

# U.S. Customs and Border Protection



## **PROPOSED REVOCATION OF A RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF PLASTIC PLACEMATS**

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

**ACTION:** Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of plastic placemats.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke a ruling letter concerning the tariff classification of plastic placemats. Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before January 11, 2010.

**ADDRESSES:** Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Jacinto P. Juarez, Jr., Tariff Classification and Marking Branch: (202) 325–0027.

## SUPPLEMENTARY INFORMATION:

### Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke a ruling letter pertaining to the tariff classification of plastic placemats. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N020433, dated December 20, 2007 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its

agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N020433, CBP determined that a table placemat made of cotton woven fabric coated on the front side with a clear plastic material and on the back side with a foam plastic material was classified under subheading 3924.10, HTSUS, as tableware and kitchenware of plastics. It is now CBP's position that the placemats are classified under subheading 3924.90, HTSUS, as other household articles of plastics.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N020433, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) HQ H071105, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 23, 2009

GAIL A. HAMILL

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N020433

December 20, 2007

CLA-2-39:OT:RR:NC:N2:222

CATEGORY: Classification

TARIFF NO. 3924.10.4000

MR. JOSEPH R. HOFFACKER  
BARTHCO TRADE CONSULTANTS  
5101 S. BROAD ST., THE NAVY YARD  
PHILADELPHIA, PA 19112-1404

RE: The tariff classification of plastic placemats from China.

DEAR MR. HOFFACKER:

In your letter dated November 28, 2007, on behalf of Sugartown Worldwide Inc., you requested a classification ruling.

The submitted sample is identified as Places People! Placemats, style# 68325. The placemat is made of a cotton woven fabric that is decorated with a bright pink, white and yellow flower pattern on a green leaf background. The front of the fabric is coated with a clear plastic material so that the flower pattern is clearly visible. The back of the fabric is coated with a tan colored foam plastic material. The coating on both sides of the fabric is visible to the naked eye and was applied prior to the stamping out of the placemat. The placemat measures approximately 12 inches wide by 18 inches long. The placemat is designed with rounded corners. As you requested, the sample will be returned to you.

The applicable subheading for style# 68325, will be 3924.10.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for tableware, kitchenware...of plastics: tableware and kitchenware: other. The rate of duty will be 3.4 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 Gary Kalus at 646-733-3055.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H071105  
CLA-2 OT:RR:CTF:TCM H071105 JPJ  
CATEGORY: Classification  
TARIFF NO.: 3924.90.10

MR. JOSEPH R. HOFFACKER  
BARTHCO TRADE CONSULTANTS  
THE NAVY YARD  
5101 S. BROAD STREET  
PHILADELPHIA, PA 19112-1404

RE: Classification of Places People! Placemat

DEAR MR. HOFFACKER:

This letter concerns New York Ruling letter (“NY”) N020433, dated December 20, 2007, issued to you by the National Commodity Specialist Division (“NCSA”), U.S. Customs and Border Protection (“CBP”). At issue in that ruling was the classification of a Places People! Placemat, Style #68325, under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N020433 and have found that it is incorrect. Our discussion on this matter is set forth below.

**FACTS:**

The Places People! Placemat, Style #68325, is made of a cotton woven fabric that is decorated with a bright pink, white and yellow flower pattern on a green leaf background. The front of the fabric is coated with a clear plastic material so that the flower pattern is clearly visible. The back of the fabric is coated with a tan colored foam plastic material. The coatings on the front and back are visible to the naked eye, and were applied prior to the stamping out of the placemat. The placemat measures approximately 12 inches wide by 18 inches long. The placemat is designed with rounded corners.

**ISSUE:**

Whether the placemat is classifiable in subheading 3924.10, HTSUS, as tableware or kitchenware, or in subheading 3924.90, HTSUS, as other household articles of plastics.

**LAW AND ANALYSIS:**

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

The HTSUS provisions under consideration are as follows:

3924 Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:

3924.10 Tableware and kitchenware:

3924.90 Other:

3924.90.10 Curtains and drapes, including panels and valances; napkins, table covers, mats, scarves, runners, doilies, centerpieces, antimacassars and furniture slipcovers; and like furnishings.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN’s provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

The EN 39.24, provides, in relevant part:

This heading covers the following articles of plastics:

(A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes and trays of all kinds, coffee-pots, teapots, sugar bowls, beer mugs, cups, sauce-boats, fruit bowls, cruets, salt cellars, mustard pots, egg-cups, teapot stands, table mats, knife rests, serviette rings, knives, forks and spoons.

The placemat meets the terms of heading 3924, HTSUS, as tableware, kitchenware, or other household articles of plastics. This finding is supported by the EN 39.24, specifically that “table mats” are covered by the heading. CBP has previously classified plastic placemats in subheading 3924.90.10, HTSUS, which specifically provides, in relevant part, for “table covers, mats, scarves, runners, doilies, centerpieces, . . .”. The placemat meets the terms of subheading 3924.90.10, HTSUS. The placemat is classified in subheading 3924.90.10, HTSUS, as “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Curtains and drapes, including panels and valances; napkins, table covers, mats, scarves, runners, doilies, centerpieces, antimacassars and furniture slipcovers; and like furnishings”. *See e.g.*, NY R04714, dated September 18, 2006; NY L89674, dated January 12, 2006; and NY K85476, dated May 26, 2004.

#### **HOLDING:**

In accordance with GRI 1 and GRI 6, the Places People! Placemat, Style #68325, is classified in heading 3924, HTSUS, and specifically in subheading 3924.90.10, HTSUS, as: “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Curtains and drapes, including panels and valances; napkins, table covers, mats, scarves, runners, doilies, centerpieces, antimacassars and furniture slipcovers; and like furnishings”.

**EFFECT ON OTHER RULINGS:**

NY N020433, dated December 20, 2007, is revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



**REVOCATION OF A RULING LETTER AND REVOCATION  
OF TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF ELECTRICALLY-HEATED THROWS  
AND SEAT PADS FOR AUTOMOTIVE USE**

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

**ACTION:** Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of certain electrically-heated throws and seat pads for automotive use.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) is revoking a ruling letter relating to the tariff classification of the “Thermo Throw” and the “Thermo SoftPad” under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 43, No. 27, on July 10, 2009. One comment was received in response to the notice.

**DATES:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 8, 2010.

**FOR FURTHER INFORMATION CONTACT:** Richard Mojica, Tariff Classification and Marking Branch, at (202) 325–0032.

**SUPPLEMENTARY INFORMATION:****Background**

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

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. § 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is revoking a ruling letter pertaining to the tariff classification of certain electrically-heated throws and seat pads for automotive use. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter ("HQ") 963001, dated July 22, 1999, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. §1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking HQ 963001 and any other ruling not specifically identified, to reflect the proper classification of the merchandise according to the analysis contained in HQ H062211 (Attachment). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.



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

Dated: November 23, 2009

GAIL A. HAMILL

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H062211

November 23, 2009

CLA-2 OT:RR:CTF:TCM H062211 RM

CATEGORY: Classification

TARIFF NO.: 8516.79.00

MR. ART GUREVICH

THERMOSTAT INTERNATIONAL CORPORATION

800 E. NORTHWEST HIGHWAY, SUITE 700

PALATINE, IL 60067

RE: Revocation of HQ 963001, dated July 22, 1999; Classification of Electrically-Heated Throws and Seat Pads for Automotive Use

DEAR MR. GUREVICH:

This is in reference to Headquarters Ruling Letter (“HQ”) 963001, dated July 22, 1999, issued to you on behalf of Thermostat International Corporation. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the “Thermo Throw” and the “Thermo Softpad,” electrically-heated throws and seat pads for automotive use, under heading 8543, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [Chapter 85].”<sup>1</sup> We have reviewed HQ 963001 and found it to be in error.

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, 2186 (1993), notice of the proposed modification was published on July 10, 2009, in the *Customs Bulletin*, Volume 43, No. 27. One comment was received in response to this notice and is addressed in this ruling.

**FACTS:**

In HQ 963001, CBP described the merchandise as follows:

[T]he Thermo Throw and the Thermo SoftPad, are electric heating devices designed to be placed on the rear bench seat and the front seat of a motor vehicle, and to be plugged into the vehicle’s cigarette lighter outlet to warm the occupants. They consist of an outer cover of one or more layers of polyester knit pile fabric and, in the SoftPad, a layer of plastic foam. Between the fabric layers are narrow woven tapes that contain copper wire and/or carbon fibers forming a criss-cross grid connected to electric wires and a thermostat that attach to a power cord. On this cord is an ON/OFF temperature control switch and a cigarette lighter adapter or plug.

In that ruling, we considered these articles to be “composite goods,” classified by application of GRI 3(b).

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<sup>1</sup> These articles had been previously classified by CBP under heading 6304, HTSUS, as “Other furnishing articles ...” See HQ D84863, dated December 17, 1998 and *General Notice of Modification of a Ruling Letter and Treatment Relating to the Tariff Classification of Electrically Heater Seat Pads*, available in the *Customs Bulletin* Volume 33, No. 32, dated August 11, 1999.

**ISSUE:**

Whether the Thermo Throw and the Thermo SoftPad are classified under heading 8516, HTSUS, as electrothermic appliances of a kind used for domestic purposes, or under heading 8543, HTSUS, as electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85, HTSUS.

**LAW AND ANALYSIS:**

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (“GRIs”). GRI 1 provides, in part, that “for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes[.]” In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, GRIs 2 through 6 may then be applied, in order.

The 2009 HTSUS provisions under consideration are as follows:

8516            Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:

                  Other electro-thermic appliances:

8516.79.00            Other ...

\* \* \*

8543            Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:

                  Other machines and apparatus:

8543.89            Other:

                  Other:

8543.89.96            Other ...

Legal Note 1(a) to Chapter 85, HTSUS, states:

1. This chapter does not cover:

- (a) Electrically warmed blankets, bed pads, foot-muffs or the like; electrically warmed clothing, footwear or ear pads or other electrically warmed articles worn on or about the person[.]

**The Additional U.S. Rules of Interpretation provide, in part:**

**1. In the absence of special language or context which otherwise requires:**

- (a) **a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use;**

\* \* \*

- (c) **a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part of accessory;**

\* \* \*

When interpreting and implementing the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) should be consulted. The ENs, although not dispositive nor legally binding, provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to heading 8516, HTSUS, state, in relevant part:

**(E) OTHER ELECTRO-THERMIC APPLIANCES OF A KIND USED FOR DOMESTIC PURPOSES**

This group includes all electro-thermic machines and appliances **provided** they are **normally used in the household**. Others include:

\* \* \*

- (18) Bed warmers.

\* \* \*

It is the position of CBP that Note 1(a) to Chapter 85, HTSUS, applies to electrically warmed articles of bedding and articles designed to be worn on or about the person. The automotive throws and pads at issue are not articles of bedding and are designed to be sat upon, not worn on or about the person. Accordingly, they are not excluded from classification in Chapter 85, HTSUS, by the Note.

In our proposed ruling, we stated that, based on the purpose for which the

Thermo Throw and the Thermo SoftPad are used (*i.e.*, to warm car seats), they are of the same kind of good as bed warmers and other such electrothermic appliances used in the household. *See* EN 85.16(E). As such, we found that they are entirely described by heading 8516, HTSUS, at GRI 1. Commenter objects to that conclusion, and posits that a bed warmer is distinguishable from an automotive seat heater in that it warms the object on which it is placed but not the person laying on it. Moreover, he argues that because the seat heaters include cigarette lighter adapters, they are not of a kind used for domestic purposes.

Heading 8516, HTSUS, provides, in relevant part, for “[O]ther electrothermic appliances of a kind used for domestic purposes[.]” The heading is a use provision, governed by Additional U.S. Rule of Interpretation 1(a), HTSUS, cited above. CBP has previously defined the term “domestic” as “of or pertaining to the family or household.” *See* HQ 965861, dated January 7, 2003 (citing the *Merriam-Webster Collegiate Dictionary*, 10th ed., pg. 344 (1999)). Accordingly, goods of the heading must be the kind of electrically-heated good that is used in the household. However, while heading 8516, HTSUS, is a use provision, it is not an actual use provision. In *Primal Lite, Inc. v. United States*, 15 F. Supp 2d 915, 917 (Ct. Int’l Trade 1998), *aff’d*, 182 F.3d 1362 (Fed. Cir. 1999), the Court of International Trade explained that:

The use of the term ‘of a kind’ is nothing more than a statement of the traditional standard for classifying importation by their use, namely that it need not necessarily be the actual use of the importation but is the use of the kind of merchandise to which the importation belongs.

Thus, under *Primal Lite*, to be classified under heading 8516, HTSUS, the heater need not actually be used in the house, but must be *the type of good* that is used in the house — such as a bed warmer. After considering their characteristics and uses, we find that a car seat heater and a bed warmer are the same kind of good. Both provide warmth to the object upon which it is placed and, in turn, to the person sitting or laying on it. We also find that the type of connector/adaptor that an article may have does not affect whether the article itself is a type of household good.

Finally, commenter submits that the goods cannot be classified under heading 8516, HTSUS, because Note 1(l) to Section XVI excludes accessories to motor vehicles, classified under Section XVII. We note that, as explained by the Court of Appeals for the Federal Circuit in *Rollerblade, Inc., v. United States* [*“Rollerblade”*], 116 F. Supp 2d 1247 (Ct. Int’l Trade 2000), *aff’d*, 282 F.3d. 1349, 1351 (Fed. Cir. 2002), an accessory “must be ‘of’ or ‘to’ the article ... listed in the heading.” The goods at issue act directly on the car seats, but not on the motor vehicles themselves. Applying *Rollerblade*, we find that they are accessories to car seats, not accessories to motor vehicles, and, therefore, are not goods of Section XVII. Accordingly, Note 1(l) to Section XVI does not apply to these goods.

Heading 9401, HTSUS, which provides in part for “Seats”, including those used for motor vehicles, also provides for parts of seats, but not their accessories. Consequently, the heated throws and pads could not be classified in this heading as car seat accessories. Moreover, Additional U.S. Rule of Inter-

pretation 1(c) directs that if a provision specifically provides for an accessory, it must be classified there and not as an “accessory.” Heading 8516, HTSUS, specifically provides for those goods.

Insofar as the Thermo Throw and the Thermo SoftPad are classified under heading 8516, HTSUS, they cannot be classified under heading 8543, HTSUS, by the terms of that heading, because they are “specified or included elsewhere in [Chapter 85].” CBP has consistently classified heating pads under subheading 8516.79, HTSUS. *See, e.g.*, HQ 967454, dated January 10, 2005; HQ 087731, dated September 7, 1990; and NY R01528, dated March 16, 2005. As we are able to classify the merchandise at GRI 1, there is no need to consider classification using GRI 3.

**HOLDING:**

By application of GRI 1 and U.S. Additional Rule of Interpretation 1(a), the Thermo Throw and Thermo SoftPad are classified under heading 8516, HTSUS, specifically in subheading 8516.79.00, which provides in relevant part for: “[O]ther electrothermic appliances of a kind used for domestic purposes; ... Other electro-thermic appliances: Other.” The column one, general rate of duty is 2.7 % *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the Internet at [www.usits.gov/tata/hts/](http://www.usits.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

HQ 963001, dated July 22, 1999, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the *Customs Bulletin*.

*Sincerely,*

GAIL A. HAMILL

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**GENERAL NOTICE**  
**19 CFR Part 177**

**Proposed Modification of Ruling Letter and Revocation of Treatment Relating to the Tariff Classification of Pressure-Mounted Safety Gates**

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

**ACTION:** Notice of proposed modification of ruling letter and treatment concerning the tariff classification of pressure-mounted safety gates.

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

**DATES:** Comments must be received on or before January 11, 2010.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Office of International Trade, Attention: Trade and Commercial Regulations Branch, 799 9th Street, 5th Floor, N.W., Washington, D.C. 20229–1179. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Dwayne S. Rawlings, Tariff Classification and Marking Branch, (202) 325–0092.

#### **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 CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff

Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify one ruling letter pertaining to the tariff classification and NAFTA eligibility of pressure-mounted safety gates. Although in this notice, CBP is specifically referring to the modification of NY L83194, dated April 4, 2005 (Attachment A), this notice covers any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY L83194, set forth as Attachment A this document, CBP determined the NAFTA eligibility of certain pressure-mounted safety gates and classified them in heading 3925, HTSUS, specifically subheading 3925.90.00 as "Builder's ware of plastics. Not elsewhere specified or included: Other." It is now CBP's position that the pressure-mounted safety gates are classified in heading 3924, HTSUS, specifically under subheading 3924.90.56, HTSUS, which provides for "Tableware, kitchenware, other household articles and hygienic or toilet articles; of plastics: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY L83194, and any other ruling not specifically identified, in order to reflect the proper analysis contained in proposed HQ 045151 set forth as Attachment B to this document. Additionally, pursuant to 19



U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: November 23, 2009

GAIL A. HAMILL

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachments

[ATTACHMENT A]

NY L83194  
April 4, 2005  
CLA-2-39:RR:NC:SP:221 L83194  
CATEGORY: Classification  
TARIFF NO.: 3925.90.0000

MR. MATTHEW WILMORE  
EVENFLO LOGISTICS  
707 CROSSROADS COURT  
VANDALIA, OHIO 45377

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA) of safety gates from Mexico; Article 509

DEAR MR. WILMORE:

In your letter dated February 24, 2005, you requested a ruling on the status of safety gates from Mexico under the NAFTA.

The sample provided with your letter is identified as a “Position and Lock” memory fit pressure gate, style 202. The product is a pressure gate that mounts into openings from 26 to 42 inches wide without hardware. It consists of two sliding panels composed of plastic mesh in a wood frame. A divided wood bar with notches and a locking clamp runs across the center of the panels and holds the gate in its desired position. The essential character of this model is imparted by the plastic mesh gate because of the primary role it plays in the functioning of the article as a gate.

You state that the plastic mesh is imported from the United States into Mexico. However, you do not indicate the country of origin of the resin or the precursor materials, nor do you specify where the resin was processed to form the mesh gate. You state that the wood is either imported from a foreign country or the United States. However, the cost figures included with your request show the wood as produced in foreign countries and not in the United States. The raw, un-sawn wood is transported to a milling facility where it is machined according to specifications. The cost figures show the United States and China as the countries of origin of the remaining components. The components are assembled to form the finished mesh gate and are packed into a carton and exported to the United States.

The applicable tariff provision for the wood framed plastic mesh gate will be 3925.90.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUS), which provides for builders’ ware of plastics, not elsewhere specified or included: other. The general rate of duty will be 5.3 percent ad valorem.

General Note 12(b), HTSUS, sets forth the criteria for determining whether a good is originating under the NAFTA. General Note 12(b), HTSUS, (19 U.S.C. § 1202) states, in pertinent part, that

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party ” only if—

- (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

- (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—
  - (A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or
  - (B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or
- (iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials; or
- (iv) they are produced entirely in the territory of Canada, Mexico and/or the United States but one or more of the non-originating materials falling under provisions for “parts” and used in the production of such goods does not undergo a change in tariff classification because—
  - (A) the goods were imported into the territory of Canada, Mexico and/or the United States in unassembled or disassembled form but were classified as assembled goods pursuant to General Rule of Interpretation 2(a), or
  - (B) the tariff headings for such goods provide for and specifically describe both the goods themselves and their parts and is not further divided into subheadings, or the subheadings for such goods provide for and specifically describe both the goods themselves and their parts,

provided that such goods do not fall under chapters 61 through 63, inclusive, of the tariff schedule, and provided further that the regional value content of such goods, determined in accordance with subdivision (c) of this note, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and such goods satisfy all other applicable provisions of this note.

Based on the facts provided, the goods described above qualify for NAFTA preferential treatment, because they will meet the requirements of HTSUSA General Note 12(b)(ii)(A). Each of the non-originating materials used in the production of such goods undergoes a change in tariff classification. The goods will therefore be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements, including Regional Value Content requirements specified in General Note 12(t)(39)(10). The mesh gate is also subject to a Regional Value Content (RVC) requirement of 60 percent under the Transaction Value Method or 50 percent under the Net Cost Method as required under the rule applicable to the gate. Assuming the goods are eligible for preferential treatment under the NAFTA, the merchandise will be free of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

This ruling letter has not addressed the Regional Value Content (RVC) of the subject goods. If you desire a ruling regarding the RVC of your goods and their eligibility for NAFTA preferential treatment, provide the information noted in Section 181.93(b) of the Customs Regulations (19 CFR 181.93(b)), to the Director, International Trade Compliance Division, Headquarters, U.S. Customs and Border Protection, 1300 Pennsylvania Ave. N.W., (Mint Annex), Washington, D.C. 20229, along with a copy of this letter. You should verify the countries of origin of the raw wood, the plastic resin and the precursor materials of the resin and you should specify what processing was performed in the United States to form the plastic mesh.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

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 Joan Mazzola at 646-733-3023.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ HO45151  
 CLA-2 OT:RR:CTF:TCM HO45151 DSR  
 CATEGORY: Classification  
 TARIFF NO.: 3924.90.5600

JOHN F. MALDONADO  
 EVENFLO COMPANY INC.  
 DIRECTOR, GLOBAL LOGISTICS AND DISTRIBUTION  
 225 BYERS RD.  
 MIAMISBURG, OH 45342

RE: Modification of NY L83194, dated April 4, 2005; subheading 3924.90.56, HTSUS; the tariff classification of pressure-mounted safety gates

DEAR MR. MALDONADO:

This letter is in response to a request for reconsideration dated April 27, 2009, made on behalf of Evenflo Company, Inc. (hereinafter "Evenflo"), of New York Ruling letter (NY) L83194, issued to Evenflo by U.S. Customs and Border Protection (CBP) on April 4, 2005.

The issues addressed by this ruling originated in a request for a ruling made by Evenflo Logistics on February 24, 2005, pertaining to the tariff classification and NAFTA eligibility of certain safety gates. The resulting ruling NY L83194 classified the safety gates, identified as "Position and Lock' memory fit pressure gate(s), style 202," under subheading 3925.90.00, of the Harmonized Tariff Schedule of the United States (HTSUS) as "Builder's ware of plastics, not elsewhere specified or included: Other."

CBP has reviewed the tariff classification of the subject safety gate and determined that the cited ruling is in error. Therefore, NY L83194 is modified for the reasons set forth in this ruling. This modification is made only with regard to the applicable tariff classification of the subject safety gates, and the determination made in NY L83194 with regard to whether the safety gates qualify for preferential treatment under NAFTA remains unchanged.

**FACTS:**

In NY L83194, the subject merchandise was identified as the "Position and Lock' memory fit pressure gate, style 202." The ruling describes the product as a pressure gate that mounts into openings without hardware. It consists of two sliding panels composed of plastic mesh in a wood frame. A divided wood bar with notches and a locking clamp runs across the center of the panels and holds the gate in its desired position. It was determined that the essential character of the article was imparted by the plastic mesh gate. The gate was classified in subheading 3925.90.00, HTSUS, as "Builder's ware of plastics. Not elsewhere specified or included: Other." It is your contention that the articles at issue are properly classified under heading 3924, HTSUS, which provides for, in relevant part, "other household articles ... of plastics."

**ISSUE:**

Whether a pressure gate made up of plastic mesh in a wood frame that mounts without hardware is classified under heading 3924, HTSUS, as "other household articles ... of plastics," or under heading 3925, HTSUS, as "builder's ware of plastics."

**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 2 through 6 may then be applied in order.

Commencing classification of the subject safety gate, in accordance with the dictates of GRI 1, the article in issue is not provided for *eo nomine*, that is by name, in any heading. CBP must therefore look to GRI 2 to classify the instant merchandise. GRI 2 is not beneficial in classifying the subject safety gate because the gate does not constitute an incomplete, unfinished, unassembled or disassembled article that is addressed in GRI 2 (a). The safety gate is composed of wood and plastic, and is, in accordance with GRI 2(b), a good “consisting of more than one material.” Goods consisting of more than one material that cannot be classified pursuant to GRI 1 or GRI 2 are to be classified according to GRI 3.

GRI 3, which covers composite goods consisting of different materials, states as follows:

When ... for any ... reason, goods are *prima facie* classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

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

The instant gate constitutes a composite good consisting of different materials, therefore we must consult GRI 3 to ascertain its HTSUS classification. The article meets the definition of a composite article because it is partially described in two headings, 3924 (as an article of plastic) and 4421 (as an “other article of wood”), and GRI 3(a) governs the classification of composite goods. GRI 3(a) provides that when classification of goods is under two or more headings “the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in ... composite goods ... those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.” Inasmuch as we cannot determine a classification under GRI 3 (a), we turn to GRI 3 (b), which states that the safety gate must be classified as if it consisted of the material

that gives the gate its essential character. The Explanatory Note (EN) to GRI 3 states as follows regarding the concept of “essential character” under GRI 3(b):

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Here, the subject gate’s plastic mesh is indispensable to the primary use and purpose of the gate, which is to prevent children or pets from passing through it. Without the mesh, the gate’s frame would be superfluous. Therefore, the plastic mesh imparts its essential character.

We now determine which HTSUS heading applicable to articles of plastic covers the subject safety gate.

The relevant HTSUS provisions under consideration state the following:

3924            Tableware, kitchenware, other household articles and  
hygienic or toilet articles; of plastics:

\* \* \*

3924.90            Other:

3924.90.56            Other.

\* \* \* \*

3925            Builders’ ware of plastics, not elsewhere specified or in-  
cluded:

\* \* \*

3925.90.00            Other.

\* \* \*

The Harmonized Commodity Description and Coding System ENs constitute the official interpretation of the Harmonized System. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80. The EN to 39.25 notes that the heading applies only to the articles mentioned in Note 11 of Chapter 39 and sub-Note 11(e) lists “[b]alconies, balustrades, fencing, gates, and similar barriers.”

In Headquarters ruling HQ 957260, dated April 4, 1995, we classified a plastic-framed safety gate capable of being permanently installed, or pressure-mounted, as “builder’s ware of plastic” under subheading 3925.90.56, HTSUS. In reaching that conclusion, we explained that it is distinguished from pressure-mounted safety gates because it could be permanently installed in the desired area by mounting hardware, as follows:

Although pressure mounted safety gates are most often temporarily mounted and would be in the nature of other household articles in head-

ing 3924, HTSUSA, the subject is distinguishable from those gates. The factor that causes it to be distinguishable from other pressure gates is the fact that it is designed so that it can be temporarily or permanently installed in the desired area through the use of the rail sockets, swing gate hardware, screws or adhesive. When so installed the Supergate III is used in the same manner as any other gate provided for in Legal Note 11(e) to Chapter 39, HTSUSA. Further, when used as a swing gate it is very similar to a door which can also be easily removed by taking out the hinge pins. We believe that a plastic safety gate purchaser might opt for the instant gate over other similar articles because of its installation capabilities and have accordingly concluded that it is similar to other items that may be installed in a house and removed without difficulty.

Furthermore, in Headquarters ruling 089159, dated August 7, 1991, we noted the following:

The issue of whether certain ... household articles of plastics ... are classified in Heading 3924, HTSUSA, as household articles or in Heading 3925, HTSUSA, as builders' ware was covered during the Third Session of the Harmonized System Committee, which was conducted in Brussels on March 9, 1989. It was the opinion of the Secretariat and the Committee that Heading 3924, HTSUSA, does not include articles designed for fixing to or setting in the wall.

We determined that this was consistent with CBP's view that certain articles of plastic designed for permanent installation are classified in heading 3925, HTSUS, as "builders' ware of plastics." See also HQ 089833, dated October 2, 1991 (molded plastic organizer that incorporates an adhesive to ensure a secure fit is intended for permanent installation and thus classifiable under heading 3925, HTSUS, as opposed to 3924, HTSUS). Thus, in order for the subject gate to fall within heading 3925, HTSUS, the gate would need to be capable of permanent installation in or on walls.

In your reconsideration request, you have described the subject safety gate as "strictly a memory-fit pressure gate, not a hardware installed swing gate." You have not provided a sample to this office, but the marketing materials provided to this office clearly include the notations "Pressure mount no tools required" and "No hardware required." The website that markets the gate states that it "[p]ressure mounts securely without hardware." See <http://evenflo.com/product.aspx?id=71&pfid=148>. "While an importer's catalogs and advertisements are not dispositive in determining the correct classification of goods under the HTSUS, they are certainly probative of the way the importer viewed the merchandise and of the market the importer was trying to reach." *THK America, Inc. v. United States*, 17 C.I.T. 1169, 1175; 837 F. Supp. 427, 433 (1993) (citing *Marubeni America Corp. v. United States*, 17 C.I.T. 360, 368; 821 F. Supp. 1521, 1528 (1993)). Therefore, while the subject gate performs the same function as a gate, it is not capable of permanent installation and is not classifiable in heading 3925, HTSUS.

The EN to 39.24 explains that the heading covers, among other things, "other household articles ... of plastics," and explicitly excludes those articles that are capable of permanent installation. CBP has consistently classified safety gates that are not capable of being permanently installed as "... other household articles." See NY M85234, August 15, 2006, (pressure-mounted safety gate with essential character of steel classified in heading 7323, HT-



SUS, as “table, kitchen or other household articles and parts thereof, of iron or steel ...”); NY J89558, October 29, 2003 (pressure-mounted safety gate with essential character of metal mesh classified in heading 7323, HTSUS, as “table, kitchen or other household articles and parts thereof, of iron or steel ...”); NY B85275 May 22, 1997 (portable safety gate made of plastic-coated steel classified in heading 7323, HTSUS as “table, kitchen or other household articles and parts thereof, of iron or steel ...”).

As discussed earlier, the essential character of the subject gate is that of plastic and, because the gate is not capable of permanent installation, the applicable heading for the gate would be heading 3924, HTSUS, “tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics.” Specifically, it is classified in subheading 3924.90.56, HTSUS, as “... other household articles of plastics: Other: Other.”

**HOLDING:**

By application of GRI 3, the subject merchandise identified as the “Position and Lock’ memory fit pressure gate, style 202” is classifiable under heading 3924, HTSUS. Specifically, it is classifiable under subheading 3924.90.56, HTSUS, which provides for “Tableware, kitchenware, other household articles and hygienic or toilet articles; of plastics: Other: Other.” The column one, general rate of duty is 3.4 percent *ad valorem*. Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY L83194, dated April 4, 2005, is hereby modified.

*Sincerely,*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED REVOCATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF CERTAIN MASS FLOW  
CONTROLLERS**

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

**ACTION:** Notice of proposed revocation of a tariff classification ruling letter and proposed revocation of treatment relating to the classification of certain mass flow controllers.

**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 Imple-

mentation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) intends to revoke a ruling letter relating to the tariff classification of certain mass flow controllers, under the Harmonized Tariff Schedule of the United States (HTSUS). The Mass Flow Controller (“MFC”) is described as being is a closed-loop device that sets, measures, and controls the flow of a gases or liquids. The MFC is said to operate automatically according to a complex system of internal applications. The MFC consists of five main components: the base, sensor, bypass (or flow splitter), control valve and printed circuit board. CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before January 11, 2010.

**ADDRESSES:** Written comments are to be addressed to Customs and Border Protection, Regulations and Rulings of the Office of International Trade, Attention: Commercial Trade and Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., 5th Floor, Washington, D.C. 20229–1179, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** John Rhea, Tariff Classification and Marking Branch: (202) 325–0035.

**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. Tile VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws.

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of certain mass flow controllers. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (“NY”) R01762 (Attachment “A”), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In the above mentioned ruling, CBP determined that the mass flow controllers were classifiable under subheading 8481.80.9015, HTSUS which provides for, “Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof: Other appliances: Other: Regulator valves, self-operating, for controlling variables such as temperature, pressure, flow and liquid level.” CBP now believes that the mass flow controller is properly classified in heading 9032, HTSUS, as an automatic regulating or control apparatus. Specifically, the mass flow controller is classified under subheading 9032.89.6060, HTSUS, which provides for: “Automatic regu-

lating or controlling instruments and apparatus ... Other instruments and apparatus: Other: Other Flow and liquid level control instruments.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY R01762 and any other ruling not specifically identified, to reflect the proper classification of the mass flow controllers according to the analysis contained in proposed Headquarters Ruling Letter (“HQ”) H028098, set forth as Attachment “B” to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 23, 2009

GAIL A. HAMILL  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments:

## [ATTACHMENT A]

NY R01762  
April 26, 2005  
CLA-2-84:RR:NC:1:102 R01762  
CATEGORY: Classification  
TARIFF NO.: 8481.80.9015

MR. GEORGE R. TUTTLE, III  
GEORGE R. TUTTLE LAW OFFICES, P.C.  
THREE EMBARCADERO CENTER (SUITE 1160)  
SAN FRANCISCO, CA 94111

RE: The tariff classification of a Mass Flow Controller of unspecified origin

DEAR MR. TUTTLE:

In your letter dated April 6, 2005 you requested a tariff classification ruling on behalf of your client Advanced Energy Industries.

The article in question is described as a Mass Flow Controller (MFC) used to regulate the flow of fluids in a variety of applications. You indicate that the MFC, which consists of a base, sensor, bypass, control valve and printed circuit board, is a closed-loop device that sets, measures and controls the flow of a particular gas or liquid. Descriptive literature was submitted.

Based on the information made available the MFC is a solenoid-actuated control valve with and integrated controller. The controller measures and compares the actual flow of fluid to a set point and generates a signal that opens or closes the control valve.

In your request you aver that the MFC is properly classified in heading 9032, Harmonized Tariff Schedule of the United States (HTSUS), which provides for automatic regulating or controlling instruments and apparatus. You offer that although the MFC incorporates a solenoid valve for controlling the flow of gases, the essential character of the apparatus is to measure and control the flow of gases.

Valves and similar appliances are provided for in HTSUS heading 8481. As you point out, the Explanatory Note to heading 8481 provides that combinations consisting of a valve and any measuring, checking or automatically controlling instrument of HTSUS heading 9032 remain in heading 8481 if the instrument or apparatus is mounted directly on the valve, and the combined article has the essential character of an article of heading 8481. If not, then the combined article is classified in HTSUS heading 9032.

We find that the MFC, which is comprised of a controller mounted directly onto a solenoid valve, has the essential character of an article of HTSUS heading 8481 because its primary function is to control the flow of a fluid. The MFC essentially is a self-operating regulator valve formed by combining a measuring apparatus with a solenoid-actuated valve and is specifically provided for in HTSUS heading 8481. Further, valves and other appliances of heading 8481 are specifically excluded from HTSUS heading 9032 by the notes to HTSUS chapter 90.

The applicable subheading for the MFC will be 8481.80.9015, HTSUS, which provides for regulator valves, self-operating, for controlling variables such as temperature, pressure, flow and liquid level. The rate of duty will be 2 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 646-733-3009.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H028098  
CLA-2 OT:RR:CTF:TCM H028098 JER  
CATEGORY: Classification  
TARIFF NO.: 9032.89.6060

GEORGE R. TUTTLE, ESQ.  
LAW OFFICES OF GEORGE R. TUTTLE, PC  
ONE EMBARCADERO CENTER, SUITE 730  
SAN FRANCISCO, CA 94111

RE: Mass Flow Controller; Proposed Revocation of NY R01762

DEAR MR. TUTTLE:

On April 26, 2005, U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letter (“NY”) R01762, dated April 26, 2005, to you on behalf of Advanced Energy Industries, Inc. (hereinafter “AEI”), classifying certain Mass Flow Controllers (“MFC”) in heading 8481, of the Harmonized Tariff Schedule of the United States (“HTSUS”). After reviewing NY R01762, we have found that ruling to be in error. For the reasons set forth in this ruling, we are revoking NY R01762.

**FACTS:**

The Mass Flow Controller (“MFC”) is described as being a closed-loop device that sets, measures, and controls the flow of gases or liquids. The MFC is said to operate automatically according to a complex system of internal applications. The MFC consists of five main components: the base, a thermal sensor, a bypass (or flow splitter), a control valve and a printed circuit board (or electronic assembly). The base provides the platform on which all other components of the MFC are mounted and contain the channels that form the main flow path of the gas. The thermal sensor is designed to respond to any changes in gas flow conditions. The bypass maintains a constant ratio of gas flow, measuring the portion of gas that passes through the sensor. The control valve establishes the flow of gas by responding to a signal that compares the actual flow to the set point. The printed circuit board system includes a bridge circuit, an amplifier circuit and a comparator circuit (or central processing unit (“CPU”)) wherein output indications and command signals are processed. The output signal is compared with the external set point signal. Any resulting error signal directs the control valve to open or close to maintain a constant flow at the set point. *Fundamentals of Mass Flow Control, Critical Terminology & Operation Principles for Gas and Liquid MFCs*, Advanced Energy Industries, Inc., (hereinafter *Fundamentals of Mass Flow Control*) available at, [www.advanced-energy.com](http://www.advanced-energy.com).

**ISSUE:**

Whether the subject merchandise is classified as an automatic regulating valve in heading 8481, HTSUS, or as an automatic controlling apparatus, in heading 9032, HTSUS, or as an instrument for measuring or checking liquids or gases in heading 9026, HTSUS.

**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 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

8481                   Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof:

8481.80                   Other appliances:

8481.80.90                   Other...

8481.80.9015                   Regulator valves, self-operating, for controlling variables such as temperature, pressure, flow and liquid level

9026                   Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquid or gases...excluding instruments and apparatus of heading 9014, 9015, 9028 or 9032; parts thereof:

9026.10                   For measuring or checking the flow or level of liquids:

9026.10.20                   Electrical...

9026.10.2040                   Flow meters

\* \* \*

9026.20                   For measuring or checking pressure:

9026.20.4000                   Electrical...

9032                   Automatic regulating or controlling instruments and apparatus; parts and accessories thereof:

\* \* \*

Other instruments and apparatus:

\* \* \*



9032.89 Other:

9032.89.60 Other...

Other:

9032.89.6060 Flow and liquid level control instruments

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

In NY R01762, CBP determined that the subject Mass Flow Controllers were classified in heading 8481, HTSUS. That ruling based its decision in part on the fact that the ENs to heading 8481, HTSUS, provide that combinations consisting of a valve and any measuring, checking or automatically controlling instrument of heading 9032, HTSUS, are classifiable in heading 8481, HTSUS, where it is found that the instrument or apparatus is mounted directly on the valve, and the combined article has the essential character of an article of heading 8481. By contrast, you contend that the controller apparatus is not mounted directly onto the valve and that the essential character of the combined apparatus is not imparted by an article of heading 8481, HTSUS. Specifically you aver that the MFC is classified in heading 9032, HTSUS, and alternatively in heading 9026, HTSUS.

In NY R01762, CBP viewed the MFC as satisfying the conditions for “combinations” set forth in the ENs to heading 8481, HTSUS. The ENs to heading 8481, HTSUS, provide that:

Combinations consisting of a valve and any measuring, checking or automatically controlling instrument or apparatus of HTSUS headings 9026 or 9032 remain in this heading if the instrument or apparatus is mounted directly on the valve, and **provided** the combined article has the essential character of an article of heading 8481. If **not** satisfying these conditions, they are classified in **heading 90.26 ...** or in **heading 90.32**.

AEI’s Mass Flow Controller consists of five main components which work in unison to maintain a constant gas flow at a particular set point. Essentially, the bypass or flow splitter forces a proportion of incoming gas through a thermal sensor which, through a heating and cooling effect, creates a temperature differential. This temperature differential is amplified into a flow output signal. This output signal is compared with the set point signal. Should an error signal result, the command signal from the printed circuit board directs the control valve to open or close to maintain a constant flow at the set point. *Fundamentals of Mass Flow Control*, at 2.

While CBP has in previous rulings classified “combination” automatic control valves in heading 8481, HTSUS, those decisions were in part based on the fact that the term “valve” was incorporated into the product’s name and thus provided for *eo nomine* in heading 8481, HTSUS. Also, while capable of sensing changes in variables and regulating flow rate, these articles were

distinguishable from articles of heading 9032 HTSUS. *See* Headquarters Ruling Letters (HQ) 952880, dated February 8, 1993; HQ 956084, dated July 27, 1994 and HQ 958548, dated February 1996 (which classified automatic flow regulating valves in heading 8481, HTSUS).

We find that the subject MFC does not satisfy the two-part analysis in the ENs to heading 8481, HTSUS. The essential character of the subject MFC directs and analyzes the gas flow, features which are beyond the scope of heading 8481, HTSUS. Also, the measuring instrument is not mounted directly on the control valve.<sup>2</sup> In the instant case, the measuring and checking devices are housed in a common unit with the valve. As such, the subject MFC is not classifiable in heading 8481, HTSUS.

Note 1(g) to Chapter 90 provides that this chapter does not include valves of heading 8481, HTSUS. As the subject MFC does not satisfy the criteria for “combination automatic valves” described in the ENs to heading 8481, HTSUS, Note 1(g) to Chapter 90 applies to exclude products whose essential character and function is that of a valve of heading 8481, HTSUS. As discussed above, the subject MFC by its function, composition and essential devices, is not classifiable as a valve within the meaning of heading 8481, HTSUS.

In order to be classifiable in heading 9032, HTSUS, merchandise must meet the terms of Note 7 to Chapter 90, HTSUS. Specific to the instant facts, the subject merchandise must satisfy Note 7 (a) to Ch. 90, HTSUS. Note 7 (a) to Chapter 90 states that:

Heading 9032 applies only to:

(a) Instruments and apparatus for automatically controlling the flow, level, pressure or other variables of liquids or gases, or for automatically controlling temperature, whether or not their operation depends on an electrical phenomenon which varies according to the factor to be automatically controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value [.]

According to the ENs to heading 9032, HTSUS, this heading provides for instruments and apparatus for automatically controlling the flow, level pressure or other variables of liquids or gases. In previous rulings, CBP has classified automatic controlling devices in heading 9032, HTSUS, where it was determined that the merchandise met the requirements set forth in the terms of the heading, the ENs to heading 9032, HTSUS, and Note 7 to Ch. 90, HTSUS. Such items were substantially similar in function to the subject MFC. For instance, in HQ H008629, dated August 13, 2007, CBP classified two cold control devices as automatic controlling apparatus within the meaning of Note 7(a) to heading 9032, HTSUS. In HQ H008629, CBP determined that the articles contained a device for measuring the variable to be controlled, a control device which compared the measured value with the desired

<sup>2</sup> NY J87730, dated August 20, 2003 and NY L82203, dated February 15, 2005. (wherein the Taco bypass valve and the BASO automatic gas pilot valve, respectively, had measuring devices which, according to images posted on the respective websites, were mounted directly on the control valve).

value and a starting, stopping or operating device.<sup>3</sup> *See also*, HQ 954950, dated December 23, 1993, in which CBP classified an electronic control unit (“ECU”) in heading 9032, HTSUS, because the ECU measured the flow, pressure and temperature of fuel, compared the data to pre-established norms and had a control device which brought the variable within the desired parameters. Likewise, HQ 086179, dated March 12, 1990, classified a water temperature regulating module in heading 9032 HTSUS, because it had a measuring device to monitor the variable, had a control device to control the water temperature and a stopping device to turn off the hot water generator when the water reached a predetermined temperature.

As the ENs to heading 9032, HTSUS, explains, instruments and apparatus which control the flow, level and pressure of liquids, gases or temperature are generally remote controlled by another control device. However, in cases where the automatic apparatus is combined with the appliance or device which carries out the order, classification of the whole is determined by GRI 1 or GRI 3(b). The applicable ENs to heading 9032, HTSUS, state in pertinent part that:

Instruments and apparatus for automatically controlling the flow, level, pressure and other variables of liquids or gases or for automatically controlling temperature are connected to an appliance which carries out the orders ... which restores the variable ... This appliance, generally remote controlled by a mechanical, hydraulic, pneumatic or electric control, is to be classified in its own appropriate heading (pump or compressor: **heading 84.13** or **84.14**; valve: **heading 84.81**, etc.). If the automatic control apparatus is combined with the appliance which carries out the orders, the classification of the whole is to be determined under either Interpretative Rule 1 or Interpretative Rule 3 (b) (see Part (III) of the General Explanatory Note to Section XVI and the Explanatory Note to heading 84.81).

The ENs to heading 9032, HTSUS, further state that: “Apparatus for automatically controlling liquids or gases or temperature, within the meaning of Note 7 (a) to this Chapter, consists of [the following] three devices forming a single entity or in accordance with Note 3 to this Chapter, a functional unit.” The ENs to heading 9032 HTSUS, state that these items consist of [the following] three essential devices which carry out its functions forming a single entity. As counsel noted, advancements in technology have caused the once separate components, (flow meter, controller and valve) to become consolidated into one single device. As such, those aspects of the MFC which measure and monitor flow activity are inseparable from those aspects which regulate the gas flow.

The ENs to heading 9032, HTSUS, provides as follows:

**Automatic control apparatus for liquids or gases and apparatus for automatically controlling temperature** form part of complete automatic control systems and consist essentially of the following devices:

<sup>3</sup> HQ H008629, explained that: “these controllers contain the main components of thermostats, as they are described by EN 90.32(I). They contain: (1) an element sensitive to changes in temperature, the action of which depends on the vapor pressure of a liquid; (2) have preset differentials for obtaining a desired temperature; and (3) switches that operate contactors, relays, fans, and motors which regulate temperature.”

- (A) **A device for measuring** the variable to be controlled (pressure or level in a tank, temperature in a room, etc.); in some cases, a simple device which is sensitive to changes in the variable (metal or bi metal rod, chamber or bellows containing an expanding liquid, float, etc.) may be used instead of a measuring device.
- (B) **A control device** which compares the measured value with the desired value and actuates the device described in (C) below accordingly.
- (C) **A starting, stopping or operating device.**

The subject merchandise has each of these three essential devices. The subject MFC has (A) a measuring device: the sensor/bypass combination which measures and checks the flow of gas, (B) a control device: the printed circuit board system which interprets the output signal in light of the desired set point and ultimately directs (C) the starting and stopping device: the printed circuit board (“PCB”) which provides the detailed instructions to the control valve to open or close to maintain a constant gas flow at the set point. Specifically, the signal generated by the bridge circuit is amplified and fed into the analog converter which outputs this signal into the CPU. The CPU compares the set point signal to the sensor reading to generate a signal to drive the control valve. *See Mass Flow Controllers: Series FC-77X, et al;* Advanced Energy (March 2004). As such, the subject MFC meets the description of an automatic control apparatus as set forth in ENs to heading 9032 HTSUS. Moreover, because the subject MFC contains each of the three devices set forth above, the MFC therefore is classifiable as an automatic regulating or controlling apparatus within the meaning of Note 7 (a) to Chapter 90, HTSUS.

In the alternative, counsel asserts that the MFC is classifiable in heading 9026, HTSUS. Classification of the subject merchandise in heading 9026, HTSUS, would be proper only if the MFC was limited to measuring and checking gas flow, i.e., the device was a Mass Flow Meter and did not meet the terms of heading 9032, HTSUS. According to our research, Mass Flow Controllers throughout the industry are devices used to both measure and control the flow of gases or liquids.<sup>4</sup> AEI’s MFC is no different. Fundamentally, the MFC contains a thermal sensor, bypass and printed circuit board (the Flow Meter) and a solenoid control valve and PCB (the Flow Controller). As explained above, the MFC meets the terms of heading 9032, HTSUS. Therefore, classification under heading 9026, HTSUS, is precluded.

### **HOLDING:**

By application of GRI 1 and Legal Note 7 (a) to Chapter 90, HTSUS, we find that the Mass Flow Controller is correctly classified in heading 9032, HTSUS, and specifically provided for in subheading 9032.89.6060, HTSUS, which provides for: “Automatic regulating or controlling instruments and apparatus...: Other instruments and apparatus: Other: Other: Other: Flow and liquid level control instruments.” The 2009 column one, general rate of duty is 1.7% *ad valorem*.

<sup>4</sup> *See Smart-Trak Series 100*, at [www.sierrainstruments.com](http://www.sierrainstruments.com) and *Brooks MF Series, Smart Mass Flow*, at [www.Brooksinstruments.com](http://www.Brooksinstruments.com). (For a discussion of the capacity of mass flow meters and controllers which monitor and regulate gas flow rates).

**EFFECT ON OTHER RULINGS:**

NY R01762, dated April 26, 2005 is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED REVOCATION AND MODIFICATION OF  
RULING LETTERS AND PROPOSED REVOCATION OF  
TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF CERTAIN LIGHT- EMITTING DIODE  
("LED") MODULES**

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

**ACTION:** Notice of proposed revocation and modification of ruling letters and proposed revocation of treatment relating to the classification of certain LED modules.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") is proposing to revoke two ruling letters and modify one ruling letter relating to the tariff classification of certain LED modules under the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

**DATES:** Comments must be received on or before January 11, 2010.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Commercial Trade and Regulations Branch, 799 9th St., N.W., 5th Floor, Washington, D.C., 20229-1179. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street N.W., Washington, D.C., 20229, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Richard Mojica, Tariff Classification and Marking Branch, at (202) 325-0032.

**SUPPLEMENTARY INFORMATION:****Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke two ruling letters and modify one ruling letter relating to the tariff classification of certain LED modules. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (“NY”) H87026, dated January 28, 2002 (Attachment A) and NY 816502, dated December 19, 1995 (Attachment B), and the modification of NY 817979, dated January 26, 1996 (Attachment C), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

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

In the aforementioned ruling letters, CBP classified certain LED modules under heading 8541, HTSUS, as "light-emitting diodes." We have reviewed those rulings and determined that the classification set forth therein is incorrect. It is now our position that the subject modules are properly classified under heading 9405, HTSUS, as "Lamps ... not elsewhere specified or included."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY H87026 and NY 816502, and to modify NY 817979, and any other ruling not specifically identified, to reflect the proper classification of LED modules according to the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H024874 (Attachment D), HQ H024876 (Attachment E) and HQ H024878 (Attachment F). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 23, 2009

GAIL A. HAMILL  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments



[ATTACHMENT A]

NY H87026  
January 28, 2002  
CLA-2-85:RR:NC:MM:109 H87026  
CATEGORY: Classification  
TARIFF NO.: 8541.40.2000

MR. NEIL R. TRENCHARD  
MANAGER, IMPORT-EXPORT OPERATIONS  
SIEMENS SHARED SERVICES, LLC  
186 WOOD AVENUE SOUTH  
ISELIN, NJ 08830

RE: The tariff classification of an EFFECTlight LED Module, MARKERlight LED Module, BACKlight LED Modules, and LINEARlight LED Modules from Germany

DEAR Ms. TRENCHARD:

In your letter dated January 2, 2002, you requested a tariff classification ruling on behalf of Osram Sylvania, Inc. (OSI).

The merchandise is described in your letter as Light Emitting Diode (LED) Modules. OSI's LED systems include modules, power supplies and connectors. However, it is specifically the modules (EFFECTlight LED Module, MARKERlight LED Module, BACKlight LED Modules, and LINEARlight LED Modules) that are subject to this ruling request.

LEDs are compound semiconductor devices that convert electricity to light (visible rays) when biased in a forward direction. Advanced high-brightness LEDs are the next generation of lighting technology and are being used in an increasingly wide range of applications as innovative alternatives to conventional lamps. The attributes for general lighting application include energy efficiency, compact size, resistance to shock, low wattage and heat, and up to 100,000 hours of life.

The EFFECTlight LED Module is designed to light architectural features, such as facades, and furniture lighting, such as glass cupboards. The entire module consists of 10 LEDs having a maximum wattage of 1.2. Based on the literature submitted for this merchandise no other electronics are present within the module.

The MARKERlight LED Module provides uniformed luminance over their entire surface area, thereby making them ideal for lighting paths or seats, for example in a movie theater. These types of modules are available in three varieties, square, circular, and rectangular. The module of the square and circular type consist of 40 LEDs and the module of the rectangular consists entirely of 8, 12 or 16 LEDs. Based on the literature submitted for this merchandise, no other electronic components are in the module. Each of these three modules has a maximum wattage of 3.84.

The BACKlight LED Modules consist of eight square LED modules about an inch in length that are strung together via a 2" cable. This design is used for contour-precise backlighting of advertising space and for general illumination. Each square module contains 4 LEDs. Based on the literature submitted for this merchandise, there are no other electronic components present in the module. The lighting is available in a variety of colors and has a maximum wattage of 4.



The LINEARlight LED Module is designed to inject light into plastics and to mark pathways and outlines. The ideal uses include escape route markers, border markers and walkways. The entire module is about 17.5" in length consisting of 32 LEDs and has a maximum wattage of 4.

The applicable subheading for the EFFECTlight LED Module, MARKERlight LED Module, BACKlight LED Modules, and LINEARlight LED Modules will be 8541.40.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for Photosensitive semiconductor devices, .... Light-emitting diodes (LED's). The rate of duty will be free.

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 Linda M. Hackett at 646-733-3015.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

[ATTACHMENT B]

NY 816502  
December 19, 1995  
CLA-2-85:RR:NC:MA:109 816502  
CATEGORY: Classification  
TARIFF NO.: 8541.40.2000

Ms. PATRICIA A. FELL  
KLEIN INTERNATIONAL, LTD.  
PARKSIDE BUSINESS CENTER  
7970 S.W. CIRRUS DRIVE, BLDG.. 13  
BEAVERTON, OREGON 97008

RE: The tariff classification of a light-emitting diode module assembly from China.

DEAR Ms. FELL:

In your letter dated November 24, 1995 you requested a tariff classification ruling.

The item described in your letter and accompanying sample consists of two light-emitting diodes connected by coated wires to a module assembly power source with switch. According to you letter, the item as imported, is placed in merchandise manufactured in the United States as a component part to add a lighted feature to the finished articles. The finished articles are various holiday display ornaments.

The applicable subheading for the diode modules will be 8541.40.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Diodes, transistors, and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof (con.): Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes: Light-emitting diodes (LED's)." The rate of duty will be 1.6 per cent. This rate will change to 1.2 per cent in 1996.

This ruling is being issued under the provisions of Section 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 Phil Carabetta at 212-466-5673.

*Sincerely,*

ROGER J. SILVESTRI  
*Director*

*National Commodity Specialist Division*

[ATTACHMENT C]

NY 817979  
January 26, 1996  
CLA-2-85:RR:NC:MA: 112 817979  
CATEGORY: Classification  
TARIFF NO.: 8541.40.2000; 8513.10.2000; 7117.19.9000

MR. MIKE CHUN  
DELTA EXPRESS  
765 ROUTE 83, SUITE 122  
HARTFORD CENTER  
BENSENVILLE, IL 60106

RE: The tariff classification of various electrical products from China

DEAR MR. CHUN:

In your letter dated December 22, 1995, on behalf of Buztronics, Inc., you requested a tariff classification ruling.

The submitted samples cover five (5) distinctive products. The "light circuit module" consists of a battery operated circuit board, one (1) inch in diameter. Two (2) sets of electrical leads are affixed to the board and each set is connected to a tiny light emitting diode (LED). A pin clasp is also soldered to the board, since the board is intended for incorporation into a promotional button. When the protective plastic sleeve is removed from the pin and it makes contact with the clasp, the LED's will begin flashing.

The "electronic blinking button" consists of the "light circuit module", including the pin clasp, assembled within a metal bottlecap. The bottlecap is decorated with advertisement for either Lite ICE beer or Molson ICE beer. These bottlecaps will be imported in both a retail package and in bulk, unpackaged form.

The "point of purchase light harness" consists of a printed circuit board with a variable speed switch and a mounted plastic battery holder, and five (5) sets of electrical leads which are soldered to the board. An LED is soldered to the other end of each set of leads. This harness is used in promotional displays where flashing lights are used.

The "keychain flashlight" is a metal keychain with a circular plastic attachment which emits a light when squeezed.

The "sound button" consists of a circular plastic housing, containing electronic components, and a metal facing with a promotional display for Budweiser beer. A pin clasp is also affixed to the housing. When a button switch on the housing is pressed, the "sound button" emits a noise resembling that of a croaking frog.

The applicable subheading for the "light circuit module" and the "point of purchase light harness" will be 8541.40.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for light emitting diodes. The rate of duty will be 1.2 percent *ad valorem*. The applicable subheading for the "electronic blinking button" and "sound button" will be 7117.19.9000, HTS, which provides for other imitation jewelry of base metal. The rate of duty will be 11 percent *ad valorem*.

The applicable subheading for the "keychain flashlight" will be 8513.10.2000, HTS, which provides for portable electric lamps designed to function by their own source of energy...; flashlights. The rate of duty will be 20 percent *ad valorem*.

This ruling is being issued under the provisions of Section 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 212-466-5680.

*Sincerely,*

ROGER J. SILVESTRI

*Director*

*National Commodity Specialist Division*

[ATTACHMENT D]

HQ H024874  
CLA-2 OT:RR:CTF:TCM H024874 RM  
CATEGORY: Classification  
TARIFF NO.: 9405.40.80

MR. NEIL R. TRENCHARD  
MANAGER, IMPORT-EXPORT OPERATIONS  
SIEMENS SHARED SERVICES, LLC  
186 WOOD AVENUE SOUTH  
ISELIN, NJ 08830

RE: Revocation of New York Ruling Letter H87026; Tariff Classification of Certain Light Emitting Diode Modules

DEAR MR. TRENCHARD:

This is in reference to New York Ruling Letter (“NY”) H87026, dated January 28, 2002, issued to you on behalf of Siemens Shared Services, LLC, concerning the tariff classification of certain light-emitting diode (“LED”) modules. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under heading 8541, Harmonized Tariff Schedule of the United States (“HTSUS”), as “light-emitting diodes.” We have reviewed NY H87026 and found it to be incorrect. For the reasons set forth below, we intend to revoke that ruling

**FACTS:**

The goods at issue are LED modules commercially known as the “EFFECTlight,” the “MARKERlight,” the “BACKlight,” and the “LINEARlight.” According to product literature submitted by the importer:

- (1) The EFFECTlight consists of a square plastic housing with a lens cover, ten LEDs mounted on a frame with anode and cathode leads extending below and covered by a clear epoxy dome (“LED bulbs”), and a printed circuit board (“PCB”). It is used to illuminate facades, walls or columns. Up to fourteen modules can be connected in sequence.
- (2) The MARKERlight consists of a round or square plastic housing, forty LED bulbs, and a PCB. It is used to illuminate walkways, steps, seats, etc.
- (3) The BACKlight consists of a chain of eight square plastic boards. Each square holds four LED bulbs and a PCB. It is used to illuminate signs. Up to three chains can be connected in sequence.
- (4) The LINEARlight consists of a plastic strip that holds thirty-two LED bulbs and a PCB. It is used to illuminate paths and signs. Up to three modules can be connected in sequence.

According to the importer, the LED modules must be integrated into housings containing heat sinks and lenses and connected by wire to a power supply unit to be used for their intended purpose.

**ISSUE:**

Whether the LED modules are classified under heading 8541, HTSUS, as “light emitting diodes” or under heading 9405, HTSUS, as “lamps ... not elsewhere specified or included.”

**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 2 through 6 may then be applied in order. GRI 2(a) provides, in part:

[a]ny reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article.

The HTSUS provisions under consideration are as follows:

- 8541 Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof:**
- 8541.40 Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes:**
- 8541.40.20 Light-emitting diodes (LED’s)**
- 9405 Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:**
- 9405.40 Other electric lamps and lighting fittings:**
- 9405.40.80 Other**
- Note 8 to Chapter 85, HTSUS, provides, in part:**

**For classification of the articles defined in this note, headings 8541 and 8542 shall take precedence over any other heading in the Nomenclature, except in the case of heading 8523, which might cover them by reference to, in particular, their function.**

Note 1 to Chapter 9405, HTSUS, provides, in part:

This chapter does not cover:

(f) Lamps or lighting fittings of chapter 85

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to heading 8541, HTSUS, provide, in part:

### **(C) Light Emitting Diodes**

Light emitting diodes ... are devices which convert electric energy into visible, infra-red or ultra-violet rays. They are used, *e.g.*, for displaying or transmitting data in control systems.

The ENs to heading 9405, HTSUS, provide, in part:

### **(I) Lamps and Lighting Fittings, not Elsewhere Specified or Included**

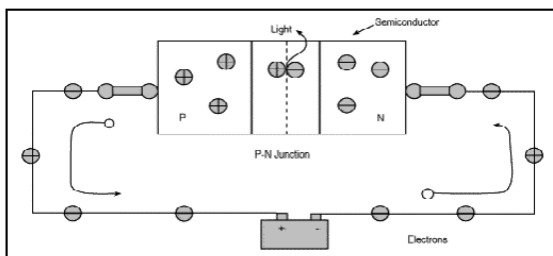
Lamps and lighting fittings of this group can be constituted or any material (**excluding** those material described in Note 1 to Chapter 71) and use any source of light (candles, oil, petrol, paraffin (or kerosene), gas, acetylene, electricity, etc). Electrical lamps and lighting fittings of this heading may be equipped with lamp-holders switches, flex and plugs, transformers, etc.

Heading 8541, HTSUS, provides, in part, for “light-emitting diodes.” The term “light-emitting diode” is not defined in the tariff. When a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

*The Oxford English Dictionary* defines the term “light-emitting diode” as “a semiconductor diode that emits light when a voltage is suitably applied.” *See www.oed.com*. *The McGraw-Hill Concise Encyclopedia of Science and Technology*, (5th Ed., 2005 at 1252) defines the term as “a rectifying semiconductor device which converts electrical energy into electromagnetic radiation.”

The website of the Lighting Research Center, a university-based research organization devoted to lighting, describes the process as follows:

LEDs are semiconductor diodes, electronic devices that permit current to flow in only one direction. The diode is formed by bringing two slightly different materials to form a PN junction [Figure 1]. In a PN junction, the P side contains excess positive charge (“holes,” indicating the absence of electrons) while the N side contains excess negative charges (*i.e.*, electrons).



**Figure 1: a P-N junction**

When a forward voltage is applied to the semiconducting element forming the PN junction, electrons move from the N area toward the P area and holes move toward the N area. Near the junction, the electrons and holes combine. As this occurs, energy is released in the form of light that is emitted by the LED.

See John Bullow, *LED Lighting Systems* (May, 2003) available at <http://www.lrc.rpi.edu/researchAreas/leds.asp>.

In keeping with the common meaning of the term and the ENs, CBP has previously determined that the provision for LEDs in heading 8541, HTSUS, covers individual LEDs (*i.e.*, the semiconductor diodes without other components). See, *e.g.*, Headquarters Ruling Letter (“HQ”) H011693, dated December 18, 2007, HQ H010636, dated December 3, 2007, and HQ H003215, dated October 10, 2007. To that effect, in HQ 966401, concerning the classification of the “Epoch light,” a battery-operated LED floodlight, we stated that:

EN 85.41 only refers to a “Light-emitting diode or electroluminescent diode” alone or by itself. There is no mention of the diode with any other components or within any housing or any device such as the Epoch light. Because the Epoch light is a complete battery-operated floodlight, which contains an LED, it is beyond the scope of heading 8541, HTSUS and classification under this heading is, therefore, precluded.

Similar to the Epoch light, the instant modules consist of several LED bulbs mounted on a PCB and incorporated into housings along with other components. As such, the devices are beyond the scope of heading 8541, HTSUS.

Heading 9405, HTSUS, provides in relevant part for “Lamps and light fittings ... not elsewhere specified or included.” Relying on the common meaning of the term, CBP has previously determined that lamps are devices which provide an isolated source of heat or light. See HQ H042586, dated January 29, 2009 (fiber optic lamp), HQ 966952, dated August 18, 2004 (litecube), and



HQ 965248, dated July 26, 2002 (bubble lights) (citing *The Random House College Dictionary* (1973) at 752 and *Webster's New Collegiate Dictionary* (1979) at 639). Pursuant to GRI 2(a), heading 9405, HTSUS, includes incomplete lamps provided that, as entered, they possess the essential character of a complete lamp. The term "essential character" in the context of GRI 2(a) refers to "the attribute that serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the good; the aggregate of distinctive component parts that establishes the identity of an article as what it is, its very essence." See, e.g., HQ 967975, dated March 24, 2006.

As entered, the subject LED modules comprise the light source of complete lamps. When installed into housings adequate for their intended purpose, and connected to a power source by a power supply unit, they emit light. As such, we conclude that the modules possess the essential character of complete lamps. Therefore, as the goods are not specified elsewhere in the Nomenclature, they are classified by application of GRI 1 and GRI 2(a) under heading 9405, HTSUS, as lamps.

Inasmuch as the LED modules are not classified under heading 8541, HTSUS, Note 8 to Chapter 85, which gives priority to merchandise classifiable in heading 8541, HTSUS, does not apply.

#### **HOLDING:**

**By application of GRI 1 and GRI 2(a), the EFFECTlight, MARKERlight, LINEARlight, and BACKlight are classified under heading 9405, HTSUS, specifically in subheading 9405.40.80, which provides in relevant part for "Lamps ... not elsewhere specified or included: Other electric lamps and light fittings: Other." The 2009, column one, general rate of duty is 3.9 % *ad valorem*.**

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

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

NY H87026, dated January 28, 2002, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

[ATTACHMENT E]

HQ H024876  
CLA-2 OT:RR:CTF:TCM H024876 RM  
CATEGORY: Classification  
TARIFF NO.: 9405.40.80

MR. MIKE CHUN  
DELTA EXPRESS  
765 ROUTE 83  
HARTFORD CENTER, SUITE 122  
BESENVILLE, IL 60106

RE: Modification of New York Ruling Letter 817979; Tariff Classification of the “Light Circuit Module” and the “Point of Purchase Light Harness.”

DEAR MR. CHUN:

This is in reference to New York Ruling Letter (“NY”) 817979, dated January 26, 1996, issued to you on behalf of Buzztronics, Inc., concerning the tariff classification of certain light-emitting diode (“LED”) modules commercially known as the “Light Circuit Module” and the “Point of Purchase Light Harness.” In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under heading 8541, Harmonized Tariff Schedule of the United States (“HTSUS”), in the provision for “light emitting diodes.” We have reviewed NY 817979 and found it to be incorrect. For the reasons set forth below, we intend to modify that ruling. The classification of the other products described in the ruling is not affected by this decision.

**FACTS:**

In NY 817979, CBP described the subject merchandise as follows:

The “light circuit module” consists of a battery operated [printed] circuit board [“PCB”], one inch in diameter. Two sets of electrical leads are affixed to the board and each set is connected to a tiny [LED]. A pin clasp is also soldered to the board, since the board is intended for incorporation into a promotional button.

\* \* \*

The “point of purchase light harness” consists of a printed circuit board with a variable speed switch and a mounted plastic battery holder, and five sets of electrical leads which are soldered to the board. An LED is soldered to the other end of each set of leads. This harness is used in promotional displays where flashing lights are used.

**ISSUE:**

Whether the Light Circuit Module and the Point of Purchase Light Harness are classified under heading 8541, HTSUS, as “light-emitting diodes” or under heading 9405, HTSUS, as “lamps ...not elsewhere specified or included.”

**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 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

- 8541            Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof:**
- 8541.41            Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes:**
- 8541.40.20            Light-emitting diodes (LED's)**
- 9405            Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:**
- 9405.40            Other electric lamps and lighting fittings:**
- 9405.40.80            Other**

**Note 8 to Chapter 85, HTSUS, provides in part:**

**For classification of the articles defined in this note, headings 8541 and 8542 shall take precedence over any other heading in the Nomenclature, except in the case of heading 8523, which might cover them by reference to, in particular, their function.**

Note 1 to Chapter 9405, HTSUS, provides in part:

This chapter does not cover:

- (f) Lamps or lighting fittings of chapter 85

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to heading 8541, HTSUS, provide, in part:

**(C) Light Emitting Diodes**

Light emitting diodes ... are devices which convert electric energy into visible, infra-red or ultra-violet rays. They are used, *e.g.*, for displaying or transmitting data in control systems.

The ENs to heading 9405, HTSUS, provide, in part:

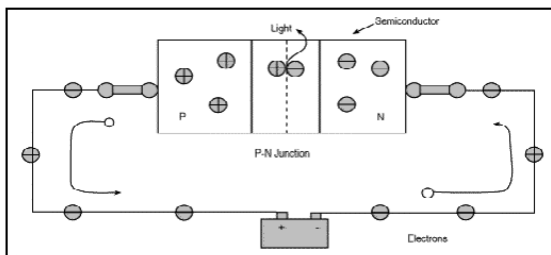
**(II) Lamps and Lighting Fittings, not Elsewhere Specified or Included**

Lamps and lighting fittings of this group can be constituted or any material (**excluding** those material described in Note 1 to Chapter 71) and use any source of light (candles, oil, petrol, paraffin (or kerosene), gas, acetylene, electricity, etc). Electrical lamps and lighting fittings of this heading may be equipped with lamp-holders switches, flex and plugs, transformers, etc.

Heading 8541, HTSUS, provides, in part, for “light-emitting diodes.” The term “light-emitting diode” is not defined in the tariff. When a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (*Fed. Cir. 1994*). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (*Fed. Cir. 1989*). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (*CCPA 1982*); *Simod*, 872 F.2d at 1576.

*The Oxford English Dictionary* defines the term “light-emitting diode” as “a semiconductor diode that emits light when a voltage is suitably applied.” See *www.oed.com*. *The McGraw-Hill Concise Encyclopedia of Science and Technology*, (5th Ed., 2005 at 1252) defines an LED as “a rectifying semiconductor device which converts electrical energy into electromagnetic radiation.” The website of the Lighting Research Center, a university-based research organization devoted to lighting, explains the process as follows:

LEDs are semiconductor diodes, electronic devices that permit current to flow in only one direction. The diode is formed by bringing two slightly different materials to form a PN junction [Figure 1]. In a PN junction, the P side contains excess positive charge (“holes,” indicating the absence of electrons) while the N side contains excess negative charges (*i.e.*, electrons).



**Figure 1: a P-N junction**

When a forward voltage is applied to the semiconducting element forming the PN junction, electrons move from the N area toward the P area and holes move toward the N area. Near the junction, the electrons and holes combine. As this occurs, energy is released in the form of light that is emitted by the LED.

See John Bullock, *LED Lighting Systems* (May, 2003) available at <http://www.lrc.rpi.edu/researchAreas/leds.asp>.

In keeping with the common meaning of the term and the ENs, CBP has previously determined that the provision for LEDs in heading 8541, HTSUS, covers individual LEDs (*i.e.*, the semiconductor diodes without other components). See, *e.g.*, Headquarters Ruling Letter (“HQ”) H011693, dated December 18, 2007, HQ H010636, dated December 3, 2007, and HQ H003215, dated October 10, 2007. To that effect, in HQ 966401, concerning the classification of the “Epoch light,” a battery-operated LED floodlight, we stated that:

EN 85.41 only refers to a “Light-emitting diode or electroluminescent diode” alone or by itself. There is no mention of the diode with any other components or within any housing or any device such as the Epoch light. Because the Epoch light is a complete battery-operated floodlight, which contains an LED, it is beyond the scope of heading 8541, HTSUS and classification under this heading is, therefore, precluded.

Similar to the Epoch light, the instant modules consist mainly of LEDs mounted on a PCB with a battery-operated power supply unit. As such, the devices are beyond the scope of heading 8541, HTSUS.

Heading 9405, HTSUS, provides in relevant part for “Lamps and light fittings ... not elsewhere specified or included.” Relying on the common meaning of the term, CBP has previously determined that lamps are devices which provide an isolated source of heat or light. See HQ H042586, dated January 26, 2009 (fiber optic lamp), HQ 966952, dated August 18, 2004 (litecube), and HQ 965248, dated July 26, 2002 (bubble lights) (citing *The Random House College Dictionary* (1973) at 752 and *Webster’s New Collegiate Dictionary* (1979) at 639). The Light Circuit Module and Point of Purchase Light Harness satisfy the above definition of a lamp in that, as imported, they are stand-alone illumination devices. Therefore, as the merchandise is not specified elsewhere in the Nomenclature, it is classified pursuant to GRI 1 under heading 9405, HTSUS. \

Inasmuch as the devices are not classified under heading 8541, HTSUS, Note 8 to Chapter 85, which gives priority to merchandise classifiable under heading 8541, HTSUS, does not apply.

**HOLDING:**

**By application of GRI 1, “Light Circuit Module” and “Point of Purchase Light Harness” are classified under heading 9405, HTSUS, specifically in subheading 9405.40.80, which provides in relevant part for “Lamps ... not elsewhere specified or included: Other electric lamps and light fittings: Other.” The 2009, column one, general rate of duty is 3.9 % *ad valorem*.**

Duty rates are provided for convenience only and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at *www.usitc.gov*.

**EFFECT ON OTHER RULINGS:**

NY 817979, dated January 26, 1996, is hereby modified as it pertains to the products described as the Light Circuit Module and the Point of Purchase Light Harness. The classification of the other products described in that ruling remains unchanged.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

[ATTACHMENT F]

HQ H024878  
CLA-2 OT:RR:CTF:TCM H024878 RM  
CATEGORY: Classification  
TARIFF NO.: 9405.40.80

MS. PATRICIA A. FELL  
KLEIN INTERNATIONAL, LTD.  
PARKSIDE BUSINESS CENTER  
7970 S.W. CIRRUS DRIVE, BLDG. 13  
BEAVERTON, OR 97008

RE: Revocation of New York Ruling Letter 816502; Tariff Classification of an LED module from China

DEAR MS. FELL:

This is in reference to New York Ruling Letter (“NY”) 816502, dated December 19, 1995, concerning the tariff classification of a light-emitting diode (“LED”) module. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under heading 8541, Harmonized Tariff Schedule of the United States (“HTSUS”), in the provision for “light-emitting diodes.” We have reviewed NY 816502 and found it to be incorrect. For the reasons set forth below, we intend to revoke that ruling.

**FACTS:**

In NY 816502, CBP described the product as follows:

The item described ... consists of two light-emitting diodes connected by coated wires to a module assembly power source with a switch. According to your letter, the item, as imported, is placed in merchandise manufactured in the United States as a component part to add a lighted feature to ... various holiday display ornaments.

**ISSUE:**

Whether the LED module is classified under heading 8541, HTSUS, as a “light-emitting diode” or under heading 9405, HTSUS, as a “lamp ... not elsewhere specified or included.”

**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 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

- 8541**            **Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof:**
- 8541.42**            **Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes:**
- 8541.40.20**            **Light-emitting diodes (LED's)**
- 9405**            **Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:**
- 9405.42**            **Other electric lamps and lighting fittings:**
- 9405.40.81**            **Other**

\* \* \*

**Note 8 to Chapter 85, HTSUS, provides in part:**

**For classification of the articles defined in this note, headings 8541 and 8542 shall take precedence over any other heading in the Nomenclature, except in the case of heading 8523, which might cover them by reference to, in particular, their function.**

Note 1 to Chapter 9405, HTSUS, provides in part:

This chapter does not cover:

- (f) Lamps or lighting fittings of chapter 85

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to heading 8541, HTSUS, provide, in part:



### (C) Light Emitting Diodes

Light emitting diodes ... are devices which convert electric energy into visible, infra-red or ultra-violet rays. They are used, *e.g.*, for displaying or transmitting data in control systems.

The ENs to heading 9405, HTSUS, provide, in part:

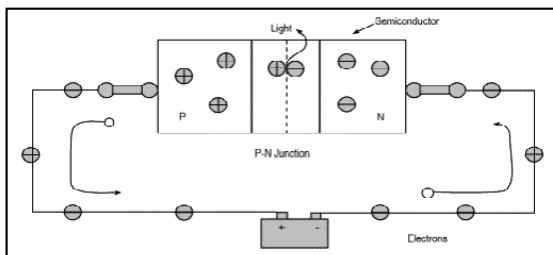
#### (I) Lamps and Lighting Fittings, not Elsewhere Specified or Included

Lamps and lighting fittings of this group can be constituted or any material (**excluding** those material described in Note 1 to Chapter 71) and use any source of light (candles, oil, petrol, paraffin (or kerosene), gas, acetylene, electricity, etc). Electrical lamps and lighting fittings of this heading may be equipped with lamp-holders switches, flex and plugs, transformers, etc.

Heading 8541, HTSUS, provides, in part, for “light-emitting diodes.” The term “light-emitting diode” is not defined in the tariff. When a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

*The Oxford English Dictionary* defines the term “light-emitting diode” as “a semiconductor diode that emits light when a voltage is suitably applied.” See *www.oed.com*. *The McGraw-Hill Concise Encyclopedia of Science and Technology*, (5th Ed., 2005 at 1252) defines an LED as “a rectifying semiconductor device which converts electrical energy into electromagnetic radiation.” The website of the Lighting Research Center, a university-based research organization devoted to lighting, explains the process as follows:

LEDs are semiconductor diodes, electronic devices that permit current to flow in only one direction. The diode is formed by bringing two slightly different materials to form a PN junction [Figure 1]. In a PN junction, the P side contains excess positive charge (“holes,” indicating the absence of electrons) while the N side contains excess negative charges (*i.e.*, electrons).



**Figure 1: a P-N junction**

When a forward voltage is applied to the semiconducting element forming the PN junction, electrons move from the N area toward the P area and holes move toward the N area. Near the junction, the electrons and holes combine. As this occurs, energy is released in the form of light that is emitted by the LED.

See John Bullock, *LED Lighting Systems* (May, 2003) available at <http://www.lrc.rpi.edu/researchAreas/leds.asp>.

In keeping with the common meaning of the term and the ENs, CBP has previously determined that the provision for LEDs in heading 8541, HTSUS, covers individual LEDs (i.e., the semiconductor diodes without other components). See, e.g., Headquarters Ruling Letter (“HQ”) H011693, dated December 18, 2007, HQ H010636, dated December 3, 2007, and HQ H003215, dated October 10, 2007. To that effect, in HQ 966401, concerning the classification of the “Epoch light,” a battery-operated LED floodlight, we stated that:

EN 85.41 only refers to a “Light-emitting diode or electroluminescent diode” alone or by itself. There is no mention of the diode with any other components or within any housing or any device such as the Epoch light. Because the Epoch light is a complete battery-operated floodlight, which contains an LED, it is beyond the scope of heading 8541, HTSUS and classification under this heading is, therefore, precluded.

Similar to the Epoch light, the instant LED module consists of LEDs connected by wires to a power supply unit. As such, the device is beyond the scope of heading 8541, HTSUS.

Heading 9405, HTSUS, provides in relevant part for “Lamps and light fittings ... not elsewhere specified or included.” Relying on the common meaning of the term, CBP has previously determined that lamps are devices which provide an isolated source of heat or light. See HQ H042586, dated January 29, 2009 (fiber optic lamp), HQ 966952, dated August 18, 2004 (litecube), and HQ 965248, dated July 26, 2002 (bubble lights) (citing *The Random House College Dictionary* (1973) at 752 and *Webster’s New Collegiate Dictionary* (1979) at 639). The subject LED module satisfies the above definition of a lamp in that, as imported, it is a stand-alone illumination device. Therefore, as the merchandise is not specified elsewhere in the Nomenclature, it is classified by application of GRI 1 under heading 9405, HTSUS.

Inasmuch as the device is not classified under heading 8541, HTSUS, Note 8 to Chapter 85, which gives priority to merchandise classifiable under heading 8541, HTSUS, does not apply.

**HOLDING:**

**By application of GRI 1, the LED module is classified under heading 9405, HTSUS, specifically in subheading 9405.40.80, which provides in relevant part for “Lamps ... not elsewhere specified or included: Other electric lamps and light fittings: Other.” The 2009, column one, general rate of duty is 3.9 % *ad valorem*.**

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

**EFFECT ON OTHER RULINGS:2**

NY 816502, dated December 19, 1995, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED MODIFICATION OF RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN SKI MITTENS**

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

**ACTION:** Notice of proposed modification of a ruling letter and revocation of treatment relating to tariff classification of certain ski mittens.

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

**DATES:** Comments must be received on or before January 11, 2010.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W. 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to modify a ruling letter pertaining to the tariff classification of certain ski mittens. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N003928, dated December 29, 2006 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an

interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N003928, set forth as Attachment A to this document, CBP determined that the subject ski mittens, identified as style #SU9196, were classified in subheading 6116.10.4400, HTSUS, which provides for "Gloves, mittens and mitts, knitted or crocheted: impregnated, coated or covered with plastics or rubber: other: without fourchettes: cut and sewn from pre-existing machine-knit fabric that is impregnated, coated or covered with plastics or rubber: other: containing over 50% by weight of plastics or rubber." It is now CBP's position that the subject mittens are properly classified in subheading 6116.10.08, HTSUS, which provides for "Gloves, mittens and mitts, knitted or crocheted: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N003928 with respect to the classification of the style #SU9196 and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject according to the analysis contained in proposed Headquarters Ruling Letter H009365, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: November 23, 2009

GAIL A. HAMILL  
*for*  
MYLES B. HARMON,  
*Director*  
*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N003928

December 29, 2006

CLA-2-61:RR:NC:TAB:354

CATEGORY: Classification

TARIFF NO.: 6116.10.4400, 6116.93.9400

Ms. LORI J.P. BOULLET  
 COLUMBIA SPORTSWEAR COMPANY  
 14375 NW SCIENCE PARK DRIVE  
 PORTLAND, OR 97229

RE: The tariff classification of gloves from China.

DEAR Ms. BOULLET:

In your letter dated November 27, 2006, you requested a classification ruling.

You have submitted a sample of a pair of what you state are lined and insulated unisex ski mittens with removable inner gloves, style #SU9196, called "Titanium Castle Mountain Mitten." The majority of the palm side, and the top portion of the thumb, is made up of what you state is a coated polyester knit fabric. A knit fabric insert with a visible coating on the underside makes up the bottom portion of the thumb. The backside of the mitten and sidewalls are made up of a coated woven nylon material, and the backside of the thumb is made up of a PU suede material that functions as a nose wipe. The mittens also feature a plastic goggle wipe on the right mitten, an inner waterproof barrier, a hook and clasp to connect the mittens together, 2 mm of polyurethane inner foam, an additional layer of foam padding and textile-backed vinyl which extends internally across the back of the knuckles, and an extended gauntlet cuff. The partially elasticized wrists feature a draw cord tightening at the back of the hand with a locking end clip. An adjustable draw cord also tightens the gauntlet hem, which also has a locking end clip.

The mittens feature removable inner gloves made of brushed knit polyester fabric featuring woven fabric fourchettes, partially elasticized wrists and hemmed fabric cuffs. You asserted classification for both gloves as composite goods, however, style #SU9196 consists of two different styles of gloves clearly suitable for use separately and classifiable individually based on their respective shell materials. The essential character of the outer glove is imparted by the coated fabric palmside material. The essential character of the inner glove is imparted by the glove's polyester fleece outershell fabric.

Although you assert style #SU9196 as a ski glove, it lacks the overlay along the thumb necessary to meet the stress caused by the flexing of the knuckles when the skier grasps the ski pole, as found to be a criteria for ski gloves in *Stonewall v. United States*, 64 Cust. Ct. 482, C.D. 4023 (1970). Additionally, the submitted marketing and advertising did not indicate that the subject gloves are specially designed for the sport of skiing. Therefore, we are classifying style #SU9196 as a cold weather multipurpose glove, not as a sports glove.

The applicable subheading for the outer glove of style #SU9196 will be 6116.10.4400, Harmonized Tariff Schedule of the United States (HTSUS), which provides for gloves, mittens and mitts, knitted or crocheted: impregnated, coated or covered with plastics or rubber: other: without fourchettes:

cut and sewn from pre-existing machine-knit fabric that is impregnated, coated or covered with plastics or rubber: other: containing over 50% by weight of plastics or rubber. The duty rate will be 9.9% *ad valorem*.

The applicable subheading for the inner glove of style #SU9196 will be 6116.93.9400, HTSUS, which provides for gloves, mittens and mitts, knitted or crocheted: other: of synthetic fibers: other: other: with fourchettes. The duty rate will be 18.6% *ad valorem*.

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

The inner glove of style #SU9196 falls within textile category 631. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at [www.cbp.gov](http://www.cbp.gov). For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at [otexa.ita.doc.gov](http://otexa.ita.doc.gov).

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 Deborah Marinucci at 646-733-3054.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*



## [ATTACHMENT B]

HQ H009365  
CLA-2 OT:RR:CTF:TCM H009365 CkG  
Category: Classification  
Tariff No.: 6116.10.08

LORI J.P. BOULLET  
COLUMBIA SPORTSWEAR  
14375 NW SCIENCE PARK DRIVE  
PORTLAND, OR 97229

Re: Modification of NY N003928; Classification of Ski Mittens

DEAR Ms. BOULLET,

This is in response to your letter of February 23, 2007, in which you request the reconsideration of New York Ruling (NY) N003928, issued December 29, 2006, regarding the tariff classification of certain cold-weather mittens under the Harmonized Tariff Schedule of the United States (HTSUS).

**FACTS:**

The submitted sample is a pair of lined and insulated unisex mittens with removable inner gloves, style #SU9196, identified as the "Titanium Castle Mountain Mitten." The outer palm side and top portion of the palm side thumb is made up of a coated polyester knit fabric. A knit fabric insert with a visible coating on the underside makes up the bottom portion of the palm side thumb. The backside of the mitten and sidewalls are made up of a coated woven nylon material, and the backside of the thumb is made up of a PU suede material that functions as a nose wipe. The mittens also feature a plastic goggle wipe on the right mitten sidewall, an inner waterproof barrier, a hook and clasp to connect the mittens together, 2 mm of polyurethane inner foam, an additional layer of foam padding and textile-backed vinyl which extends internally across the back of the knuckles, and an extended gauntlet cuff. The partially elasticized wrists feature a draw cord tightening at the back of the hand with a locking end clip. An adjustable draw cord also tightens the gauntlet hem, which also has a locking end clip.

The removable inner gloves are made of brushed knit polyester fabric with woven fabric fourchettes, partially elasticized wrists and hemmed fabric cuffs. The removable inner gloves are affixed to the outer shell mitten by a string that loops around a small pull-tab sewn into the bottom edge of the glove cuffs.

**ISSUE**

1. Whether the Titanium mitten is classifiable as a ski mitten/glove of subheading 6116.10.08, HTSUS, or in subheading 6116.10.44, HTSUS, as a coated, covered or impregnated mitten.
2. Whether the inner liner should be classified separately

**LAW AND ANALYSIS**

Merchandise imported into the United States is classified under the HTSUS. Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of

goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions at issue are as follows:

- 6116: Gloves, mittens and mitts, knitted or crocheted
- 6116.10: Impregnated, coated or covered with plastics or rubber
- 6116.10.08: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts
- 6116.10.44: Other: Containing over 50 percent by weight of plastics or rubber
- 6116.93: Of synthetic fibers:
  - Other:
  - Other:
- 6116.93.94: With fourchettes (631)

\* \* \* \* \*

There is no dispute that the mittens are classified in subheading 6116.10, HTSUS. At issue is the proper eight-digit tariff rate. GRI 6, HTSUS, requires that the GRI's be applied at the subheading level on the understanding that only subheadings at the same level are comparable. The GRI's apply in the same manner when comparing subheadings within a heading.

At the eight-digit subheading level, you request classification of the subject articles as gloves specially designed for use in sport, principally skiing. Subheading 6116.10.08, HTSUS, is a principal use provision. For articles governed by principal use, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that, in the absence of special language or context which otherwise requires, such use "is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use." In other words, the article's principal use at the time of importation determines whether it is classifiable within a particular class or kind.

The CIT has further provided factors which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality

of so using the import, and recognition in the trade of this use. See *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), *cert. denied*, 429 U.S. 979 (hereinafter *Carborundum*).

In *Sports Industries, Inc. v. United States*, 65 Cust. Ct. 470, C.D. 4125 (1970), the court, in interpreting the term “designed for use,” examined not only the features of the articles, but also the materials selected and the marketing, advertising and sale of the article. A conclusion that a certain glove is “specially designed” for a particular sport requires more than a mere determination of whether the glove or pair of gloves could possibly be used while engaged in that sport. See HQ 965714, dated November 15, 2002; HQ 965157, dated May 14, 2002. To determine whether an article is specially designed for a specific sport requires consideration of whether the article has particular features that adapt it for the stated purpose.

With regard to the proper classification of ski gloves, the court in *Stonewall Trading Company v. United States*, Cust. Ct. 482, C.D. 4023 (1970) held that ski gloves possessing the following features were specially designed for use in the sport of skiing:

- (1) A hook and clasp to hold the gloves together;
- (2) An extra piece of vinyl stitched along the thumb to meet the stress caused by the flexing of the knuckles when the skier grasps the ski pole;
- (3) An extra piece of vinyl with padding reinforcement and inside stitching which is securely stitched across the middle of the glove where the knuckles bend and cause stress;
- (4) Cuffs with an elastic gauntlet to hold the gloves firm around the wrist so as to be waterproof and to keep it securely on the hand.

The *Stonewall* criteria are used as a guideline to aid in the classification of sports gloves and mittens, but they are neither mandatory nor all-inclusive in determining whether a glove merits classification under this provision. A case by case analysis will be used by CBP in determining whether a glove’s design merits classification as a ski glove under headings 6116 or 6216, HTSUS. See Headquarters Ruling Letter (HQ) 954733, dated December 21, 1993; HQ 089589, dated August 19, 1991. Even if the *Stonewall* criteria are met, a glove is not classifiable as a ski glove if it is not functionally practicable for such use. See HQ 952393, dated August 28, 1992; HQ 953629, dated Jul 8, 1993. In addition to the *Stonewall* criteria outlined above, CBP consistently considers the protective features of a glove (*e.g.*, resistance to wind and water) and how the gloves are advertised and sold. See *e.g.*, HQ 956188, dated December 29, 1994; HQ 954425, dated September 10, 1993; HQ 953629, dated Jul 8, 1993; and HQ 088374, dated June 24, 1991.

In this case, the Titanium Castle Mountain mittens possess three of the four features specified in *Stonewall*: a hook and clasp to hold the gloves together, an extra piece of vinyl with padding reinforcement across the back

of the hand where the knuckles bend and cause stress, and cuffs with an elastic gauntlet. In NY N003928, CBP determined that the absence of the second *Stonewall* characteristic precluded the subject mittens from classification as gloves specially designed for use in skiing. However, as noted above, the *Stonewall* criteria are not necessarily determinative of the classification of a glove. CBP will also examine additional physical characteristics such as the construction of the mitten, the materials used and their resistance to the elements as well as the marketing, advertisement and sale of the subject mittens.

You note that the Titanium mittens possess additional physical characteristics that indicate a design for use in skiing, such as a drawcord tightener and locking end clip for the gauntlet cuffs to keep out snow and ice, a nose wipe and goggle wipe, and an inner layer of foam insulation for warmth. CBP has held in the past that such features indicate a specialized design for skiing or snowboarding. *See e.g.*, NY 815169, dated October 19, 1995; NY A80208, dated March 14, 1996; NY H83294, dated July 31, 2001; NY K88512, dated August 20, 2004; NY L86675, dated September 8, 2005; NY M83789, dated June 22, 2006; and NY N021405, dated January 25, 2008. The marketing of the mitten similarly focuses on its suitability for skiing. The Titanium glove packaging, for example, features two skiers ascending a mountain slope. We, therefore, agree that the Titanium Castle Mountain gloves are specially designed for use in sports, including skiing or snowmobiling, and are provided for in subheading 6116.10.08, HTSUS.

With regard to the classification of the removable inner gloves, the issue is whether they are in fact dedicated liners or whether they are suitable for independent use. CBP has consistently classified dedicated and removable glove liners with their paired outer gloves. *See e.g.*, NY G81410, dated September 21, 2000; NY H89549, dated April 12, 2002; NY I87612, dated November 18, 2002; NY K85841, dated June 3, 2004. However, where CBP determines that the inner glove is suitable for separate and independent use, it is classified separately. *See* NY L89356, dated February 10, 2006; NY N042400, dated November 14, 2008. In the instant case, the inner gloves are not securely attached to the outer glove. Furthermore, while we recognize that the liner may be worn under a ski glove while skiing, it is clearly suitable for separate use. The liner possesses no features which indicate that it is specially designed for use with the Titanium Castle Mountain Mitten. The removable glove liner is thus classified separately from the outer mitten. The liner is provided for in subheading 6116.93.94, HTSUS.

#### **HOLDING:**

By application of GRI 1 and 6, the Titanium Castle Mountain Mitten is classified under subheading 6116.10.08, HTSUS, which provides for “Gloves, mittens and mitts, knitted or crocheted: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts.” The 2009 column one, general rate of duty is 2.8% *ad valorem*.

The classification of the liner glove remains unchanged.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are

provided on the internet at *www.usitc.gov/tata/hts*.

**EFFECT ON OTHER RULINGS:**

NY N003928, dated December 29, 2006, is hereby modified.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



**GENERAL NOTICE**  
**19 CFR Part 177**

**Proposed Modification of a Ruling Letter and Revocation of Treatment Relating to the Classification of NAD, Lithium Salt**

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

**ACTION:** Notice of proposed modification of a ruling letter and treatment relating to the classification of NAD, Lithium Salt.

**SUMMARY:** Pursuant to section 625(c), tariff act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement implementation act (pub. L. 103–182, 107 stat. 2057), this notice advises interested parties that customs and border protection (“CPB”) is proposing to modify a ruling concerning the classification of NAD, Lithium salt, under the harmonized tariff schedule of the united states (HTSUS). Similarly, CPB is proposing to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before January 11, 2010.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade—Regulation and Rulings, Attn: Mr. Joseph Clark, 799 9th Street N.W. -5th Floor, Washington D.C. 20229–1179. Comments submitted may be inspected at 799 9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Allyson Mattanah, Tariff Classification and Marking Branch (202) 325-0029.

**SUPPLEMENTARY INFORMATION:**

**Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP is proposing to modify a ruling pertaining to the classification of NAD, Lithium salt. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) R03289, dated March 13, 2006, (set forth as Attachment "A" to this document) this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify NY R03289, and to revoke or modify any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H009527. (Set forth as Attachment "B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 23, 2009

GAIL A. HAMILL  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*



[ATTACHMENT A]

NY R03289  
March 13, 2006  
CLA-2-29:RR:NC:2:239 R03289  
CATEGORY: Classification  
TARIFF NO.: 2934.99.9000

MS. JULIE ANN KINYOUN  
EMD BIOSCIENCES, INC.  
10394 PACIFIC CENTER COURT  
SAN DIEGO, CA 92121

RE: The tariff classification of NADH, Disodium Salt (CAS 606-68-8) and NAD, Lithium (CAS 64417-72-7) from Germany.

DEAR MS. KINYOUN:

In your letter dated February 14, 2006, you requested a tariff classification ruling for NADH, Disodium Salt which is the disodium salt of the reduced form of NAD (nicotinamide adenine dinucleotide) and NAD, Lithium which is the lithium salt of NAD. You state in your letter that both products will be imported for research use only, and not for human or drug use.

According to Goodman & Gilman's *The Pharmacological Basis of Therapeutics*, Ninth Edition, at p.1759, "NAD and NADP, the physiologically active forms of nicotinic acid (a B vitamin, aka niacin, antipellagra vitamin), serve a vital role in metabolism as coenzymes for a wide variety of proteins that catalyze oxidation-reduction reactions essential for tissue respiration. The coenzymes, bound to appropriate dehydrogenases, function as oxidants by accepting electrons and hydrogen from substrates and thus becoming reduced. The reduced pyridine nucleotides, in turn, are reoxidized by flavoproteins."

You assert in your letter that the subject products should be classified as vitamins, under heading 2936, HTS, because both NADH and NAD "are both from niacinamide" (another B vitamin, aka nicotinamide). "Nicotinic acid functions in the body after conversion to either nicotinamide adenine dinucleotide (NAD) or nicotinamide adenine dinucleotide phosphate (NADP). It is to be noted that nicotinic acid occurs in these two nucleotides in the form of its amide, nicotinamide." *Id.* at p. 1758. The General Explanatory Notes to heading 2936, HTS, indicate, inter alia, that vitamins "cannot be synthesized by the human body and must therefore be obtained ... from outside sources." However, since both NADH and NAD are, in fact, synthesized by the human body from the precursor B vitamin, nicotinic acid (aka niacin, antipellagra vitamin), they would both be excluded from classification, as vitamins, under heading 2936, HTS.

The applicable subheading for both products will be 2934.99.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other heterocyclic compounds. The rate of duty will be 6.5 percent *ad valorem*.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is



imported. If you have any questions regarding the ruling, contact National Import Specialist Richard Dunkel at 646-733-3032.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H009527  
 CLA-2 OT:RR:CTF:TCM H009527ARM  
 CATEGORY: Classification  
 TARIFF NO.: 2934.99.39

Ms. JULIE ANN KINYOUN  
 EMD BIOSCIENCES, INC.  
 10394 PACIFIC CENTER COURT  
 SAN DIEGO, CA 92121

RE: Proposed Modification of NY R03289; Tariff classification of NAD, Lithium (CAS 64417-72-7) from Germany.

DEAR Ms. KINYOUN:

This is in reference to New York (NY) Ruling Letter R03289, dated March 13, 2006, issued to you by Customs and Border Protection ("CBP") concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of NADH Disodium Salt and NAD, Lithium. In NY R03289, both goods were classified under subheading 2934.99.90, HTSUS, as other heterocyclic compounds. For the reasons set forth below, NY R03289 is modified with respect to NAD, Lithium.

**FACTS:**

The merchandise at issue is NAD, Lithium (CAS # 64417-72-7) and has a chemical formula of  $C_{21}H_{27}N_7O_{14}P_2 \cdot Li$ . It is the lithium salt of NAD (nicotinamide adenine dinucleotide). The compound is a modified aromatic monolithium salt of a zwitterionic compound containing the following functional groups: heterocyclic with nitrogen hetero-atoms, heterocyclic with oxygen hetero-atoms, amide, amine, phosphate, and alcohol.

**ISSUE:**

Whether NAD, Lithium is a modified aromatic heterocyclic compound of subheading 2939.99.39, HTSUS, or an other heterocyclic compound of subheading 2939.99.90, HTSUS.

**LAW AND ANALYSIS:**

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

At issue is the proper eight-digit national tariff rate applicable to the instant merchandise. GRI 6 provides that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to the GRIs. The HTSUS provisions under consideration are as follows:

2939: Nucleic acids and their salts, whether or not chemically defined; other heterocyclic compounds:

Other:

2939.99 Other:

Aromatic or modified aromatic:

Other:

2939.99.39 Products described in additional U.S. note 3 to section VI

\* \* \* \* \*

Other:

Other:

2939.99.90 Other

The Additional U.S. Notes to Section VI, HTSUS, state, in pertinent part, the following:

2. For the purposes of the tariff schedule:

(a) The term “aromatic” as applied to any chemical compound refers to such compound containing one or more fused or unfused benzene rings;

(b) The term “modified aromatic” describes a molecular structure having at least one six-membered heterocyclic ring which contains at least four carbon atoms and having an arrangement of molecular bonds as in the benzene ring or in the quinone ring, but does not include any such molecular structure in which one or more pyrimidine rings are the only modified aromatic rings present;

\* \* \* \* \*

3. The term “products described in additional U.S. note 3 to section VI” refers to any product not listed in the Chemical Appendix to the Tariff Schedule and—

(a) For which the importer furnishes the Chemical Abstracts Service (C.A.S.) registry number and certifies that such registry number is not listed in the Chemical Appendix to the Tariff Schedule; or

(b) Which the importer certifies not to have a C.A.S. registry number and not to be listed in the Chemical Appendix to the Tariff Schedule, either under the name used to make Customs entry or under any other name by which it may be known

The structure of the instant merchandise contains 2 six-sided heterocyclic rings each containing four or more carbon atoms and an arrangement of bonds as in a benzene ring, an aromatic compound. In accordance with Additional U.S. Note 2(b) to Section VI, the instant merchandise consists of a modified aromatic compound. Further, it is not listed in the Chemical Appendix to the HTSUS and is assigned a CAS registry number not listed in the Chemical Appendix to the HTSUS. As such, it is classified in subheading 2932.99.39, HTSUS.

**HOLDING:**

By application of GRIs 1 and 6, the NAD, Lithium is classified in heading 2934, HTSUS. It is specifically provided for in subheading 2934.99.39, HTSUS, which provides for: “Nucleic acids and their salts, whether or not chemically defined; other heterocyclic compounds: Other: Other: Aromatic or modified aromatic: Other: Products described in additional U.S. note 3 to section VI.” The 2009 column one general rate of duty is 6.5% *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

New York (NY) Ruling Letter R03289, dated March 13, 2006, is modified.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Classification and Trade Facilitation Division*



**PROPOSED REVOCATION OF TWO RULING LETTERS  
AND PROPOSED REVOCATION OF TREATMENT  
RELATING TO THE TARIFF CLASSIFICATION OF  
AUTOMOTIVE FAN SHROUDS**

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

**ACTION:** Notice of proposed revocation of two tariff classification ruling letters and proposed revocation of treatment relating to the classification of fan shrouds.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) is proposing to revoke a ruling letter relating to the tariff classification of fan shrouds, also referred to as fan housings, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

**DATES:** Comments must be received on or before January 11, 2010.

**ADDRESSES:** Written comments are to be addressed to Customs and Border Protection, Regulations and Rulings of the Office of International Trade, Attention: Commercial Trade and Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C.

20229–1179. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20229, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** John Rhea, Tariff Classification and Marking Branch: (202) 325–0035.

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke two ruling letters pertaining to the tariff classification automotive fan shrouds (aka, “automotive fan housings”). Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (“NY”) N014061, dated July 25, 2007, and NY D88203, dated March 23, 1999 (Attachments “A” and “B”), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or

decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In the above mentioned rulings; CBP determined that the fan shrouds (aka, fan housings) were classified in two different headings relative to the part of the automobile incorporating the finished fan. CBP now believes that the fan shrouds are classifiable as parts of a fan rather than as a part of an automotive radiator in heading 8708, HTSUS, or as a part of an automotive air conditioner in heading 8415, HTSUS. Accordingly, it is now CBP's position that the automotive fan shrouds are properly classified in heading 8414, HTSUS. Specifically, these fan shrouds are classified under subheading 8414.90.10, 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: Parts: Of fans (including blowers) and ventilating or recycling hoods: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY N014061, NY D88203 and any other ruling not specifically identified, to reflect the proper classification of the fan shrouds according to the analysis contained in proposed Headquarters Ruling Letters ("HQ") H027029 and HQ H029003, set forth as Attachments "C" and "D" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 23, 2009

GAIL A. HAMILL  
*For*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments:

## [ATTACHMENT A]

N014061

July 25, 2007

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

CATEGORY: Classification

TARIFF NO.: 8415.90.8045, 8708.91.7550

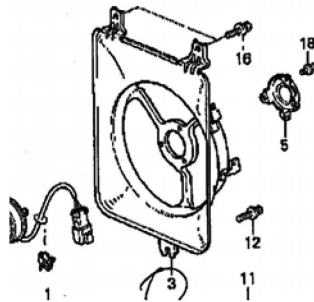
MS. LAURIE PEACH  
AMERICAN HONDA MOTORS  
1919 TORRANCE BLVD  
TORRANCE, CA 90501-2746

RE: The tariff classification of automotive parts from Japan

DEAR MS. PEACH,

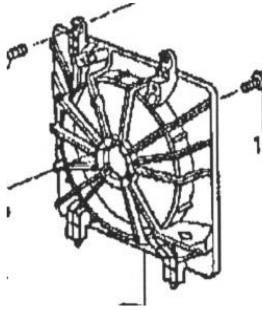
In your letter dated July 5, 2007, you requested a tariff classification ruling.

The items in question are two shrouds used in the manufacturer of Honda automobiles. The first shroud, identified as an Air Conditioner Shroud (Part # 38615-P1E-A00), is constructed of steel and is used in the Honda Odyssey to, "protect elements of the air conditioner subassembly, including the fan and exterior condenser, from damage during operation of the vehicle."



The applicable classification subheading for the Air Conditioner Shroud will be 8415.90.8045, Harmonized Tariff Schedule of the United States (HTSUS), which provides for parts of automotive air conditioners. The rate of duty will be 1.4%.

The second item is identified as a Radiator Shroud (Part # 19015-RBB-003) and is one of several components that make up the radiator cooling system used in certain Acura automobiles. The shroud is constructed of plastic and "...protect(s) the radiator fan (to) facilitate continued operation of the radiator.



The applicable classification subheading for the Radiator Shroud (Part #19015-RBB-003) will be 8708.91.7550, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Parts...of ...motor vehicles ...: Other parts...: Radiators and parts thereof: Parts: For other vehicles: Other". The rate of duty will be 2.5%.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the Air Conditioner Shroud, contact National Import Specialist Kenneth Brock at 646-733-3009. If you have any questions regarding the Radiator Shroud, contact National Import Specialist Richard Laman at 646-733-3017.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*



[ATTACHMENT B]

NY D88203  
March 23, 1999  
CLA-2-87:RR:NC:MM:101 D88203  
CATEGORY: Classification  
TARIFF NO.: 8708.99.8080

MR. ROBERT J RESETAR  
PORSCHE CARS NORTH AMERICA, INC.  
980 HAMMOND DRIVE  
SUITE 1000  
ATLANTA, GEORGIA 30328

RE: The tariff classification of a Fan Housing from Germany

DEAR MR. RESETAR:

In your letter dated February 10, 1999 you requested a tariff classification ruling.

You submitted a diagram of the Fan Housing from your parts microfiche system. The fan Housing is made from injected molded plastic. It mounts on the engine side of the radiator. Mounted on to the housing are twin electric cooling fans.

The applicable subheading for the Fan Housing will be 8708.99.8080, Harmonized Tariff Schedule of the United States (HTS), which provides for *Parts and accessories of the motor vehicles of headings 8701 to 8705: Other: Other: Other: Other...Other*. The rate of duty will be 2.5% *ad valorem*.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212-637-7035.

*Sincerely,*

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

[ATTACHMENT C]

HQ H027029  
CLA-2 OT:RR:CTF:TCM H027029 JER  
CATEGORY: Classification  
TARIFF NO.: 8414.90.10

Ms. LAURIE PEACH, NATIONAL CUSTOMS MANAGER  
AMERICAN HONDA MOTOR CO., INC.  
1919 TORRANCE BLVD  
TORRANCE, CA 90501-2746

RE: Proposed Revocation of NY N014061; Automotive Fan Shrouds for Automotive Air Conditioner Condensers and Radiators

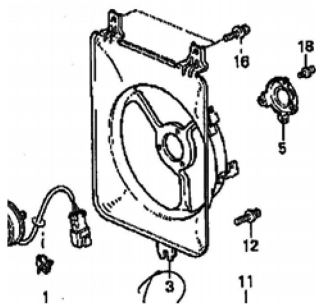
DEAR Ms. PEACH:

On July 25, 2007, U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letter (“NY”) N014061 to you, on behalf of American Honda Motor Company Inc., (“American Honda”), classifying certain “automotive fan shrouds” in headings 8415, and 8708, of the Harmonized Tariff Schedule of the United States (“HTSUS”). In light of the additional information provided by your company and after reviewing NY N014061, we have found that ruling to be in error. For the reasons set forth below, we are revoking NY N014061.

**FACTS:**

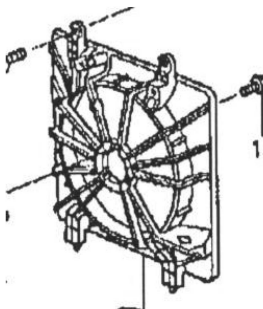
The facts as stated in NY N014061 are as follows:

The items in question are two fan shrouds used in the manufacturer of Honda automobiles. The first fan shroud, identified as an Air Conditioner Shroud (Part # 38615-P1E-A00), is constructed of steel and is used in the Honda Odyssey to, “protect elements of the air conditioner subassembly, including the fan and exterior condenser, from damage during operation of the vehicle.”



\* \* \*

The second item is identified as a Radiator Shroud (Part # 19015-RBB-003) and is one of several components that make up the radiator cooling system used in certain Acura automobiles. The shroud is constructed of plastic and “...protect(s) the radiator fan (to) facilitate continued operation of the radiator.”



Based on the information provided, CBP determined that the air conditioner shroud (Part # 38615-P1E-A00) was classified in heading 8415, HTSUS, and specifically in subheading 8415.90.8045, HTSUS, as parts of an automotive conditioner. The radiator shroud (Part # 19015-RBB-003) was classified in subheading 8708.91.7550, HTSUS, as parts of motor vehicles. Subsequent to the publication of NY 014061, American Honda discovered that certain facts concerning the two automotive shrouds had been misstated and acknowledged that only the protective function of the shroud was identified.

In your letter dated, March 20, 2008, you provide the following corrections to the facts considered in NY 014061:

These shrouds all serve two primary functions of ensuring that the air flow from electrically powered fans is circulated across the entire face of the vehicle radiator and condenser (thereby preventing “hot spots” that could otherwise impair the functioning of these components) and of serving as a mounting base for the fan motor and blades.

#### **ISSUE:**

Whether the subject merchandise is classifiable as a part of an automotive radiator, in heading 8708, HTSUS, as a part of an automotive air conditioning machine, in heading 8415, HTSUS, or as part of a fan, in heading 8414, HTSUS.

#### **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 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

8708                    Parts and accessories of the motor vehicles of headings  
8701 to 8705:

Other parts and accessories:

8708.91	Radiators and parts thereof:
8708.91.60	Parts:
	For other vehicles:
8708.91.7000	Of cast iron...
8708.91.75	Other...
8414.90	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:
8414.90	Parts:
8414.90.10	Of fans (including blowers) and ventilating or recycling hoods...
8415	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated; parts thereof:
8415.90	Parts:
8415.90.80	Other...

Note 2 to Section XVI, HTSUS, provides in pertinent part as follows:

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

- (a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517.

There is no dispute that pursuant to Note 2 (a) to Section XVI, HTSUS, the instant articles are parts which are not goods of headings of Chapters 84 or 85, HTSUS. However, each fan shroud completes the fan assembly used in the air conditioning condenser or the radiator, and provides the structural mounting necessary to support the fan blades and the fan motor. Further, each shroud provides a means to direct the air flow produced by the fan blades to the vehicle's radiator or air conditioning condenser. Accordingly, each fan shroud is solely or principally used with an automotive fan which, in

turn, operates with the radiator or air conditioning condenser, rather than as a part of the motor vehicle as a whole, under Note 2 (b) to Section XVI, HTSUS.

In NY E83687, dated July 30, 1999, CBP held that fan shrouds designed to house the fan blades within the engine compartment and used in an “electrodrive cooling system” were parts of a fan classified in heading 8414, HTSUS. We explained that the fan shroud components were not complete fans but instead were parts that will be assembled with other components to form a completed fan. Similarly, in Headquarters Ruling Letter (“HQ”) 966787, dated February 9, 2004, CBP classified a “fan shroud assembly” as a complete axial fan, in part, because the article consisted of: an axial fan, fan blades, fan shrouds, a temperature sensor, mounting brackets and its intended purpose was for use as a fan. In HQ 966787, the fan shroud assembly was mounted to and used with a central processing unit (“CPU”). HQ 966787 noted that the “fan shroud merely protects the fan and provides a conduit for air to be channeled” but did not alone impart a method for cooling the CPU. Likewise, although the “fan shroud assembly” of HQ 966787 was used in a broader application, classification under the more specific heading was preferred to a more general heading. *See also*, NY J86319, dated February 9, 2004 (which classified the aforementioned “fan shroud assembly” in heading 8414, HTSUS, and was later affirmed by HQ 966787).

Likewise, the instant fan shrouds complete the fan assemblies into an automobile’s radiator or air conditioner. It is a long-standing classification principle that “a part of [a] particular part is more specifically provided for as a part of the part than as a part of the whole.” *C.F. Liebert v. United States*, 287 F. Supp. 1009 (1968). Therefore, the shrouds are more immediately parts of fans than they are parts of radiators, air conditioners or automobiles as a whole. In keeping with the reasoning in *C.F. Liebert*, and previous rulings involving substantially similar merchandise, we find that the subject fan shrouds are classified as parts of completed fan in heading 8414, HTSUS.

#### **HOLDING:**

By application of GRI 1 and pursuant to Section XVI Note 2 (b), both the subject air conditioner fan shroud and radiator fan shroud are classified under heading 8414, HTSUS. Specifically, the items are classified under subheading 8414.90.10, 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: Parts: Of fans (including blowers) and ventilating or recycling hoods: Other.” The 2009, column one, general rate of duty is 4.7% *ad valorem*.

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

NY N014061, dated July 25, 2007, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## [ATTACHMENT D]

HQ H029003  
 CLA-2 OT:RR:CTF:TCM H029003 JER  
 CATEGORY: Classification  
 TARIFF NO.: 8414.90.10

ROBERT J. RESETAR  
 PORSCHE CARS NORTH AMERICA, INC.  
 980 HAMMOND DRIVE, SUITE 1000  
 ATLANTA, GA 30328

RE: Proposed Revocation of NY D88203; Fan Housing from Germany

DEAR MR. RESETAR:

On March 23, 1999, U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letter (“NY”) D88203 to you on behalf of Porsche Cars North America, Inc., (“Porsche”) classifying certain “automotive fan housings” in subheading 8708.99.8080, of the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP has recently received new information concerning the function and purpose of automotive fan housings (also known as “fan shrouds”). After reviewing NY D88203, we have found that ruling to be in error. For the reasons set forth in this ruling, we are revoking NY D88203.

**FACTS:**

The subject automotive fan housing, (also referred to as a “fan shroud”), was described in NY D88203 as being made from injected molded plastic and mounted on the engine side of the vehicle’s radiator. Twin electric cooling fans are mounted onto the fan housing. According to our research, the radiator fan shroud or the cooling system fan shroud facilitate the functioning of the radiator or air cooling system by effectively directing the air over the radiator and throughout the engine compartment. *See Discount Car Parts: Fan Shroud Description*, at [www.car-stuff.com](http://www.car-stuff.com). The fan shroud basically houses the fan blades and secures them in place. *Id.*

**ISSUE:**

Whether the subject merchandise is classifiable as a part of an automotive radiator, in heading 8708, HTSUS, as a part of an automotive air cooling system, in heading 8415, HTSUS, or as part of a fan, in heading 8414, HTSUS.

**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 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

8708                   Parts and accessories of the motor vehicles of headings  
8701 to 8705:

Other parts and accessories:

8708.91                   Radiators and parts thereof:

8708.91.60                   Parts:

For other vehicles:

8708.91.7000                   Of cast iron...

8708.91.75                   Other...

8414.90                   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:

8414.90                   Parts:

8414.90.10                   Of fans (including blowers) and ventilating or  
recycling hoods...

8415                   Air conditioning machines, comprising a motor-driven fan  
and elements for changing the temperature and humid-  
ity, including those machines in which the humidity can-  
not be separately regulated; parts thereof:

8415.90                   Parts:

8415.90.80                   Other...

Note 2 to Section XVI, HTSUS, provides in pertinent part as follows:

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

- (c) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
- (d) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517.

There is no dispute that pursuant to Note 2 (a) to Section XVI, HTSUS, the instant articles are parts which are not goods of headings of Chapters 84 or 85, HTSUS. However, the instant fan housing (a.k.a. fan shroud) completes the fan assembly used in the air cooling system or radiator, and provides the structural mounting necessary to support the fan blades and the fan motor. Further, the shroud provides a means to direct the air flow produced by the fan blades to the vehicle's radiator or air cooling system. Accordingly, the fan shroud is solely or principally used with an automotive fan which, in turn, operates with the radiator or air cooling system, rather than as a part of the motor vehicle as a whole, under Note 2 (b) to Section XVI, HTSUS.

In NY E83687, dated July 30, 1999, CBP held that fan shrouds designed to house the fan blades within the engine compartment and used in an "electrodrive cooling system" were parts of a fan classified in heading 8414, HTSUS. We explained that the fan shroud components were not complete fans but instead were parts that will be assembled with other components to form a completed fan. Similarly, in Headquarters Ruling Letter ("HQ") 966787, dated February 9, 2004, CBP classified a "fan shroud assembly" as a complete axial fan, in part, because the article consisted of: an axial fan, fan blades, fan shrouds, a temperature sensor, mounting brackets and its intended purpose was for use as a fan. In HQ 966787, the fan shroud assembly was mounted to and used with a central processing unit ("CPU"). HQ 966787 noted that the "fan shroud merely protects the fan and provides a conduit for air to be channeled" but did not alone impart a method for cooling the CPU. Likewise, although the "fan shroud assembly" of HQ 966787 was used in a broader application, classification under the more specific heading was preferred to a more general heading. *See also*, NY J86319, dated February 9, 2004 (which classified the aforementioned "fan shroud assembly" in heading 8414, HTSUS, and was later affirmed by HQ 966787).

Likewise, the instant fan shrouds complete the fan assemblies into an automobile's radiator or air cooling system. It is a long-standing classification principle that "a part of [a] particular part is more specifically provided for as a part of the part than as a part of the whole." *C.F. Liebert v. United States*, 287 F. Supp. 1009 (1968). Therefore, the shrouds are more immediately parts of fans than they are parts of radiators, air cooling systems or automobiles as a whole. In keeping with the reasoning in *C.F. Liebert*, and previous rulings involving substantially similar merchandise, we find that the subject fan shrouds are classified as parts of completed fan in heading 8414, HTSUS.

#### **HOLDING:**

By application of GRI 1 and pursuant to Section XVI Note 2 (b), the subject automotive fan housing is classified in heading 8414, HTSUS. Specifically, the item is classified under subheading 8414.90.10, 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: Parts: Of fans (including blowers) and ventilating or recycling hoods: Other." The 2009, column one, general rate of duty is 4.7% *ad valorem*.



**EFFECT ON OTHER RULINGS:**

NY D88203, dated March 23, 1999, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED REVOCATION OF RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF A CERTAIN  
PIEZOELECTRIC CERAMIC STACK**

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

**ACTION:** Notice of proposed revocation of one ruling letter and treatment relating to the tariff classification of a piezoelectric ceramic stack.

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

**DATES:** Comments must be received on or before January 11, 2010.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W. 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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

**SUPPLEMENTARY INFORMATION:****Background**

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of a piezoelectric ceramic stack. Although in this notice, CBP is specifically referring to the proposed revocation of New York Ruling Letter (NY) *N021072*, dated December 28, 2007 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may

raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In *N021072*, CBP determined that the piezoelectric ceramic stack was classified in heading 6909, HTSUS, which provides for “Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods.” It is now CBP’s position that the subject piezoelectric stack is properly classified in heading 8541, HTSUS, specifically subheading 8541.60.00, which provides for: “Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof: Mounted piezoelectric crystals.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY *N021072* and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the piezoelectric crystal according to the analysis contained in proposed Headquarters Ruling Letter H025781, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: November 23, 2009

GAIL A. HAMILL  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

[ATTACHMENT A]

N021072  
December 28, 2007  
CLA-2-69:OT:RR:NC:1:128  
CATEGORY: Classification  
TARIFF NO.: 6909.19.5095

MR. GREG OSNES  
KYOCERA INDUSTRIAL CERAMICS CORPORATION  
5713 E. FOURTH PLAIN BOULEVARD  
VANCOUVER, WA 98661

RE: The tariff classification of a piezo ceramic stack from Japan.

DEAR MR. OSNES:

In your letter dated December 17, 2007, you requested a tariff classification ruling.

The merchandise under consideration is a piezo ceramic stack. You indicate that the article is composed of alumina, lead and palladium. The approximate breakdown is as follows: 5% palladium, less than 1% silver and lead, the balance is piezo ceramic. The piezo ceramic stack is designed for use in a fuel injector for motor vehicles. It replaces the use of a common solenoid. An electric current is applied to the multilayer stack and causes a displacement. The piezo ceramic stack displacement applies pressure on a small push pin, which in turn opens the injector to inject fuel for combustion. These fuel injectors will be installed into diesel engines for pickup trucks. You have submitted literature and a sample of the item with your request.

You suggest classification of the piezo ceramic stack in subheading 8481.90.9080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Taps, cocks, valves and similar appliances... Parts: Other, Other: Other." However, Note 1(b) to Chapter 84 of the HTSUS states that:

This chapter does not cover:

Machinery or appliances (for example, pumps) of ceramic material and ceramic parts of machinery or appliances of any material (chapter 69).

Consequently, based on Note 1 (b) to Chapter 84, the subject ceramic stack is excluded from classification in subheading 8481.90.9080, HTSUS.

The applicable subheading for the piezo ceramic stack will be 6909.19.5095, HTSUS, which provides for "Ceramic wares for laboratory, chemical or other technical uses...Other." The rate of duty will be 4% *ad valorem*.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Sharon Chung at 646-733-3028.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H025781  
 CLA-2 OT:RR:CTF:TCM H025781 CKG  
 CATEGORY: Classification  
 TARIFF NO.: 8541.60.00

J. KEVIN HORGAN, ESQ.  
 JUDITH HOLDSWORTH, ESQ.  
 DEKIEFFER & HORGAN  
 SUITE 800  
 729 FIFTEENTH STREET, NW  
 WASHINGTON, DC 20005

RE: Revocation of NY N021072; classification of piezoelectric ceramic stack

DEAR MR. HORGAN AND MS. HOLDSWORTH,

This is in response to your letter of March 12, 2008, requesting reconsideration of New York Ruling Letter (NY) N021072, dated December 28, 2007, regarding the tariff classification of a piezoelectric stack imported from Japan by the Kyocera Industrial Ceramics Corporation.

In NY N021072, CBP classified the piezoelectric stack in heading 6909, Harmonized Tariff Schedule of the United States (HTSUS) as “Ceramic ware for laboratory, chemical or other technical uses.” You suggest classification under subheading 8541.60.00, HTSUS, as a mounted piezoelectric crystal. We have reviewed that ruling, and for the reasons set forth below, we have determined the initial classification of the piezo ceramic stack to be incorrect.

## FACTS

This sample is described as a ceramic piezoelectric stack. A laboratory analysis performed by CBP confirms that the instant article consists of three (3) octagonal pieces of a grey material that differ in length. The pieces have adjacent faces of unequal height but alternate faces of essentially equal height. The two smaller faces appear to be partially metallic. The sample has a lamellar structure with alternating layers made of two different materials. One layer is a lead zirconate titanate ceramic. Lead zirconate titanate ceramic (also called PZT) is a well-known material used in piezoelectric devices. The other layer is PZT mixed with a large amount of silver (Ag). The silver acts as the internal electrodes of a multilayer (laminated) piezoelectric device. The sample also has external electrodes made from silver on two opposing faces to which wires may be attached. After importation, the stack is encapsulated in resin and a lead wire is attached.

The piezoelectric stack is used in fuel injection systems for diesel engines. When an electric current is applied to the ceramic stack, the stress causes a slight displacement or shape change of the stack. In this case, the displacement applies pressure on a small push pin, which in turn opens the injector to inject fuel for combustion in a diesel engine.

## ISSUE

Whether the merchandise at issue is classifiable in heading 6909, HTSUS, as “Ceramic ware for laboratory, chemical or other technical uses,” or heading 8541, HTSUS, as “mounted piezoelectric crystals.”

**LAW AND ANALYSIS**

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The HTSUS provisions at issue are as follows:

6909: Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods:

Ceramic wares for laboratory, chemical or other technical uses:

6909.19: Other:

\* \* \* \* \*

8541: Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof:

8541.60.00: Mounted piezoelectric crystals

\* \* \* \* \*

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

EN 69.09(2) provides in pertinent part as follows:

The heading covers in particular:

(2) Ceramic wares for other technical uses, such as pumps, valves

EN 85.41 (D) states:

“Piezoelectric crystals... are generally in the form of plates, bars, discs, rings, etc., and must, at least, be equipped with electrodes or electric connections. They may be coated with graphite, varnish, etc., or arranged on supports and they are often inside an envelope (*e.g.*, metal box, glass bulb).”

\* \* \* \* \*

Consistent with the EN description of piezoelectric crystals, technical sources also indicate that a piezoelectric crystal changes its physical dimensions when subjected to an electric field. When deformed by external pressure, an electric field is created across the crystal. The piezoelectric crystal has electrodes attached to its front and back for the application and detection of electrical charges. The crystal consists of numerous dipoles, and in the normal state, the individual dipoles have an oblique orientation with no net surface charge. See <http://www.ustip.com/serve1.php?dbs=Piezoelectric%20Crystal&type=db1>

The laboratory analysis performed by CBP confirms that the instant article primarily consists of lead zirconate titanate ceramic plates stacked together and equipped with silver electrodes. The piezoelectric stack at issue conforms to the technical definition of a mounted piezoelectric crystal as well as the description provided for in EN 84.41, HTSUS. Further, prior CBP decisions held that electrodes or electric connections attached to the surface of a crystal were sufficient to deem the crystals “mounted.” See *e.g.*, Headquarters Ruling Letters (HQ) 957334, dated April 24, 1995 (in which piezoelectric crystals described as a “ceramic resonators” “mounted and equipped with electric connections” were classified under subheading 8541.60, HTSUS; HQ 956905, dated October 26, 1994 (in which PZT Transducers made of a polycrystalline ceramic material containing lead, zirconate, and titanite, in the form of plates with nickel-gold electrodes mounted on both surfaces was classified in sub heading 8541.60, HTSUS); and New York Ruling Letter (NY) F80316, dated December 27, 1999 (in which crystal quartz discs which were merely painted with silver on both sides, the silver itself acting as an electrode, were classified under subheading 8541.60, HTSUS, as mounted piezoelectric crystals).

## HOLDING

Pursuant to GRI 1, the instant piezoelectric stack is classifiable under heading 8541, HTSUS. It is specifically provided for in subheading 8541.60.00, HTSUS, as a mounted piezoelectric crystal. The 2008 column one, general rate of duty is Free.

## EFFECT ON OTHER RULINGS:

NY N021072, dated December 28, 2007, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF LAWN SWEEPER HOPPER BAGS

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



**ACTION:** Notice of revocation of a ruling letter and treatment relating to the tariff classification of lawn sweeper hopper bags.

**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 CBP is revoking a ruling letter concerning the tariff classification of lawn sweeper hopper bags. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published on August 6, 2009, in Vol. 43, No. 31, of the *Customs Bulletin*. One comment was received in support of the notice.

**DATES:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 8, 2010.

**FOR FURTHER INFORMATION CONTACT:** Jacinto P. Juarez, Jr., Tariff Classification and Marking Branch: (202) 325–0027.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke a ruling letter concerning the tariff classification of lawn

sweeper hopper bags was published in the August 6, 2009, *Customs Bulletin*, Vol. 43, No. 31. One comment was received in support of the notice.

As stated in the proposed notice, this revocation 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.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In New York Ruling Letter (NY) K87594, CBP determined that a lawn sweeper bag made predominantly of plastics, and designed to be pulled behind a lawn tractor was classified under heading 3926, HTSUS, as an article of plastic. It is now CBP's position that the lawn sweeper bags are classified under heading 8479, HTSUS, as parts of machines with individual functions.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY K87594, and is revoking or modifying any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (HQ) H042584, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: November 23, 2009

GAIL A. HAMILL  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H042584

November 23, 2009

CLA-2 OT:RR:CTF:TCM H042584 JPJ

CATEGORY: Classification

TARIFF NO.: 8479.90.94

MR. ROBERT GARDENIER  
M.E. DEY & Co. INC.  
5007 SOUTH HOWELL AVENUE  
P.O. BOX 370080  
MILWAUKEE, WI 53237-0080

RE: Classification of lawn sweeper bags; Revocation of NY K87594

DEAR MR. GARDENIER:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling letter (NY) K87594, issued to you on July 22, 2004. CBP has determined that NY K87594 is incorrect.

In NY K87594, we determined that lawn sweeper bags designed to be pulled behind a lawn tractor and made predominantly of plastics were classified under heading 3926, HTSUS, as other articles of plastics.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on August 6, 2009, in the *Customs Bulletin*, Vol. 43, No. 31. One comment was received in support of the notice.

**FACTS:**

In NY K87594, the product was described as follows:

The product is described as a lawn sweeper bag designed to be pulled behind a lawn tractor. The bag is imported without metal supports, which are added after importation. You state that the bottom is laminated vinyl and the sides are low density polyethylene. The samples are composed predominantly of plastics. Each sample bag has a bottom made of thick, embossed plastic sheeting. The three sides are made of textile fabric heavily and visibly coated with a plastic material. Material of this construction is considered to be of chapter 39 plastics for tariff classification purposes. The top is made of woven strip material.

**ISSUE:**

Are the lawn sweeper hopper bags classifiable under heading 3926, HTSUS, as “Other articles of plastics”, or under heading 8479, as “Parts” of “Machines and mechanical appliances having individual functions”?

**LAW AND ANALYSIS:**

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

The HTSUS provisions under consideration are as follows:

3926 Other articles of plastics and articles of other materials of headings 3901 to 3914:

8479 Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:

Note 2 to Section XVI (which includes Chapter 84), HTSUS, states, in relevant part:

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

\* \* \*

- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517[.]

The Harmonized Commodity Description and Coding System Explanatory Notes (“EN’s”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN’s provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

General Explanatory Note (I)(B) to Section XVI, HTSUS, states, in relevant part:

#### GENERAL

#### (I) GENERAL CONTENT OF THE SECTION

\* \* \*

- (B) In general, the goods of this Section may be of any material. In the great majority of cases they are of base metal, but the Section also covers certain machinery of other materials (e.g., pumps wholly of plastics) and parts of plastics, of wood, precious metals, etc.

Heading 3926, HTSUS, provides, in relevant part, for “other articles of plastics”. However, it is a so-called “basket” provision within Chapter 39, in which classification “is appropriate only when there is no tariff category that covers the merchandise more specifically.” See *EM Industries, Inc. v. United States*, 22 Ct. Int’l Trade 156, 165, 999 F. Supp. 1473, 1480 (1998) (“‘Basket’ or residual provisions of HTSUS Headings. . . are intended as a broad catch-all to encompass the classification of articles for which there is no more specifically applicable subheading”). See also *Apex Universal, Inc., v. United States*, 22 Ct. Int’l Trade 465 (CIT 1998).

Heading 8479, HTSUS, provides for machines that have individual functions as well as their parts. In HQ H029996, dated November 7, 2008, CBP

classified, among other merchandise, lawn sweepers, imported without the lawn sweeper bags, under heading 8479, HTSUS.<sup>5</sup> Because the lawn sweeper bags are dedicated solely for use with the lawn sweeper, we now conclude that the lawn sweeper bags are “parts” of the lawn sweeper within the meaning of the HTSUS, and the text of heading 8479, HTSUS. See *Bauerhin Technologies Limited v. United States*, 914 F.Supp. 554, (Ct. Int’l Trade, 1995).

Per *EM Industries*, we find that heading 8479, HTSUS, provides a more specific description of the bags as a part of a machine that has an individual function than does heading 3926, HTSUS, which more generally provides for other articles of plastics. Pursuant to Note 2(b) to Section XVI, which states, in relevant part, that “. . . parts, if suitable for use solely or principally with a particular kind of machine. . . are to be classified with the machines of that kind. . .”, the lawn sweeper hopper bags are classified in heading 8479, (subheading 8479.90) HTSUS.

#### **HOLDING:**

**Pursuant to GRI 1 and Note 2(b) to Section XVI, HTSUS, the lawn sweeper hopper bags are classified in heading 8479, HTSUS. Specifically, they are classified in subheading 8479.90.94, HTSUS, which provides for “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Parts: Other.” The 2009 column one general rate of duty is Free.**

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

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

NY K87594, dated July 22, 2004, is revoked.

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

*Sincerely,*

GAIL A. HAMILL

*For*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

<sup>5</sup> In HQ H029996, we described the lawn sweepers at issue as follows:

Lawn sweepers (Models 45-0320, 45-0326, 45-0331, and 45-0337,) consist of a steel polyethylene housing which incorporates a series of brushes which are rotated by means of geared wheels or a drive shaft. The brushes pick up leaves, grass clippings, and other lawn debris and deposit them in a hopper, which consists of a bag, supported by steel tubing and typically fastened to the rear of the housing, for disposal. Lawn sweepers may vary in terms of the width of the housing and certain features, such as height adjustment, bag capacity, and brush speed.

**MODIFICATION OF RULING LETTER AND REVOCATION  
OF TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF SPORTS GLOVES**

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

**ACTION:** Notice of modification of three ruling letters and revocation of treatment relating to tariff classification of sports gloves.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying NY 4042400, NY N042401 and NY N042402, dated November 14, 2008, relating to the tariff classification of sports gloves under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 43, No. 28, on July 17, 2009. No comments were received in response to the notice.

**DATES:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 8, 2010.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff

Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 43, No. 28, on July 17, 2009, proposing to modify NY 4042400, NY N042401 and NY N042402, pertaining to the tariff classification of sports gloves imported by Black Diamond, Inc. No comments were received in response to the notice. As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N042400, NY N042401 and N042402, CBP determined that the subject gloves of styles Stormweight (Style # 801060), Legend (Style # 801605, 801610), Fever (Style # 801564, 801566), Prodigy (Style # 801551, 801555), Guide (Style # 801511, 801512), Squad (Style # 801576, 801578), Renegade (801431, 801436), and Glissade (Style # 801725) were classified as follows:

Styles #801551, #801555, #801511 and #801512 were classified in subheading 4203.21.8060, HTSUS, which provides for "articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: specially designed for use in sports: other...other."

Styles #801564, #801724, #801605, #801576, #801431 were classified in subheading 4203.29.3020, HTSUS, which provides for "articles



of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: other: other: other: men's...lined."

Style #801060 was classified in subheading 4203.29.40, HTSUS, as "articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: other: other: for other persons: not lined"

Styles #801566, #801610, #801578, #801436 and #801725 were classified in subheading 4203.29.5000, HTSUS, which provides for "articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: other: other: other: for other persons: lined."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N042400, NY N042401 and NY N042402 with respect to the subject styles, in order to reflect the proper classification of the subject gloves according to the analysis contained in Headquarters Ruling Letter H055387, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: November 23, 2009

GAIL A. HAMILL  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment



HQ H055387

November 23, 2009

CLA-2 OT:RR:CTF:TCM H055387 CkG

Category: Classification

Tariff No.: 4203.21.60, 4203.21.80, 6116.93.94

MR. RICHARD S. LUSKIN, Esq.

BLACK DIAMOND EQUIPMENT, LTD.

2084 EAST 3900 SOUTH

SALT LAKE CITY, UT 84124

Re: Reconsideration of NY N042400, NY N042401 and N042402; classification of sports gloves

DEAR MR. LUSKIN,

This is in response to your letter of March 12, 2009, requesting reconsideration of New York Rulings Letters (NY) N042400, N042401, and N042402, dated November 14, 2008, with regard to the classification of nine styles of cold weather/winter sports gloves. We have since reviewed NY N042400, N042401, and N042402, and find them to be incorrect. For the reasons set out below, we are modifying these three rulings. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify NY N042400, NY N042401, and NY N042402 was published on July 17, 2009, in Volume 43, Number 28, of the *Customs Bulletin*. CBP received no comments in response to the notice.

**FACTS:**

The merchandise at issue is identified as Stormweight (Style # 801060), Windweight (Style #801062, 801063), Legend (Style # 801605, 801610), Fever (Style # 801564, 801566), Prodigy (Style # 801551, 801555), Guide (Style # 801511, 801512), Squad (Style # 801576, 801578), Renegade (Style # 801431, 801436), and Glissade (Style # 801724 and 801725).

Styles Legend, Fever, Prodigy, Guide, Squad and Renegade pertain to the FREERIDE line of gloves. The Black Diamond catalog states that “[t]he Freeride series features skiing specific designs intended to provide the most appropriate warmth and protection possible.”

Style Fever #801564 (men’s) and #801566 (women’s) is a lined and insulated glove made with a palmside, from fingertips to wrist, composed of over 90% goatskin leather. A goatskin leather palm overlay is also sewn across the palmside and overlaps four fingertips and the base of the backside knuckles. A strip of leather is sewn across the lower part of the backside. The backside thumb is made of a flocked polyurethane (PU) fabric which serves as a nose wipe. The remainder of the outer shell includes a small portion of the bottom of the palmside at the wrist, the backside which contains a zippered pocket into which a heat pack is inserted for extra warmth, fourchettes, sidewalls, extended gauntlet cuff and is made up of a woven fabric that has been laminated to a knit pile fabric on the underside. The gloves also feature an elasticized wrist, a hook and clasp, an inner waterproof barrier, and a ribbed knit cuff extending beyond the gauntlet bottom.

Style Legend #801605 (men’s) and #801610 (women’s) is a lined and insulated glove made with a palm side, from fingertips to wrist composed of goatskin leather. Goatskin leather also makes up the majority of the backside

and sidewalls. The remainder of the glove, which includes a portion of the fourchettes, the bottom portion of the backside, and the cuff, are made of a coated woven fabric. The backside thumb is made of a flocked PU fabric which serves as a nose wipe. Other features include a hook and loop fastener at the cuff, a hook and clasp, and irregular shaped molded foam padding placed over two of the backside fingers and across the backside knuckles.

Style Prodigy #801551 (men's) and #801555 (women's) is a lined and insulated glove. The gloves feature a palm side, from fingertips to wrist, and a complete index finger, made up of over 90% goatskin leather, which extends across the backside knuckles and makes up the sidewalls of the thumb and index finger. A goatskin leather palm overlay is sewn across the palmside. Leather inserts make up three of the backside fingertips, the backside finger knuckles, and the base of the backside thumb. The remainder of the outer shell, which includes a small portion of the palm side at the wrist, fourchettes, backside and extended gauntlet, are made up of a coated woven textile fabric. The outer gloves also feature an elasticized wrist, a drawstring tightener sewn into the gauntlet hem, and a backside thumb made up of a flocked PU fabric which serves as a nose wipe. The glove has a dedicated glove liner made of a coated woven fabric. The dedicated liners are lined and insulated and are attached to the outer gloves by means of hook and loop fabric. The dedicated glove liners feature fourchettes and a pull tab sewn to the outer edge of the cuff that enables the liners to be pulled out more easily.

Style Guide #801511 (men's) and #801512 (women's) is a lined and insulated glove. The gloves are made of a palm side, from fingertips to wrist, made up of over 90% goatskin leather, which also extends to form the sidewalls and overlaps four fingertips. A goatskin leather palm patch is sewn across the palmside. The backside thumb is made of a flocked PU fabric which serves as a nose wipe. The remainder of the glove, which includes a small portion of the bottom of the palmside at the wrist, the backside, fourchettes, and extended gauntlet cuff, are made up of a coated woven fabric. A leather goatskin overlay is sewn across the backside knuckles, a portion of which also features an irregular shaped molded foam padding. Additional features include an elasticized wrist and a drawstring tightener sewn into the gauntlet hem. The glove has a dedicated glove liner made of a coated woven fabric. The dedicated liners are lined and insulated and are attached to the outer glove by means of hook and loop fabric. The dedicated glove liners feature fourchettes, a knit berber lining, and a pull tab sewn to the outer edge of the cuff that enables the liners to be pulled out more easily.

Style Squad #801576 (men's) and #801578 (women's) is a lined and insulated glove made of a palm side, from fingertips to wrist, composed of over 90% goatskin leather. Goatskin leather also makes up the fourchettes, sidewalls, and overlaps the fingertips of the index finger, middle finger and thumb. Vented goatskin leather makes up a portion of the backside at the knuckles, the backside of the index finger, middle finger, and a portion of the ring finger. Beneath the vented goatskin leather is an inner liner made of a coated woven fabric. The remainder of the outer shell, which includes a small portion of the bottom of the palmside at the wrist, the backside of the pinky finger and a portion of the backside ring finger, and extended gauntlet cuff, is made up of a woven fabric with a coating on the underside. Additional features include a partially elasticized wrist, a hook and clasp, a backside thumb made of a flocked PU fabric which serves as a nose wipe, and a second

inner cuff with a drawstring tightener sewn into the hemmed bottom measuring approximately 1½ inches sewn to the inner edge of the extended gauntlet cuff.

Style Renegade #801431 (men's) and #801436 (women's) is a lined and insulated glove made up of a palmside, from fingertips to wrist, composed of over 90% goatskin leather. Goatskin leather also makes up the sidewall of the index finger. The balance of the outershell, including a small portion of the bottom of the palmside at the wrist, the fourchettes, backside and cuff, are made up of a woven fabric that has been laminated to a knit pile fabric on the underside. Additional features include an elasticized wrist, a hook and clasp, an inner waterproof barrier, a hook and loop fastener on the cuff, a heavy-weight berber fleece lining, and a backside thumb made of a flocked PU fabric which serves as a nose wipe.

Style Glissade pertains to the ASCENT line of gloves, which are described in the black diamond catalog as "designed for general mountaineering, alpine climbing, or use in winter environments where breathability and temperature regulation are crucial." Style Glissade #801724 (men's) and #801725 (women's) is a lined and insulated glove with a complete palmside, from fingertips to wrist, composed of over 90% goatskin leather with Kevlar stitching. Goatskin leather also makes up the sidewall of the index finger and thumb. The balance of the outershell, which includes a small portion of the bottom of the palmside at the wrist, the fourchettes, backside and extended gauntlet cuff, is made up of a woven fabric that has been laminated to a knit pile fabric on the underside. Additional features include a partially elasticized wrist, a hook and clasp, an inner waterproof barrier, a backside thumb made of a flocked PU fabric which serves as a nose wipe, and a second inner cuff which features a drawstring tightener sewn into the hemmed bottom that measures approximately 1½ inches sewn to the inner edge of the extended gauntlet cuff.

Styles Windweight #801062 (men's) and #801063 (women's) and Stormweight (#801060) pertain to Black Diamond's LINER series. The Black Diamond catalog describes them as "comfortable, fitted gloves that can be used on their own or with the ASCENT series."

Style Stormweight #801060, is described as a pair of unisex gloves/liners. The gloves are made up of 100% polyester knit fabric that features a breathable windstopper membrane on the inner surface which is sandwiched between a finely knit polyester fabric on the inner surface and a brushed polyester fabric on the outer surface of the glove. A goatskin leather overlay makes up the palmside, from fingertips to wrist, and overlaps the fingertips and thumb tip. Other features include a partially elasticized wrist, a hook and clasp, and fourchettes.

Style Windweight #801062 (men's) and #801063 (women's) is a cold weather glove/liner made up of a 100% knit polyester fleece outer shell. A goatskin suede leather palm patch is located across the center of the palm and covers a portion of the base of the index finger and thumb. The tip of the palmside thumb, index and middle fingers feature a small silicon dotted overlay. Other features include a partially elasticized wrist, knit polyester fleece fourchettes and sidewalls, and a hook and clasp.

Styles #801551, #801555, #801511 and #801512 were classified in subheading 4203.21.8060, HTSUS, which provides for "articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: specially designed for use in sports: other...other."

Styles #801564, #801724, #801605, #801576, #801431 were classified in subheading 4203.29.3020, HTSUS, which provides for “articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: other: other: other: men’s...lined.”

Styles #801566, #801610, #801578, #801436 and #801725 were classified in subheading 4203.29.5000, HTSUS, which provides for “articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: other: other: other: for other persons: lined.”

Style #801060 was classified in subheading 4203.29.40, HTSUS, as “articles of apparel and clothing accessories, of leather or of composition leather: gloves, mittens and mitts: other: other: for other persons: not lined”

Styles #801062 and #801063 were classified in subheading 6116.93.94, HTSUS, which provides for “gloves, mittens and mitts, knitted or crocheted: other: of synthetic fibers: other: other: with fourchettes.”

**ISSUE:**

1. Whether the material of the palmside or outer shell imparts the essential character of the subject gloves.
2. Whether the subject gloves are classified as gloves specially designed for use in sports or “other” gloves

**LAW AND ANALYSIS:**

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

The HTSUS provisions at issue are as follows:

4203: Articles of apparel and clothing accessories, of leather or of composition leather:

Gloves, mittens and mitts:

4203.21: Specially designed for use in sports:

Ski or snowmobile gloves, mittens and mitts:

4203.21.55: Cross-country ski gloves, mittens and mitts

4203.21.60: Other

4203.21.80: Other

4203.29: Other:

Other:

4203.29.30: Men's

4203.29.3020: Lined

For other persons:

4203.29.40: Not lined

4203.29.50: Lined

\* \* \* \* \*

6116: Gloves, mittens and mitts, knitted or crocheted

Other:

6116.93: Of synthetic fibers:

6116.93.08: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts.....

Other:

Other:

6116.93.94: With fourchettes

\* \* \* \* \*

6216: Gloves, mittens and mitts:

Other:

Of man made fibers:

6216.00.46: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts.....

\* \* \* \* \*

Since the gloves at issue are composite goods of leather and textile, classification is determined by application of GRI 3(b). GRI 3(b) provides that composite goods consisting of different materials or made up of different components, shall be classified as if they consisted of the material or component which gives them their essential character. Court decisions on the essential character for 3(b) purposes have looked primarily to the role of the

constituent material in relation to the use of the goods. See *Better Home Plastics Corp. v. U.S.*, 915 F. Supp. 1265 (CIT 1996), *aff'd* 119 F. 3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. U.S.*, 966 F.Supp. 1245 (CIT 1997), *rehear'g denied*, 994 F. Supp. 393 (1998).

You contend that, except for Style #801725, the essential character of the merchandise is imparted by the textile component. As such, you argue that the merchandise is classified in heading 6216, HTSUS. You argue that Style # 801725 is classified in heading 4203, HTSUS. Alternatively, you contend that Style #'s 801060, 801605, 801610, 801564, 801566, 801578, 801576, 801431 and 801436 are classifiable in heading 4203, HTSUS and Style # 801062 is classified in heading 6116, HTSUS.

While you contend that the outer shell imparts the essential character to Style #'s 801605, 801610, 801564, 801566, 801555, 801551, 801511, 801512, 801576, 801578, 801431 and 801436 because it provides waterproofing and breathability, the Black Diamond catalog indicates that the Gore-Tex inserts are also waterproof and breathable. Furthermore, the coating on the outer shell limits the breathability of the woven nylon material, decreasing the role of the outer shell in relation to the glove as a whole. Therefore, the essential character of the gloves is imparted by the leather palmside, which provides the grip, and reinforces the area of stress caused by grasping the ski poles. See HQ 089576, dated August 27, 1991.

We agree that the essential character of Style #'s 801724 and 801725 is imparted by the leather palmside, which imparts the grip and is thus crucial for climbing.

The suede portion of Style #'s 801062 and 801063 plays a minimal role in relation to the textile portion, in that it covers a small area of the glove and is not otherwise prominent. The essential character is thus imparted by the wind-resistant knit Polartec shell. Insofar as the gloves are classified by the knit shell, classification in heading 6216, HTSUS, is inapplicable insofar as the legal text of heading 6216 is limited to gloves, mittens and mitts not knit or crocheted. As such, style #'s 801062 and 801063 are classified in heading 6116, HTSUS.

At the six-digit subheading level, you request classification of the subject articles as gloves specially designed for use in sport, principally skiing.<sup>6</sup> For articles governed by principal use, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that, in the absence of special language or context which otherwise requires, such use "is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use." In other words, the article's principal use at the time of importation determines whether it is classifiable within a particular class or kind.

While Additional U.S. Rule of Interpretation 1(a), HTSUS, provides general criteria for discerning the principal use of an article, it does not provide

<sup>6</sup> GRI 6 provides that for legal purposes, 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 the above rules, on the understanding that only subheadings at the same level are comparable. GRI 6 thus incorporates GRIs 1 through 5 in classifying goods at the subheading level. Since GRI 6 uses the phrase "for legal purposes" the preceding GRIs are to be applied at the level necessary for the final legal classification of the goods for tariff purposes.

specific criteria for individual tariff provisions. However, the CIT has provided factors which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. See *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979 (hereinafter *Carborundum*).

In *Sports Industries, Inc. v. United States*, 65 Cust. Ct. 470, C.D. 4125 (1970), the court, in interpreting the term “designed for use,” examined not only the features of the articles, but also the materials selected and the marketing, advertising and sale of the article. A conclusion that a certain glove is “specially designed” for a particular sport requires more than a mere determination of whether the glove or pair of gloves could possibly be used while engaged in that sport. See HQ 965714, dated November 15, 2002; HQ 965157, dated May 14, 2002. To determine whether an article is specially designed for a specific sport requires consideration of whether the article has particular features that adapt it for the stated purpose.

With regard to the proper classification of ski gloves, the court in *Stonewall Trading Company v. United States*, Cust. Ct. 482, C.D. 4023 (1970) held that ski gloves possessing the following features were specially designed for use in the sport of skiing:

- (1) A hook and clasp to hold the gloves together;
- (2) An extra piece of vinyl stitched along the thumb to meet the stress caused by the flexing of the knuckles when the skier grasps the ski pole;
- (3) An extra piece of vinyl with padding reinforcement and inside stitching which is securely stitched across the middle of the glove where the knuckles bend and cause stress;
- (4) Cuffs with an elastic gauntlet to hold the gloves firm around the wrist so as to be waterproof and to keep it securely on the hand.

The Stonewall criteria are used as a guideline to aid in the classification of sports gloves and mittens, but they are neither mandatory nor all-inclusive in determining whether a glove merits classification under this provision. A case by case analysis will be used by CBP in determining whether a glove’s design merits classification as a ski glove under headings 6116 or 6216, HTSUS. See Headquarters Ruling Letter (HQ) 954733, dated December 21, 1993; HQ 089589, dated August 19, 1991. Even if the Stonewall criteria are met, a glove is not classifiable as a ski glove if it is not functionally practicable for such use. See HQ 952393, dated August 28, 1992; HQ 953629, dated Jul 8, 1993. In addition to the *Stonewall* criteria outlined above, CBP consistently considers the protective features of a glove (e.g., resistance to wind and water)



and how the gloves are advertised and sold. *See e.g.*, HQ 956188, dated December 29, 1994; HQ 954425, dated September 10, 1993; HQ 953629, dated Jul 8, 1993; and HQ 088374, dated June 24, 1991.

Examination of the FREERIDE line of gloves (Style #'s 801605, 801610, 801564, 801566, 801551, 801555, 801511, 801512, 801576, 801570, 801431 and 801436) yields the finding that they meet several of the Stonewall criteria. All styles in the FREERIDE line possess an elastic gauntlet to hold the gloves firm around the wrist, and thus satisfy the fourth Stonewall criterion. However, some styles lack some of the remaining Stonewall criteria. The Prodigy, Squad and Renegade gloves all lack reinforcement of the knuckles. The Guide and Prodigy gloves also lack a hook and clasp to keep the gloves together. Only the Fever and Renegade gloves feature extra stitching along the thumb.

However, as noted above, the Stonewall criteria are not necessarily determinative of the classification of a glove. CBP will also examine additional physical characteristics such as the construction of the glove, the materials used and their resistance to the elements as well as the marketing, advertisement and sale of the subject gloves.

The general physical characteristics of the FREERIDE gloves evidence a design specific to skiing. This is demonstrated by the gloves' incorporation of such components as Gore-Tex and Primaloft insulation, the elasticized wrists with a drawstring tightener and extended gauntlet cuff which effectively keep moisture out, the use of leather palm reinforcement which enables a more secure grip than does plastic, the nose wipe on the backside thumb and the overall sturdy appearance and sound workmanship. Furthermore, the environment of sale of the gloves indicates that they are specially designed for use in skiing. The importer's catalog describes the FREERIDE line of gloves as featuring "skiing-specific designs." The Prodigy, Legend, Guide, and Renegade gloves are featured on outdoor sporting goods websites such as Altrec, [www.Backcountry.com](http://www.Backcountry.com) and [www.MountainGear.com](http://www.MountainGear.com) as ski gloves. The FREERIDE gloves are thus designed to withstand the rigorous, cold and wet conditions of extreme skiing, are marketed as ski gloves, and are sold in the same channels of trade as other ski gloves. Insofar as no evidence has been presented to support a finding that the gloves are designed, marketed or sold as cross-country gloves of subheading 4203.21.55, HTSUS, they are classified as "other" ski gloves of subheading 4203.21.60, HTSUS.

Style Glissade (Style #'s 801724 and 801725) is described in the black diamond catalog as "designed for general mountaineering, alpine climbing, or use in winter environments where breathability and temperature regulation are crucial." Like the ski gloves in the Freeride series, the Glissade gloves feature an elasticized wrist, a hook and clasp, an extended gauntlet cuff with drawstring tightener, and reinforced stitching along the thumb portion. Due to the lack of sufficient evidence demonstrating that the Glissade glove is designed, marketed or sold as a ski glove, it is classified in subheading 4203.21.80, HTSUS, as other gloves specially designed for use in sports.

Similarly, the Black Diamond catalog does not indicate that Windweight style #'s 801062 (men's) and #801063 (women's) and Stormweight (Style # 801060) have a specialized design for use in skiing. Both gloves are constructed primarily of knit polyester fleece. CBP has previously deemed gloves of knit fabric to be unsuitable for use in skiing due to the tendency of the fabric to retain and absorb moisture and dry slowly, as well as the tendency



of snow to adhere to such fabric. See HQ 953629, dated Jul 8, 1993, in which two styles of gloves with an additional plastic insert or an inner waterproof barrier did not render the glove sufficiently water resistant due to the tendency of snow to adhere to the acrylic material of the glove. HQ 954425, dated September 10, 1993, similarly noted that “Gloves that are comprised of significant amounts of knit fabric which allow moisture to penetrate the wearer’s hands are not suitable for use in skiing.”

Furthermore, the partially elasticized wrists of both liner styles do not provide a sufficiently tight seal against snow and water, particularly given the absence of a drawstring tightener or additional knit cuff. See HQ 952393, dated December 30, 1992. The suede palm patch of the Windweight liner also does not provide sufficient resistance to snow and damp conditions. CBP observed in HQ 088374, dated June 24, 1991, that suede leather was not particularly well suited for a ski glove: “Both glove styles are largely covered in sueded leather... suede will absorb and retain moisture, stretch out of shape and/or expand, and dry slowly, which makes it highly unsuitable to the sport of skiing where contact with snow is a characteristic occurrence; treatment of the skins with a water-repellent chemical may protect such gloves from minor contact with the elements but does not transform these gloves into gloves specially designed for use in skiing.” The use of suede to reinforce the palm in order to provide better grip and texture, on the other hand, has been held to constitute a useful feature of ski gloves where the glove had other, sufficient water-resistant properties. See HQ 954733, dated December 21, 1991, in which gloves with a suede leather palm and additional inner linings of Gore-Tex, foam, and thinsulate were classified as ski gloves. Moreover, the suede palm patch does not extend past the base of the thumb and index finger. The Windweight gloves only feature a silicone overlay on the tip of the palmside thumb, index and middle fingers. The polyester fleece on the remainder of the palmside and the rest of the glove remains uncovered. The leather overlay on the palmside of the Stormweight gloves, on the other hand, provides for greater water protection and a surer grip, extending from the fingertips to the wrist. Finally, the liner gloves are made from a lightweight, sheer construction and lack padding to protect hands from injuries resulting from falls.

The tag on the Stormweight gloves states that they are designed for runners, hikers, and backcountry skiers. The Stormweight glove, due to the heightened protection and surer grip that the palmside material provides as well as the marketing indicating it is designed with runners, hikers and skiers in mind, is classified in subheading 4203.21.80, HTSUS, as “gloves, mittens and mitts: specially designed for use in sports: other.”

The suede palm patch for grip and durability, silicone overlays on the fingertips for improved tactility, the “windbloc” polartec fleece shell in conjunction with marketing information and consumer reviews obtained from [www.backcountry.com](http://www.backcountry.com) and [www.amazon.com](http://www.amazon.com) evidence that the Windweight glove is specially designed, marketed and sold for use in climbing and mountaineering. It is classified in subheading 6116.93.08, HTSUS, as knit gloves specially designed for use in sports.

**HOLDING:**

By application of GRI 3, styles 801605, 801610, 801564, 801566, 801551, 801555, 801511, 801512, 801576, 801578, 801431, and 801436 are classified in subheading 4203.21.60, HTSUS, which provides for: "Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Specially designed for use in sports: Ski or snowmobile gloves, mittens and mitts: Other." The 2009 column one, general rate of duty is 5.5% *ad valorem*.

Styles 801724 and 801725 are classified in subheading 4203.21.80, HTSUS, which provides for: "Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Specially designed for use in sports: Other." The 2009 column one, general rate of duty is 4.9% *ad valorem*.

Style 801060 is classified in subheading 4203.21.80, HTSUS, which provides for: "Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Specially designed for use in sports: Other." The 2009 column one, general rate of duty is 4.9% *ad valorem*.

Styles 801062 and 801063 are classified in 6116.93.08, which provides for: "Gloves, mittens and mitts, knitted or crocheted: Other: Of synthetic fibers: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts." The 2009 column one, general rate of duty is 2.8% *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

New York Rulings Letters (NY) N042400, N042401, and N042402, dated November 14, 2008, are hereby modified with respect to the classification of styles 801605, 801610, 801564, 801566, 801551, 801555, 801511, 801512, 801576, 801578, 801431, 801436, 801724, 801725, and 801060.

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

*Sincerely,*

GAIL A. HAMILL

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**GENERAL NOTICE**  
**19 CFR Part 177**

**Proposed Revocation of Two Ruling Letters and Revocation of Treatment Relating to the Tariff Classification of an Auxiliary Vehicle Heater Unit**

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

**ACTION:** Notice of proposed revocations of two ruling letters and treatment concerning the tariff classification of an auxiliary vehicle heater units.

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

**DATES:** Comments must be received on or before January 11, 2010.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Office of International Trade, Attention: Trade and Commercial Regulations Branch, 799 9th Street, 5th Floor, N.W., Washington, D.C. 20229-1179. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Dwayne S. Rawlings, Tariff Classification and Marking Branch, (202) 325-0092.

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke two ruling letters pertaining to the tariff classification of auxiliary vehicle heater units. Although in this notice, CBP is specifically referring to the revocations of NY 859202, dated January 18, 1991 (Attachment A), and NY J88055, dated September 3, 2003 (Attachment B), this notice covers any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY 859202 and NY J88055, CBP classified auxiliary vehicle heater units in heading 7322, HTSUS, specifically subheading

7322.90.00, HTSUS, as “air heaters not electrically heated, incorporating a motor-driven fan or blower.” It is now CBP’s position that both auxiliary vehicle heater units are properly classified in heading 8419, HTSUS, specifically under subheading 8419.50.50, HTSUS, which provides for “machinery, plant or laboratory equipment, whether or not electrically heated ... for the treatment of materials by a process involving a change in temperature such as heating: Heat exchange units: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY J88055 and NY 859202, and any other ruling not specifically identified, in order to reflect the proper analysis contained in proposed HQ 065718 and HQ 065720, respectively set forth in Attachments C and D to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: November 23, 2009

GAIL A. HAMILL  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

[ATTACHMENT A]

NY 859202  
JAN 18 1991  
CLA-2-3:S:N:N1:113 859202  
CATEGORY: Classification  
TARIFF NO.: 7322.90.0015; 8414.59.8040

MR. GREG J. GRASHER  
BORDER BROKERAGE CO.  
P.O. BOX B  
BLAINE, WASH. 98230

RE: The tariff classification of an auxiliary heating system, combustion air blower and pump from Canada

DEAR MR. GRASHER:

In your letter dated December 15, 1990 you requested a tariff classification ruling.

The "Thermo Star" vehicle heater system is an auxiliary heating system used to heat and regulate heated coolant flow to a truck's cab, engine and fuel tank. The system does not rely upon the vehicle's engine for its source of heat.

The complete system consists of the boxed unit with heater control module, cab mounted thermostat and function control panel, fuel metering pump with fuel filter, pickup pipe and fuel lines, solenoid control valve with check valve, exhaust pipe, wiring harness and installation kit and mounting hardware.

The applicable subheading for the complete "Thermo Star" vehicle heater system with the above named components will be 7322.90.0015, Harmonized Tariff Schedule of the United States (HTS), which provides for air heaters and hot air distributors. The duty rate will be 4.2 percent *ad valorem*.

The applicable subheading for the blower will be 8414.59.8040, Harmonized Tariff Schedule of the United States (HTS), which provides for fans, other, other. The duty rate will be 4.7 percent *ad valorem*.

Goods classifiable under subheading 7322.90.0015, HTS, which have originated in the territory of Canada, will be entitled to a 2.9 percent *ad valorem* rate of duty under the United States- Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

Goods classifiable under subheading 8414.59.8040, HTS, which have originated in the territory of Canada, will be entitled to a 1.8 percent *ad valorem* rate of duty under the United States- Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

Your inquiry does not provide enough information for us to give a classification ruling on the pump. Your request for a classification ruling should include the type of pump (reciprocating, rotary or centrifugal).

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

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

[ATTACHMENT B]

NY J88055  
September 3, 2003  
CLA-2-73:RR:NC:N1:113 J88055  
CATEGORY: Classification  
TARIFF NO.: 7322.90.0015

MR. ROBERT J. RESETAR  
PORSCHE CARS NORTH AMERICA, INC.  
980 HAMMOND DRIVE  
SUITE 1000  
ATLANTA, GA 30328

RE: The tariff classification of an auxiliary heater unit from Germany.

DEAR MR. RESETAR:

In your letter dated August 15, 2003, you requested a ruling on tariff classification.

The merchandise is an auxiliary heater for an automobile. The heater unit is a self-contained, steel, heating device mounted on the wheel well inside the engine compartment. The unit circulates and heats engine coolant to preheat the engine and passenger compartment prior to driving in cold weather. The unit includes control electronics, a pump and a combustion and heat exchange chamber. It operates by drawing fuel from the vehicle's tank into the combustion chamber. Simultaneously, the pump circulates cold engine coolant into the combustion chamber, where it is heated by heat exchange. The hot coolant is circulated back through the vehicle's engine and HVAC heat exchanger. A blower circulates air over the HVAC heat exchanger, which is then warmed and the heated air blown into the passenger compartment.

In your letter, you suggest classification under either heading 7321, HTS, or heading 8419, HTS. However, it is the opinion of this office that heading 7322, HTS, is more specific. The Explanatory Notes to the HTS for this heading include that air heaters "wherever they are intended to be used." Furthermore, an example given for this heading includes apparatus for heating vehicles where the heater does not use the heat of the engine.

The applicable subheading for this product will be 7322.90.0015, Harmonized Tariff Schedule of the United States (HTS), which provides for air heaters and hot air distributors. The general rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist James Smyth at 646-733-3018.

*Sincerely,*

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



[ATTACHMENT C]

HQ H065718  
CLA-2 OT:RR:CTF:TCM H065718 DSR  
CATEGORY: Classification  
TARIFF NO.: 8419.50.50

MR. ROBERT J. RESETAR  
PORSCHÉ CARS NORTH AMERICA, INC.  
980 HAMMOND DRIVE  
SUITE 1000  
ATLANTA, GA 30328

RE: Revocation of NY J88055, dated September 3, 2003; subheading 8419.50.50, HTSUS; the tariff classification of an auxiliary vehicle heater unit

DEAR MR. RESETAR:

This is in regard to New York Ruling Letter (NY) J88055, issued to you on September 3, 2003, regarding the classification under the HTSUS of an auxiliary vehicle heater. We have reviewed NY J88055 and find it to be in error.

**FACTS:**

The merchandise is an auxiliary heater for an automobile. The heater unit is a self-contained, steel, heating device mounted on the wheel well inside the engine compartment. The unit circulates and heats engine coolant to preheat the engine and passenger compartment prior to driving in cold weather. The unit includes control electronics, a pump, and a combustion and heat exchange chamber. It operates by drawing fuel from the vehicle's tank into the combustion chamber. Simultaneously, the pump circulates cold engine coolant into the combustion chamber, where a heat exchanger heats it. The hot coolant is circulated back through the vehicle's engine and HVAC heat exchanger. A blower circulates air over the HVAC heat exchanger, where it is then warmed, and the heated air is blown into the passenger compartment. In NY J88055, CBP determined that the subject auxiliary vehicle heater unit was classified under subheading 7322.90.00, HTSUS, as an "air heater."

**ISSUE:**

Whether the auxiliary vehicle heater is classified as an "air heater" of heading 7322, HTSUS, or as a "heat exchange unit" of heading 8419, HTSUS.

**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 2 through 6 may then be applied in order.

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

7322 Radiators for central heating, not electrically heated, and parts thereof, of iron or steel; air heaters and hot air distributors (including distributors which can also distribute fresh or conditioned air), not electrically heated, incorporating a motor-driven fan or blower, and parts thereof, of iron or steel:

\* \* \*

7322.90.00 Other, including parts.

\* \* \*

7322.90.0015 Air heaters, not electrically heated, incorporating a motor-driven fan or blower

\* \* \* \*

8419 Machinery, plant or laboratory equipment, whether or not electrically heated ... for the treatment of materials by a process involving a change in temperature such as heating ...

\* \* \*

8419.50 Heat exchange units:

\* \* \*

8419.50.50 Other.

\* \* \* \*

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

The Explanatory Note to heading 7322, HTSUS, provides that an “air heater” transfers the heat given off by combustion gases passing through it to *air* traveling along its outer surface. The vehicle’s HVAC system then distributes the heated air through the vehicle. By comparison, the Explanatory Note to heading 8419, HTSUS, explains that heading 8419 excludes air heaters and hot air distributors covered by heading 7322, HTSUS, and covers machinery and plant designed to submit materials (solid, liquid and gaseous) to a heating or cooling process in order to cause a simple change in temperature.

Here, the subject heater does not transfer heat via its heat exchanger to any air traveling along its surface, as required by heading 7322, HTSUS. Instead, the heater directly submits the vehicle’s engine coolant to a

heating process by circulating the coolant through the heater's combustion chamber, where the coolant is heated by a heat exchanger. The hot coolant is then re-circulated through the vehicle's engine and HVAC heat exchanger to preheat the engine and distribute heated air to the vehicle's passenger compartment. Thus, it is now the position of CBP that the heater in NY J88055 is classified in heading 8419, HTSUS, which provides for "machinery, plant or laboratory equipment, whether or not electrically heated ... for the treatment of materials by a process involving a change in temperature such as heating: Heat exchange units: Other."

**HOLDING:**

By application of GRI 1, the subject auxiliary vehicle heater unit is classifiable under heading 8419, HTSUS. Specifically, it is classifiable under subheading 8419.50.50, HTSUS, which provides for "machinery, plant or laboratory equipment, whether or not electrically heated ... for the treatment of materials by a process involving a change in temperature such as heating: Heat exchange units: Other." The column one, general rate of duty is "free." Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at *www.usitc.gov*.

**EFFECT ON OTHER RULINGS:**

NY J88055, dated September 3, 2003, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

[ATTACHMENT D]

HQ HO65720  
CLA-2 OT:RR:CTF:TCM HO65720 DSR  
CATEGORY: Classification  
TARIFF NO.: 8419.50.50

MR. GREG J. GRASHER  
BORDER BROKERAGE CO.  
P.O. Box B  
BLAINE, WA 98230

RE: Revocation of NY 859202, dated January 18, 1991; subheading 8419.50.50, HTSUS; the tariff classification of an auxiliary vehicle heater unit

DEAR MR. GRASHER:

This is in regard to New York Ruling Letter (NY) 859202, issued to you on January 18, 1991, regarding the classification under the HTSUS of the “Thermo Star” auxiliary vehicle heater unit. We have reviewed NY 859202 and find it to be in error.

**FACTS:**

The “Thermo Star” vehicle heater system is an auxiliary heating system used to heat and regulate heated coolant flow to a truck’s cab, engine and fuel tank. The system does not rely upon the vehicle’s engine for its source of heat. The complete system consists of the boxed unit with heater control module, cab mounted thermostat and function control panel, fuel metering pump with fuel filter, pickup pipe and fuel lines, solenoid control valve with check valve, exhaust pipe, wiring harness and installation kit and mounting hardware. It operates by drawing fuel from the vehicle’s tank into the combustion chamber. Simultaneously, the pump circulates cold engine coolant into the combustion chamber, where a heat exchanger heats it. The hot coolant is circulated back through the vehicle’s engine and HVAC heat exchanger. A blower circulates air over the HVAC heat exchanger, where it is then warmed, and the heated air is blown into the passenger compartment. In NY 859202, CBP determined that the subject “Thermo Star” auxiliary vehicle heater unit was classified under subheading 7322.90.00, HTSUS, as an “air heater.”

**ISSUE:**

Whether the “Thermo Star” auxiliary vehicle heater is classified as an “air heater” of heading 7322, HTSUS, or as a “heat exchange unit” of heading 8419, HTSUS.

**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 2 through 6 may then be applied in order.

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

7322 Radiators for central heating, not electrically heated, and parts thereof, of iron or steel; air heaters and hot air distributors (including distributors which can also distribute fresh or conditioned air), not electrically heated, incorporating a motor-driven fan or blower, and parts thereof, of iron or steel:

\* \* \*

7322.90.00 Other, including parts.

\* \* \*

7322.90.0015 Air heaters, not electrically heated, incorporating a motor-driven fan or blower

\* \* \* \*

8419 Machinery, plant or laboratory equipment, whether or not electrically heated ... for the treatment of materials by a process involving a change in temperature such as heating ...

\* \* \*

8419.50 Heat exchange units:

\* \* \*

8419.50.50 Other.

\* \* \* \*

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

The Explanatory Note to heading 7322, HTSUS, provides that an “air heater” transfers the heat given off by combustion gases passing through it to *air* traveling along its outer surface. The vehicle’s HVAC system then distributes the heated air through the vehicle. By comparison, the Explanatory Note to heading 8419, HTSUS, explains that heading 8419 excludes air heaters and hot air distributors covered by heading 7322, HTSUS, and covers machinery and plant designed to submit materials (solid, liquid and gaseous) to a heating or cooling process in order to cause a simple change in temperature.

Here, the subject heater does not transfer heat via its heat exchanger to any air traveling along its surface, as required by heading 7322, HTSUS. Instead, the heater directly submits the vehicle’s engine coolant to a

heating process by circulating the coolant through the heater's combustion chamber, where the coolant is heated by a heat exchanger. The hot coolant is then re-circulated through the vehicle's engine and HVAC heat exchanger to preheat the engine and distribute heated air to the vehicle's passenger compartment. Thus, it is now the position of CBP that the heater in NY 859202 is classified as a heat exchanger in heading 8419, HTSUS, which provides for "machinery, plant or laboratory equipment, whether or not electrically heated ... for the treatment of materials by a process involving a change in temperature such as heating: Heat exchange units: Other."

**HOLDING:**

By application of GRI 1, the subject merchandise identified as the "Thermo Star" auxiliary vehicle heater unit is classifiable under heading 8419, HTSUS. Specifically, it is classifiable under subheading 8419.50.50, HTSUS, which provides for "machinery, plant or laboratory equipment, whether or not electrically heated ... for the treatment of materials by a process involving a change in temperature such as heating: Heat exchange units: Other." The column one, general rate of duty is "free." Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY 859202, dated January 18, 1991, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED MODIFICATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE NAFTA ELIGIBILITY AND MARKING OF CERTAIN  
AUTOMATIC DATA PROCESSING SYSTEMS**

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

**ACTION:** Notice of proposed modification of a tariff classification ruling letter and proposed revocation of treatment relating to the North American Free Trade Agreement (NAFTA) eligibility of certain automatic data processing systems.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementing Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to modify

Headquarters Ruling Letter (HQ) H027696, dated July 2, 2008 relating to the NAFTA eligibility of certain automatic data processing systems. CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

**DATES:** Comments must be received on or before January 11, 2010.

**ADDRESSES:** Written comments are to be addressed to Customs and Border Protection, Regulations and Rulings of the Office of International Trade, Attention: Tariff Classification and Marking Branch, 799 9th Street, N.W., Mint Annex Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Jean R. Broussard, Tariff Classification and Marking Branch: (202) 325-0284.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises

interested parties that CBP proposes to modify a ruling letter pertaining to the NAFTA eligibility of certain automatic data processing systems. Although CBP is specifically referring to the proposed modification of HQ H027696 (Attachment A) this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In HQ H027696, set forth as Attachment A to this document, CBP determined that the NAFTA eligibility of certain automatic data processing systems under General Note 12(t), Harmonized Tariff System of the United States (HTSUS). Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify HQ H027696 and any other ruling not specifically identified, in order to reflect the proper analysis contained in proposed HQ H074136 set forth in Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 23, 2009

GAIL A. HAMILL  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments



[ATTACHMENT A]

HQ H027696

July 2, 2008

CLA-2 OT:RR:CTF:TCM H027696 HkP  
CATEGORY: Classification Origin Marking  
TARIFF NO.: 8471.49

Ms. JOYCE WINEMAN  
ACCOUNT MANAGER/LCB  
UPS SUPPLY CHAIN SOLUTIONS  
4950 GATEWAY  
EAST EL PASO, TX 79905

RE: ADP systems: classification; NAFTA eligibility

DEAR MS. WINEMAN:

This is in response to your letter, dated March 19, 2008, to the National Commodity Specialist Division, U.S. Customs and Border Protection ("CBP"), on behalf of your client, Hon Hai Precision Industry Co. ("Hon Hai"), requesting a binding ruling on the tariff classification of certain merchandise under the Harmonized Tariff Schedule of the United States (HTSUS). At issue is the classification of an automatic data processing ("ADP") machine, keyboard, mouse, and monitor imported from Mexico packaged together for retail sale. You have also asked CBP to address whether this merchandise would be eligible for treatment as a good of a NAFTA (the North American Free Trade Agreement) country. Your letter was forwarded to this office on May 7, 2008, for a response.

The issues addressed by this ruling originated in a request for a ruling made by you on June 19, 2007, with respect to the tariff classification and NAFTA eligibility of certain merchandise in two scenarios, the second of which is the subject of this decision. The first concerned whether an ADP machine, keyboard and mouse packaged together for retail sale in a box would be classified as a set pursuant to GRI 3(b). CBP issued New York Ruling Letter ("NY") N025291, dated April 25, 2008, in response to the first scenario.

**FACTS:**

Hon Hai imports from their subsidiary in Mexico an ADP machine, a keyboard, a mouse, and a monitor packaged together for retail sale. When so packaged, the merchandise is identified by model numbers M9177c and M8307c.

According to the submitted information, the keyboard and mouse are imported into Mexico from various vendors in China, Taiwan, and Malaysia, and the monitor is imported into Mexico from Taiwan. The monitors measure either 19 or 22 inches and have integrated speakers but cannot accept video signals other than VGA and DVI. Some monitors may contain TV tuner cards which are also manufactured outside of NAFTA countries. Those monitors can only receive analog signals. Their TV functions can be controlled through the computer once certain software is installed.

The ADP machine is assembled in Mexico from components originating in China, Taiwan, and Malaysia. The ADP<sup>TM</sup>'s motherboard is shipped to Mexico in a box with all its components except for the memory (a BIOS ROM

chip) and the central processing unit. The following assembly operations occur in Mexico:

1. Chassis installations: rear I/O shield; system fan; power supply; PCA (printed circuit assembly) components such as the processor cooler back plate, retention module, memory module, Intel processor, heatsink, Bluetooth, front I/O shield, and PCA cabling; Expansion cards, such as a video card, modem card, TV tuner card, wire/wireless card and LED, or an audio card, as requested; optical drive; hard drive; Bluejay module (video and imaging card); bezel subassembly.
2. Final assembly: front bezel installation, connector cover installation, cable routing and side access panel installation.
3. Equipment testing.
4. Software installation.

All of the above stated operations are performed by skilled and trained workers. All of the ADP machines use Windows Vista as their operating system and all the models perform data processing functions. Additional hardware or software can also be installed by a customer on a machine. The keyboard and mouse connect to the CPU through connectors or USB ports.

#### **ISSUES:**

Are an ADP machine, keyboard, mouse, and monitor imported together an ADP system of subheading 8471.49, HTSUS?

If so, what is the country of origin of an ADP system comprised of an ADP machine assembled in Mexico, a monitor made in Taiwan, and a keyboard and a mouse made in China?

If so, how should an ADP system that has components originating in different countries be marked for country of origin marking purposes?

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

##### **Classification**

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

The HTSUS provisions under consideration are as follows:

8471 Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included:

\* \* \*

Other automatic data processing machines:

\* \* \*

8471.49.0000 Other, entered in the form of systems “|..

8471.50.01 Processing units other than those of subheading 8471.41 or 8471.49, whether or not containing in the same housing one or two of the following types of unit: storage units, input units, output units “|..

\* \* \*

8471.60 Input or output units, whether or not containing storage units in the same housing:

\* \* \*

Other:

8471.60.2000 Keyboards “|..

8471.60.7000 Units suitable for physical incorporation into automatic data processing machines or units thereof “|..

\* \* \*

8471.60.90 Other “|..

\* \* \*

8471.60.9050 Other “|..

Note 5 to Chapter 84, HTSUS, provides in relevant part:

(A) For the purposes of heading 8471, HTSUS, the expression “automatic data processing machines ” means machines capable of:

(i) Storing the processing program or programs and at least the data immediately necessary for the execution of the program;

(ii) Being freely programmed in accordance with the requirements of the user;

- (iii) Performing arithmetical computations specified by the user; and
- (iv) Executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run.

(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units.

(C) Subject to paragraphs (D) and (E) below, a unit is to be regarded as being part of an automatic data processing system if it meets all of the following conditions:

- (i) It is of a kind solely or principally used in an automatic data processing system;
- (ii) It is connectable to the central processing unit either directly or through one or more other units; and
- (iii) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

Separately presented units of an automatic data processing machine are to be classified in heading 8471.

However, keyboards, X–Y co-ordinate input devices and disk storage units which satisfy the conditions of paragraphs (C) (ii) and (C) (iii) above, are in all cases to be classified as units of heading 8471.

Subheading Note 1 to Chapter 84 provides:

For the purposes of subheading 8471.49, the term “systems” means automatic data processing machines whose units satisfy the conditions laid down in note 5(C) to chapter 84 and which comprise at least a central processing unit, one input unit (for example, a keyboard or a scanner), and one output unit (for example, a visual display unit or a printer).

Under the provisions of Note 5(B), ADP machines may be in the form of systems consisting of a variable number of separate units. Note 5(C) instructs that keyboards and X–Y coordinate input devices [for example, a mouse] that meet the conditions of paragraphs C (ii) and (iii) of the Note are in all cases to be classified as units of heading 8471. Since that is the case here, we find that the keyboard and the mouse must be classified as units of an ADP machine under heading 8471. Likewise, in this instance, we find that the monitor meets the requirements of Note 5(C) and is to be regarded as part of an ADP system because it is not presented separately. Furthermore, based on the information you have provided to CBP, we find that the ADP machine you have described conforms to the definition provided in Note 5(A) and is classified under heading 8471, HTSUS.

Based on the relevant provisions of Note 5 and Subheading Note 1 to Chapter 84, we find that the ADP machine, keyboard, mouse, and monitor when entered packaged together, comprise an ADP system, which is classified in subheading 8471.49.0000, HTSUS.

NAFTA Origin

You ask whether an ADP machine assembled in Mexico, a monitor made in Taiwan, and a keyboard and a mouse made in China (or in other non-NAFTA countries), and imported into the U.S. as an “ADP system”, are eligible for preferential duty rates under NAFTA as goods of a NAFTA country.

As an initial matter, the following is noted on GN p. 2 of the HTSUS (2008) (Rev. 1):

COMPILER™S NOTE: The rules of origin provisions for United States free trade agreements, other than those for the United States-Australia Free Trade Agreement, the United States-Singapore Free Trade Agreement and the United States-Chile Free Trade Agreement, have NOT been updated to reflect changes to the tariff schedule resulting from Presidential Proclamation 8097, which modified the HTS to reflect World Customs Organization changes to the Harmonized Commodity Description and Coding System. You will therefore see tariff heading/subheading numbers in the pertinent general notes which do not correspond to numbers in chapters 1 through 97 or to other portions of the same general notes.

Accordingly, because the NAFTA rules of origin have not been updated to reflect the 2007 changes to the Harmonized System, the pre-2007 classifications for the goods at issue must be used in order to ascertain their correct rule of origin under NAFTA.

General Note 12 of the HTSUS incorporates Article 401, North American Free Trade Agreement, as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (December 8, 1993), into the HTSUS. Note 12(b) provides, in relevant part:

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if they are goods wholly obtained or produced entirely in the territory of Canada, Mexico, and/or the United States; or

they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivision (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivision (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note[.] Originating good status is conferred on ADP systems classified under 8471.49 in accordance with GN 12(t) 85/191, Subheading 8471.49 rule, which provides:

The origin of each unit presented within a system shall be determined as though each unit were presented separately and were classified under the appropriate tariff provision for that unit.

The foregoing rule is subject to Chapter Rule 2, Chapter 84, GN 12, which provides:

For purposes of subheading 8471.49, the origin of each unit presented within a system shall be determined in accordance with the rule that would be applicable to such unit if it were presented separately; and the special rate of

duty applicable to each unit presented within a system shall be the rate that is applicable to such unit under the appropriate tariff item within subheading 8471.49.

For purposes of this rule, the term “unit presented within a system” shall mean:

(a) a separate unit as described in note 5(B) to chapter 84 of the tariff schedule; or (b) any other separate machine that is presented and classified with a system under subheading 8471.49.

As only the ADP machine underwent processing in Mexico, it is the only unit that is eligible to acquire originating status as a good of Mexico under rule of origin GN12(b). The monitor, keyboard and mouse do not fulfill any of the requirements of GN 12(b) and, therefore, cannot be treated as goods originating in the territory of a NAFTA party. We have not been provided with any manufacturing information on the monitor, keyboard or mouse and, thus, will not comment on their countries of origin.

Based on the Compiler’s Note above, the pre-2007 classification for the ADP machine must be used in order to ascertain its correct rule of origin. Under the provisions of HTSUS (2006), when presented separately, an ADP machine was classified in subheading 8471.50, HTSUS. (This remains the case under HTSUS (2008).) Originating status is thereby conferred on an ADP machine by the following rule:

192. A change to subheading 8471.50 from any other subheading, except from subheading 8471.30 through 8471.49.

As earlier stated, the ADP’s motherboard is imported into Mexico in a box with all of its components except for the BIOS ROM chip and the CPU. Without these components an ADP machine cannot perform the functions described in Note 5(A) to Chapter 84 (discussed in the “Classification” section above). None of the components assembled together to form the ADP machine were classified in subheadings 8471.30 through 8471.49, HTSUS. The ADP machine is, therefore, a good of Mexico for duty purposes.

Finally, you have asked, what country of origin should be indicated on the CBP Form 7501 (“Entry Summary”) when only one classification (8471.49, HTSUS) is used for the ADP system?

For purposes of the Entry Summary, pursuant to Chapter Rule 2 to Chapter 84, General Note 12, HTSUS, the country of origin of each unit of the ADP system must be listed in the box specified on the form (currently, box 10). Further, each unit of the system must be separately described as required on the form (currently, in boxes 27 through 33). The duty rate for each unit must be reflected in specified box (currently, box 34).

#### Marking

The issue of country of origin marking was indirectly raised in some of the correspondence between you and CBP. Although not specifically asked to do so, we will also address this issue because we believe that it is an important corollary to the issues discussed in this ruling.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. Â§1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its con-

tainer) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. Â§1304 was “that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will.” *United States v. Friedlaender & Co.*, 27 CCPA 297, 302, C.A.D. 104 (1940). Part 134, U.S. Customs and Border Protection Regulations (19 C.F.R. Â§134) implements the country of origin marking requirements and exceptions of 19 U.S.C. Â§1304.

Section 134.1(b), CBP Regulations (19 C.F.R. Â§ 134.1(b)), defines “country of origin” as:

[T]he country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of [the marking laws and regulations]; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Part 102 of the CBP Regulations sets forth the NAFTA Rules of Origin for country of origin marking purposes. 19 C.F.R. Â§102.0. 19 C.F.R. Â§102.11 provides, in pertinent part:

The following rules shall apply for the purposes of determining the country of origin of imported goods other than textile and apparel products covered by Â§ 102.21.

The country of origin of a good is the country in which:

The good is wholly obtained or produced; The good is produced exclusively from domestic materials; or Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in Â§102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

\* \* \*

(d) Where the country of origin of a good cannot be determined under paragraph (a), (b) or (c) of this section, the country of origin of the good shall be determined as follows:

\* \* \*

(3) If the country of origin of the good cannot be determined under paragraph (d)(1) or (d)(2) of this section, the country of origin of the good is the last country in which the good underwent production.

In previous correspondence between CBP and yourself, there was discussion of the tariff shift requirements of section 102.11(a). However, we now find that section 102.11(a) is not applicable in this situation. Paragraphs (a)(1) and (a)(2) are not applicable because the ADP system is not wholly obtained or produced in any one country and is not produced exclusively from the



domestic materials of any one country. Paragraph (a)(3) (the section 102.20 “tariff shift” rules) is not applicable because the ADP system (the good at issue for marking purposes) does not incorporate foreign materials, that is, the units of the system are not subassemblies or components incorporated into each other by any production process in order to produce the system; it is only the ADP machine, a unit (which is not at issue for marking purposes) of the system, that is wholly assembled from foreign materials. See 102.1(l) “Material”.

Paragraph (b) of section 102.11 concerns the country of origin for marking purposes based on the “essential character” of materials of a good that is not a set and is not covered by paragraph (a) of the section. This is inapplicable because, as stated above in relation to section 102.11(a)(3), the ADP system itself does not incorporate foreign materials. Paragraph (c) covers “goods specifically described in the Harmonized System as a set or a mixture, or classified as a set, mixture or composite good pursuant to General Rule of Interpretation 3”. This is not the situation here. Paragraphs (d)(1) and (d)(2) concern goods produced as a result of minor processing or by simple assembly; neither is the case here.

Under the provisions of section 102.11(d)(3), we find that the country of origin with which the ADP system should be marked is Mexico because it is the last country in which it underwent production. See 102.1(n) “Production”. Specifically, the ADP machine was assembled in Mexico by skilled and trained workers in an operation that constituted more than simple assembly. See 102.1 (o) “Simple Assembly”.

Finally, for your information, 19 C.F.R. Â§134.22 provides that when an article is excepted from the marking requirements, the outermost container or holder in which the article ordinarily reaches the ultimate purchaser shall be marked to indicate the country of origin of the article whether or not the article is marked to indicate its country of origin. Section 134.32 provides that articles for which the marking of the containers will reasonably indicate the origin of the articles are an exception to the marking regulations. In this case, we believe that only the outermost package in which the ADP system reaches the ultimate purchaser need be marked.

In addition, 19 C.F.R. Â§134.41(b) requires that the degree of permanence and visibility of marking should at least be sufficient to insure that in any reasonably foreseeable circumstance, the marking shall remain on the article (or its container) until it reaches the ultimate purchaser unless it is deliberately removed. The marking must survive the normal distribution and store handling. The ultimate purchaser in the United States must be able to find the marking easily and read it without strain. CBP has found certain factors to be indicative but not conclusive of compliance with the requirements of 19 C.F.R. Â§134.41 and 19 U.S.C. Â§1304. Among the factors that we consider are the size, location, and legibility of the marking, and whether or not the marking stands out. CBP has generally found that the size of the marking should be large enough so that the ultimate purchaser can easily see the marking without strain. The location of the marking should be in a place where the ultimate purchaser could expect to find the marking or where he/she could easily notice it from a casual inspection. Whether the marking stands out is generally dependent on where it appears in relationship to other print on the article and whether it is in contrasting letters to the background.



Overall, CBP has found that the totality of the circumstances determines whether or not the marking conforms to the marking rules. See, for e.g., HQ 733940, October 24, 1991.

**HOLDING:**

By application of GRI 1, the ADP system is classified in heading 8471, HTSUS. It is specifically provided for in subheading 8471.49, HTSUS, which provides for: “Automatic data processing machines and units thereof “; Other automatic data processing machines: Other, entered in the form of systems.”

The country of origin of the system is determined according to the origin of each unit of the system. The country of origin of the ADP machine is Mexico. The country of origin of the other components of the system will depend on where they were manufactured or substantially transformed.

The country of origin for marking purposes of the ADP system is Mexico.

A copy of this ruling letter should be attached to entry documents filed at the time the goods are entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

*Sincerely,*

GAIL A. HAMILL,

*Chief*

*Tariff Classification and Marking Branch*

## [ATTACHMENT B]

HQ H074136  
CLA-2 OT:RR:CTF:TCM H074136 JRB  
CATEGORY: Origin/Marking  
TARIFF NO.: 8471.49

Ms. JOYCE WINEMAN  
ACCOUNT MANAGER/LCB  
UPS SUPPLY CHAIN SOLUTIONS  
4950 GATEWAY EAST  
EL PASO, TX 79905

RE: ADP systems; NAFTA eligibility; Marking; Modification of HQ H027696

DEAR Ms. WINEMAN:

This is in reference to HQ H027696, issued to you on July 2, 2008, on behalf of your client, Hon Hai Precision Industry Co. ("Hon Hai"), concerning the tariff classification of certain merchandise under the Harmonized Tariff Schedule of the United States (HTSUS). On May 29, 2009, U.S. Customs and Border Protection ("CBP") issued a notice in the *Customs Bulletin* proposing to modify HQ H027696 with proposed ruling letter HQ H037540. Based on comments received as a result of this notice, CBP decided to withdraw the proposed modification on August 20, 2009. In HQ H027690, in addition to classifying the merchandise as an automatic data processing ("ADP") system, CBP also addressed whether the merchandise was eligible for preferential tariff treatment under the NAFTA (the North American Free Trade Agreement). For the reasons set forth below, we are modifying only that portion of the ruling relating to NAFTA eligibility and country of origin marking. We will also be addressing whether the subject merchandise is subject to the merchandise processing fee under 19 U.S.C. §58c(a).

**FACTS:**

Hon Hai imports from their subsidiary in Mexico an ADP machine, a keyboard, a mouse, and a monitor packaged together for retail sale. When so packaged, the merchandise is identified by model numbers M9177c and M8307c.

According to the submitted information, the keyboard and mouse are imported into Mexico from various vendors in China, Taiwan, and Malaysia, and the monitor is imported into Mexico from Taiwan. The monitors measure either 19 or 22 inches and have integrated speakers but cannot accept video signals other than VGA and DVI. Some ADP machines may contain TV tuner cards which are also manufactured outside of NAFTA countries. The monitors can only receive analog TV signals through the ADP machine. The TV functions can be controlled through the computer once certain software is installed.

The ADP machine is assembled in Mexico from components originating in China, Taiwan, and Malaysia. The ADP's motherboard is shipped to Mexico in a box with all its components except for the memory (a BIOS ROM chip) and the central processing unit. The following assembly operations occur in Mexico:

1. Chassis installations: rear I/O shield; system fan; power supply; PCA (printed circuit assembly) components such as the

- processor cooler back plate, retention module, memory module, Intel processor, heatsink, Bluetooth, front I/O shield, and PCA cabling; Expansion cards, such as a video card, modem card, TV tuner card, wire/wireless card and LED, or an audio card, as requested; optical drive; hard drive; Bluejay module (video and imaging card); bezel subassembly.
2. Final assembly: front bezel installation, connector cover installation, cable routing and side access panel installation.
  3. Equipment testing.
  4. Software installation.

All of the above stated operations are performed by skilled and trained workers.

All of the ADP machines use Windows Vista as their operating system and all the models perform data processing functions. Additional hardware or software can also be installed by a customer on a machine. The keyboard and mouse connect to the CPU through connectors or USB ports.

#### ISSUES:

- (i) Whether an ADP system comprised of an ADP machine assembled in Mexico, a monitor made in Taiwan, and a keyboard and a mouse made in China, Taiwan or Malaysia, is eligible for preferential tariff treatment under the NAFTA?
- (ii) How should an ADP system that has components originating in different countries be marked for country of origin marking purposes?
- (iii) Is the ADP system exempt from the merchandise processing fee?

#### LAW AND ANALYSIS:

##### *I. Eligibility for Preferential Treatment Under NAFTA*

You ask whether an ADP machine assembled in Mexico, a monitor made in Taiwan, and a keyboard and a mouse made in China (or in other non-NAFTA countries), and imported into the U.S. as an “ADP system”, are eligible for preferential duty rates under NAFTA as goods of a NAFTA country.

As an initial matter, the following is noted on page 2 of the General Notes (GN) of the *HTSUS (2009) (Rev. 1)*:

**COMPILER’S NOTE: The rules of origin provisions for United States free trade agreements, other than those for the United States-Australia Free Trade Agreement, the United States-Singapore Free Trade Agreement and the United States-Chile Free Trade Agreement, have NOT been updated to reflect changes to the tariff schedule resulting from Presidential Proclamation 8097, which modified the HTS to reflect World Customs Organization changes to the Harmonized Commodity Description and Coding System. You will therefore see tariff heading/subheading**

**numbers in the pertinent general notes which do not correspond to numbers in chapters 1 through 97 or to other portions of the same general notes.**

Accordingly, because the NAFTA rules of origin have not been updated to reflect the 2007 changes to the Harmonized System, the pre-2007 classifications for the goods at issue must be used in order to ascertain their correct rule of origin under NAFTA.

**General Note 12 of the HTSUS incorporates Article 401, North American Free Trade Agreement, as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (December 8, 1993), into the HTSUS. General Note 12(a)(ii) provides that:**

- (a) Goods originating in the territory of a party to the North American Free Trade Agreement (NAFTA) are subject to duty as provided herein. For the purposes of this note—

\* \* \* \* \*

- (ii) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Mexico under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), **and goods enumerated in subdivision (u) of this note**, when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “MX” in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act. (emphasis added)

**General Note 12(b) provides in relevant part that:**

- (b) For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party ” only if—

\* \* \* \* \*

- (v) they are goods enumerated in subdivision (u) of this note and meet all other requirements of this note.

General Note 12(u) incorporates Table 308.1.1 of Annex 308.1 of the NAFTA and provides that:

Goods that shall be considered originating goods. For the purposes of subdivision (b)(v) of this note, notwithstanding the provisions of subdivision (t) above, the automatic data processing machines, automatic data processing units and parts of the foregoing that are classifiable in the tariff provisions enumerated in the first column and are described opposite such provisions, when the foregoing are imported into the customs territory of the United States from the territory of Canada or of Mexico, shall be considered originating goods for the purposes of this note:

	<i>Provisions</i>	<i>Description</i>
(1)	8471.30.01, 8471.41.01, 8471.49.00, 8471.50.01	Automatic data processing machines
(2)	8471.49.00, 8471.50.01	Digital processing units
(3)	8471.49.00, 8471.60.10	Combined input/output units
(4)	8471.49.00, 8528.41.00, 8528.51.00, 8528.61.00	Display units
(5)	8471.49.00, 8471.60.20, 8471.60.70, 8471.60.80, 8471.60.90	Other input or output units
(6)	8471.49.50, 8471.70	Storage units
(7)	8471.49.00, 8471.80.10, 8471.80.40, 8471.80.90, 8517.62.00, 8517.69.00	Other units of automatic data processing machines
(8)	8443.99, 8473.30, 8517.70, 8529.90	Parts of automatic data processing machines and units thereof
(9)	8471.49.00, 8504.40.60, 8504.40.70	Power supplies for automatic data processing machines
(10)	8504.90.20, 8504.90.40	Parts of power supplies for automatic data processing machines

**In HQ H027696, dated July 2, 2008, we properly determined that the merchandise met the terms of an ADP system as defined by Subheading Note 1 to Chapter 84<sup>7</sup> and was correctly classified in subheading 8471.49.00, HTSUS, when imported from the territory of Mexico into the United States. This classification remains the same under the 2006 through 2009 versions of the HTSUS. As this tariff provision is listed in General Note 12(u), the merchandise qualifies as an originating good under NAFTA for duty purposes.**

## *II. Marking for Country of Origin Purposes*

The issue of country of origin marking was indirectly raised in some of the correspondence between you and CBP. Although not specifically asked to do so, we will also address this issue because we believe that it is an important corollary to the issues discussed in this ruling.

<sup>7</sup> Subheading Note 1 to Chapter 84 provides that: "For the purposes of subheading 8471.49, the term 'systems' means automatic data processing machines whose units satisfy the conditions laid down in note 5(C) to chapter 84 and which comprise at least a central processing unit, one input unit (for example, a keyboard or a scanner), and one output unit (for example, a visual display unit or a printer)."

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. §1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. §1304 was “that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will.” *United States v. Friedlaender & Co.*, 27 CCPA 297, 302, C.A.D. 104 (1940). Part 134, U.S. Customs and Border Protection Regulations (19 C.F.R. §134) implements the country of origin marking requirements and exceptions of 19 U.S.C. §1304.

Section 134.1(b), CBP Regulations (19 C.F.R. § 134.1(b)), defines “country of origin” as:

[T]he country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of [the marking laws and regulations]; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Part 102 of the CBP Regulations sets forth the NAFTA Rules of Origin for country of origin marking purposes. 19 C.F.R. §102.0. 19 C.F.R. §102.11 provides, in pertinent part:

The following rules shall apply for the purposes of determining the country of origin of imported goods other than textile and apparel products covered by § 102.21.

- (a) The country of origin of a good is the country in which:
- (1) The good is wholly obtained or produced;
  - (2) The good is produced exclusively from domestic materials;  
or
  - (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in §102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.
- (b) Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:

- (1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good, or
- (2) If the material that imparts the essential character to the good is fungible, has been commingled, and direct physical identification of the origin of the commingled material is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the appendix to part 181 of this chapter.
- (c) Where the country of origin cannot be determined under paragraph (a) or (b) of this section and the good is specifically described in the Harmonized System as a set or mixture, or classified as a set, mixture or composite good pursuant to General Rule of Interpretation 3, the country of origin of the good is the country or countries of origin of all materials that merit equal consideration for determining the essential character of the good.
- (d) Where the country of origin of a good cannot be determined under paragraph (a), (b) or (c) of this section, the country of origin of the good shall be determined as follows:

\* \* \*

- (3) If the country of origin of the good cannot be determined under paragraph (d)(1) or (d)(2) of this section, the country of origin of the good is the last country in which the good underwent production.

CBP finds that §102.11(a) is not applicable in this situation. Paragraphs (a)(1) and (a)(2) are not applicable because the ADP system is not wholly obtained or produced in any one country and is not produced exclusively from the domestic materials of any one country. Paragraph (a)(3) (the §102.20 “tariff shift” rules) is not applicable because the foreign-sourced goods (*e.g.*, the monitor, keyboard and mouse) which are simply re-packed with the ADP machine is a non-qualifying operation under 19 C.F.R. §102.17.<sup>8</sup>

As the goods entered into the United States meet the terms of “ADP systems” as defined in Subheading Note 1 to Chapter 84, CBP finds that they constitute a GRI 1 set under the Harmonized System for the purposes of §102.11. Therefore, we find that §102.11(b) is also inapplicable.

<sup>8</sup> 19 C.F.R. §102.17 sets out the rules as to non-qualifying operations under §102.20, in relevant part:

[a] foreign material shall not be considered to have undergone an applicable change in tariff classification specified in § 102.20 or § 102.21 or to have met any other applicable requirements of those sections merely by reason of one or more of the following:

\* \* \* \*

- (c) Simple packing, repacking or retail packaging without more than minor processing;

In cases where §102.11(a) or (b) do not apply we must also consider the applicability of 19 C.F.R. §102.19 which provides, in relevant part:  
NAFTA preference override.

- (a) Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1(q) of this chapter is not determined under § 102.11(a) or (b) or § 102.21 to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin (see § 181.11 of this chapter) has been completed and signed for the good.

As demonstrated above, §102.11(a) and (b) do not apply and the system is originating within the meaning of §181.1(q) because the system qualifies for NAFTA under General Note 12.<sup>9</sup> Therefore, the country of origin of the system is the last NAFTA country in which that good underwent production other than minor processing.<sup>10</sup> In this case, the country of origin is Mexico because it is the last country where the system underwent production that was beyond minor processing. The ADP machine is assembled in Mexico and it is then packaged together with various input and output units for retail sale. That assembly is not minor processing because it is not one of the nine operations listed in §102.1(m). Thus, the ADP system should be marked as a product of Mexico because Mexico is the last NAFTA country where the good underwent production other than minor processing so long as a properly completed Certificate of Origin is included with the good at the time of importation.

<sup>9</sup> 19 C.F.R. §181.1(q) provides that the term originating when used with regard to a good or a material, means a good or material which qualifies as originating in the United States, Canada and/or Mexico under the rules set forth in General Note 12, HTSUS, and in the appendix to this part.

<sup>10</sup> The phrase "minor processing" is defined at 19 C.F.R. §102.1(m) as the following:

- (1) Mere dilution with water or another substance that does not materially alter the characteristics of the good;
- (2) Cleaning, including removal of rust, grease, paint, or other coatings;
- (3) Application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings;
- (4) Trimming, filing or cutting off small amounts of excess materials;
- (5) Unloading, reloading or any other operation necessary to maintain the good in good condition;
- (6) Putting up in measured doses, packing, repacking, packaging, repackaging;
- (7) Testing, marking, sorting, or grading;
- (8) Ornamental or finishing operations incidental to textile good production designed to enhance the marketing appeal or the ease of care of the product, such as dyeing and printing, embroidery and appliques, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories notions, findings and trimmings; or
- (9) Repairs and alterations, washing, laundering, or sterilizing.



*Merchandise Processing Fee*

19 U.S.C. §58c(a) provides the statutory authority for certain customs services which states in relevant part that:

(a) Schedule of fees

In addition to any other fee authorized by law, the Secretary of the Treasury shall charge and collect the following fees for the provision of customs services in connection with the following:

\* \* \* \* \*

(9)(A) For the processing of merchandise that is formally entered or released during any fiscal year, a fee in an amount equal to 0.21 percent ad valorem, unless adjusted under subparagraph (B).

However, 19 U.S.C. §58c(b)(10)(B) provides that:

For goods qualifying under the rules of origin set out in section 3332 of this title, the fee under subsection (a)(9) or (10)—

\* \* \* \* \*

(ii) may not be increased after December 31, 1993, and may not be charged after June 29, 1999, with respect to goods that qualify to be marked as goods of Mexico pursuant to such Annex 311, for such time as Mexico is a NAFTA country.

Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

**19 U.S.C. §3332(n) provides for the rules of origin of automatic data processing goods under NAFTA:**

**Notwithstanding any other provision of this section, when the NAFTA countries apply the rate of duty described in paragraph 1 of section A of Annex 308.1 of the Agreement to a good provided for under the tariff provisions set out in Table 308.1.1 of such Annex, the good shall, upon importation from a NAFTA country, be deemed to originate in the territory of a NAFTA country for purposes of this section.**

**As stated above, Table 308.1.1 is codified in General Note 12(u) which lists ADP systems of subheading 8471.49.00 as being deemed to originate in the territory of a NAFTA country for purposes of origin. In addition, the ADP system qualifies to be marked as a good of Mexico. As such, the subject merchandise qualifies under 19 U.S.C. §58c(b)(10)(B)(ii) as being exempt from the merchandise processing fees.**

**HOLDING:**

By application of GRI 1, the ADP system is classified in heading 8471, HTSUS. It is specifically provided for in subheading 8471.49.00, HTSUS, which provides for: "Automatic data processing machines and units thereof

...: Other automatic data processing machines: Other, entered in the form of systems.” In accordance with General Note 12(b)(v), the ADP system originates from Mexico under NAFTA.

The country of origin of the system for marking purposes is Mexico so long as the importer presents a NAFTA Certificate of Origin pursuant to 19 C.F.R. §181.11.

Under 19 U.S.C. §58c(b)(10)(B)(ii), the ADP system imported from Mexico qualifies for exemption from the merchandise processing fee.

**EFFECT ON OTHER RULINGS:**

HQ H027696, dated July 2, 2008, is hereby modified.

*Sincerely,*

MYLES B. HARMON,  
*Director*

*Commercial & Trade Facilitation Division*



**REVOCATION OF TWO RULING LETTERS AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF PELLICLES**

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

**ACTION:** Notice of revocation of two tariff classification ruling letters and revocation of treatment relating to the classification of pellicles.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) is revoking two ruling letters relating to the tariff classification of pellicles under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on August 27, 2009, in the *Customs Bulletin*, Volume 43, No. 35. One comment was received in response to the notice.

**DATES:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 8, 2010.

**FOR FURTHER INFORMATION CONTACT:** Richard Mojica, Tariff Classification and Marking Branch, at (202) 325–0032.

**SUPPLEMENTARY INFORMATION:****Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is revoking two ruling letters pertaining to the tariff classification of pellicles. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (“NY”) I87349, dated October 29, 2002, and NY G88540, dated April 12, 2001, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not

identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY I87349, NY G88540, and any other ruling not specifically identified, to reflect the proper classification of pellicles according to the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H055635 (Attachment A) and HQ H055636 (Attachment B). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: November 23, 2009

GAIL A. HAMILL  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

[ATTACHMENT A]

HQ H055635

November 23, 2009

CLA-2 OT:RR:CTF:TCM H055635 RM

CATEGORY: Classification

TARIFF NO.: 8486.90.00

Ms. DEMETRIUS D. JONES  
YUSEN GLOBAL LOGISTICS  
691 AIRPORT S. PARKWAY  
COLLEGE PARK, GA 30349

RE: Revocation of New York Ruling Letter I87349, dated October 29, 2002;  
Classification of Pellicles

DEAR Ms. JONES:

This is in reference to New York Ruling Letter (“NY”) I87349, dated October 29, 2002, issued to you on behalf of Mitsui Chemicals America, Inc., concerning the tariff classification of pellicles. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the pellicles under heading 9002, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for: “Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked; parts and accessories thereof.” We have reviewed the ruling and found this classification to be incorrect.

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, 2186 (1993), notice of the proposed revocation was published on August 27, 2009, in the *Customs Bulletin*, Volume 43, No. 35. One comment was received in support of the proposed action.

**FACTS:**

In NY I87349, we described the merchandise as follows:

The Mitsui pellicles consist of a membrane of nitrocellulose, modified cellulose, or fluoropolymer mounted on a frame of aluminum alloy. Pellicles provide a high level of cleanliness and have excellent optical properties. Pellicles are used with the photomask in a photolithography process to transfer reduced-sized patterns from the photomask to sensitized semiconductor wafers and materials.<sup>11</sup> The pellicles are applied to photomasks

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<sup>11</sup> Photolithography is a multi-step process that creates integrated circuit patterns on semiconductor wafers. The process is as follows: a photomask is fed into a step-and-repeat aligner which shines ultraviolet light through the transparent areas of the mask and onto a wafer coated with photoresist. The exposed photoresist hardens and becomes impervious to etchants. The unexposed photoresist is subjected to an etch process and removed using chemical solvents, leaving a nitride pattern on the wafer in the exact design of the mask. The resulting pattern is then repeatedly “stepped” (*i.e.*, projected repeatedly across wafer’s surface), one die at a time, until full coverage is achieved. A typical IC requires twenty to forty individual steps. See *Microchip Fabrication: A Practical Guide to Semiconductor*

during the lithography process in order to protect the photomask. In addition to protecting the photomask, pellicles transmit more than 99 percent of light from the photolithography process in a uniform way.

We have since received information indicating that the pellicles at issue do not reflect light.<sup>12</sup> They merely transmit the light that shines through them. According to the *Semiconductor Equipment and Materials International* (“SEMI”) *International Standards: Compilation of Terms* (available at [www.semi.org](http://www.semi.org), updated November 2008), a “pellicle” is:

[A] thin, optically transparent film typically of a polymer, attached to and supported by a frame, and attached to a photomask [an opaque plate with holes that contains the patterns to be reproduced on a substrate] (also known as a “reticle”). Its purpose is to seal out contaminants and reduce the printed effects caused by contamination in the image plane of an optical exposure system with a minimum decrease in the quality of optical transmission.

Technical information on pellicles, available on the website of a leading supplier ([www.mliusa.com/technology-paper.htm](http://www.mliusa.com/technology-paper.htm)), explains that there are two types: “soft” pellicles, made of transparent fluorocarbon-based polymers, and “hard” pellicles, made of quartz glass. The pellicles at issue are soft pellicles.

#### ISSUE:

Whether the pellicles are classified under heading 9002, HTSUS, as optical elements, or under heading 8486, HTSUS, as parts of machines of a kind used solely or principally for the manufacture of semiconductor devices.

#### 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 2 through 6 may then be applied in order.

The 2009 HTSUS provisions under consideration are as follows:

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*Processing* by Peter Van Zant (McGraw Hill, 5th ed, pp. 198–203, 241–279). See also <http://www.infras.com/Tutorial/sld005.htm>.

<sup>12</sup> The pellicles at issue are not “pellicle mirrors,” devices that split a beam of light in two whereby one half is reflected and the other is transmitted.



\* \* \*

**(B) MACHINES AND APPARATUS FOR THE MANUFACTURE OF SEMICONDUCTOR DEVICES OR OF ELECTRONIC INTEGRATED CIRCUITS**

This heading covers machines and apparatus for the manufacture of semiconductor devices or of electronic integrated circuits such as:

\* \* \*

(4) **Lithography equipment**, which transfer the circuit designs to the photoresist-coated surface of the semiconductor wafer such as:

(b) **Equipment for exposing the photoresist coated wafer with the circuit design** (or a part thereof):

(i) **Using a mask or reticle and exposing the photoresist to light** (generally ultraviolet) or, in some instances, X-rays:

(a) **Contact printers ...**

(b) **Proximity aligners ...**

(c) **Scanning aligners ...**

(d) **Step and repeat aligners**, which use projection techniques to expose the wafer a portion at a time. Exposure can be by reduction from the mask to the wafer or 1:1. Enhancements include the use of an excimer laser.

\* \* \*

**(E) PARTS AND ACCESSORIES**

**Subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading includes parts and accessories for the machines and apparatus of this heading. Parts and accessories falling in this heading thus include, *inter alia*, work or tool holders and other special attachments which are solely or principally used for the machines and apparatus of this heading.

The ENs to heading 9002, HTSUS, provide, in part:

**With the exception** of ophthalmic lenses (which when mounted constitute spectacles, lorgnettes or the like of **heading 90.04**), this heading covers the articles referred to in Items (B), (C) and (D) of the Explanatory Note to heading 90.01 when in a permanent mounting (*viz.*, fitted in a support or frame, etc.) suitable for fitting to an apparatus or instrument.

The ENs to heading 9001, HTSUS, provide, in part:

This heading covers:

**(D) Optical elements of any material other than glass, whether or not optically worked, not permanently mounted ...**

**Optical elements are manufactured in such a way that they produce a required optical effect. An optical element does more than merely allow light (visible, ultraviolet or infrared) to pass through it, rather the passage of light must be altered in some**



**way, for example, by being reflected, attenuated, filtered, diffracted, collimated, etc.** (Emphasis added).

\* \* \*

Some of the optical elements listed above (lenses, prisms, etc.) may be colored, or coated with an anti reflection film of cryolite, calcium or magnesium fluoride, etc. This does not affect their classification in this heading.

Heading 9002, HTSUS, provides in part for “Optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus ....” CBP has held, consistent with EN 90.01 (incorporated by reference into EN 90.02), that an “optical element” is one that produces an optical effect. *See, e.g.*, HQ 966475, dated October 23, 2003. That is, it must “[do] more than merely allow light (visible, ultraviolet or infrared) to pass through it, rather, the passage of light must be altered in some way, for example, by being reflected, attenuated, filtered, diffracted, collimated, etc.” *See* EN 90.01. *See also* NY N049895, dated February 10, 2009. The pellicles at issue do not alter (*e.g.*, reflect, attenuate, filter, diffract or collimate) the light that passes through them. To the contrary, they are intentionally designed to reduce their reflectivity and to optimize light transmission. As such, we conclude that they are not “optical elements” of heading 9002, HTSUS.

Heading 8486, HTSUS, provides, in relevant part, for: “Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; ... parts and accessories.” It is undisputed that the subject pellicles are “parts” of a kind used solely with lithography equipment which transfer integrated circuit designs to the photoresist-coated surface of a semiconductor wafer. *See Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774, 777 (Fed. Cir. 1997) (“[A]n imported item dedicated solely for use with another article is a ‘part’ of that article within the meaning of the HTSUS”). Specifically, they are parts of step-and-repeat aligners. *See* EN 84.86 (B)(4)(b)(i)(d).

Note 2(b) to Section XVI, HTSUS, provides that parts which are not included in any of the headings of Chapters 84 or 85 (except for some headings not relevant here), and are suitable for use solely or principally with a particular kind of machine, are classified with that machine. The pellicles at issue are not specifically described in either Chapter. As such, we find that they are classified under heading 8486, in subheading 8486.90, HTSUS, as parts of machines and apparatus of a kind used solely for the manufacture of integrated circuits.

## **HOLDING:**

By application of GRI 1 and Note 2(b) to Section XVI, the subject pellicles are classified under heading 8486, HTSUS, specifically in subheading 8486.90.00, which provides for: “Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; ... parts and accessories: Parts and accessories.” The 2009 column one, general rate of duty is: Free.

**EFFECT ON OTHER RULINGS:**

NY I87349, dated October 29, 2002, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the *Customs Bulletin*.

*Sincerely,*

GAIL A. HAMILL

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

[ATTACHMENT B]

HQ H055636

November 23, 2009

CLA-2 OT:RR:CTF:TCM H055636 RM

CATEGORY: Classification

TARIFF NO.: 8486.90.00

GARTH ATCHLEY  
SENIOR MANAGER  
EXPEDITERS TRADEWIN LLC  
150 RARATIN CENTER PARKWAY  
EDISON, NJ 08837

RE: Revocation of New York Ruling Letter G88540, dated April 12, 2001;  
Classification of Pellicles

DEAR MR. ATCHLEY:

This is in reference to New York Ruling Letter (“NY”) G88540, dated April 12, 2001, issued to you on behalf of Dupont Photomasks, Inc., concerning the tariff classification of pellicles. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the pellicles under heading 9002, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for: “Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked; parts and accessories thereof.” We have reviewed the ruling and found this classification to be incorrect.

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, 2186 (1993), notice of the proposed revocation was published on August 27, 2009, in the *Customs Bulletin*, Volume 43, No. 35. One comment was received in support of the proposed action.

**FACTS:**

In NY G88540, we described the merchandise as follows:

The pellicle is an ultra-thin piece of plastic film that is mounted on a plastic frame. The plastic film is composed of modified fluoropolymer, Teflon or nitrocellulose. The pellicle covers a photomask to provide a contaminant-free environment for the photomask. The photomask is a quartz or glass plate containing precision images of integrated circuits. The photomask and the pellicle are used in a photolithography process to transfer reduced-sized patterns from the photomask to sensitized semiconductor wafers and materials.<sup>13</sup> Pellicles have optical

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<sup>13</sup> Photolithography is a multi-step process that creates integrated circuit patterns on semiconductor wafers. The process is as follows: a photomask is fed into a step-and-repeat aligner which shines ultraviolet light through the transparent areas of the mask and onto a wafer coated with photoresist. The exposed photoresist hardens and becomes impervious to etchants. The unexposed photoresist is subjected to an etch process and removed using chemical solvents, leaving a nitride pattern on the wafer in the exact design of the mask.

properties that allow the pellicles to transmit and to reflect light. The main optical function of the pellicle is to transmit light. Pellicles are manufactured to various optical wavelengths required for semiconductor manufacturing.

As examples, the G-line operates at 436 nanometers and the H-line operates at 365 nanometers. The pellicle is used in an optical application in the photolithography process by transmitting light from the stepper through the photomask onto the sensitized semiconductor wafer.

We have since received information indicating that the pellicles at issue do not reflect light.<sup>14</sup> They merely transmit the light that shines through them. According to the *Semiconductor Equipment and Materials International* (“SEMI”) *International Standards: Compilation of Terms* (available at [www.semi.org](http://www.semi.org), updated November 2008), a “pellicle” is:

[A] thin, optically transparent film typically of a polymer, attached to and supported by a frame, and attached to a photomask [an opaque plate with holes that contains the patterns to be reproduced on a substrate] (also known as a “reticle”). Its purpose is to seal out contaminants and reduce the printed effects caused by contamination in the image plane of an optical exposure system with a minimum decrease in the quality of optical transmission.

Technical information on pellicles, available on the website of a leading supplier ([www.mliusa.com/technology-paper.htm](http://www.mliusa.com/technology-paper.htm)), explains that there are two types: “soft” pellicles, made of transparent fluorocarbon-based polymers, and “hard” pellicles, made of quartz glass. The pellicles at issue are soft pellicles.

#### **ISSUE:**

Whether the pellicles are classified under heading 9002, HTSUS, as optical elements, or under heading 8486, HTSUS, as parts of machines of a kind used solely or principally for the manufacture of semiconductor devices.

#### **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 2 through 6 may then be applied in order.

The resulting pattern is then repeatedly “stepped” (i.e., projected repeatedly across wafer’s surface), one die at a time, until full coverage is achieved. A typical IC requires twenty to forty individual steps. See *Microchip Fabrication: A Practical Guide to Semiconductor Processing* by Peter Van Zant (McGraw Hill, 5th ed, pp. 198–203, 241–279). See also <http://www.infras.com/Tutorial/sld005.htm>.

<sup>14</sup> The pellicles at issue are not “pellicle mirrors,” devices that split a beam of light in two whereby one half is reflected and the other is transmitted.



\* \* \*

**(B) MACHINES AND APPARATUS FOR THE MANUFACTURE OF SEMICONDUCTOR DEVICES OR OF ELECTRONIC INTEGRATED CIRCUITS**

This heading covers machines and apparatus for the manufacture of semiconductor devices or of electronic integrated circuits such as:

\* \* \*

- (5) **Lithography equipment**, which transfer the circuit designs to the photoresist-coated surface of the semiconductor wafer such as:
- (c) **Equipment for exposing the photoresist coated wafer with the circuit design** (or a part thereof):
- (i) **Using a mask or reticle and exposing the photoresist to light** (generally ultraviolet) or, in some instances, X-rays:
  - (e) **Contact printers ...**
  - (f) **Proximity aligners ...**
  - (g) **Scanning aligners ...**
  - (h) **Step and repeat aligners**, which use projection techniques to expose the wafer a portion at a time. Exposure can be by reduction from the mask to the wafer or 1:1. Enhancements include the use of an excimer laser.

\* \* \*

**(E) PARTS AND ACCESSORIES**

**Subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading includes parts and accessories for the machines and apparatus of this heading. Parts and accessories falling in this heading thus include, *inter alia*, work or tool holders and other special attachments which are solely or principally used for the machines and apparatus of this heading.

The ENs to heading 9002, HTSUS, provide, in part:

**With the exception** of ophthalmic lenses (which when mounted constitute spectacles, lorgnettes or the like of **heading 90.04**), this heading covers the articles referred to in Items (B), (C) and (D) of the Explanatory Note to heading 90.01 when in a permanent mounting (*viz.*, fitted in a support or frame, etc.) suitable for fitting to an apparatus or instrument.

The ENs to heading 9001, HTSUS, provide, in part:

This heading covers:

**(D) Optical elements of any material other than glass, whether or not optically worked, not permanently mounted ...**

**Optical elements are manufactured in such a way that they produce a required optical effect. An optical element does more than merely allow light (visible, ultraviolet or infrared) to pass through it, rather the passage of light must be altered in some**

**way, for example, by being reflected, attenuated, filtered, diffracted, collimated, etc.** (Emphasis added).

\* \* \*

Some of the optical elements listed above (lenses, prisms, etc.) may be colored, or coated with an anti reflection film of cryolite, calcium or magnesium fluoride, etc. This does not affect their classification in this heading.

Heading 9002, HTSUS, provides in part for “Optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus ....” CBP has held, consistent with EN 90.01 (incorporated by reference into EN 90.02), that an “optical element” is one that produces an optical effect. *See, e.g.*, HQ 966475, dated October 23, 2003. That is, it must “[do] more than merely allow light (visible, ultraviolet or infrared) to pass through it, rather, the passage of light must be altered in some way, for example, by being reflected, attenuated, filtered, diffracted, collimated, etc.” *See* EN 90.01. *See also* NY N049895, dated February 10, 2009. The pellicles at issue do not alter (e.g., reflect, attenuate, filter, diffract or collimate) the light that passes through them. To the contrary, they are intentionally designed to reduce their reflectivity and to optimize light transmission. As such, we conclude that they are not “optical elements” of heading 9002, HTSUS.

Heading 8486, HTSUS, provides, in relevant part, for: “Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; ... parts and accessories.” It is undisputed that the subject pellicles are “parts” of a kind used solely with lithography equipment which transfer integrated circuit designs to the photoresist-coated surface of a semiconductor wafer. *See Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774, 777 (Fed. Cir. 1997) (“[A]n imported item dedicated solely for use with another article is a ‘part’ of that article within the meaning of the HTSUS”). Specifically, they are parts of step-and-repeat aligners. *See* EN 84.86 (B)(4)(b)(i)(d).

Note 2(b) to Section XVI, HTSUS, provides that parts which are not included in any of the headings of Chapters 84 or 85 (except for some headings not relevant here), and are suitable for use solely or principally with a particular kind of machine, are classified with that machine. The pellicles at issue are not specifically described in either Chapter. As such, we find that they are classified under heading 8486, in subheading 8486.90, HTSUS, as parts of machines and apparatus of a kind used solely for the manufacture of integrated circuits.

## **HOLDING:**

By application of GRI 1 and Note 2(b) to Section XVI, the subject pellicles are classified in heading 8486, HTSUS, specifically in subheading 8486.90.00, which provides for: “Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; ... parts and accessories: Parts and accessories.” The 2009 column one, general rate of duty is: Free.

**EFFECT ON OTHER RULINGS:**

NY G88540, dated April 12, 2001, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the *Customs Bulletin*.

*Sincerely,*

GAIL A. HAMILL

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



**GENERAL NOTICE**  
**19 CFR Part 177**

**Revocation of a Ruling Letter and Revocation of Treatment  
Relating to the Tariff Classification of Fc-77 Fluorinert**

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

**ACTION:** Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of FC-77 Fluorinert.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CPB”) is revoking a ruling concerning the tariff classification of FC-77 Flourinert, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. . Notice of the proposed revocation was published on July 17, 2009, in Volume 43, Number 28, of the CUSTOMS BULLETIN. No comments were received in response to this notice.

**DATES:** Merchandise entered or withdrawn from warehouse for consumption on or after February 8, 2010.

**FOR FURTHER INFORMATION CONTACT:** Allyson Mattanah, Tariff Classification and Marking Branch (202) 325-0029.



**SUPPLEMENTARY INFORMATION:****Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the CUSTOMS BULLETIN, Volume 43, No. 28, on July 17, 2009, proposing to revoke New York Ruling Letter (NY) B89965, dated January 7, 1998, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this issue 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 issue subject to this notice, should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, CBP is revoking any treatment it previously accorded to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer’s failure to advise CBP of substantially identical transactions or of a

specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In NY B89965, CBP ruled that the merchandise consists of a mixture of halogenated hydrocarbons classified in subheading 3824.90.55, HTSUS. The referenced ruling is incorrect because the mixture consists of compounds other than halogenated hydrocarbons.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY B89965, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter H058796, which is set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: November 23, 2009

GAIL A. HAMILL

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H058796

November 23, 2009

CLA-2 OT:RR:CTF:TCM H058796 ARM

CATEGORY: Classification

TARIFF NO.: 3824.90.92

MR. SCOTT FRISBY  
NIKON PRECISION INC.  
1399 SHOREWAY ROAD  
BELMONT, CA 94002-4107

RE: Revocation of NY B89965; FC-77 Fluorinert (CAS 86508-42-1) from Japan.

DEAR MR. FRISBY:

This is to inform you that Customs & Border Protection (CBP) has reconsidered New York (NY) Ruling letter B89965, dated January 7, 1998, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of FC-77 Fluorinert (CAS 86508-42-1) from Japan. The substance was classified as a mixture of halogenated hydrocarbons in subheading 3824.90.47, (now 3824.90.55), HTSUS. We have determined that NY B89965 is in error. Therefore, this ruling revokes NY B89965.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), ), a notice was published in the CUSTOMS BULLETIN, Volume 43, No. 28, on July 17, 2009, proposing to revoke New York Ruling Letter (NY) B89965, dated January 7, 1998, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

**FACTS:**

According to CBP Laboratory Report #NY20071768A, dated May 8, 2008, FC-77, CAS Registry No. 86508-42-1, is a mixture of Perfluoro furans, a perfluoro pyran (oxygen heterocyclic compounds) with a perfluoro acyclic hydrocarbon. In NY B89965, we stated that “the merchandise at issue is used as a cooling agent inside machines used by the semiconductor industry to fabricate computer chips.” The Material Safety Data Sheet for the product notes its specific use as a testing fluid or heat transfer fluid for electronics.

**ISSUE:**

Whether FC-77 is a mixture of hydrogenated hydrocarbons of subheading 3824.90.55, HTSUS, or an other chemical preparation of 3824.90.92, HTSUS?

**LAW AND ANALYSIS:**

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

The HTSUS subheadings under consideration are as follows:

3824 Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

3824.90 Other:

Other:

Other:

Mixtures of halogenated hydrocarbons:

3824.90.55 Other . . . . .

\* \* \* \* \*

Other:

3824.90.92 Other . . . . .

There is no dispute that the instant merchandise is classified as an other chemical product in subheading 3824.90, HTSUS. At issue is the proper 8-digit tariff rate. Therefore, GRI 6 is implicated. GRI 6 requires that the classification of goods at the subheading level “shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the above rules [GRIs 1–5], on the understanding that only subheadings at the same level are comparable.”

The instant merchandise contains a mixture of perfluoro furans, a perfluoro pyran (oxygen heterocyclic compounds) with a perfluoro acyclic hydrocarbon. While the perfluoro acyclic hydrocarbon is a halogenated hydrocarbon, the other compounds in the mixture are not halogenated hydrocarbons. As such, the entire mixture is not composed of only halogenated hydrocarbons and cannot be classified in subheading 3824.90.55, HTSUS. It is classified in subheading 3824.90.92, HTSUS.

**HOLDING:**

Pursuant to GRI 1, through the application of GRI 6, FC-77 Fluorinert is classified in heading 3824. It is provided for in subheading 3824.90.92, which provides for: “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other. The 2009, column one general rate of duty is 5% *ad valorem*.”

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

**EFFECT ON OTHER RULINGS:**

NY B89965, dated January 7, 1998, is revoked.

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

*Sincerely,*

GAIL A. HAMILL

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



**REVOCAION OF A RULING LETTER RELATING TO  
WHETHER CERTAIN COMMISSION PAYMENTS ARE  
INCLUDED IN THE APPRAISED VALUE OF IMPORTED  
MERCHANDISE**

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

**ACTION:** Revocation of a ruling letter on whether certain commission payments are included in the appraised value of imported merchandise under section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA; 19 U.S.C. § 1401a).

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling letter on whether certain commission payments are included in the appraised value of imported merchandise under section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA; 19 U.S.C. § 1401a). Notice of the proposed action was published in the *Customs Bulletin*, Vol. 43, No. 36, on September 3, 2009. No comments were received in response to the notice.

**DATES:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 8, 2010.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Reese, Valuation and Special Programs Branch at (202) 325–0046.

**SUPPLEMENTARY INFORMATION:****Background:**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 43, No. 36, on September 3, 2009, proposing to revoke HQ H006588, dated December 17, 2007, relating to the dutiability of certain buying commission payments. Since the decision to revoke is based on the specific facts of the particular matter, CBP is not revoking or modifying any other rulings. Similarly, CBP is not revoking or modifying any treatment. No comments were received in response to the notice.

Accordingly, pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ H006588 by issuance of HQ H022168. (See Attachment). In accordance with 19 U.S.C. 1625(c), HQ H022168 will become effective 60 days after publication in the *Customs Bulletin*.

Dated: November 23, 2009

GEORGINA GRIER  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H022168

November 23, 2009

OT:RR:CTF:VS H022168 CRS

CATEGORY: Valuation

MS. KIMRA COONS  
NATIONAL ACCOUNT MANAGER  
PARTNERSHIP PROGRAMS BRANCH  
OFFICE OF INTERNATIONAL TRADE  
U.S. CUSTOMS AND BORDER PROTECTION  
4477 WOODSON ROAD  
ST. LOUIS, MO 63134

RE: Revocation of HQ H006588; 19 U.S.C. § 1625; David's Bridal Inc.

DEAR MS. COONS:

This concerns a letter dated January 14, 2008, submitted pursuant to 19 U.S.C. § 1625 by Sandler, Travis & Rosenberg on behalf of David's Bridal, Inc. (DBI), requesting modification or revocation of Headquarters Ruling Letter (HQ) H006588, the holding of which was adverse to DBI.

Additional information relevant to this matter was provided by the Philadelphia Field Office, Regulatory Audit, Office of International Trade, on May 5, 2009. This information was not part of the record in HQ H006588 and therefore was not considered by this office when making the original decision in H006588.

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, 2186 (1993), notice of the proposed revocation of HQ H006588 was published on September 3, 2009, in the *Customs Bulletin*, Volume 43, Number 36. No comments were received in response to the proposed revocation.

**FACTS:**

In HQ H006588, dated December 17, 2007, we responded to a request for internal advice from your office concerning the dutiability of certain payments made by DBI to Fillberg Limited, a purported buying agent in Hong Kong. We concluded that DBI had not met its burden of establishing that the payments constituted bona fide buying commissions. The payments in question were made pursuant to a 1995 buying agency agreement<sup>15</sup> between DBI and Fillberg. The agreement specifies Fillberg's duties, which are typical of those undertaken by a buying agent. They include: researching and investigating manufacturers or suppliers; informing the principal of market conditions; making arrangements for buying visits; arranging for the purchase of sample fabrics, labels or other items used in the manufacture of the imported merchandise; providing advice on prices, terms and conditions; inspecting merchandise and ensuring quality control; and arranging for shipment. As provided for in the agreement, Fillberg has no authority to bind DBI except on DBI's written order or authorization. In return for the services rendered

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<sup>15</sup> The original buying agency agreement, while signed by the parties, was undated, though it would appear to date from July 1995. It was subsequently amended on April 11, 2000.

under the terms of the agreement, DBI agreed to pay DBI a commission equal to a specified percentage of the U.S. dollar FOB price of merchandise shipped in a particular calendar year.

Fillberg was formed pursuant to a joint venture agreement<sup>16</sup> between DBI and Addwood Limited, Hong Kong.<sup>17</sup> The joint venture agreement provides at section 5.1 that Fillberg is to act as DBI's exclusive agent in regard to the purchase and importation of wedding dresses and other bridal wear into the U.S. and, in turn, that DBI is to be Fillberg's exclusive U.S. client. The agreement provides further that Fillberg will negotiate the purchase of merchandise with suppliers in accordance with DBI's requirements, but that purchase orders will be entered into in writing directly between DBI and the manufacturer or supplier. In addition, section 5.3 of the joint venture agreement provides that neither Fillberg nor Addwood, nor any subsidiaries, affiliates or other members of the Addwood Group are to engage directly or indirectly in the retail of merchandise without DBI's written consent. In addition, section 5.3 provides that DBI consents to retail sales by Fillberg, Addwood or its affiliates subject to certain enumerated conditions. Counsel asserts that this provision of the joint venture agreement has never been exercised and there is no evidence in the record that would indicate that Fillberg engaged in retail sales.

The 1995 buying agency agreement and joint venture agreement are no longer in effect. As of January 1, 2008, DBI amended the joint venture agreement, revising a number of sections including sections 5.1 and 5.3. Section 5.1 now reads as follows:

*Exclusive Relationship: Agency Agreement.* The purpose of the Company will be to act as the exclusive buying agent of DBI for the purchase of Merchandise from the Agency Territory. The duties and responsibilities of DBI and the Company shall be set forth in the Buying Agency Agreement. The buying agency relationship between DBI and the Company shall be governed by the Buying Agency Agreement dated January 1, 2008, which shall prevail over any contrary terms of the AGREEMENT. Paragraphs 5.1.1 and 5.1.4 are hereby eliminated.

Section 5.3 was also revised and now states that "[Fillberg] shall not engage in any retail sales or any activity other than as a buying agent for DBI."

HQ H006588 held that DBI had not met its burden of establishing that the payments made to Fillberg constituted bona fide buying commissions inasmuch as there was insufficient documentary evidence to establish the existence of a bona fide buying agency relationship. Consequently, the payments made to Fillberg were included in transaction value as an addition to the price actually paid or payable. The decision also expressed concern in respect of two provisions of the joint venture agreement.

First, it was noted that the exclusivity clause set forth in section 5.1 of the joint venture agreement had "the potential to override" the buying agency agreement in that any signatory to the joint venture agreement is required to use Fillberg in regard to the sale of merchandise and that this constituted a

<sup>16</sup> The joint venture agreement is also undated, but likewise appears to date from July 1995.

<sup>17</sup> DBI owns fifty percent of Fillberg's shares; the remaining fifty percent are owned by Addwood. Mr. Mordechai Kafry owns a [\*\*\*\*\*] percent interest in Addwood.



condition of sale. Secondly, it was noted that the role of the agent could not be distinguished from the role of the related party sellers, particularly inasmuch as section 5.3 of the joint venture agreement grants Fillberg the right to engage in retail sales subject to certain conditions. This concern also appears to have been based on the conclusion that Fillberg was related to Wingreat and Maxtel.<sup>18</sup>

The record in this case is based principally on information developed in the course of an audit of DBI conducted by the Philadelphia Branch, Boston Field Office, Regulatory Audit, in 2004–2005.<sup>19</sup> As noted above, additional information relevant to this matter was submitted in 2009 by the Philadelphia Field Office. The record reflects that with the assistance of Fillberg, DBI develops an annual purchasing plan. DBI works with Fillberg to negotiate prices with its foreign suppliers on an arm's length basis. Once the terms have been arranged, a purchase order is issued through Fillberg for the goods. Payment is made with Fillberg's assistance. In most instances, DBI pays for imported merchandise by instructing its bank to issue a letter of credit to Fillberg as beneficiary. Fillberg then instructs its bank to open a back-to-back letter of credit in favor of the manufacturer or seller of the merchandise. The payment for the merchandise is separate from the payment of the commissions paid to Fillberg. Commission invoices are issued on a monthly basis and payment is made by wire transfer. Merchandise is shipped directly from the manufacturer to DBI; Fillberg neither takes title to the merchandise, nor physical possession. All of Fillberg's income is derived from commission payments.

In addition to dealing with unrelated sellers, DBI also deals with two related party sellers: Wingreat, a designer and seller of dresses and bridal wear in Hong Kong; and Maxtel, a seller of dresses in Sri Lanka.<sup>20</sup> In related party purchases, DBI instructs its bank to open a letter of credit in favor of the related party, which draws thereon to pay the manufacturer or exporter. As in the case of unrelated sellers, commission payments are made separately. Furthermore, the record reflects that DBI personnel make frequent trips to visit the manufacturers of the imported merchandise to discuss a range of quality control and production issues. DBI purchases and imports from approximately thirty vendors. Other than Wingreat and Maxtel, the record reflects that DBI is not related to any of the other vendors from which it purchases merchandise.

### **ISSUE:**

The issue presented is whether certain payments made by DBI to Fillberg under the 1995 and 2008 buying agency agreements constitute bona fide buying commissions such that they are not included in transaction value.

### **LAW AND ANALYSIS:**

Initially we note that DBI filed a request for modification or revocation of HQ H006588 pursuant to 19 U.S.C. § 1625. As a general matter, a proposed

<sup>18</sup>See HQ H006588 at 7, n.7 (Implying that Fillberg and Sellers 1 and 2 are related).

<sup>19</sup>The Philadelphia Branch was established as a Field Office in its own right in October 2007.

<sup>20</sup>DBI owns a fifty percent interest in Wingreat and a twenty-five percent interest in Maxtel. Maxtel purchases merchandise from a wholly-owned related party, Carlton Garments PVT, of Sri Lanka.

interpretive ruling or decision that would modify or revoke a prior ruling or decision that has been in effect for more than sixty days must be published in the *Customs Bulletin*. 19 U.S.C. § 1625(c). Inasmuch as H006588 was in effect for more than sixty days from the date of its issuance, and given that none of the exceptions to the publication requirement are applicable, publication of a proposed notice of revocation is required.

### *Commission Payments*

Merchandise imported into the United States is appraised in accordance with section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA; codified at 19 U.S.C. § 1401a). The primary method of appraisal under the TAA is transaction value, defined as the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts in respect of certain statutorily enumerated additions. The term “price actually paid or payable” is defined in pertinent part as “the total payment (whether direct or indirect . . . ) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.” 19 U.S.C. § 1401a(b)(4). See *Generra Sportswear Co. v. United States*, 905 F.2d 377 (Fed. Cir. 1990). Transaction value is an acceptable basis of appraisal only if, inter alia, the buyer and seller are not related, or if related, an examination of the circumstances of sale indicates that the relationship did not influence the price actually paid or payable, or the transaction value of the merchandise closely approximates certain “test values.” 19 U.S.C. § 1401a(b)(2)(B). For purposes of this decision we have assumed that transaction value is the appropriate basis of appraisal in both related and unrelated sales.

The enumerated additions to the price actually paid or payable include the value of any selling commissions incurred by the buyer with respect to the imported merchandise. A “selling commission” is any commission paid to the seller’s agent, *i.e.*, one who is related to or controlled by, or works for or on behalf of, the manufacturer or the seller. 19 C.F.R. § 152.102(b). *Bona fide* buying commissions are not included in transaction value as part of the price actually paid or payable or as an addition thereto. *Pier 1 Imports, Inc. v. United States*, 708 F.Supp.351, 354 (Ct. Int’l Trade 1989); *Rosenthal-Netter, Inc. v. United States*, 679 F.Supp. 21, 23 (Ct. Int’l Trade 1988); *Jay-Arr Slimwear, Inc. v. United States*, 681 F.Supp 875, 878 (Ct. Int’l Trade 1988). The existence of a *bona fide* buying commission depends upon the relevant factors of the particular case. *J.C. Penney Purchasing Corp. v. United States*, 451 F.Supp. 973, 983 (Cust. Ct. 1978). However, the importer has the burden of proving the existence of a *bona fide* agency relationship and that the payments to the purported agent constitute *bona fide* buying commissions. *Rosenthal-Netter*, 679 F.Supp. at 23; *New Trends, Inc. v. United States*, 645 F.Supp. 957, 960 (Ct. Int’l Trade 1986).

The primary consideration in an agency relationship is the right of the principal to control the agent’s conduct with respect to those matters entrusted to the agent. *J.C. Penney*, 451 F. Supp. at 983. The existence of a buying agency agreement has been viewed as supporting the existence of a buying agency relationship. *Dorco Imports v. United States*, 67 Cust. Ct. 503, 512, R.D. 11753 (1971). In addition, the courts have examined such factors as:

the transaction documents; whether the purported agent's actions were primarily for the benefit of the principal; whether the importer could have purchased the merchandise directly from the manufacturers without employing an agent; whether the intermediary was operating an independent business, primarily for its own benefit; and whether the purported agent was financially detached from the manufacturer of the merchandise. *Rosenthal-Netter*, 679 F. Supp. at 23; *New Trends*, 645 F. Supp. at 960–962.

As a general matter, a relationship between the agent and the seller will not preclude the finding of a *bona fide* buying agency; however, closer scrutiny will be accorded the related party transaction in determining whether in fact a *bona fide* buying agency exists. *Bushnell International, Inc. v. United States*, 477 F.2d 1402, 1406 (CCPA 1973); see also HQ 548222, dated February 27, 2003; HQ 544895, dated July 22, 1992; and HQ 544657, dated July 1, 1991. In determining whether an agency relationship exists, the evidence submitted to Customs must clearly establish the fact of a *bona fide* buying agency. See HQ 544610 dated February 23, 1991. Customs has consistently held that an invoice or other documentation from the actual foreign seller is required in order to establish that the agent is not the seller, as well as to determine the price actually paid or payable to the seller. HQ 542141 dated September 29, 1980; also published as TAA No. 7, Dep't. of the Treasury, U.S. Customs Service, *Customs Valuation Rulings under the Trade Agreements Act of 1979*, SuDoc. No. T 17:2:C 96/15 (1984). While the absence of a buying agency agreement does not necessarily preclude the existence of a buying agency relationship, it is difficult to establish an agency relationship without one. See U.S. Customs and Border Protection, Informed Compliance Publication, *What Every Member of the Trade Community Should Know About: Buying and Selling Commissions*, available at [http://www.cbp.gov/linkhandler/cgov/trade/legal/informed\\_compliance\\_pubs/icp004r2.ctt/icp004r2.pdf](http://www.cbp.gov/linkhandler/cgov/trade/legal/informed_compliance_pubs/icp004r2.ctt/icp004r2.pdf) (May 11, 2009).

In this case, there is a buying agency agreement between DBI and Fillberg, a factor that supports the existence of a *bona fide* buying agency. *Dorco Imports*, 67 Cust. Ct. at 512. Moreover, DBI actively controlled the purchasing process. DBI originates all purchases in accordance with the annual purchasing plan developed by its Production Department, with significant input from Fillberg. DBI personnel implement the purchasing plan through the analysis of planned new product designs and by reviewing manufacturer performance and quality from the preceding year. This involves extensive overseas travel. DBI is also actively involved in the purchasing process via its participation in the styling and design of garments. The fact that the manufacturer is aware that the importer and not the agent was the purchaser of the merchandise is evidence of a buying agency relationship. *J.C. Penney*, 451 F.Supp. at 983. The record indicates that DBI takes title to the merchandise FOB port of shipment, and that at no time does Fillberg bear the risk of loss, another factor that supports the existence of a *bona fide* buying agency. *Rosenthal-Netter*, 679 F.Supp. at 26. Based on our review, the record indicates that the parties acted in accordance the buying agency agreement.

DBI also controlled the payment process. Payment for the merchandise was effected by back-to-back letters of credit. Accordingly, the manner in which payment was made indicates that DBI exercised control over Fillberg. *Pier I Imports*, 708 F.Supp. 354–355 (Payment by means of back-to-back letters of credit demonstrates that the agent purchased merchandise only at the direction of the principal). Commission payments were made separately from the payment for the merchandise and did not inure to the benefit of the sellers. This too supports the existence of a bona fide buying agency. *Rosenthal-Netter*, 679 F. Supp. at 23; *New Trends*, 645 F. Supp. at 960–962. See also *J.C. Penney*, 451 F.Supp. at 984 (Commissions paid to an agent for services rendered, no part of which inure to the benefit of the seller, are buying commissions).

The fact that DBI and Fillberg are related persons within the meaning of 19 U.S.C. § 1401a(g)(1) does not negate an otherwise legitimate buying agency relationship. *E.g.*, HQ 545988 dated May 18, 1995. The primary consideration is the right of DBI, the principal to control Fillberg, the agent. *J.C. Penney*, 451 F. Supp. at 983. As indicated above, the record in this case supports a finding that DBI exercises control over Fillberg, which acts as a bona fide buying agent. While DBI is related to Wingreat and Maxtel, nothing in the record suggests that Fillberg is related to Wingreat or to Maxtel — or indeed, to any of the unrelated sellers — within the meaning of section 402(g)(1) of the TAA, and more particularly, within the meaning of 402(g)(1)(G). That is, Fillberg is not “controlled by or under common control with” either Wingreat or Maxtel. See *Transfer Pricing; Related Party Transactions*, 58 Fed. Reg. 5445 (Jan. 21, 1993) (with reference to the definition of control); see also HQ 545481 dated September 14, 1994, HQ 546782 dated December 2, 1999. Moreover, even assuming that Fillberg was related to Wingreat and/or Maxtel, this alone would not invalidate the buying agency relationship, although it would necessitate closer scrutiny. *Bushnell International, Inc. v. United States*, 477 F.2d at 1406. Finally, DBI obtains merchandise from some thirty vendors. Apart from Wingreat and Maxtel, DBI is not related to any of the vendors. The fact that DBI does not purchase only from related sellers supports the existence of a buying agency. See CBP Informed Compliance Publication, *Buying and Selling Commissions*, *supra*, at 12 (“If the purported buying agent obtains the imported merchandise only from its related seller, it will be difficult for the importer to show that the agent is acting in the best interests and under the direction and control of the buyer and a finding of a bona fide agency is unlikely). Accordingly, based on the evidence in the record we find that Fillberg is a bona fide buying agent for DBI, that it does not act as an independent seller, and that its functions are separate and distinct from those of Wingreat and Maxtel and are readily distinguished therefrom.

HQ H006588 also determined that the exclusivity clause set forth in section 5.1 of the joint venture agreement supersedes the buying agency agreement in that any signatory to the joint venture agreement is required to use Fillberg in regard to the sale of merchandise and that, consequently, section 5.1 constituted a condition of sale. However, upon reviewing the record below and taking into consideration the additional information submitted in con-

nection with the request for reconsideration, we conclude that HQ H006588 was in error. While Fillberg is DBI's exclusive agent, there is no evidence to support a finding that the exclusivity clause operates as either an express or implied condition of sale in DBI's purchases from either its related or unrelated sellers as would warrant including the commission payments in transaction value as part of the price actually paid or payable or as an addition thereto. The commissions are not paid to the seller nor, based on the evidence in the record, do they inure to the seller. Even if the commissions were to inure to the seller it would not necessarily invalidate the finding of a bona fide agency relationship. No one factor is determinative in deciding whether a bona fide buying agency exists; rather each case is governed by its own particular facts. *J.C. Penney*, 451 F. Supp. at 983; *Bushnell*, 477 F.2d at 1406.

Here the evidence indicates that Fillberg performs activities that are typical of a buying agent, viz., Fillberg was involved in the purchasing process, participated in styling and generally performed those activities it had contracted to undertake in accordance with the terms of the buying agency agreement. Indeed, the information presented indicates that Fillberg performed the same general agency services in assisting DBI with its purchases from unrelated sellers as it did when assisting DBI in its purchases from related sellers.

The exclusivity clause does not lessen DBI's control over Fillberg. As described above, the record reflects that DBI exercises control over Fillberg and that Fillberg acted upon instructions from DBI in accordance with the terms of the buying agency agreement. Similarly, the fact that Fillberg could have engaged in wholesale or retail sale or rental of merchandise in accordance with section 5.3 of the joint venture agreement does not invalidate the principal-agency relationship. In the first instance, there is no evidence in the record that Fillberg sold merchandise. Indeed, the audit confirmed that all of Fillberg's revenue was derived from commission payments. However, even if Fillberg had acted as a seller in other transactions it would not necessarily have invalidated the buying agency. In *Jay-Arr Slimwear*, the purported agent also owned the manufacturer. The court noted that if any commissions paid to the agent were retained by the seller the bona fides of the buying agency relationship would be suspect, but added:

Nevertheless, profits earned by an agent which may ultimately benefit the manufacturer is but one factor, which standing alone, does not bar exclusion of the commissions from the dutiable cost. *Bushnell*, 60 CCPA at 161, 477 F.2d at 1406. No single factor is determinative; the relationship must be judged by the entire factual situation. *J.C. Penney*, 80 Cust. Ct. at 95, 451 F.Supp. at 983; *Knit Wits*, 62 Cust. Ct. at 1011.

*Jay-Arr Slimwear*, 681 F.Supp. at 879. Accordingly, neither section 5.1 nor section 5.3 of the 1995 joint venture agreement invalidate the bona fides of the buying agency in the particular circumstances of this case. Thus, in view of the totality of the evidence, DBI has met its burden of establishing that the payments made to Fillberg under the buying agency agreement constitute bona fide buying commissions.

As previously noted, both the buying agency agreement and the joint venture agreement were amended in 2008; sections 5.1 and 5.3 of the joint venture agreement were among the provisions revised. Provided that the parties act in accordance with the 2008 agreements, commissions paid to

Fillberg pursuant to the agreements would constitute bona fide buying commissions and, as such, would not be included in transaction value. As always, however, it should be noted that since the existence of a buying agency is factually specific, the actual determination regarding the dutiability of future commission payments will be made by the appraising officer at the port of entry based on the documentation submitted.

**HOLDING:**

In conformity with the foregoing, the commission payments made by DBI to Fillberg under the 1995 buying agency agreement constitute bona fide buying commissions. As such, the payments are not included in transaction value.

**EFFECT ON OTHER RULINGS:**

HQ H006588 is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

*Sincerely,*

GEORGINA GRIER

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade facilitation Division*

cc: Rick Lawlor, Regulatory Audit, Philadelphia  
Steven Foreman, OFO, Philadelphia



**CUSTOMS BROKERS USER FEE PAYMENT FOR 2010**

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

**ACTION:** General Notice.

**SUMMARY:** This document provides notice to customs brokers that the annual fee of \$138 that is assessed for each permit held by a broker, whether it may be an individual, partnership, association, or corporation, is due by January 25, 2010. Customs and Border Protection (CBP) announces this date of payment for 2010 in accordance with the Tax Reform Act of 1986.

**DATES:** Payment of the 2010 Customs Broker User Fee is due Monday, January 25, 2010.

**FOR FURTHER INFORMATION CONTACT:** Russell Morris, Broker Compliance Branch, Trade Policy and Programs, Office of International Trade, (202) 863-6543.



**SUPPLEMENTARY INFORMATION:*****Background***

CBP Dec. 07–01 amended section 111.96 of title 19 of the Code of Federal Regulations (19 CFR 111.96) pursuant to the amendment of section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) by section 892 of the American Jobs Creation Act of 2004, to establish that effective April 1, 2007, an annual user fee of \$138 is to be assessed for each customs broker permit and national permit held by an individual, partnership, association, or corporation.

Customs and Border Protection (CBP) regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date which is published in the **Federal Register** annually. See 19 CFR 24.22(h) and (i)(9). Broker districts are defined in the General Notice entitled, “Geographical Boundaries of Customs Brokerage, Cartage and Light-erage Districts” published in the **Federal Register** as T.D. 00–18 on March 15, 2000 (65 FR 14011).

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99–514) provides that notices of the date on which the payment is due for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** by no later than 60 days before such due date. Please note that section 403 of the Homeland Security Act of 2002, 6 U.S.C. 101 et seq., (Pub. L. 107–296) and Treasury Department Order No. 100–16 (see Appendix to 19 CFR Part 0) delegated general authority vested in the Secretary of the Treasury over customs revenue functions (with certain specified exceptions) to the Secretary of Homeland Security.

This document notifies customs brokers that for calendar year 2010, the due date for payment of the user fee is January 25, 2010.

Dated: November 3, 2009

DANIEL BALDWIN  
*Assistant Commissioner*  
*Office of International Trade*

[Published in the Federal Register, November 18, 2009 (74 FR 59581)]

**ESTABLISHMENT OF GLOBAL ENTRY PROGRAM  
8 CFR Parts 103 and 235**

**RIN 1651-AA73**

**USCBP-2008-0097**

**AGENCY:** U.S. Customs and Border Protection; DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Pursuant to section 7208(k) of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended, U.S. Customs and Border Protection (CBP) proposes to establish an international trusted traveler program, called Global Entry. This voluntary program would allow CBP to expedite clearance of pre-approved, low-risk air travelers into the United States. CBP has been operating the Global Entry program as a pilot at several airports since June 6, 2008. Based on the successful operation of the pilot, CBP now proposes to establish Global Entry as a permanent voluntary regulatory program.

**DATES:** Comments must be received on or before January 19, 2010.

**ADDRESSES:** You may submit comments, identified by docket number USCBP-2008-0097, by *one* of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Border Security Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 799 9th Street, NW, 5th Floor, Washington, DC 20001-4501.

**Instructions:** All submissions received must include the agency name and docket title for this rulemaking, and must reference docket number USCBP-2008-0097. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.



Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Customs and Border Protection, 799 9th Street, NW, 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT: FOR FURTHER INFORMATION CONTACT:** Fiorella Michelucci, Office of Field Operations, 202-344-1220 or Daniel Tanciar, Office of Field Operations, 202-344-2818.

### **I. Public Participation**

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

### **II. Background And Purpose**

Section 7208(k) of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), 118 Stat. 3638, as amended by section 565 of the Consolidated Appropriations Act, 2008, 121 Stat. 1844, codified at 8 U.S.C. 1365b, requires the Secretary of Homeland Security (Secretary) to create a program to expedite the screening and processing of pre-approved, low-risk air travelers into the United States. Under the IRTPA, the Secretary shall ensure that the international trusted traveler program includes as many participants as practicable by establishing a reasonable cost of enrollment, making program enrollment convenient and easily accessible, and providing applicants with clear and consistent eligibility guidelines. *See* 8 U.S.C. 1365b(k)(3). The program shall also incorporate available technologies, such as biometrics and e-passports, and security threat assessments.

Section 7208(k) of the IRTPA requires DHS to initiate a rulemaking action to establish the criteria to participate in the program and to set the appropriate fee for such participation. This rule meets that requirement by proposing, among other things, the criteria for participation in this voluntary program and the fee necessary to cover the costs of the program.

### **A. Existing Trusted Traveler Programs**

CBP currently operates several regulatory and non-regulatory international trusted traveler programs. These programs provide expedited travel for pre-screened populations and operate under the Port Passenger Accelerated Service System (PORTPASS), a legacy system of the former Immigration and Naturalization Service, described in 8 CFR 235.7. CBP currently operates three PORTPASS programs: the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), which allows expedited entry at specified land border ports; the Free and Secure Trade program (FAST), which, among other things, provides expedited border processing for known, low-risk commercial drivers<sup>1</sup>; and the I-68 program, which allows expedited entry process for boaters entering the United States from Canada for recreational purposes. Although considered a PORTPASS program, the I-68 program is described separately in 8 CFR 235.1(g). CBP also operates NEXUS, a trusted traveler program limited to travel between the U.S. and Canada. NEXUS is authorized by 8 U.S.C. 1753. Additional details regarding all of these programs can be found at [www.cbp.gov](http://www.cbp.gov).

### **B. Global Entry Pilot**

In addition to the permanent traveler programs described above, CBP is currently conducting a pilot program called Global Entry. The pilot began at three airports on June 6, 2008. *See* 73 FR 19861 and 73 FR 30416. On August 13, 2008, CBP announced the expansion of the pilot to four additional airports (for a total of seven airports) and to additional terminals at one of the original three airports. *See* 73 FR 47204. The pilot was expanded to thirteen additional airports (for a total of twenty airports) on August 10, 2009. *See* 74 FR 152. The Global Entry pilot utilizes fingerprint biometrics technology to verify registered program participants and automated kiosks to provide participants expedited entry into the United States at any of the pilot's airport locations. Applicants apply online through the Global On-line Enrollment System (GOES) at [www.globalentry.gov](http://www.globalentry.gov). Applicants pay a non-refundable fee of \$100 when applying to the program. All applicants undergo a background check, including an interview by a CBP officer, before being enrolled in the pilot program.

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<sup>1</sup> FAST was established in 2002 under bilateral agreements between the United States and Canada (northern border) and the United States and Mexico (southern border).

The pilot program is generally limited to U.S. citizens, U.S. nationals, and U.S. lawful permanent residents.<sup>2</sup> On April 23, 2009, however, CBP published a notice in the **Federal Register** announcing that it had expanded eligibility for participation in the Global Entry pilot to include citizens of the Netherlands who participate in Privium, an expedited travel program in the Netherlands, provided they otherwise satisfy the requirements for participation in the Global Entry pilot program. See 74 FR 18586.

Only individuals 14 years of age or older may apply to enroll in Global Entry. Individuals may not qualify if they:

- Are inadmissible to the United States under applicable immigration laws;
- Provide false or incomplete information on their application;
- Have been convicted of a criminal offense in any country;
- Have been found in violation of customs or immigration laws; or
- Fail to meet other Global Entry requirements.

An individual who is not accepted into the Global Entry pilot program has three avenues for inquiry: (1) DHS Travelers Redress Inquiry Program (DHS TRIP); (2) directly through the enrollment center; and (3) the CBP Trusted Traveler Ombudsman.

For more information about specific details of the pilot program, please refer to the initial notice published on April 11, 2008, in the **Federal Register** at 73 FR 19861. Additional details also may be found on the website: [www.globalentry.gov](http://www.globalentry.gov).

The Global Entry pilot is operating successfully. The automated kiosks are working smoothly with no current major technical issues or problems. From June 2008 through March 2009, over 8,000 applications were filed and 7,923 participants were enrolled. CBP is approving applications for participation more quickly than was expected. The average approval time for each application has been less than one week — better than the initial estimates of ten to fourteen days. Public reaction has been positive, and CBP has received comments during the pilot lauding the program.<sup>3</sup>

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<sup>2</sup> A U.S. citizen means a person who acquired U.S. citizenship at birth or upon naturalization as provided by law and who has not subsequently lost such citizenship. A U.S. national is (A) a citizen of the United States or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. 8 U.S.C. 1101 (a)(21). A U.S. lawful permanent resident is a person who has been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Such status terminates upon entry of a final administrative order of exclusion, deportation or removal. 8 CFR 1.1(p); 8 U.S.C. 1101(a)(20).

DHS has conducted a statistical analysis based on data for 1,575 flights with at least one Global Entry passenger onboard from November 19, 2008 to January 9, 2009. That analysis indicates that participation in Global Entry may reduce a passenger's wait time by up to seventy percent — or an estimated seven minutes on average. This analysis further demonstrates that participation in Global Entry reduces the variability of wait times, with less than one percent of Global Entry passengers waiting longer than twenty minutes and approximately ten percent of all U.S. citizens and lawful permanent residents waiting longer than twenty minutes. We found that Global Entry participation varies by airports, airlines and region from where the flight originates.

### III. Establishing a Permanent Global Entry Program

CBP has determined, based on the success of the Global Entry pilot program, that the pilot should be established as a permanent program and that it should be expanded to include additional airport locations. Accordingly, pursuant to section 7208(k) of the IRTPA, CBP is proposing to amend its regulations to establish Global Entry as a permanent international trusted traveler program. As proposed under this rule, the permanent Global Entry program will operate in a similar manner as the Global Entry pilot program. CBP anticipates that the existing Global Entry pilot will continue to operate until this proposal is adopted as a final rule. In the interim, CBP will continue to evaluate the pilot and will take into consideration the results of this evaluation, including all comments received by CBP in response to the **Federal Register** notices regarding the pilot, when formulating the details of the permanent Global Entry program in any final rulemaking.

Current participants in the pilot program automatically will be enrolled in the Global Entry program for five years from the date of enrollment in the pilot program. Participation in Global Entry would continue to be voluntary.

This permanent Global Entry program, like the Global Entry pilot program, will facilitate the movement of low-risk, frequent air travelers arriving from outside the United States. The Global Entry program will provide an expedited inspection and examination process for pre-approved, pre-screened travelers by allowing them to proceed directly to automated Global Entry kiosks upon their arrival

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<sup>3</sup> For example, the Executive Director of the U.S. Chamber of Commerce commented “[T]he Chamber commends U.S. Customs and Border Protection for announcing that it would pilot the Global Entry international trusted traveler (IRT) program ... CBP's proposal to pilot Global Entry at three major U.S. airports is an important first step in what the Chamber hopes will be a nationwide program.”

in the United States. This permanent Global Entry program, along with the other trusted traveler programs that CBP operates, is consistent with CBP's strategic goal of facilitating legitimate travel while securing the homeland.

## **A. Eligibility Requirements**

### **1. Persons Eligible to Enroll**

U.S. citizens, U.S. nationals, and U.S. lawful permanent residents would be eligible for participation in the program. Children 14 years of age and older, but under the age of 18, must have the consent of a parent or legal guardian to participate in Global Entry. Children under the age of 14 are not eligible to participate in the program.

Additionally, CBP plans to expand the program to include nonimmigrant aliens from other countries via joint arrangements between CBP and its respective counterparts in foreign governments. CBP is working with other countries that operate comparable international trusted traveler programs to enter into reciprocal arrangements for the purposes of expanding eligibility for Global Entry. For example, under the Global Entry pilot program, CBP has entered into an arrangement with the Netherlands to allow citizens of the Netherlands who participate in Privium, an expedited travel program operated by the Government of the Netherlands, to participate in the Global Entry pilot.

Pursuant to the terms of these reciprocal arrangements, both CBP and the respective government of the nonimmigrant alien applicant would vet these applicants during separate enrollments. Each government would determine if the individual is eligible to participate in its respective program. To receive CBP approval to participate in Global Entry, applicants from these other countries would have to satisfy all the requirements specified in this proposed rule. CBP will announce any expansions of the Global Entry regulatory program through such reciprocal arrangements, as well as any substantial modifications or retractions (*i.e.*, cancellations of such arrangements) by publication of a notice in the **Federal Register**. CBP anticipates that each country that participates under the Global Entry pilot would also participate under the permanent Global Entry program.

### **2. Disqualifying Factors**

An individual is ineligible to participate in Global Entry if such individual is inadmissible to the United States under the U.S. immigration laws. An individual may also be ineligible to participate in Global Entry if CBP determines that the individual presents a potential risk for terrorism, criminality or smuggling, or is otherwise

not a low-risk traveler. This risk determination will be based in part upon an applicant's ability to demonstrate past compliance with laws, regulations, and policies. An applicant may not qualify for participation if any of the following risk factors are applicable:

- The applicant provides false or incomplete information on the application;
- The applicant has been arrested for, or convicted of any criminal offense or has pending criminal charges or outstanding warrants;
- The applicant has been found to be in violation of any customs, immigration, or agriculture regulations, procedures, or laws in any country;
- The applicant is the subject of an investigation by any Federal, State, or local law enforcement agency;
- The applicant is inadmissible to the United States under U.S. immigration laws and regulations, including applicants with approved waivers of inadmissibility or parole documentation;
- The applicant cannot satisfy CBP of their low-risk status or meet other program requirements; or
- The applicant has been identified on a government watch list.

### **B. Program Application and Selection Process**

The application for the Global Entry program will continue to be available on-line through the Global On-Line Enrollment System (GOES) at *www.globalentry.gov*. The application (the same application currently used for the pilot) would be completed and submitted electronically through GOES. Alternative application options, such as providing enrollment data via private sector entities, will be considered by CBP. If and when CBP provides for alternative application processes, CBP will announce those options to the public.

There would be three steps to the application process:

*Step 1: Completion of on-line application:* Applicants would complete and submit the program application on-line through GOES and submit payment of a non-refundable fee through Pay.gov. Applicants would be provided with a GOES on-line account in order to assist them and permit CBP to communicate with the applicant during the application process.

*Step 2: Application review and notification:* CBP officers would review the applicant's information for processing to ensure that the applicant is in compliance with U.S. customs and immigration laws

and regulations. CBP also will compare the information provided in the application against government criminal and antiterrorism databases. CBP may also use foreign government databases and sources to the extent permitted by relevant U.S. laws and regulations, and to the extent allowed under applicable arrangements with foreign governments.

Applicants should check their GOES account after the application is filed to ensure that CBP received the application. After review, the applicant will receive notification from CBP through the applicant's GOES account regarding the status of the application. CBP will also send a message to the e-mail address provided by the applicant at the time of the application to check their GOES account. Applicants meeting the eligibility criteria will be notified that they can schedule an interview as indicated below. If the application is denied, instructions will be given on how to proceed if the applicant wishes to seek additional information.

*Step 3: Interview and Processing at Enrollment Center:* Applicants will be notified that they can schedule an interview at an Enrollment Center using the GOES link to the on-line scheduling feature. Applicants would choose an Enrollment Center at any Global Entry airport location. The list of Enrollment Centers and contact information for those locations can be found at [www.globalentry.gov](http://www.globalentry.gov). As operation of the program expands, CBP would add additional enrollment locations to the list.

At the Enrollment Center, CBP officers would review the information provided by the applicant and conduct an interview of the applicant. The applicant would be required to bring to the interview originals of the identification documentation he or she specified in the application. Usually, this will be a U.S. passport or Lawful Permanent Resident Card (Form I-551) or, in the case of aliens, a foreign passport (and visa, if applicable). During this process, CBP officers would perform the following procedures: verify identity and proof of citizenship, U.S. national or lawful permanent resident status, as applicable; confirm admissibility to the United States; confirm the validity of travel documents; confirm that the candidate meets eligibility requirements; electronically capture a full set of ten fingerprints; conduct various checks, including a check for criminal records in law enforcement databases (which involves submission of the fingerprints to the Federal Bureau of Investigation (FBI)); and take a digital photograph of each applicant for the Global Entry database. CBP may consider whether to require the submission of other biometrics in the future.



Although an application can be made for a child (14 years of age or older, but under 18) to travel with a non-custodial adult, a child appearing at the Enrollment Center for processing must be accompanied by at least one custodial adult (parent or guardian). At the interview, the CBP officer may request appropriate documentary evidence of parental custody from the parent or guardian seeking to enroll the child in the Global Entry program.

After the interview, applicants will be notified of their acceptance into the Global Entry program by a message posted to their GOES account. If an applicant is denied participation in Global Entry, a notice will be sent to the applicant's GOES account advising him or her of the denial, with instructions on how to proceed if the applicant wishes to seek additional information.

Each Global Entry participant would be screened against the relevant criminal and anti-terrorism government databases each time he or she uses the Global Entry kiosk. CBP would also continue to conduct periodic checks for all participants during the entire period of enrollment to ensure that CBP can quickly take action should new information be made available that would disqualify the participant.

The required immigration status and citizenship of participants must be valid at all times. Participants must possess required immigration and identity documents at all times during their travel, including at the time of arrival at participating airports.

### **C. Redress**

An individual whose application is denied or whose participation is suspended or terminated has three possible methods for redress. These processes do not create or confer any legal right, privilege or benefit, but are wholly discretionary on the part of CBP. The methods of redress include:

(1) *Enrollment Center*

The applicant/participant may contest his or her denial, suspension or removal in writing to the enrollment center where that individual's interview was conducted, or if the applicant/participant has not been interviewed, he or she can write to the CBP Ombudsman as described in paragraph (3) below. The enrollment center addresses are available at [www.globalentry.gov](http://www.globalentry.gov). The letter must be received by CBP within 30 calendar days of the date provided as the date of suspension or removal. The individual should write on the envelope "Redress Request RE: Global Entry." The letter should address any facts or conduct listed in the notification from CBP as contributing to the denial, suspension or removal and why the applicant/participant believes the reason for the action is invalid. The applicant/participant



may also contact the enrollment center where the interview was conducted if it is believed that the denial, suspension or revocation was based upon inaccurate information. The individual should also include any reasonably available supporting documentation. After review, CBP will inform the individual of its redress decision. The decision of CBP in the matter is final. If the individual's request for redress is successful, the individual's eligibility to participate in Global Entry will resume immediately.

(2) *DHS Travelers Redress Inquiry Program (DHS TRIP)*

The applicant/participant may choose to initiate the redress process through DHS TRIP. An applicant/participant seeking redress may obtain the necessary forms and information to initiate the process on the DHS TRIP Web site at [http://www.dhs.gov/xtrulsec/programs/gc\\_1169676919316.shtm](http://www.dhs.gov/xtrulsec/programs/gc_1169676919316.shtm), or by contacting DHS Trip by mail at the address on this website.

(3) *Ombudsman*

If an applicant/participant believes the denial, suspension or revocation was based upon inaccurate information he or she may contact the CBP Trusted Traveler Ombudsman at the address on the website [www.globalentry.gov](http://www.globalentry.gov) and following the link for "Trusted Traveler Program Denials."

#### **D. Enrollment Period and Payment of Fee**

Congress has authorized the Secretary to charge a reasonable fee for participation in the program. See 8 U.S.C. 1365b(k)(3)(B). Pursuant to this authority, CBP is proposing a fee of \$100. This non-refundable fee would be paid to CBP at the time of application through the Federal Government's on-line payment system, Pay.gov. Pay.gov is a system by which parties can make secure electronic payments to many Federal Government agencies. If the applicant is enrolled, this fee would cover his or her participation in the Global Entry Program for a total of five years. CBP currently charges a fee of \$100 to apply for participation in the Global Entry pilot. Participants in the Global Entry pilot would not have to reapply or pay an additional fee to participate in the Global Entry program. Upon implementation of the Global Entry program, participants in the Global Entry pilot would be automatically enrolled in the Global Entry program for five years from the date of their enrollment in the pilot program.

CBP believes that the \$100 proposed fee is reasonable because, as explained in more detail below, it covers only the application processing costs associated with this program, including the submission of applicant fingerprints to the FBI, and provides a benefit to the ap-

plicant. Applicants who are enrolled as Global Entry participants will receive the benefit of expedited clearance through airports at which the Global Entry program is operational, for a period of five years, provided their participation is not terminated before the end of the five-year period.

(1) Alternatives to Charging a Fee

The only alternative to charging a fee to cover CBP's application processing costs associated with the Global Entry program would be for the United States Government, and specifically CBP, to pay for the costs out of its general appropriated funds, without reimbursement. However, IRTPA authorizes the Secretary to charge a reasonable fee and not charging a fee would be contrary to stated Congressional and Administration policy that a fee should be charged when a specific benefit is rendered. 31 U.S.C. 9701; Office of Management and Budget (OMB) Circular A-25, User Charges (Revised), section 6, 58 FR 38142 (July 15, 1993). Therefore, CBP has determined that charging a fee for the subject service is the only viable alternative.

(2) Amount of the Fee

CBP has determined that \$100 is the amount necessary to recover the costs incurred by CBP for the processing of the application, including the submission of the applicant's fingerprints to the FBI, and other administrative costs of the program.

However, the program costs covered by this fee do not include inspection costs incurred by CBP each time a Global Entry participant enters the United States. Such costs are covered by the various inspection user fees already charged by CBP. *See* 8 U.S.C. 1356(d); 19 U.S.C. 58c(a)(5).

The application processing costs covered by the fee are provided as follows:

<b>Unit Cost of Processing An Application for Global Entry (5 Year Cycle)</b>	
<b>Unit Cost FBI Fingerprints</b>	<b>\$17.25</b>
<b>Unit Cost of Vetting An Applicant</b>	<b>\$38.04</b>
<b>Unit Cost of Establishing, Operating, and Maintaining An Enrollment Center</b>	<b>\$32.53</b>
<b>Unit Cost of GES Servers, Storage, Enhancements and Upgrades</b>	<b>\$11.14</b>

<b>Grand Total Unit Cost of Processing A Global Entry Application</b>	<b>\$99.96</b>
<b>Notes for Table</b>	
1. Position costs for application processing is calculated by multiplying .5 by the hourly rate of a U.S. Customs and Border Protection Officer (CBPO), (Total position cost = \$144,000, including training, equipment and other costs). A 3.16% pay raise and benefits weighted average rate was applied.	
2. A 3% inflation rate adjustment was applied for all costs.	
3. GES is the acronym for CBP's Global Enrollment System. Application for the Global Entry program will occur in the Global On-Line Enrollment System (GOES), which is part of GES. The GES is housed in the CBP Secure network.	
<b>Other Assumptions</b>	
CBPOs working at the enrollment centers will perform other functions when no application processing-related work exists.	
Unit cost is based on regular hours. Overtime is excluded.	
Total enrollees = 250,000 (This total would be reached in a five-year cycle).	

As the above table indicates, the total calculated costs to CBP, per applicant, are \$99.96. To simplify accounting tasks for both applicants and CBP, and to allow for the possibility of small variations in the estimated costs compared to the actual costs, CBP is setting the cost per applicant at one hundred dollars. This fee will be non-refundable.

Based on the above considerations, CBP is proposing to amend its regulations at 8 CFR 103.7 to add language prescribing a fee of one hundred dollars (\$100) to apply for participation in the Global Entry program.

### **E. Participating Airports**

The Global Entry program, like the existing Global Entry pilot program, would allow participants expedited entry into the United States at any of its airport locations by using automated kiosks located in the Federal Inspection Services (FIS) area of each participating airport. Although it is anticipated that the Global Entry program would eventually operate at most major international airport

locations, the program initially would be limited to those airports that are participating in the Global Entry pilot. The airports chosen for Global Entry are those which typically experience the largest numbers of travelers arriving there from outside of the United States. The Global Entry pilot is currently operational at the following seven airports : John F. Kennedy International Airport, Jamaica, New York, (JFK); George Bush Intercontinental Airport, Houston, Texas (IAH); Washington Dulles International Airport, Sterling, Virginia (IAD); Los Angeles International Airport, Los Angeles, California (LAX); Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia (ATL); Chicago O'Hare International Airport, Chicago, Illinois (ORD); and Miami International Airport, Miami, Florida (MIA).

Expansions to new airports would be announced to the public in a **Federal Register** notice and on the website *www.globalentry.gov*, just as they are currently announced for the pilot. An updated list of all the airports at which Global Entry is operational will be available at *www.globalentry.gov*.

#### **F. Arrival Procedures for Global Entry Participants**

A Global Entry participant would not have to wait in the regular passport control primary inspection lines. After arriving at the FIS area, the participant would proceed directly to the Global Entry kiosk. A sticker affixed to the participant's passport at the time of acceptance in Global Entry would provide visual identification that the individual can be referred to the kiosk. These stickers will be made available to participants at the enrollment center located in each participating airport. Global Entry would use fingerprint biometrics technology to verify a participant's identity and confirm his or her status as a participant in the program. In addition to fingerprint biometrics, CBP may offer the use of additional biometric technologies as options for identity verification at Global Entry kiosks to participants when the technologies become available to the Global Entry program.

After arriving at the kiosk, the participant would activate the system by inserting either a machine-readable passport or a machine-readable Lawful Permanent Resident card into the document reader. On-screen instructions would guide the participant to provide fingerprints electronically. These fingerprints would be compared with the fingerprint biometrics on file to validate identity and confirm that the individual is a participant of the program. The participant would also be prompted to look at the camera for a digital photograph and to respond to several questions by use of a touch-screen. CBP Officers stationed in booths next to the kiosk lanes would oversee activities at

the kiosk. If a problem occurs with a participant's validation, the participant will be directed to proceed to the front of the regular inspection lines.

When the procedures at the kiosk have been successfully completed, the participant would be issued a transaction receipt. This receipt would be provided to the CBP Officer along with the passport or Lawful Permanent Resident card at the exit control area for examination.

When using the Global Entry kiosks, Global Entry participants would be required to declare all articles being brought into the United States pursuant to 19 CFR 148.11.

If Global Entry participants declare any of the following, the kiosk would redirect the user to the nearest open passport control primary inspection station:

1. Commercial merchandise or commercial samples, or items that exceed the applicable personal exemption amount;
2. More than \$10,000 in currency or other monetary instruments (checks, money orders, etc.), or foreign equivalent in any form;  
or
3. Restricted/prohibited goods, such as agricultural products, firearms, mace, pepper spray, endangered animals, birds, narcotics, fireworks, Cuban goods, and plants.

Pursuant to 19 CFR Part 162, Global Entry participants may be subject to random examination or further examination and inspection at any time during the arrival process if determined necessary by CBP. Each successful use of Global Entry would constitute a separate and completed inspection and application for entry by the participants on the date that Global Entry is used.

All aliens seeking admission to the United States generally must be inspected by the examining officer in order to determine admissibility and shall present required documentation. *See* 8 U.S.C. 1225(a)(3), (b), 1182(a)(7); 8 CFR part 235. Additionally, pursuant to 8 U.S.C. 1185(b) and 8 CFR part 235, a person claiming U.S. citizenship must establish that fact to the examining officer's satisfaction and must present a U.S. passport or other acceptable documentation. The advance inspection and identification, when the enrolled participant satisfies the conditions and requirements set fourth in this section, satisfies the reporting requirements of 8 CFR 235.1(a). Each successful use of Global Entry constitutes a separate and completed inspection and application for entry by the program participants on the date Global Entry is used.

### **G. Electronic System for Travel Authorization (ESTA)**

The Visa Waiver Program (VWP) enables citizens and nationals from participating countries to travel to and enter the United States for business or pleasure for up to ninety days without obtaining a visa. Nonimmigrant aliens who wish to travel to the United States under the VWP are required to obtain a travel authorization via ESTA (Electronic System for Travel Authorization) in advance of departure to the United States. To obtain travel authorization, applicants must submit biographical data and answer eligibility questions. ESTA is accessible online at <https://esta.cbp.dhs.gov> for citizens and eligible nationals of VWP countries.

The Global Entry regulatory program is separate from VWP. Therefore, when CBP expands the program to include persons other than U.S. citizens, U.S. nationals, and U.S. lawful permanent residents, any Global Entry participants who are nonimmigrant aliens from a participating VWP country (*e.g.*, the Netherlands) and who wish to travel to the United States under the VWP would be required to receive a travel authorization via ESTA in advance of departure to the United States. Global Entry applicants who have not already received a travel authorization via ESTA will be able to do so as part of the Global Entry application and enrollment process. During the Global Entry enrollment and interview phase the applicant will be asked whether he or she is in possession of an ESTA number. If not in possession of an ESTA number, the applicant will be asked questions from which it can be determined whether the applicant is VWP-eligible, and a determination regarding ESTA authorization will be made.

#### **IV. STATUTORY AND REGULATORY REQUIREMENTS**

##### **A. Executive Order 12866**

This rule is not an “economically significant” rulemaking action under Executive Order 12866 because it will not result in the expenditure of more than \$100 million in any one year. This rule, however, is a significant regulatory action under Executive Order 12866; therefore, this proposed rule has been reviewed by the Office of Management and Budget.

Global Entry is a voluntary program that provides a benefit to the public by speeding the CBP processing time for participating travelers. Travelers who are otherwise admissible to the United States will be able to enter or exit the country regardless of whether they participate in Global Entry. This evaluation explores the potential costs and benefits of this voluntary trusted traveler program.

As noted above, CBP estimates that over a five year period, 250,000 enrollees will be processed, an annual average of 50,000 individuals. CBP will charge a fee of \$100 per applicant and estimates that each application will require 40 minutes (0.67 hours) of the enrollee's time to search existing data resources, gather the data needed, and complete and review the application form. Additionally, an enrollee will experience an "opportunity cost of time" to travel to an Enrollment Center upon acceptance of the initial application. We assume that one hour will be required for this time spent at the Enrollment Center and travel to and from the Center, though we note that during the pilot program, many applicants coordinated their trip to an Enrollment Center with their travel at the airport. We have used one hour of travel time so as not to underestimate potential opportunity costs for enrolling in the program. We use a value of \$28.60 for the opportunity cost for this time, which is taken from the Federal Aviation Administration's *Economic Values for FAA Investment and Regulatory Decisions, A Guide*. (July 3, 2007. See Table ES-1). This value is the weighted average for U.S. business and leisure travelers. For this evaluation, we assume that all enrollees will be U.S. citizens, U.S. nationals, or Lawful Permanent Residents.

Using these values, we estimate that the cost per enrollee is \$147.76 (\$28.60 per hour  $\times$  1.67 hours + \$100 enrollment fee). If there are 50,000 enrollees annually, this is a cost of \$7,388,100 per year. Over five years, the total costs will be approximately \$32 million at a seven percent discount rate (\$35 million at a three percent discount rate).

As noted previously, Global Entry will allow for expedited processing for those travelers enrolled in the program. DHS currently estimates that, based on its statistical analysis from two-months worth of data, those enrolling in Global Entry will save seven minutes on average. Monetizing those benefits is difficult; entry processing times vary widely among airports and times of day, and the number of trips that the Global Entry benefit will be used for any given individual is unknown. During some peak periods at some international airports, entry processing times can be an hour or more. Avoiding such lines by using Global Entry kiosks and avoiding all other entry processing would likely represent a clear savings in time for a typical participant.

Because participation in the Global Entry program is voluntary, the perceived benefits of reduced wait time would have to equal or exceed the cost of the program over five years. Potential enrollees will determine whether or not it is worthwhile to enroll in the program based on their individual preferences, which will be influenced by the



number of trips they make and the typical wait times they experience when entering the United States. The most likely participants in the program are those that plan to make multiple trips over five years, typically experience long waits at the airports they use, or are averse to the perceived hassle or inconvenience of standing in line for entry processing. Using the estimates presented above, if the annualized cost of the program is \$36 (total cost of \$147.76 amortized over five years at a seven percent discount rate) and the average time saved per trip is seven minutes (monetized savings of \$3.34 per trip), then an average traveler would need to make approximately eleven trips annually through participating airports to consider enrollment in the Global Entry program worth the cost and estimated burden.

Additionally, those travelers not enrolled in Global Entry could experience a small benefit in time-savings as well. If Global Entry participants are not standing in the regular entry processing lines, non-enrollees could experience reduced wait times.

Finally, the costs for CBP to administer this program are not included here because they will be recovered through the \$100 enrollment fee. CBP could experience benefits by speeding entry processing and avoiding time needed to process proven low-risk travelers.

### **B. Regulatory Flexibility Act**

This section examines the impact of the proposed rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 604), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

CBP has considered the impact of this proposed rule on small entities. The individuals to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6). CBP acknowledges that there are certain “sole proprietors” who would be considered small businesses and could be affected if they chose to participate in Global Entry. However, Global Entry is voluntary and the fee to enroll in Global Entry is one hundred dollars plus the opportunity cost of the individual applying. CBP believes such an expense would not rise to the level of being a “significant economic impact,” particularly as the expense need not be incurred unless the enrollee chooses to incur it. However, we welcome comments on that assumption. The most helpful comments are those that can give us specific information or ex-



amples of a *direct impact* on small entities. If we do not receive comments that demonstrate that the rule causes small entities to incur direct costs, we may, during the process of drafting the final rule, certify that this action does not have a significant economic impact on a substantial number of small entities.

### **C. Unfunded Mandates Reform Act of 1995**

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### **D. Executive Order 13132**

The proposed rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

### **E. Paperwork Reduction Act**

Information is being collected from voluntary applicants in order to assess whether the individuals meet the eligibility requirements and are otherwise deemed to be low-risk travelers and therefore may appropriately participate in the voluntary Global Entry program. This information will be collected through the Global On-Line Enrollment System (GOES). This collection of information is required and authorized by 8 U.S.C. 1365b and 8 CFR Part 235 for use in international trusted traveler programs. Additionally, the information being collected is necessary to satisfy the requirements regarding examination of aliens applying for admission to the United States pursuant to 8 U.S.C. 1225(a)(3), 8 U.S.C. 1225(b) and 8 U.S.C. 1182(a)(7), and U.S. Citizens entering the United States pursuant to 8 U.S.C. 1185(b).

An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. OMB has already approved the collection of the Global Entry application information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under OMB Control Number 1651-0121. A revision request will

be submitted to OMB to reflect the additional respondents that will be submitting the requisite information through GOES.

The burden estimates for collecting and entering information for the GOES on-line application for Global Entry, interview time, and travel time are presented below:

Estimated Number of Respondents: 50,000

Estimated Number of Responses per Respondent: 1

Estimated Number of Total Annual Responses: 50,000

Estimated Time Per Response: 40 minutes

Estimate Total Annual Burden Hours: 33,500

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Border Security Regulations Branch, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC 20001-4501.

Comments are invited on:

(a) whether the collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of the information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected;

(d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) estimates of capital or startup costs and costs of operations, maintenance, and purchases of services to provide information.

## **F. Privacy**

The on-line application for Global Entry collects information similar to that collected on applications for CBP's other trusted traveler programs (*e.g.*, NEXUS, SENTRI and FAST). The information collected through the on-line application is deposited into the Global Enrollment System (GES), as the system of record for CBP trusted traveler programs. The personal information provided by the applicants, including the fingerprint biometrics taken at the time of the personal interview, may be shared with other government and law enforcement agencies in accordance with applicable laws and regu-

lations. The personal information that is collected through GOES is maintained in a Privacy Act system of records (GES) that was last published in the **Federal Register** (71 FR 20708) on April 21, 2006. CBP has also published two Privacy Impact Assessments that cover this program on the DHS Privacy Office Website, *www.dhs.gov/privacy* [GES, GOES]. In addition, an update addressing on-line functionality of the enrollment process was posted to the DHS Privacy Office website on November 1, 2006. Applicant biometrics (fingerprints, photographs) are stored in the DHS Automated Biometric Identification System (IDENT). The IDENT Privacy Act System of Records notice was last published on June 5, 2007.

### **G. Signing Authority**

The signing authority for this document falls under 8 U.S.C. 1365b(k) pertaining to the authority of the Secretary of Homeland Security to develop and implement a trusted traveler program to expedite the travel of previously screened and known travelers across the borders of the United States.

### **List of Subjects**

#### **8 CFR PART 103**

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

#### **8 CFR PART 235**

Administrative Practice and Procedure, Aliens, Immigration, Reporting and Recordkeeping Requirements.

### **PROPOSED AMENDMENTS TO CBP REGULATIONS**

For the reasons set forth in this document, it is proposed to amend 8 CFR Parts 103 and 235 as follows:

#### **PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS**

1. The authority citation for part 103 would continue to read as follows:

**AUTHORITY:** 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. In §103.7, paragraph (b)(1) is amended by adding at the end of the list of forms (after the entry for “Form N–644”) the following: “Global Entry. For filing an application for Global Entry— \$100.”

### **PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION**

3. The authority citation for part 235 would continue to read as follows:

**AUTHORITY:** 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, published January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1365b, 1379, 1731–32; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458 as amended by section 546 of Pub L. 109–295 and by section 723 of Pub. L. 110–53).

4. A new section 235.7a is added to read as follows:

#### **§235.7a Global Entry Program**

(a) *Program Description.* The Global Entry program is a voluntary international trusted traveler program consisting of an integrated passenger processing system that will expedite the movement of low-risk air travelers into the United States by providing an expedited inspection process for pre-approved, pre-screened travelers. In order to participate, a person must meet the eligibility requirements specified in this section, apply in advance, undergo pre-screening by CBP, and be accepted into the program. The Global Entry program allows participants expedited entry into the United States at selected airports identified by CBP at [www.globalentry.gov](http://www.globalentry.gov). Participants will be processed through the use of CBP-approved technology that will include the use of biometrics to validate identity and to perform enforcement queries.

(b) *Definitions.* For purposes of this section:

*Nonimmigrant Alien* means any person not a citizen or U.S. national who has been granted the right to reside temporarily in the United States. The individuals making up this category are described at section 101(a)(15) of the Act.

*U.S. Citizen* means a person who acquired U.S. citizenship at birth or upon naturalization as provided by law and who has not subsequently lost such citizenship.

*U.S. Lawful Permanent Resident* means, in accordance with section 101(a)(20) of the Act, a person who has been lawfully accorded the privilege of residing permanently in the United States as an immi-

grant in accordance with the immigration laws and whose status has not changed. Such status terminates upon entry of a final administrative order of exclusion, deportation, or removal.

*U.S. National* means a citizen of the United States or a non-citizen who owes permanent allegiance to the United States as provided in section 101(a)(22) of the Act.

(c) *Program Eligibility Criteria.*

(1) *Eligible Individuals.* The following individuals, who hold a valid, machine-readable passport or a valid, machine-readable Lawful Permanent Resident Card, may apply to participate in Global Entry:

(i) U.S. citizens, U.S. nationals, and U.S. lawful permanent residents absent any of the disqualifying factors described in paragraph (c)(2) of this section.

(ii) Certain nonimmigrant aliens from countries that have entered into reciprocal arrangements with CBP concerning international trusted traveler programs absent any of the disqualifying factors described in paragraph (c)(2) of this section, and subject to the conditions set forth in the particular arrangement. Individuals from a country that has entered into such an arrangement with CBP may be eligible to apply for participation in Global Entry only after announcement by CBP by publication of a notice in the **Federal Register**. The notice will include the country, the scope of eligibility of nonimmigrant aliens from that country (whether citizens of the foreign country only or also non-citizens) and other conditions that may apply based on the terms of the arrangement. CBP may change or terminate these arrangements without prior notice to the public, but will announce such actions as soon as practicable by publication of a notice in the **Federal Register**.

(iii) Children 14 years of age and older, but under the age of 18 who meet the eligibility criteria of paragraph (c)(1)(i) or (ii) of this section, must have the consent of a parent or legal guardian to participate in Global Entry. Children under the age of 14 are not eligible to participate in the program.

(2) *Disqualifying Factors.* An individual is ineligible to participate in Global Entry if CBP determines that the individual presents a potential risk for terrorism, criminality or smuggling, or is otherwise not a low-risk traveler. This risk determination will be based in part upon an applicant's ability to demonstrate past compliance with laws, regulations, and policies. An applicant may not qualify for participation if any of the following risk factors are applicable:

(i) The applicant provides false or incomplete information on the application;

(ii) The applicant has been arrested for, or convicted of any criminal offense or has pending criminal charges or outstanding warrants;

(iii) The applicant has been found in violation of any Customs, Immigration, or Agriculture regulations, procedures, or laws in any country;

(iv) The applicant is the subject of an investigation by any Federal, State, or local law enforcement agency;

(v) The applicant is inadmissible to the United States under the immigration laws, including applicants with approved waivers of inadmissibility or parole documentation;

(vi) The applicant cannot satisfy CBP of their low-risk status or meet other program requirements; or

(vii) The applicant has been identified on a Government watch list.

(d) *Participating Airports.* The Global Entry program allows participants expedited entry into the United States at the locations identified at [www.cbp.gov](http://www.cbp.gov). Expansions of the Global Entry program to new airports will be announced by publication in the **Federal Register** and at [www.cbp.gov](http://www.cbp.gov).

(e) *Program Application.*

(1) Each applicant must complete and submit the program application electronically through the Global On-Line Enrollment System (GOES). The application and application instructions for the Global Entry program are available at [www.globalentry.gov](http://www.globalentry.gov).

(2) Each applicant must pay a non-refundable fee in the amount set forth at 8 CFR 103.7(b)(1) for “Global Entry” at the time of application. The fee covers participation for a total of 5 years (provided participation is not suspended or terminated by CBP prior to the end of the 5 years, which is the length of the membership period). The fee is to be paid to CBP at the time of application through the Federal Government’s on-line payment system, Pay.gov.

(3) Each applicant may apply to renew participation up to 90 days prior to the close of the original membership period but before the expiration date to prevent a lapse in participation.

(4) Each applicant may check the status of his or her application through his or her personal GOES account.

(f) *Interview and Enrollment.*

(1) After submitting the application, the applicant will be notified by CBP to schedule an in-person interview at a Global Entry Enrollment Center. Applicants may schedule the interview by using GOES and may select an Enrollment Center from the list presented.

(2) Each applicant must bring to the interview with CBP the original of the identification document specified in his or her application.

(3) CBP will collect a full set of ten fingerprints to conduct biometric based background checks.

(4) Each applicant must allow CBP to take a digital photograph of the applicant.

(5) An applicant may be required to provide additional biometric information that CBP may require to participate in the program.

(6) After the interview, each applicant will be notified by CBP of his or her acceptance or denial in Global Entry by a message posted to his or her personal GOES account.

(g) *Valid Machine-Readable Passport or Valid Lawful Permanent Resident Card.* Each participant must possess a valid, machine-readable passport or valid, machine-readable U.S. Lawful Permanent Resident Card (Form I-551). Machine-readable passports must include two optical-character, typeface lines at the bottom of the biographical page of the passport that help to quickly read the biographical information on the passport. Machine-readable U.S. Lawful Permanent Resident Cards must also include two optical-character, typeface lines that help to read the information on the card.

(h) *Arrival Procedures.* In order to utilize the Global Entry program upon entry in the United States, each participant must:

(1) Use the Global Entry kiosk and follow the on-screen instructions;

(2) Declare all articles being brought into the United States pursuant to 19 CFR 148.11. A Global Entry participant will be redirected to the nearest open passport control primary inspection station, if the participant declares any of the following:

(i) Commercial merchandise or commercial samples, or items that exceed the applicable personal exemption amount;

(ii) More than \$10,000 in currency or other monetary instruments (checks, money orders, etc.), or foreign equivalent in any form; or

(iii) Restricted/prohibited goods, such as agricultural products, firearms, mace, pepper spray, endangered animals, birds, narcotics, fireworks, Cuban goods, and plants.

(i) *Application for Entry, Examination and Inspection.* Each successful use of Global Entry constitutes a separate and completed inspection and application for entry by the participants on the date that Global Entry is used. Pursuant to the enforcement provisions of 19 CFR Part 162, Global Entry participants may be subject to further examination and inspection at any time during the arrival process if determined necessary by CBP.

(j) *Pilot Participant Enrollment.* Upon implementation of the Global Entry Program, participants in the Global Entry pilot will be auto-



matically enrolled in the Global Entry Program for 5 years from the date of enrollment in the pilot program.

(k) *Denial, Removal and Suspension.*

(1) If an applicant is denied participation in Global Entry, a notice will be sent to the applicant's GOES account advising him or her of the denial, with instructions on how to proceed if the applicant wishes to seek additional information.

(2) A Global Entry participant may be suspended or removed from the program for any of the following reasons:

(i) CBP, at its sole discretion, determines that the participant has engaged in any misconduct under the Global Entry program;

(ii) CBP, at its sole discretion, determines that the participant provided false information during the application and/or application process;

(iii) CBP, at its sole discretion, determines that the participant failed to follow the terms, conditions and requirements of the program;

(iv) CBP, at its sole discretion, determines that the participant has been arrested or convicted of a crime or otherwise no longer meets the program eligibility criteria; or

(v) CBP, at its sole discretion, determines that such action is otherwise necessary.

(3) CBP will notify the participant of his or her suspension or removal in writing. Such suspension or removal is effective immediately.

(l) *Redress.*

An individual whose application is denied or whose participation is suspended or terminated has three possible methods for redress. These processes do not create or confer any legal right, privilege or benefit, but are wholly discretionary on the part of CBP. The methods of redress include:

(1) *Enrollment Center.*

The applicant/participant may contest his or her denial, suspension or removal in writing to the enrollment center where that individual's interview was conducted or if the applicant/participant has not been interviewed, he or she can write to the CBP Ombudsman in accordance with paragraph (1)(3) of this section. The enrollment center addresses are available at [www.globalentry.gov](http://www.globalentry.gov). The letter must be received by CBP within 30 calendar days of the date provided as the date of suspension or removal. The individual should write on the envelope "Redress Request RE: Global Entry." The letter should address any facts or conduct listed in the notification from CBP as contributing to the denial, suspension or removal and why the



applicant/participant believes the reason for the action is invalid. The applicant/participant may also contact the enrollment center where the interview was conducted if it is believed that the denial, suspension or revocation was based upon inaccurate information. The individual should also include any reasonably available supporting documentation. After review, CBP will inform the individual of its redress decision. The decision of CBP in the matter is final. If the individual's request for redress is successful, the individual's eligibility to participate in Global Entry will resume immediately.

(2) *DHS Travelers Redress Inquiry Program (DHS TRIP).*

The applicant/participant may choose to initiate the redress process through DHS TRIP. An applicant/participant seeking redress may obtain the necessary forms and information to initiate the process on the DHS TRIP Web site at [http://www.dhs.gov/xtrvlsec/programs/gc\\_1169676919316.shtm](http://www.dhs.gov/xtrvlsec/programs/gc_1169676919316.shtm), or by contacting DHS Trip by mail at the address on this website.

(3) *Ombudsman.*

If an applicant/participant believes the denial, suspension or revocation was based upon inaccurate information he or she may contact the CBP Trusted Traveler Ombudsman at the address on the website [www.globalentry.gov](http://www.globalentry.gov) and following the link for "Trusted Traveler Program Denials."

Dated: November 13, 2009

JANET NAPOLITANO,  
*Secretary.*

[Published in the Federal Register, November 19, 2009 (74 FR 59932)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:  
Visa Waiver Program Carrier Agreement (Form I-775)**

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

**ACTION:** 60-Day notice and request for comments; Revision of an existing information collection: 1651-0110

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on the Visa Waiver Program Carrier Agreement (Form I-775). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before January 19, 2010, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

**Title:** Visa Waiver Program Carrier Agreement

**OMB Number:** 1651-0110

**Form Number:** I-775

**Abstract:** Pursuant to section 217 of the Immigration and Nationality Act (INA), paragraphs (a) and (e) and 8 CFR 217.6, all carriers must enter into an agreement with CBP in order to transport passengers to the United States under the Visa Waiver Program (VWP). Form I-775 functions as the agreement between CBP and carriers, serving to hold the carriers liable for transportation costs and to ensure the completion of required forms. CBP is proposing to adjust the burden hours for this

collection of information because the estimated response time has decreased from 2 hours to 30 minutes.

CBP is also proposing to add new provisions to this Agreement including: (1) a prohibition on transporting any alien who is not authorized by the Electronic System for Travel Authorization (ESTA) to travel to the United States under the VWP; (2) a requirement that carriers applying to become signatory to a visa waiver contract with CBP have must have paid all their User Fee obligations and any previous penalties under the INA or U.S. Customs laws; (3) a requirement that carriers applying to become signatory to the VWP with CBP must post a bond sufficient to cover the total penalty amounts for violations that were imposed against the carrier during the previous fiscal year; (4) a provision that if the carrier ceases operations in the United States, then the agreement becomes null and void; and, (5) a provision that the Agreement must be renewed every seven years. In addition, CBP proposes to add a statement to Form I-775 regarding the submission of electronic arrival and departure manifests by carriers, which is an existing requirement provided under 8 CFR 217.7(a) and (b).

**Current Actions:** This submission is being made to extend the expiration date with a revision to the burden hours.

**Type of Review:** Extension (with change)

**Affected Public:** Businesses

**Estimated Number of Respondents:** 400

**Estimated Time per Respondent:** 30 minutes

**Estimated Total Annual Burden Hours:** 200

Dated: November 17, 2009

TRACEY DENNING  
*Agency Clearance Officer*  
*U.S. Customs and Border Protection*

[Published in the Federal Register, November 20, 2009 (74 FR 60281)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:**  
**Application for Foreign Trade Zone and/or Status**  
**Designation, and Application for Foreign Trade Zone**  
**Activity Permit**

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

**ACTION:** 30-Day notice and request for comments; Revision of an existing information collection: 1651-0029.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Foreign Trade Zone Admission and/or Status Designation (Form 214), and Application for Foreign Trade Zone Activity Permit (Form 216). This is a proposed extension and revision of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 47014) on September 14, 2009, allowing for a 60-day comment period. One comment was received. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before December 23, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-5806.

**SUPPLEMENTARY INFORMATION:** U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and

- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

**Title:** Application for Foreign Trade Zone Admission and/or Status Designation, and Application for Foreign Trade Zone Activity Permit

**OMB Number:** 1651-0029

**Form Number:** CBP Forms 214, 214A, 214B, 214C, and 216

**Abstract:** CBP Forms 214, Application for Foreign-Trade Zone Admission and/or Status Designation; 214A (Statistical Copy); 214B (Continuation Sheet); and 214C (Continuation Sheet/Statistical Copy), are used by companies that bring merchandise into a foreign trade zone to register the admission of such merchandise into zones, and to apply for the appropriate zone status. Form CBP-216, Foreign-Trade Zone Activity Permit, is used by companies to request approval to manipulate, manufacture, exhibit or destroy merchandise in a foreign trade zone.

**Current Actions:** Current Actions: CBP is proposing to decrease the burden hours associated with this collection of information as a result of better estimates of the total number of annual responses for Form 214.

**Type of Review:** Extension (with change)

**Affected Public:** Businesses

***Form 214, Application for Foreign-Trade Zone Admission and/or Status Designation***

**Estimated Number of Respondents:** 6,749

**Estimated Number of Annual Responses per Respondent:** 25

**Estimated Total Annual Responses:** 168,725

**Estimated Time per Response:** 15 minutes

**Estimated Total Annual Burden Hours:** 42,182

***Form 216, Application for Foreign-Trade Zone Activity Permit***

**Estimated Number of Respondents:** 2,500

**Estimated Number of Annual Responses per Respondent:** 10

**Estimated Total Annual Responses:** 25,000

**Estimated Time per Response:** 10 minutes

**Estimated Total Annual Burden Hours: 4,167**

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

Dated: November 17, 2009

TRACEY DENNING  
*Agency Clearance Officer*  
*U.S. Customs and Border Protection*

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**AGENCY INFORMATION COLLECTION ACTIVITIES:  
Declaration for Free Entry of Unaccompanied Articles**

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

**ACTION:** 30-Day notice and request for comments; Revision of an existing information collection: 1651-0014

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Declaration for Free Entry of Unaccompanied Articles (Form 3299). This is a proposed extension and revision of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 48092) on September 21, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before December 23, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland

Security, and sent via electronic mail to oira\_submission@omb.eop.gov or faxed to (202) 395-5806.

**SUPPLEMENTARY INFORMATION:** U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

**Title:** Declaration for Free Entry of Unaccompanied Articles

**OMB Number:** 1651-0014

**Form Number:** Form 3299

**Abstract:** The Declaration for Free Entry of Unaccompanied Articles, Form 3299, is prepared by individuals or a broker acting as an agent for the individual, or in some cases, the CBP officer. This Form allows individuals to claim duty-free entry of personal and household effects that do not accompany the individual upon his or her arrival in the United States.

**Current Actions:** CBP is proposing to increase the burden hours associated with this collection of information as a result of increasing the estimated time per response from 10 minutes to 45 minutes for Form 3299.

**Type of Review:** Extension (with change)

**Affected Public:** Individuals, Businesses

**Estimated Number of Respondents:** 150,000

**Estimated Number of Annual Responses per Respondent:** 1

**Estimated Total Annual Responses:** 150,000



**Estimated Time per Response:** 45 minutes

**Estimated Total Annual Burden Hours:** 112,500

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

Dated: November 18, 2009

TRACEY DENNING  
*Agency Clearance Officer*  
U.S. Customs and Border Protection

[Published in the Federal Register, November 23, 2009 (74 FR 61163)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:  
Application for Allowance in Duties**

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

**ACTION:** 30-Day notice and request for comments; Revision of an existing information collection: 1651-0007

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Allowance in Duties. This is a proposed extension and revision of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 45872) on September 4, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before December 18, 2009.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland



Security, and sent via electronic mail to oira\_submission@omb.eop.gov or faxed to (202) 395-5806.

**SUPPLEMENTARY INFORMATION:**

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

**Title:** Application for Allowance in Duties

**OMB Number:** 1651-0007

**Form Number:** CBP Form 4315

**Abstract:** Form 4315 is required by CBP in instances of claims of damaged or defective imported merchandise on which an allowance in duty is made in the liquidation of an entry. The information is used to substantiate an importer's claim for such duty allowances.

**Current Actions:** There are no changes to the information collection. This submission is being made to extend the expiration date.

**Type of Review:** Extension (without change)

**Affected Public:** Businesses

**Estimated Number of Respondents:** 12,000

**Estimated Number of Annual Responses per Respondent:** 1

**Estimated Time per Respondent:** 8 minutes

**Estimated Total Annual Burden Hours:** 1,600

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

Dated: November 13, 2009

TRACEY DENNING  
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