wear during exercise or work not wearing apparel); *Antonio Pompeo v. United States*, 40 Cust. Ct. 362, C.D. 2006 (1958) (crash helmets not wearing apparel); *Best v. United States*, 1 Ct. Cust. Appls. 49, T.D. 31009 (1910) (ear caps for prevention of abnormal ear growth not wearing apparel). “*Admiral Craft Equipment* developed the standard that items are not considered wearing apparel when the use of those items goes ‘far beyond that of general wearing apparel.’¹ *Daw Industries, Inc. v. United States*, 714 F.2d 1140, 1143 (Fed. Cir. 1983). In *Daw Industries* the Court found that sheaths and socks used exclusively with prostheses do not provide “significantly more, or essentially different,” protection than analogous articles of clothing, but merely “differ incrementally.” The Court concluded that while in some cases the differences may become so large that the article is no longer wearing apparel, that was not the case with the sheaths and socks.

In HQ 952204, dated April 12, 1993, Customs applied the reasoning relied upon in *Daw Industries* when considering the classification of a “swim sweater” which is a flotation device that functions as a swimming aid for children. Customs found that while the “swim sweater” provides some protection from the elements and arguably adorns the body, it is used in very specific situations. Customs concluded that the increment in the difference in use and effect between the “swim sweater” and a conventional sweater is so large that the “swim sweater” is no longer wearing apparel. For additional rulings finding that “swim sweaters” are not wearing apparel, see HQ 952483, dated May 27, 1993; HQ 95590, dated January 31, 1994; HQ 953775, dated April 12, 1993; and HQ 953776, dated April 12, 1993.

¹ *Admiral Craft Equipment, Corp. v. United States*, 82 Cust. Ct. 162, C.D. 4796 (1979).

The use of a buoyancy compensator like the one discussed herein, whether in the form of a vest or a jacket, goes far beyond that of a typical jacket or vest. Buoyancy compensators are designed to provide SCUBA divers with neutral buoyancy.² “Divers usually seek a condition of neutral to slightly negative buoyancy. * * * Neutral buoyancy enhances a scuba diver’s ability to swim easily, change depth, and hover.”³ U.S. Navy Diving Manual, 2-9.4.2, p. 2-14. In order to maintain neutral buoyancy, divers use a combination of inflatable air bladders contained within the buoyancy compensator and weights.

In HQ 950562, dated January 9, 1992, Customs classified a Stratus snorkeling vest designed to provide surface flotation as well as warmth as a garment. This ruling was affirmed in HQ 952483, dated May 27, 1993. The vest was constructed by bonding a flotation pocket to a neoprene vest. Relying on the EN to Heading 6113, HTS (heading includes oilskins & divers’ suits), Customs reasoned that if the neoprene vest were imported without the flotation pocket, it would be classified as a garment. Customs next considered, in light of *Daw Industries*, supra, whether the additional protection and other advantages afforded by the flotation pocket were “significantly more, or essentially different,” than those provided by the neoprene vest alone. Because marketing materials stated that the vest was “designed to provide warmth and a small amount of flotation,” Customs concluded that the snorkeling vest did not differ significantly from a neoprene vest alone, and affirmed HQ 950562.

Whereas the snorkel vest had dual functions of providing warmth and buoyancy, the entire design of buoyancy compensators is centered around buoyancy control. While features such as padding provide some warmth and protection, these benefits are ancillary to the function of allowing the diver to control her buoyancy. The instant buoyancy compensator is not a garment or wearing apparel.

Customs has classified some articles with similar features to the instant buoyancy compensator in Chapter 63 as lifejackets or lifebelts. In HQ 952204 (classifying the swim sweaters discussed above), Customs relied upon the following definitions of lifejackets and lifebelts:

Webster’s New World Dictionary, Third College Edition (1988) defines a life preserver as a “buoyant device for saving a person from drowning by keeping the body afloat, as a ring or sleeveless jacket of canvas-covered cork or kapok.” Buoyancy is defined as “the ability or tendency to float or rise in liquid or air.” A life belt is defined as “a life preserver in the form of a belt,” and a life jacket (or vest) as “a life preserver in the form of a sleeveless jacket or vest.”

Customs noted that the swim sweaters did not meet U.S. Coast Guard specifications for life preservers. However, because they meet the common definition of a life preserver, they were classifiable as such.

Likewise, in HQ 950496, dated March 5, 1992, Customs classified a windsurfer’s buoyancy vest within subheading 6307.20, HTSUSA, as a lifejacket, even though it did not meet the U.S. Coast Guard specifications for life preservers. See also HQ 952930, dated February 25, 1993. The basis of this ruling was that while the article did not meet U.S. Coast Guard specifications, its main purpose was to help keep the wearer afloat. See also NY G87464, dated March 13, 2001 (classifying a bib-like snorkel vest as a lifejacket under subheading 6307.20, HSUSA).⁴

In contrast, the primary function of a buoyancy compensator is to control buoyancy, be it negative buoyancy or positive buoyancy, at all stages of a dive. While a buoyancy compensator can be, and is, used to help divers float on the surface, this is merely one end of the spectrum of its capabilities. At the other end of the spectrum, divers can deflate the buoyancy compensator allowing them to descend to their desired depth, at which point the buoyancy compensator can be inflated as needed to maintain neutral buoyancy. The inflatable bladder, inflation tube with mouthpiece, exhaust valve and weight pouches makes this vest an adjustable apparatus that acts to increase or decrease buoyancy to counteract the weight of the air tank or the buoyancy of a wet suit.

² The acronym SCUBA stands for “Self Contained Underwater Breathing Apparatus.” U.S. Navy Diving Manual, Appx. 1D-9.

³ Negative buoyancy gives a diver in a helmet and dress (Navy term for apparel and gear) a better foothold on the bottom. U.S. Navy Diving Manual, 2-9.4.2, p. 2-14.

⁴ Unlike the snorkel vest in HQ 950562, this snorkel vest only consisted of the flotation bib and did not have a neoprene vest to add warmth and protection.

Subheading 9506.29.00.40, HTSUSA, provides for:

Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof: Other, Other.

The EN to heading 9506, HTSUSA, state:

This heading covers:

* * * * *

(B) Requisites for other sports and outdoor games * * *, e.g.:

* * * * *

(2) Water-skis, surf-boards, sailboards and other water-sports equipment, such as diving stages (platforms), chutes, divers' flippers and respiratory masks of a kind used without oxygen or compressed air bottles, and simple underwater breathing tubes (generally known as "snorkels") for swimmers or divers.

The legal note to Chapter 95 excludes sports clothing of chapters 61 and 62. However, this exclusionary note does not operate to exclude buoyancy compensators from Chapter 95 because, as discussed above, buoyancy compensators are not clothing.

It is well settled that equipment used for scuba diving is classified in subheading 9506.29.0040, HTSUSA. See, *H.I.M./Fathom, Inc., v. United States*, 21 C.I.T. 776, 981 F. Supp. 610 (classifying a weight belt used for diving in subheading 9506.29.0040, HTSUSA (1997)); NY 81357, dated August 23, 1995, and NY G86744, dated February 12, 2001, (classifying weight belts as diving equipment). The instant buoyancy compensator that is equipped with an air bladder, inflation hose, exhaust valve, weight pouches and compressed air tank harness, is clearly a piece of equipment designed for scuba diving. Accordingly, it is classified as dive equipment under subheading 9506.29.0040, HTSUSA. For similar rulings on buoyancy compensators, see HQ 965106 and HQ 965313.

Holding:

The instant buoyancy compensator is classified under subheading 9506.29.0040, HTSUSA, which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof: Other, Other." The duty rate is FREE.

Effect On Other Rulings:

NY E82612, dated June 14, 1999, is hereby REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, January 14, 2002.
CLA-2 RR:CR:TE 965313 JFS
Category: Classification
Tariff No. 9506.29.0040

MR. TOM PACIAFFI
CORONET BROKERS CORP
*P.O. Box 300764
Cargo Building 80
John F. Kennedy International Airport
Jamaica, NY 11430-0764*

Re: Revocation of NY F83415, dated March 22, 2000; Classification of Buoyancy Compensator Vests; Dive Equipment; Chapter 95; Not Wearing Apparel.

DEAR MR. PACIAFFI:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) F83415, issued to you on behalf of your client Cressi Sub USA, on March 22, 2000, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of five buoyancy compensators. After review of that ruling, it has been determined that the classification the buoyancy compensators in subheading 6211.43.0091, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY F83415.

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. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY F83415 was published on December 12, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 50. As explained in the notice, the period within which to submit comments on this proposal was until January 11, 2002. No comments were received in response to this notice.

Facts:

The items that are the subject of this revocation are known as buoyancy compensators. In NY F83415, they were classified in subheading 6211.43.0091, HTSUSA, which provides, in pertinent part, for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of man-made fibers, Other." The buoyancy compensators were described as follows:

The items are Styles Air, Safety 108, Safety 104, Safety 102, Aquapro 6 and Aquapro 5 Buoyancy Compensator Jackets. The jackets are used during underwater diving. All jackets are made of a woven 100% nylon fabric. Although the styles vary, they feature such items as a carry handle, stainless steel rings, inflatable/deflatable bladders, weight pockets with dump ability, accessory clips, adjustable arm, chest and waist straps, hose retainer, storage pockets, utility rings and padded backs.

Issue:

Are the buoyancy compensators classifiable as dive equipment under subheading 9506.29.0040, HTSUSA?

Analysis:

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

Chapter 62 covers articles of apparel that are not knitted or crocheted. In order to classify the buoyancy compensator in Chapter 62, HTSUSA, it must be considered wearing apparel. Buoyancy compensators are designed to be worn and, therefore, fall generally within the class or kind of articles considered wearing apparel. See *Arnold v. United States*, 147 U.S. 494, 496 (1892). See also HQ 952204, dated April 12, 1993. However, all

things worn by humans are not necessarily wearing apparel. See *Dynamics Classics, Ltd. v. United States*, Slip. Op. 86-105, 10 C.I.T. 666 (Oct. 17, 1986) (plastic suits used for weight reduction inappropriate for wear during exercise or work not wearing apparel); *Antonio Pompeo v. United States*, 40 Cust. Ct. 362, C.D. 2006 (1958) (crash helmets not wearing apparel); *Best v. United States*, 1 Ct. Cust. Appls. 49, T.D. 31009 (1910) (ear caps for prevention of abnormal ear growth not wearing apparel). “Admiral Craft Equipment developed the standard that items are not considered wearing apparel when the use of those items goes ‘far beyond that of general wearing apparel.’”¹ *Daw Industries, Inc. v. United States*, 714 F.2d 1140, 1143 (Fed. Cir. 1983). In *Daw Industries* the Court found that sheaths and socks used exclusively with prostheses do not provide “significantly more, or essentially different,” protection than analogous articles of clothing, but merely “differ incrementally.” The Court concluded that while in some cases the differences may become so large that the article is no longer wearing apparel, that was not the case with the sheaths and socks.

In HQ 952204, dated April 12, 1993, Customs applied the reasoning relied upon in *Daw Industries* when considering the classification of a “swim sweater” which is a flotation device that functions as a swimming aid for children. Customs found that while the “swim sweater” provides some protection from the elements and arguably adorns the body, it is used in very specific situations. Customs concluded that the increment in the difference in use and effect between the “swim sweater” and a conventional sweater is so large that the “swim sweater” is no longer wearing apparel. For additional rulings finding that “swim sweaters” are not wearing apparel, see HQ 952483, dated May 27, 1993; HQ 95590, dated January 31, 1994; HQ 953775, dated April 12, 1993; and HQ 953776, dated April 12, 1993.

The use of buoyancy compensators like the ones discussed herein, whether in the form of a vest or a jacket, goes far beyond that of a typical jacket or vest. Buoyancy compensators are designed to provide SCUBA divers with neutral buoyancy.² “Divers usually seek a condition of neutral to slightly negative buoyancy. * * * Neutral buoyancy enhances a scuba diver’s ability to swim easily, change depth, and hover.”³ U.S. Navy Diving Manual, 2-9.4.2, p. 2-14. In order to maintain neutral buoyancy, divers use a combination of inflatable air bladders contained within the buoyancy compensator and weights.

In HQ 950562, dated January 9, 1992, Customs classified a Stratus snorkeling vest designed to provide surface flotation as well as warmth as a garment. This ruling was affirmed in HQ 952483, dated May 27, 1993. The vest was constructed by bonding a flotation pocket to a neoprene vest. Relying on the EN to Heading 6113, HTS (heading includes oilskins & divers’ suits), Customs reasoned that if the neoprene vest were imported without the flotation pocket, it would be classified as a garment. Customs next considered, in light of *Daw Industries*, supra, whether the additional protection and other advantages afforded by the flotation pocket were “significantly more, or essentially different,” than those provided by the neoprene vest alone. Because marketing materials stated that the vest was “designed to provide warmth and a small amount of flotation,” Customs concluded that the snorkeling vest did not differ significantly from a neoprene vest alone, and affirmed HQ 950562.

Whereas the snorkel vest had dual functions of providing warmth and buoyancy, the entire design of buoyancy compensators is centered around buoyancy control. While features such as padding provide some warmth and protection, these benefits are ancillary to the function of allowing the diver to control her buoyancy. The instant buoyancy compensators are not garments or wearing apparel.

Customs has classified some articles with similar features to the instant buoyancy compensators in Chapter 63 as lifejackets or lifebelts. In HQ 952204 (classifying the swim sweaters discussed above), Customs relied upon the following definitions of lifejackets and lifebelts:

Webster’s New World Dictionary, Third College Edition (1988) defines a life preserver as a “buoyant device for saving a person from drowning by keeping the body afloat, as a ring or sleeveless jacket of canvas-covered cork or kapok.” Buoyancy is defined as “the ability or tendency to float or rise in liquid or air.” A life belt is defined as

¹ *Admiral Craft Equipment, Corp. v. United States*, 82 Cust. Ct. 162, C.D. 4796 (1979).

² The acronym SCUBA stands for “Self Contained Underwater Breathing Apparatus.” U.S. Navy Diving Manual, Appx. 1D-9.

³ Negative buoyancy gives a diver in a helmet and dress (Navy term for apparel and gear) a better foothold on the bottom. U.S. Navy Diving Manual, 2-9.4.2, p. 2-14.

“a life preserver in the form of a belt,” and a life jacket (or vest) as “a life preserver in the form of a sleeveless jacket or vest.”

Customs noted that the swim sweaters did not meet U.S. Coast Guard specifications for lifepreservers. However, because they meet the common definition of a lifepreserver, they were classifiable as such.

Likewise, in HQ 950496, dated March 5, 1992, Customs classified a windsurfer’s buoyancy vest within subheading 6307.20, HTSUSA, as a lifejacket, even though it did not meet the U.S. Coast Guard specifications for life preservers. See also HQ 952930, dated February 25, 1993. The basis of this ruling was that while the article did not meet U.S. Coast Guard specifications, its main purpose was to help keep the wearer afloat. See also NY G87464, dated March 13, 2001 (classifying a bib-like snorkel vest as a lifejacket under subheading 6307.20, HSUSA).⁴

In contrast, the primary function of a buoyancy compensator is to control buoyancy, be it negative buoyancy or positive buoyancy, at all stages of a dive. While a buoyancy compensator can be, and is, used to help divers float on the surface, this is merely one end of the spectrum of its capabilities. At the other end of the spectrum, divers can deflate the buoyancy compensator allowing them to descend to their desired depth, at which point the buoyancy compensator can be inflated as needed to maintain neutral buoyancy. The inflatable bladder, inflation tube with mouthpiece, exhaust valve and weight pouches makes this vest an adjustable apparatus that acts to increase or decrease buoyancy to counteract the weight of the air tank or the buoyancy of a wet suit.

Subheading 9506.29.00.40, HTSUSA, provides for:

Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof: Other, Other.

The EN to heading 9506, HTSUSA, state:

This heading covers:

* * * * *
 (B) Requisites for other sports and outdoor games * * *, e.g.:
 * * * * *

(2) Water-skis, surf-boards, sailboards and other water-sports equipment, such as diving stages (platforms), chutes, divers’ flippers and respiratory masks of a kind used without oxygen or compressed air bottles, and simple underwater breathing tubes (generally known as “snorkels”) for swimmers or divers.

The legal note to Chapter 95 excludes sports clothing of chapters 61 and 62. However, this exclusionary note does not operate to exclude buoyancy compensators from Chapter 95 because, as discussed above, buoyancy compensators are not clothing.

It is well settled that equipment used for scuba diving is classified in subheading 9506.29.0040, HTSUSA. See, *H.I.M./Fathom, Inc., v. United States*, 21 C.I.T. 776, 981 F. Supp. 610 (classifying a weight belt used for diving in subheading 9506.29.0040, HTSUSA (1997)); NY 81357, dated August 23, 1995, and NY G86744, dated February 12, 2001, (classifying weight belts as diving equipment). The instant buoyancy compensators that are equipped with an air bladder, inflation hose, exhaust valve, weight pouches and compressed air tank harness, are clearly pieces of equipment designed for scuba diving. Accordingly, they are classified as dive equipment under subheading 9506.29.0040, HTSUSA. For similar rulings on buoyancy compensators, see HQ 965106 and HQ 965312.

Holding:

The Safety 108, Safety 104, Safety 102, Aquapro 6 and Aquapro 5 buoyancy compensators are classified under subheading 9506.29.0040, HTSUSA, which provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof: Other, Other.” The duty rate is FREE.

⁴ Unlike the snorkel vest in HQ 950562, this snorkel vest only consisted of the flotation bib and did not have a neoprene vest to add warmth and protection.

Effect On Other Rulings:

NY F83415, dated March 22, 2000, is hereby REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF CERTAIN TIME
DELAY RELAY MODULES

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

ACTION: Notice of revocation of tariff classification ruling letter and the revocation of treatment relating to the classification of certain time delay relay modules.

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 a ruling, and is revoking any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of certain time delay relay modules under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published on December 12, 2001, in Vol. 35, No. 50 of the CUSTOMS BULLETIN. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich,
General Classification Branch: (202) 927-2318.

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, notice proposing to revoke NY F89832, dated August 15, 2000, was published on December 12, 2001, in Vol. 35, No. 50 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

As stated in the proposed notice, this revocation action will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised 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 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 HTSUS. 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 which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY F89832, and any other ruling not specifically identified, to reflect the proper classification of the time delay relay modules under subheading 8536.41.00, HTSUS, which provides for other electrical relays for a voltage not exceeding 60V, pursuant to the analysis in HQ 964754, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

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

Dated: January 15, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, January 15, 2002.
CLA-2 RR:CR:GC 964754 AML
Category: Classification
Tariff No. 8536.41.00

Ms. JULIE S. JOHNSON
IMPORT COMPLIANCE SPECIALIST
HONEYWELL H&BC
*1985 Douglas Drive North
Golden Valley, MN 55422*

Re: Reconsideration of NY F89832; Time delay relay module.

DEAR Ms. JOHNSON:

This is in reference to your letter, dated November 28, 2000, to the National Commodity Specialist Division, New York, requesting reconsideration of New York Ruling Letter (NY) F89832, issued to you on August 15, 2000, which concerned the classification of a time delay relay module (model # ST82U) under the Harmonized Tariff Schedule of the United States (HTSUS). Your request was forwarded to this office for reply. NY F89832 classified the time delay relay module (model # ST82U) under subheading 8536.49.0080, HTSUS, which provides for other electrical delays. Descriptive literature was forwarded for our consideration. We have reviewed NY F89832 and believe that the classification set forth 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 December 12, 2001, in Vol. 35, No. 50 of the CUSTOMS BULLETIN, proposing to revoke NY F89832 and to revoke the treatment pertaining to the time delay relay module. No comments were received in response to this notice.

Facts:

The article was described in NY F89832 as follows:

As indicated by the submitted descriptive literature, the relay, identified as the ST82U family, is described as operating on a time delay principle. It contains a time delay circuit that enables the relay to function at a specified time period.

In your November 28, 2000, letter, you state that the descriptive information and prints provided with your original ruling request indicate that the voltage of the time delay relay family is 24 volts. NY F89832 classified the time delay relay module (model # ST82U) under subheading 8536.49.0080, HTSUS, which provides for other electrical delays, with the term "other" referring to articles with voltages exceeding 60V but not exceeding 1000V.

Literature provided with your request describes the function of the articles as follows:

The ST82 time delay relay is used in compressor-run air conditioning and heat pump systems. The ST82 delays the indoor blower shut-off after the compressor has shut off.

Issue:

Whether the “family” of time delay relay modules, model # ST82U (including model # ST82U1004) is classifiable under subheading 8536.41.00, HTSUS, which provides for other electrical relays for a voltage not exceeding 60V?

Law and Analysis:

The General Rules of Interpretation (GRIs) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states in pertinent part that “for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]”

The HTSUS provisions under consideration are as follows:

- 8536 Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V:
- Relays:
- 8536.41.00 For a voltage not exceeding 60 V:
- 8536.49.00 Other.

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. Customs believes the ENs should always be consulted. See T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to Chapter 85 provide, in pertinent part, that the chapter covers “certain electrical goods not generally used independently, but designed to play a particular role as components, in electrical equipment, e.g., capacitors (heading 85.32), switches, fuses, junction boxes, etc. (heading 85.35 or 85.36).” The ENs to heading 8536 provide, in pertinent part, as follows:

These apparatus consist essentially of devices for making or breaking one or more circuits in which they are connected, or for switching from one circuit to another; they may be known as single pole, double pole, triple pole, etc., according to the number of switch circuits incorporated. This group also includes change-over switches and relays.

* * * * *

(C) Relays are electrical devices by means of which the circuit is automatically controlled by a change in the same or another circuit. They are used, for example, in telecommunication apparatus, road or rail signalling apparatus, for the control or protection of machine-tools, etc.

The various types can be distinguished by, for example:

* * * * *

- (2) The predetermined conditions on which they operate: maximum current relays, maximum or minimum voltage relays, differential relays, fast acting cut-out relays, time delay relays, etc.

The time delay relay modules are classifiable at GRI 1 under heading 8536, HTSUS. The evidence presented in the letter requesting reconsideration, corroborated by the descriptive literature, demonstrates that “the voltage of this time delay relay family is 24 volts.” Such articles with voltages not exceeding 60V are classifiable under subheading 8536.41.00, HTSUS. The time delay relay modules will be so classified.

Holding:

The “family” of time delay relay modules, model # ST82U (including model # ST82U1004) is classifiable under subheading 8536.41.00, HTSUS, which provides for other electrical relays for a voltage not exceeding 60V.

Effect on Other Rulings:

NY F89832 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 John Durant, Director,
Commercial Rulings Division.)