

# U.S. Customs Service

## *General Notices*

### ANNOUNCEMENT OF A NATIONAL CUSTOMS AUTOMATION PROGRAM TEST TO ELIMINATE THE SUBMISSION OF THE PAPER MASTER AIR WAYBILL DOCUMENT

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs plan to conduct a test under the National Customs Automation Program (NCAP) under which a participating air carrier must electronically transmit, through the Air Automated Manifest System, master air waybill data prior to arrival of the aircraft in the United States and will not have to submit a copy of the master air waybill as an attachment to the air cargo manifest upon arrival in the United States. Under the test, the participant still will be required to submit all other documentation as required and be capable of retrieving and printing a copy of the information contained in the master air waybill upon demand by Customs.

DATES: The test will commence no earlier than March 3, 2003 and will run for approximately one year. Comments concerning this notice and all aspects of the announced test must be received on or before February 20, 2003. Applications will be accepted throughout the duration of the test.

ADDRESSES: Written comments may be submitted to the U.S. Customs Service, Office of Field Operations, Manifest and Conveyance Branch, 1300 Pennsylvania Avenue, N.W., Room 5.2B, Washington, D.C. 20229. Interested parties may apply to participate in the test by submitting a written request to the U.S. Customs Service, Office of Field Operations, Trade Compliance and Facilitation, 1300 Pennsylvania Avenue, N.W., Room 5.2B, Washington, D.C. 20229, ATTN: Paperless Master AWB Test.

FOR FURTHER INFORMATION CONTACT: David King, Manifest and Conveyance Branch, Office of Field Operations (202-927-1133).

SUPPLEMENTARY INFORMATION:

#### BACKGROUND

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Pub. L. 103-182, 107 Stat. 2057, 2170 (December 8,

1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of title VI establishes the National Customs Automation Program (NCAP), an automated and electronic system for the processing of commercial importations. Section 631 of the Act creates sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411 through 1414), as amended, which define and list the existing and planned components of the NCAP (19 U.S.C. 1411), establish program goals (19 U.S.C. 1412), provide for the implementation and evaluation of the program (19 U.S.C. 1413), and provide for the remote location filing of entries (19 U.S.C. 1414).

Requirements for conducting an approved test program or procedure designed to evaluate planned components of the NCAP are set forth in § 101.9 of the Customs Regulations (19 CFR 101.9). These regulations, in part, enable the Commissioner of Customs to impose requirements different from those specified in the Customs Regulations, provided that the different requirements do not affect the collection of revenue, the public health and safety, or law enforcement. This test is established pursuant to that regulatory provision.

#### *I. Description of Test Program*

##### *Air Cargo Manifest*

Section 122.42(c) of the Customs Regulations (19 CFR 122.42(c)) requires that the commander of an aircraft arriving in the United States from a foreign area, or his agent, must deliver upon arrival any required forms to the Customs officer at the place of entry. (Among these forms are the general declaration (§ 122.43), crew baggage declaration (§ 122.44), crew list (§ 122.45), stores list (§ 122.47), air cargo manifest (§ 122.48), and the passenger and crew manifests (§ 122.49a).) Section 122.48 of the Customs Regulations (19 CFR 122.48) provides that an air cargo manifest is required for all cargo on board a flight arriving in the United States from a foreign area, except for cargo arriving from and departing for a foreign country on the same through flight. Section 122.48(c), Customs Regulations (19 CFR 122.48(c)), provides that the air cargo manifest must be on Customs Form (CF) 7509, that it must contain all required information, and that a more complete description of the cargo shipped under air waybills may be provided by attaching to the cargo manifest a copy of each air waybill and, if a consolidated shipment, copies of the house air waybills.

##### *Electronic Submission of the Air Waybill Information*

In an attempt to facilitate cargo processing and release, Customs has accepted, on a voluntary basis, the electronic transmission of air waybill information from qualified air carriers, through the Air Automated Manifest System (AAMS), either before or upon arrival of the aircraft in the United States. However, air carriers submitting air waybill information in this way are still required to submit the paper documents, even though the data is transmitted electronically. Now, to further facilitate the control, processing, and release of air cargo, Customs, via this test

program, will relieve AAMS air carriers participating in the test from the requirement of submitting a copy of the master air waybill as an attachment to the air cargo manifest when they electronically transmit master air waybill information to Customs prior to arrival of the aircraft in the United States. Test participants still must submit all other documentation as required under the regulations and be capable of retrieving and printing a copy of the master air waybill information upon demand by Customs.

It is anticipated that the test will run for one year. In the event, however, that Customs determines that a longer test program period is warranted, Customs will announce an extension of the test by publication of a notice in the Federal Register.

It is noted that Customs previously announced a NCAP test program regarding submission to Customs of electronic air cargo manifest information through publication of a notice in the Federal Register (65 FR 58840) on October 2, 2000 (Announcement of a National Customs Automated Program Test Regarding Submission to Customs of Electronic Air Cargo Manifest Information). This October 2000 test is distinct from the test announced today in this document and remains in effect for any qualified air carriers who may wish to submit electronic air cargo manifest information to Customs prior to arrival of the aircraft in the United States without having to submit upon arrival a CF 7509 (Air Cargo Manifest). (See the cited notice for eligibility and application instructions.) Submission of the CF 7509 is required under the test announced in this document.

#### *Regulatory Provision Suspended*

As noted above, § 122.48(c) provides that a more complete description of the cargo shipped under air waybills may be provided by attaching to the cargo manifest a copy of each air waybill and, if a consolidated shipment, copies of the house air waybills. Thus, when an air carrier opts to provide cargo information in this manner, copies of the master air waybill and any house air waybills must be submitted with the air cargo manifest. Under the test, this requirement to submit a copy of the master air waybill in paper form will be suspended when the test participant electronically transmits to Customs the air waybill information prior to the aircraft's arrival in the United States. Participants will not be required to submit copies of these air waybills with the cargo manifest but must be capable of providing Customs required air waybill information, electronically or otherwise, upon demand by Customs. Participation in this test program does not relieve carriers from compliance with applicable requirements of other government agencies.

#### *II. Test Program Eligibility Criteria*

To be eligible to participate in the test program, an air carrier must meet the following eligibility criteria:

1. A carrier must be a qualified AAMS carrier in the port where it will operate under the test. A qualified AAMS carrier has been tested and certified by Customs to possess the technical capability to transmit and

receive AAMS data. Technical requirements for AAMS carriers are specified in the Customs publication entitled, "Customs Automated Manifest Interface Requirements—Air (CAMIR—Air)." Any carrier not currently AAMS qualified may submit a written request to become an AAMS participant to the Customs Client Representative Branch closest to the applicant's operational location. A list of Customs Client Representatives may be obtained from the United States Customs Service, Office of Information and Technology, Client Representatives Branch, 7501 Boston Blvd., Springfield, VA 22153 (703/921-7500).

2. A carrier must be a participant in the Customs-Trade Partnership Against Terrorism (C-TPAT) program. C-TPAT is a joint Customs-business initiative to build cooperative relationships that strengthen overall supply chain and border security. Application instructions for air carriers wishing to participate in the C-TPAT program may be found on the Internet at *www.Customs.gov* or may be requested in writing from the United States Customs Service, Office of Field Operations, Industry Partnership Programs, 1300 Pennsylvania Avenue, N.W., Room 5.4C, Washington, D.C. 20229, ATTN: C-TPAT.

### *III. Test Program Application and Selection Process*

#### *Application Process*

Any air carrier that satisfies the eligibility criteria may apply to participate in the test program by submitting a written request to the United States Customs Service, Office of Field Operations, Trade Compliance and Facilitation, 1300 Pennsylvania Avenue, N.W., Room 5.2B, Washington, D.C. 20229, ATTN: Paperless Master AWB Test. Customs will accept applications from eligible air carriers throughout the duration of the test. The request must be signed by an authorized official, designate the Customs port where the participant will operate under the test, and designate a point of contact and telephone number within the applicant's organization.

Upon review, Customs will issue written notification regarding the approval or denial of the application. If denied, Customs will inform the applicant of the reasons for denial and the right to reapply after any deficiencies identified in the notice of denial have been corrected. Any air carrier that applies for permission to participate in the test program will be given due consideration by Customs and will be evaluated based on its ability to meet the requirements set forth in the notice.

Participation in this test program will not be considered confidential information, and the identity of participants will be made available to the public upon written request.

#### *IV. Test Program Procedures*

Test program procedures will be coordinated with all participating and affected parties. The following procedures apply to all participant air carriers and will be in effect for the duration of the test program:

1. The participant air carrier must transmit the master air waybill information to AAMS with all the necessary data elements as set forth in

the CAMIR-Air publication prior to the arrival of the aircraft. Where the carrier transfers the freight to a deconsolidator that participates in the AAMS program, the deconsolidator must electronically transmit the house air waybill information. Where the carrier transfers the freight to a non-automated deconsolidator or releases the freight from its own facility, the carrier must supply through AAMS complete house air waybill details including piece count, weight, cargo description, shipper, and consignee information.

2. The participant must be able to print a paper copy of the master air waybill with the required data elements and submit it to Customs personnel upon demand by Customs.

3. If for any reason, the electronic data interchange system between Customs and the participant becomes inoperative or Customs is unable to receive electronic transmissions, the participant will print a copy of the master air waybill, attach it to the air cargo manifest, and submit it to Customs at the port of arrival.

#### *V. Suspension/Termination From the Test Program and Administrative Review*

##### *Suspension/Termination Process*

The failure of a participant to comply with the procedural requirements or to maintain participation in the programs required for eligibility (AAMS and C-TPAT), or failure to adhere to all applicable laws and regulations, may result in the suspension or termination of the participant from the test program. Except in instances of willfulness on the part of the participant, or where public health, interest, or safety is at issue, the port director will issue a written notice of proposed suspension to the participant. The notice will inform the participant of the following:

1. The basis of the proposed action and all applicable terms and conditions regarding implementation of the proposed action and the administrative review process.

2. The right to seek administrative review of the action, pursuant to the terms set forth in the notice. A request for review must be received by Customs on or before the 10th calendar day from the date the notice of proposed suspension was issued.

3. That any action will be held in abeyance for a period of 10 calendar days from the date of the notice or, if the participant timely seeks administrative review of the matter pursuant to the terms set forth in the notice, pending conclusion of Customs review of the matter.

4. That failure to seek administrative review of the matter pursuant to the terms set forth in the notice will constitute acceptance of the terms and conditions set forth in the notice, preclude any further administrative review of the matter, and automatically commence the suspension at midnight of the 10th calendar day from the date of the notice.

Where there is willfulness on the part of the participant, or where public health, interest, or safety is concerned, suspension from the test program may go into effect immediately upon issuance of an electronic

notice by the port director that sets forth the basis of the action and any related information. Within 5 calendar days from the date the electronic notice was issued, Customs will issue a written notice of immediate suspension to the participant. A notice of immediate action, whether electronic or in paper form, will provide the same kind of information as that contained in a notice of proposed suspension. An immediate suspension will remain in effect pending conclusion of any administrative review of the action by Customs.

#### *Administrative Review*

To seek administrative review of any suspension from the test program, the participant must submit documentation to the port director that issued the suspension notice within 10 calendar days from the date the notice of proposed suspension or an electronic notice of immediate suspension was issued. The documentation must establish, to the satisfaction of Customs, that the alleged deficiencies which led to the action did not occur or have been corrected.

The port director will review the documentation and issue a written final notice of decision to the participant within 30 days from the date the documentation was received by Customs, unless the time period is extended upon due notice. In the case of a participant seeking review of a proposed suspension, the final notice will either impose a suspension that is effective upon the date of the final notice or indicate that no suspension will be imposed. In the case of a participant seeking administrative review of an immediate suspension, the final notice will inform the participant that the suspension has been affirmed, modified, or revoked upon the date of the final notice.

If a suspension is imposed, the suspended participant may seek a second level of administrative review to appeal the final notice of suspension by submitting documentation to the Assistant Commissioner, Office of Field Operations, within 10 calendar days of the final notice. The Assistant Commissioner or its designee will issue to the suspended participant a written decision within 30 calendar days from the date the documentation was received, unless this time period is extended upon due notice. The decision will affirm, modify, or revoke the suspension and will set forth the basis for the determination, as well as any applicable terms and conditions.

#### *VI. Test Evaluation Criteria*

During the course of the test, Customs and the participants will evaluate the test, and the results of the evaluation will be published in the Federal Register and the CUSTOMS BULLETIN as required by § 101.9(b) of the Customs Regulations (19 CFR 101.9(b)). The test will be evaluated through an analysis of questionnaires completed by affected participants and Customs personnel. Evaluation criteria for Customs and other government agencies include workload impact, policy and procedural

accommodation, and trade compliance impact. Criteria for participants include cost benefits and operational efficiency.

Dated: January 28, 2003.

JAYSON P. AHERN,  
*Assistant Commissioner,*  
*Office of Field Operations.*

[Published in the Federal Register, January 31, 2003 (68 FR 5072)]

DEPARTMENT OF THE TREASURY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, January 29, 2003.*

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

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

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PROPOSED REVOCATION OF RULING LETTER AND  
TREATMENT RELATING TO TARIFF CLASSIFICATION OF AN  
INDUSTRIAL COOLING FAN ASSEMBLY

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of an industrial cooling fan assembly.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is proposing to revoke one ruling letter pertaining to the tariff classification of industrial cooling fan assemblies under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is proposing to revoke any treatment previously accorded by Customs to substantially identical transactions. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before March 14, 2003.

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

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch (202) 572-8785.

## SUPPLEMENTARY INFORMATION:

## BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke one ruling letter pertaining to the tariff classification of an industrial cooling fan assembly. Although in this notice Customs is specifically referring to one ruling (NY E89795), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No additional rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

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

In NY E89795, dated December 8, 1999 (Attachment A), an industrial cooling fan assembly, consisting of a matching set of blades, hub and fasteners, imported unassembled, was classified as parts of fans under subheading 8414.90.00, HTSUS. It is now Customs position that this industrial cooling fan assembly constitutes an incomplete fan, classifiable according to General Rule of Interpretation (GRI) 2(a), applied, *mutatis mutandis*, through GRI 6, as a fan under subheading 8414.59.00, HTSUS.

The Harmonized Commodity and Coding System Explanatory Notes (ENs) to Section XVI also provide that incomplete machines are classifiable as complete machines when the assembly of parts is so far advanced that it has the main essential features of the complete machine. The instant assembly is imported without a drive shaft or motor because the shaft is a part of the pre-existing motor or gearbox to which the fan assembly is attached. This is common within the industrial cooling fan industry. Further, neither the ENs to Section XVI, HTSUS, nor to heading 8414, HTSUS, require that a machine of heading 8414, HTSUS, be fitted with a motor for classification in that heading and/or section. All other components are present and ready for assembly. Therefore, Customs concluded that the import possessed the main essential features of a complete fan. Accordingly, the industrial fan assembly is classifiable in subheading 8414.59.00, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY E89795 any other ruling not specifically identified to reflect the proper classification of the subject merchandise, pursuant to the analysis set forth in HQ 965993 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action, we will give consideration to any written comments timely received.

Dated: January 28, 2003.

PETER T. LYNCH,  
(for Myles B. Harmon, Director,  
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
New York, NY, December 8, 1999.  
CLA-2-84:RR:NC:1:102 E89795  
Category: Classification  
Tariff No. 8414.90.1080

MR. E.A.W. LAARHOVEN  
VENTILATOREN SIROCCO HOWDEN BV LANSINKESWEG  
4 P.O. Box 975 7550 AZ Hengelo  
The Netherlands

Re: The tariff classification of a fan assembly from The Netherlands.

DEAR MR. LAARHOVEN:

In your letter dated May 17, 1999 and received by this office on November 15, 1999 you requested a tariff classification ruling on behalf of Ventilatoren Sirocco Howden.

The item in question is described as a fan assembly consisting of a steel hub, a set of fasteners and a number of reinforced polyester fan blades. You indicate that in most cases the fan assembly will be shipped disassembled and assembled on site for use as a component of a heat exchanger system. Descriptive information was submitted.

The applicable subheading for the fan assembly, whether entered assembled or disassembled, will be 8414.90.1080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other parts of fans, including blowers, and ventilating or recycling hoods. The rate of duty will be 4.7 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 Kenneth T. Brock at 212-637-7026.

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 965993 DBS  
Category: Classification  
Tariff No. 8414.59.60

MR. ROBERT E. BURKE, ESQ.  
BARNES, RICHARDSON & COLBURN  
303 East Wacker Dr., Suite 1100  
Chicago, IL 60601

Re: Revocation of NY E89795; axial cooling fan; GRI 2(a).

DEAR MR. BURKE:

This is in response to your letter dated October 16, 2002, requesting reconsideration of NY E89795, which was issued to your client, Ventilatoren Sirocco Howden, on December 8, 1999, classifying a fan assembly in subheading 8414.90.10, Harmonized Tariff Schedule of the United States (HTSUS), as parts of fans. We have reviewed NY E89795, the supplemental information and arguments provided in your letters of January 6 and January 8, 2003, and the discussion from the teleconference conducted with you and your client's representatives on January 8, 2003. We have found the ruling to be incorrect.

*Facts:*

The product at issue was described in NY E89795 as a “fan assembly” for an industrial axial cooling fan, and was classified as a part of a fan. It consists of a matching set of a steel hub, a set of fasteners (consisting of aluminum support blocks and U-bolts) and a number of reinforced polyester fan blades. The components will be shipped unassembled due to the very large size of the good once assembled. The fan assemblies are custom-made for use in heat exchanger systems. Once assembled and mounted to an existing motor or gearbox, the fan cools condensers in large gas-fueled electric power generation units.

Your client stated that the assembly is generally imported without a drive shaft because in most cases the custom-made assembly is designed to be mounted onto an existing driving shaft mechanism (gearbox) which is the output shaft for the motor. The assembly may be attached to the mating drive shaft via a coupling flange, which is included with the imported assembly as needed. You furnished Customs with advertising materials from other companies within the cooling fan industry to further illustrate this point and demonstrate trade custom.

*Issue:*

Whether the imported fan assembly is classifiable as a part of a fan in subheading 8414.90.10, HTSUS, or an incomplete or unassembled fan, classifiable as a fan in subheading 8414.59.60, HTSUS, according to GRI 2(a).

*Law and Analysis:*

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

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

<b>8414</b>	Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof:
	Fans:
8414.59	Other:
	Other:
8414.59.60	Other.
*	*
8414.90	Parts
8414.90.10	Of fans.

When the subheadings, rather than the headings are at issue, GRI 6 is applied. GRI 6 provides that, “for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to [rules 1 through 5] on the understanding that only subheadings at the same level are comparable for the purposes of this rule and the relative section and chapter notes also apply, unless the context otherwise requires.”

An article is to be classified according to its condition as imported. See *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). While the blades, hub and fasteners may individually constitute parts of a fan, these components are imported unassembled, but together. GRI 2(a) provides that goods imported in an unassembled condition are to be classified as the assembled article. Further, the ENs to Section XVI state, in part, the following:

**(V) UNASSEMBLED MACHINES**  
(See General Interpretive Rule 2 (a))

For convenience of transport many machines and apparatus are transported in an unassembled state. Although in effect the goods are then a collection of parts, they are

classified as being the machine in question and not in any separate heading for parts. The same applies to an incomplete machine \* \* \* presented unassembled (see also in this connection the General Explanatory Notes to Chapters 84 and 85). However, unassembled components in excess of the number required for a complete machine or for an incomplete machine having the characteristics of a complete machine, are classified in their own heading.

The unassembled components are shipped as such due to size, and are not in excess of those required for the complete machine. Thus, an assembly is not classifiable as parts but as the complete machine. See NY F82265, dated February 24, 2000. However, the instant assembly is not imported with a drive shaft or motor. Thus, we must determine whether the assembly is an incomplete machine.

The ENs to heading 8414, HTSUS, which describe fans, state, in pertinent part, as follows:

These machines, **which may or may not be fitted with integral motors**, are designed either for delivering large volumes of air or other gases at relatively low pressure or merely for creating a movement of the surrounding air (emphasis added).

Those of the first kind may act as air extractors or as blowers (e.g., industrial blowers used in wind tunnels). They consist of a propeller or blade-type impeller revolving in a casing or conduit, and function on the principle of rotary or centrifugal compressors.

The second type are of more simple construction, and consist merely of a driven fan rotating in free air \* \* \*.

It is clear from the ENs that a fan may be imported *sans* motor and still be a fan for tariff purposes. However, fans are machines. For a fan to perform its function as a machine for delivering large volumes of air or moving surrounding air, it must be able to rotate the fan blades. This import lacks the mechanism to rotate the blades. Rather, the imported pieces are assembled and attached to an existing gearbox and/or motor, which contains the drive shaft (discussed below). Since the import does not contain such a mechanism, it is not classifiable according to GRI 1 as a complete fan.

As the import is missing at least one component, we turn to GRI 2. GRI 2(a) covers unfinished or incomplete goods, and unassembled or disassembled goods. It states as follows:

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

We must now determine whether the assembly imparts the essential character of a complete fan. The ENs to GRI 2(a) direct us to the General ENs to Section XVI, HTSUS, which provide, in pertinent part, as follows:

#### (IV) INCOMPLETE MACHINES

(See General Interpretative Rule 2 (a))

Throughout the Section any reference to a machine or apparatus covers not only the complete machine, but also an incomplete machine (i.e., an assembly of parts so far advanced that it already has the main essential features of the complete machine). Thus a machine lacking only a flywheel, a bed plate, calender rolls, tool holders, etc., is classified in the same heading as the machine, and not in any separate heading providing for parts. Similarly a machine or apparatus normally incorporating an electric motor (e.g., electro-mechanical hand tools of heading 85.08) is classified in the same heading as the corresponding complete machine even if presented without that motor.

The instant assembly lacks only a shaft and a motor to be a complete fan. We have already concluded that the ENs do not require that a fan of heading 8414, HTSUS, be fitted with an integral motor. The ENs to Section XVI regarding GRI 2(a) reiterate this by stating that a machine or apparatus normally incorporating a motor may be classified as the complete machine without the motor. You have demonstrated that in the large industrial cooling fan industry, "fans" do not often incorporate their own drive shaft because it is a

part of the motor or gearbox.<sup>1</sup> As the shaft is a part of the motor, and the motor is not required for classification purposes, we can only conclude that, in this case, the shaft and motor are not “main essential features” for purposes of tariff classification.

The massive hub and blades, which are imported ready for assembly with fasteners, comprise the main essential features of an industrial cooling fan. In fact, it is the blade size, curvature, and the quantity of blades that makes each of these types of fans suited for their intended purpose, as they are specially designed to deliver or move air in such a way that they cool the industrial machinery to which they attach.

We note EN(VI) to GRI 2(a) states that the rule also applies to incomplete or unfinished articles presented unassembled or disassembled provided that they are to be treated as complete or finished articles by virtue of the first part of the rule. As we have determined that the imported merchandise is classifiable as a complete fan by virtue of the first part of GRI 2(a), applied, *mutatis mutandis*, through GRI 6, the instant assembly is an incomplete, unassembled fan of subheading 8414.59, HTSUS.

For the reasons above, we find NY E89795 to be incorrect.

*Holding:*

The fan assembly is classifiable in subheading 8414.59.60, HTSUS, which provides for “Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof: fans: other: other: other.”

*Effect on Other Rulings:*

NY E89795, dated December 8, 1999, is hereby REVOKED.

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

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<sup>1</sup> Whether the fans of this type attach either directly to a motor or attach to a gearbox, the imported assembly is comprised of the same components. Thus, we have no reason to distinguish between the two.