U.S. Customs and Border Protection

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING A LIFT UNIT FOR A OVERHEAD PATIENT LIFT SYSTEM

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of a lift unit for an overhead patient lift system. Based upon the facts presented, CBP has concluded in the final determination that Sweden is the country of origin of the lift unit for purposes of U.S. government procurement.

DATES: The final determination was issued on May 28, 2010. A copy of the final determination is attached. Any party-at-interest, as defined in 19 C.F.R. § 177.22(d), may seek judicial review of this final determination until July 6, 2010.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Valuation and Special Programs Branch: (202) 325–0034.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on 2010, pursuant to subpart B of part 177, Customs Regulations (19 C.F.R. Part 177, subpart B), CBP issued a final determination concerning the country of origin of the lift unit which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H100055, was issued at the request of Hill-Rom Company, Inc., under procedures set forth at 19 C.F.R. Part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511–18). In the final determination, CBP concluded that, based upon the facts presented, the lift unit, assembled in Sweden from parts made in a non-TAA country and in Sweden, is substantially transformed in Sweden, such that Sweden is the country of origin of the finished article for purposes of U.S. government procurement.

Section 177.29, Customs Regulations (19 C.F.R. § 177.29), provides that notice of final determinations shall be published in the *Federal Register* within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 C.F.R. § 177.30), provides that any party-at-interest, as defined in 19 C.F.R. § 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the *Federal Register*.

Dated: May 28, 2010

HAROLD M. SINGER
Acting Executive Director Regulations
and Rulings
Office of International Trade

Attachment

HQ H100055

May 28, 2010
OT:RR:CTF:VS H100055 HkP
CATEGORY: Marking

KAREN A. MCGEE, ESQ.
LINDA M. WEINBERG, ESQ.
BARNES & THORNBURG LLP
750 17TH STREET, N.W., SUITE 900
WASHINGTON, DC 20006–4675

RE: Government Procurement; Country of Origin of a Lift Unit for an Overhead Patient Lift System; Substantial Transformation

DEAR MSES. MCGEE AND WEINBERG:

This is in response to your letter dated April 1, 2010, requesting a final determination on behalf of Hill-Rom Company, Inc., pursuant to subpart B of part 177 of the U.S. Customs and Border Protection Regulations (19 C.F.R. Part 177).

Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (TAA), as amended (19 U.S.C. 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of a lift unit for the Likorall Overhead Patient Lift System. We note that as a U.S. importer Hill-Rom is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

According to the information submitted, the Likorall Overhead Patient Lift System is a ceiling-mounted or free-standing patient lift system. The system is capable of lifting and transporting patients with limited mobility, weighing up to 550 pounds, from one part of a room to another or from one room to another. It can also be used for weighing and lifting in combination with a stretcher and for walking, standing, gait and balance training. The system is designed to lift and move patients safely while avoiding injuries to caregivers.

The merchandise at issue, the Likorall lift unit, is the motorized component of the Overhead Patient Lift System that extends and retracts the lift belt to which the patient-supporting sling is attached. The unit is manufactured in 3 basic models: (1) 242, which has a lifting capacity up to 440 pounds; (2) 243, which has a lifting capacity up to 507 pounds; and (3) 250, which has a lifting capacity up to 550 pounds. Models 243 and 250 come in an "ES" version, which is equipped with an infrared (IR) receiver for optional use with a remote control. Model 242 comes in the "S" version, which operates only with an attached hand control, as well as in the ES version. In addition, the 242 model has "R2R" versions, which feature a contact for a transfer motor so that the patient can be moved between two independent overhead rail systems in separate rooms, without the need for openings above doorways. The lift unit was designed, developed and engineered in Sweden. It incorporates approxi-

mately 100 components imported from non-TAA countries, except for the motor, which is imported from a TAA country and the IR remote control, which is made in Sweden.

At the manufacturing facility in Sweden, teams of employees assemble the lift unit in a four segment process and perform a 25-step final functional test under specified conditions. The segments are: manufacturing the electrical motor, drum and motor package in a 17-step process; mounting batteries and installing the exterior covers of the drum/motor assembly in a 5-step process; connecting a printed circuit board assembly (PCBA) to the motor, housed drum and batteries in a 3-step process; and, assembling the emergency strap, cover and end caps in a 14-step process. The PCBA is assembled and programmed prior to importation into Sweden but is designed in Sweden and its software program is written in Sweden. During the final functional test the electronics of the lift unit are checked and the maximum load is attached to check performance. At the conclusion of the test, the employee performing the test must complete a test protocol form, with the original being provided to the customer and a copy retained by the manufacturer in a test log that tracks units by serial number. The full manufacturing process takes approximately 45 minutes and the testing process takes approximately 15 minutes.

According to the information submitted, the employees manufacturing the lift unit have mechanical knowledge and skill related to their work gained from technical secondary education, product specific training, and certified final functional test training. The lift unit is also tested by an accredited testing institute and complies with the requirements of directives for medical-technical Class 1 products in the European Union (MDD 93/42/EEC).

Packaged for retail sale with the lift unit is a hand control, which is attached by cable to the overhead unit and is used to control power, lifting and lowering of the lift unit's belt, and the moving of the lift unit along the rails. The hand control plugs into a contact on one of the end plates and is physically and electrically connected to the overhead lift unit. It is made in a non-TAA country. An IR remote hand control (ES versions and 242 ESR2R), which can be used as an alternative to the attached hand control is also imported with the unit. The remote control and the PCB it incorporates are made in Sweden. A battery charger, into which the wired hand control is inserted to charge the batteries inside the lift unit, is also imported with the lift unit. The charger is made in the same non-TAA country as the hand control.

ISSUE:

What is the country of origin of the lift unit for purposes of U.S. government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. In C.S.D. 85–25, 19 Cust. Bull. 844 (1985), CBP held that for purposes of the Generalized System of Preferences ("GSP"), the assembly of a large number of fabricated components onto a printed circuit board in a process involving a considerable amount of time and skill resulted in a substantial transformation. In that case, in excess of 50 discrete fabricated components (such as resistors, capacitors, diodes, integrated circuits, sockets, and connectors) were assembled. Whether an operation is complex and meaningful depends on the nature of the operation, including the number of components assembled, number of different operations, time, skill level required, attention to detail, quality control, the value added to the article, and the overall employment generated by the manufacturing process.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

CBP has held in a number of cases that complex and meaningful assembly operations involving a large number of components result in a substantial transformation. In Headquarters Ruling Letter (HQ) H047362, dated March 26, 2009, CBP found that 61 components manufactured in China and assembled into ground fault circuit interrupters (GCFIs) in Mexico in a two-phase process by skilled workers using sophisticated equipment were substantially transformed in Mexico. In particular, we took into consideration that the first phase involved the assembly of a PCB in a 42-step technically complex process that took 12 minutes and that the completed PCB had all the major components necessary for the GCFI to fulfill its function. We also took into consideration that in the second phase the PCB would be assembled with

29 other components to form the GCFIs in a 43-step process taking approximately 10 minutes, after which the components would have lost their individual identities and become an integral part of the interrupters with a new name, character and use.

By contrast, assembly operations that are minimal or simple will generally not result in a substantial transformation. For example, in HQ 734050, dated June 17, 1991, CBP held that Japanese-origin components were not substantially transformed in China when assembled in that country to form finished printers. The printers consisted of five main components identified as the "head", "mechanism", "circuit", "power source", and "outer case." The circuit, power source and outer case units were entirely assembled or molded in Japan. The head and mechanical units were made in Japan but exported to China in an unassembled state. All five units were exported to China where the head and mechanical units were assembled with screws and screwdrivers. Thereafter, the head, mechanism, circuit, and power source units were mounted onto the outer case with screws and screwdrivers. In holding that the country of origin of the assembled printers was Japan, CBP recognized that the vast majority of the printer's parts were of Japanese origin and that the operations performed in China were relatively simple assembly operations.

In this case, approximately 100 components manufactured in non-TAA countries will be assembled in Sweden in four phases requiring specialized training. The manufacturing process has 39 steps and takes 45 minutes. After manufacturing, the unit is subjected to a 25-step testing process, which takes approximately 15 minutes. We find these manufacturing and testing operations in Sweden to be sufficiently complex and meaningful, in that individual components' names, uses and identities are lost and are transformed in Sweden into the lift unit. Therefore, the country of origin of the lift unit is Sweden.

You argue that of the lift unit, detachable hand control and battery charger being imported, the lift unit provides the essential character of the Likorall System. "The term 'character' is defined as 'one of the essentials of structure, form, materials, or function that together make up and usually distinguish the individual.'" *Uniden America Corporation v. United States*, 120 F. Supp. 2d. 1091, 1096 (citations omitted) (Ct. Int'l Trade 2000), *citing National Hand Tool Corp. v. United States*, 16 Ct. Int'l Trade 308, 311 (1992). In *Uniden* (concerning whether the assembly of cordless telephones and the installation of their detachable A/C (alternating current) adapters constituted instances of substantial transformation), the Court of International Trade applied the "essence test" and found that "[t]he essence of the telephone is housed in the base and the handset. Consumers do not buy the article because of the specific function of the A/C adapter, but rather because of what the completed handset and base provide: communication over telephone wires." *Id*. at 1096.

Further, you argue that the detachable hand control and battery charger are substantially transformed with the lift unit, in that they have a new character, use and name because they are attached to and form parts of the Likorall System. In support of this view, you cite *Uniden*, *supra*, in which the court also found that the detachable A/C adapters underwent a substantial transformation pursuant to the Generalized System of Preferences (GSP) when installed into the cordless telephones. The court noted that the substantial transformation test is to be applied to the product as a whole and not

to each of its detachable components. *See id*. Consequently, the court found that the A/C adapter, as part of the cordless phone, had a new character, use and name.

Based on the findings of the court in *Uniden*, we agree with your view that the detachable hand control and battery charger are substantially transformed when attached to the lift unit. Consequently, if they are imported from Sweden packaged together with the lift unit, their country of origin for purposes of U.S. government procurement will be Sweden.

HOLDING:

Based on the facts of this case, we find that the manufacturing and testing operations performed in Sweden substantially transforms the non-TAA country components. Therefore, the country of origin of the lift unit is Sweden for purposes of U.S. government procurement. Moreover, because the lift unit conveys the essential character of the Likorall System and the detachable hand control and the battery charger are parts of that system, they are substantially transformed when attached to the lift unit. The country of origin of the hand control and battery charger for purposes of U.S. government procurement, when imported from Sweden packaged with the lift unit, is Sweden.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days after publication in the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

HAROLD M. SINGER
Acting Executive Director
Regulations and Rulings
Office of International Trade

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING CERTAIN UPRIGHT AND RECUMBENT EXERCISE BIKES

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of certain upright and recumbent exercise bikes. Based upon the facts presented, CBP has concluded in the final

determination that the U.S. is the country of origin of the upright and recumbent exercise bikes for purposes of U.S. government procurement.

DATES: The final determination was issued on June 2, 2010. A copy of the final determination is attached. Any party-at-interest, as defined in 19 C.F.R. § 177.22(d), may seek judicial review of this final determination until July 9, 2010.

FOR FURTHER INFORMATION CONTACT: Elif Eroglu, Valuation and Special Programs Branch: (202) 325–0277.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on June 2, 2010, pursuant to subpart B of part 177, Customs Regulations (19 C.F.R. part 177, subpart B), CBP issued a final determination concerning the country of origin of the upright and recumbent exercise bikes which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H095239, was issued at the request of Brunswick Corporation under procedures set forth at 19 C.F.R. part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, the upright and recumbent exercise bikes, assembled in the U.S. from parts made in Mexico, China, Taiwan, Germany, Indonesia, Korea and the U.S., are substantially transformed in the U.S., such that the U.S. is the country of origin of the finished article for purposes of U.S. government procurement.

Section 177.29, Customs Regulations (19 C.F.R. § 177.29), provides that notice of final determinations shall be published in the Federal Register within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 C.F.R. § 177.30), provides that any party-at-interest, as defined in 19 C.F.R. § 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the Federal Register.

Dated: June 2, 2010

SANDRA L. BELL
Executive Director
Regulations and Rulings
Office of International Trade

Attachment

H095239

June 2, 2010
OT:RR:CTF:VS H095239 EE
CATEGORY: Marking

MS. SHANNON FURA
MR. JEREMY PAGE
PAGE•FURA, P.C.
1 SOUTH DEARBORN, SUITE 2100
CHICAGO, IL 60603

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, CBP Regulations; Country of Origin; Upright and Recumbent Exercise Bikes

DEAR MS. FURA AND MR. PAGE:

This is in response to your correspondence of September 1, 2009, resubmitted January 19, 2010, forwarded to us by the National Import Specialist ("NIS") Division, in which you requested a final determination on behalf of Brunswick Corporation ("Brunswick"), pursuant to subpart B of part 177, Customs and Border Protection ("CBP") Regulations (19 C.F.R. § 177.21 *et seq*.). Under the pertinent regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq*.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of certain upright and recumbent exercise bikes. We note that Brunswick is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

You describe the pertinent facts as follows. The items at issue consist of upright and recumbent exercise bikes produced in the U.S. from U.S. and foreign components by Brunswick's Life Fitness Division. You advise that both versions of the bikes are produced in the U.S. from a range of components and subassemblies. The majority of the components which comprise the bikes and the various subassemblies are stated to be of U.S. origin, with a lesser number sourced from Mexico, China, Taiwan, Germany, Indonesia, and Korea. All of the subassemblies are produced in the U.S. with the exception of the standard console assembly, which is produced in Indonesia. The various subassemblies are ultimately assembled into the final frame assembly to produce the final product. You state that the final assembly, which takes place in the U.S., is the most-complex step in the manufacturing process, requiring the incorporation of all of the other assemblies in a precise order to ensure the proper operation of the finished bike. The upright and recumbent exercise bikes will be tested and packaged in the U.S.

You submitted the list of components for the upright and recumbent exercise bikes and the origin of each component. You also submitted illustrations of the upright and recumbent exercise bikes and the step-by-step assembly process in the U.S.

A. Upright Exercise Bike

The upright exercise bike is produced from a number of distinct subassemblies which, with the exception of the console assembly, are assembled in the U.S. The primary subassemblies include the wheel assembly; the leg leveler and nut assembly; the seat assembly; the shieve/clutch bearing subassembly; the intermediate pulley/shaft; the drive pulley/crank hub; the idler-arm assembly; the alternator-pulley assembly; the rear resistor/bracket/cable assembly; the PCB/battery assembly; the reed switch/bracket subassembly; the shroud with decal assembly (left & right); and the handlebar assembly. The subassemblies are produced concurrently and then joined together during the final bike frame assembly process.

The assembly of the upright exercise bike is comprised of approximately 352 individual operational steps and more than 175 components. The production of the subassemblies takes approximately 90 minutes, which includes 30 minutes for the final assembly.

The upright exercise bike assembly process of the principal subassemblies involves:

1. Pressing flange bearing into wheel using arbor press; (wheel assembly)
2. Securing insert to wheel and bearing assembly with a screw; (wheel assembly)
3. Attaching decal seat post and seat with fasteners. Attaching seat post guide, spring support brackets, guide base with fasteners and pressing on seat post bumper; (seat assembly)
4. Pressing shieve and clutch bearing using mandrel; (shieve/clutch bearing subassembly)
5. Securing magnet and standoff assembly to crankshaft assembly with a screw; (intermediate pulley/shaft)
6. Securing crank hub to pulley with bolts; (drive pulley/crank hub)
7. Securing pulley to idler arm bracket with nut; (idler-arm assembly)
8. Securing pulley to alternator with nut and washer; (alternator-pulley assembly)
9. Assembling resistor, resistor brackets, resistor rod and covering the assembly with cardboard insulator; (rear resistor/bracket/cable assembly)
10. Installing wire harness to the resistor terminals with bolts and nuts; (rear resistor/bracket/cable assembly)
11. Seating stand-offs to PCB bracket with mallet; (PCB/battery assembly)
12. Securing PCB board to seating stand-offs with screws; (PCB/battery assembly)
13. Securing battery to PCB bracket with screws; (PCB/battery assembly)
14. Securing reed switch to reed switch bracket with screws; (reed switch/bracket subassembly)
15. Decal application on shrouds; (shroud with decal assembly)
16. Assembling of handlebar with electrode (heartbeat measurement)

cable assembly, poly sleeves, and caution labeling and attaching handlebar end caps with mallet. (handlebar assembly)

B. Recumbent Exercise Bike

Similar to the upright exercise bike, the recumbent exercise bike is produced from a number of distinct subassemblies which, with the exception of the console assembly, are assembled in the U.S. The subassemblies include but are not limited to the resistor-mounting bracket assembly; the power-PCB bracket assembly; the shroud with decal assembly (left & right); the leg leveler assembly; the wheel assembly; the intermediate-pulley assembly; the idler-bracket pulley assembly; the pulley-clutch assembly; the crank-pulley assembly; the alternator-pulley assembly; the seat assembly; the lock assembly; the roller take-up assembly; the seat extrusion assembly; the battery mounting-bracket assembly; the extrusion endcap assembly; and the reed-switch mounting bracket assembly. The individual subassemblies are produced concurrently and then joined together and sequenced for the final bike frame assembly process to produce the finished recumbent bike.

The assembly of the recumbent exercise bike is comprised of approximately 468 individual operational steps and more than 270 components. The production of the recumbent exercise bike takes approximately 105 minutes, which includes 14 minutes for the final assembly.

The recumbent exercise bike assembly process of the principal subassemblies involves:

1. Securing resistor assembly into bracket with nut; (resistor-mounting bracket assembly)
2. Seating stand-offs to PCB bracket with mallet; (power-PCB bracket assembly)
3. Securing the PCB board to stand-offs with screws bracket; (power-PCB bracket assembly)
4. Decal application on shrouds; (shroud with decal assembly)
5. Assembling nuts to leg levelers; (leg leveler assembly)
6. Securing insert to wheel and bearing assembly with screw; (wheel assembly)
7. Securing magnet and standoff assembly to crankshaft assembly with screw; (intermediate-pulley assembly)
8. Securing pulley to idler arm bracket with nut; (idler-bracket pulley assembly)
9. Pressing shieve and clutch bearing using mandrel; (pulley-clutch assembly)
10. Securing crank hub to pulley with bolts; (crank-pulley assembly)
11. Securing pulley to alternator with nut and washer; (alternator-pulley assembly)
12. Assembling handlebars with seat weldment, cable assembly, cable sleeve, bottom seat pad, roller take-up assemblies and rollers using screws, washers and nuts; (seat assembly)
13. Assembling locking block with housing-insert assembly, compression spring, retainer bearing into housing, with packed housing. Further

assembling and locking in place with groove pin (using arbor press), anti-rattle washer, knob/bracket assembly and handle using screws; (lock assembly)

14. Pressing take-up roller shaft through take-up roller plate with arbor press; (roller take-up assembly)
15. Assembling preload rollers to roller-place assemblies and assembling e-rings to assemblies; (roller take-up assembly)
16. Assembling seat extrusion with threaded rivets and cable clamp. Attaching locking rack with fasteners, stop bracket and bumper strip with screws; (seat extrusion assembly)
17. Securing battery to bracket with screws; (battery mounting-bracket assembly)
18. Assembling decal to endcap; (extrusion endcap assembly)
19. Securing reed switch to reed switch bracket with screws. (reed-switch mounting bracket assembly)

ISSUE:

What is the country of origin of the upright and recumbent exercise bikes for the purpose of U.S. government procurement?

LAW AND ANALYSIS:

Pursuant to subpart B of part 177, 19 C.F.R. § 177.21 *et seq*., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq*.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. government procurement, CBP applies the provisions of subpart B of part 177 consistent with the Federal Acquisition Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 C.F.R. § 25.403(c)(1). The Federal Acquisition Regulations define "U.S.-made end product" as:

> …an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a

> new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.
>
> 48 C.F.R. § 25.003.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. Factors which may be relevant in this evaluation may include the nature of the operation (including the number of components assembled), the number of different operations involved, and whether a significant period of time, skill, detail, and quality control are necessary for the assembly operation. *See* C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. If the manufacturing or combining process is a minor one which leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026 (1982), *aff'd* 702 F. 2d 1022 (Fed. Cir. 1983).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the actual manufacturing process may be relevant when determining whether a substantial transformation has occurred. No one factor is determinative.

In a number of rulings (*e.g.*, Headquarters Ruling Letter ("HQ") 735608, dated April 27, 1995 and HQ 559089 dated August 24, 1995), CBP has stated: "in our experience these inquiries are highly fact and product specific; generalizations are troublesome and potentially misleading.

In HQ 735368, dated June 30, 1994, CBP held that the country of origin of a certain finished bike assembled in Taiwan with components made in several countries was Taiwan. CBP stated that because the bicycle was assembled in Taiwan and one of the bicycle's most significant components, the frame, was made in Taiwan, the country of origin of the bicycle was Taiwan. Although the other components came from several different countries, when they were assembled together in Taiwan, they each lost their separate identity and became an integral part of a new article of commerce, a bicycle.

In the instant case, the assembly of the upright exercise bike is comprised of approximately 352 discrete steps and over 175 U.S. and foreign components. The assembly of the recumbent exercise bike is comprised of approximately 468 discrete steps and over 270 U.S. and foreign components. With the exception of the standard console subassembly, all of the subassemblies are produced in the U.S. from U.S. and foreign components. The subassemblies are then assembled into the final frame assembly. We find that under the described assembly process, the foreign components lose their individual

identities and become an integral part of the articles, the upright and recumbent exercise bikes, possessing a new name, character and use. The assembly process that occurs in the U.S. is complex and meaningful and requires the assembly of a large number of components into subassemblies to be assembled into the final products. Further, we note that a substantial number of components are of U.S. origin, where the assembly occurs, which was an important consideration in HQ 735368. Therefore, based upon the information before us, we find that the imported components that are used to manufacture the upright and recumbent exercise bikes are substantially transformed as a result of the assembly operations performed in the U.S. and that the country of origin of the bikes for government procurement purposes is the U.S.

HOLDING:

The components that are used to manufacture the upright and recumbent exercise bikes are substantially transformed as a result of the assembly operations performed in the U.S. Therefore, the country of origin of the upright and recumbent exercise bikes for government procurement purposes is the U.S.

Notice of this final determination will be given in the *Federal Register*, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days after publication of the *Federal Register* notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

SANDRA L. BELL
Executive Director
Regulations and Rulings
Office of International Trade

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING A GTX MOBILE+ HAND HELD COMPUTER

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of a GTX Mobile+ hand held computer. Based upon the facts presented, CBP has concluded in the final determination that Canada is the country of origin of the GTX Mobile+ hand held computer for purposes of U.S. government procurement.

DATES: The final determination was issued on June 2, 2010. A copy of the final determination is attached. Any party-at-interest, as defined in 19 C.F.R. § 177.22(d), may seek judicial review of this final determination until July 9, 2010.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, Valuation and Special Programs Branch: (202) 325–0132.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on June 2, 2010, pursuant to subpart B of part 177, Customs Regulations (19 C.F.R. part 177, subpart B), CBP issued a final determination concerning the country of origin of the GTX Mobile+ hand held computer which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H089762, was issued at the request of Psion Teklogix, Inc. under procedures set forth at 19 C.F.R. part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, the combination of the installation of Canadian developed software on the GTX Mobile+ hand held computer and the assembly of the device in Canada from parts made in several different countries, resulted in a substantial transformation in Canada, such that Canada is the country of origin of the finished article for purposes of U.S. government procurement.

Section 177.29, Customs Regulations (19 C.F.R. § 177.29), provides that notice of final determinations shall be published in the *Federal Register* within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 C.F.R. § 177.30), provides that any party-at-interest, as defined in 19 C.F.R. § 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the *Federal Register*.

Dated: June 2, 2010

SANDRA L. BELL
Executive Director
Regulations and Rulings
Office of International Trade

Attachment

HQ H089762

June 2, 2010
MAR-2–05 OT:RR:CTF:VS H089762 RSD
CATEGORY: Marking

ROBERT T. STACK, ESQ.
TOMPKINS & DAVIDSON
5 HANOVER SQUARE
NEW YORK, NY 10004

RE: United States Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, CBP Regulations; GTX Mobile+ Hand Held Computer; substantial transformation

DEAR MR. STACK:

This is in response to your letter dated July 18, 2008, requesting a final determination on behalf of Psion Teklogix, Inc., (Psion) pursuant to subpart B of Part 177, Customs and Border Protection ("CBP") Regulations (19 CFR § 177.21 *et seq*.). CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government. We have received a supplemental submission from your office dated March 15, 2010.

This final determination concerns the country of origin of the GTX Mobile+ hand held computers (GTX Mobile). We note that Psion is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination. Your request for confidential treatment regarding all cost and price information contained in your request is granted and such information will not be disclosed to the public.

FACTS:

The product at issue is the base model of the computer GTX Mobile. It is used to collect mobile data in the field, conduct emulation testing on site, and/or transmit data/test information to the user's home facilities. The GTX Mobile is used in mobile–intensive applications such as asset tracking, meter reading and mobile ticketing across a variety of industries. The approximate exterior physical dimensions of the GTX Mobile are 9 inches in length, with a width ranging from 3 inches at the grip area to approximately 3.9 inches at the display area, and a depth ranging from 1.2 inches at the grip to 1.7 inches at the display area. It is battery powered and the various sub-assemblies forming the computers are housed in a metal chassis and a plastic exterior.

You indicate that the federal government may want to purchase the GTX Mobile for various military initiatives and emergency operations where asset identification and inventory tracking are critical. An example of basic military use for the GTX Mobile may include tracking computers and peripherals that are sent overseas. Product literature was submitted with your request.

The GTX Mobile hand held computer consists of the following functional components:

1. A subassembly consisting of the main logic board and keyboard, each individually assembled in China, and joined to the metal chassis frame in China;

2. The LCD screen sub-assembly, assembled in Japan from primarily Japanese components, including a screen and a printed circuit board;
3. A data cable and speaker connector for the LCD display screen, of Japanese origin;
4. An imager sub-assembly assembled in Canada using two PCB boards (one is an interface board assembled in Canada, and the other is a decoder board that is assembled in the United States), a camera element (imager engine) manufactured in the United States, and various structural and connection components and plastic structural casing components;
5. An 802.11g radio modem assembled in Taiwan using components from Japan, Israel, and the United States;
6. An RFID scanner made in Italy (currently an optional additional data gathering element).

In addition, construction of the unit requires a number of components, including;

1. A display bezel made in China, with a company logo added in the United States;
2. An end piece and battery cover from China;
3. A battery from Taiwan;
4. A stylus and stylus holder from China;
5. Optional accessories; and
6. A cover.

As noted above, the imager is assembled at a Psion subsidiary in Canada. The final assembly for the GTX Mobile takes place at Psion's Canadian headquarters facility. Assembly of the imager per unit involves fifteen steps to assemble twelve components. The most important components are two PCB's and engine.

The assembly process of the GTX Mobile in Canada involves internally developed product software applications to allow functionality of the main board, imager and radio. The parts are sent to the assembly cell units where the required assembly steps are completed. The physical assembly takes longer if alternative devices such as the RFID scanner with connection devices or other customer add-ons are included in the configuration.

The assembly includes attaching the keyboard bezel to the imported sub-assembly of the keyboard and main logic board, installing the data cable and speaker connector cable to both the LCD screen and the main logic board PCB in the chassis, assembling the LCD display screen to the chassis, installing the display bezel over the LCD portion of the chassis, pressing the display bezel into the housing, securing the bezel to the chassis with two screws, attaching the flex cable for the scanner imager to the 2D imager and the computer chassis, attaching the scanner console to the chassis, installing the radio card into the CF card slot, sliding the radio antenna for the radio into the housing slot, adding a stylus holder in the case housing, installing the end cap component, and installing the main battery.

Personnel begin software loading using internally developed fixtures and automated remote configuration software (variables affecting software versions loaded to particular computers include radio modem display version keyboard configuration, added devices such as RFID or other customer specifications), which involves the installation of: (a) the Microsoft license for the

Microsoft CE operation system; (b) Psion self-developed upgraded version of the Microsoft operating system; (c) Psion "Opentekterm" proprietary software package that renders the device operational; (d) security software for the device, (e) Fortress Technologies Secure Client security software; and Juniper Networks Odyssey Access Client FIPS and (f) Mobile Control Center Psion Tekogix's proprietary device management software. The software download takes approximately four minutes. You indicate that in Canada, Psion has expended in excess of 150,000 hours in the development of its proprietary software code for its line of mobile hand held computers, at a considerable cost. It continues to expend significant sums annually in upgrading versions of the terminal emulation software of communication software to enhance performance of the product and to assure compatibility with component improvements.

After the software is loaded, final functional testing is done for functional compatibility. These tests are managed by the internally developed Automated Remote Configuration software application. After testing, the unit is subject to a variable lot control reporting process which records all the configuration and software elements for the unit with the product serial code into a company record system.

The testing and assembly line operation involves two Active Remote Configuration (ACR) test experts, four manufacturing engineering and sixteen assembly technicians. The four manufacturing engineering and two ARC testing experts are responsible for the assembly guides and software download configuration required for each individual product line. It generally involves somewhere between 200 and 300 hours of personnel time per product line.

ISSUE:

What is the country of origin of the GTX Mobile hand computer for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 C.F.R. § 177.21 *et seq*., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq*.), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part

177 consistent with the Federal Procurement Regulations. *See* 19 CFR § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR § 25.403(c)(1).

Therefore, the question presented in this final determination is whether, as a result of the operations performed in Canada, the GTX Mobile computer will be substantially transformed into a product of Canada.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 6 Ct. Int'l Trade 204, 573 F. Supp. 1149 (1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). If the manufacturing or combining process is a minor one which leaves the identity of the imported article intact, a substantial transformation has not occurred. *Uniroyal Inc. v. United States*, 3 Ct. Int'l Trade 220, 542 F. Supp. 1026 (1982). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 80–111, C.S.D. 85–25, and C.S.D. 90–97.

In order to determine whether a substantial transformation occurs when components of various origins are assembled to form completed articles, CBP considers the totality of the circumstances and makes such decisions on a case-by-case basis. The country of origin of the article's components, the extent of the processing that occurs within a given country, and whether such processing renders a product with a new name, character, or use are primary considerations in such cases. Additionally, facts such as resources expended on product design and development, extent and nature of post-assembly inspection procedures, and worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one such factor is determinative.

In several rulings, CBP has analyzed whether the assembly of electronic equipment such as computers and related devices from various components resulted in a substantial transformation of those components. For example, in Headquarters Ruling Letter (HQ) 735541 dated September 15, 1994, one of the two types of assembly operations described in the ruling involved inserting a floppy disk drive, VGA docking station board, keyboard, DC/DC converter, as well as a CPU, RAM, and a hard disk drive into an imported unfinished computer. In addition, a LCD display assembly and a plastic battery cover were attached into the computer. We noted that the assembly process involved several components and also included the assembly of the CPU, which allowed the computers to function. Consequently, we concluded that in combining these components in the production of a notebook computer, a new article of commerce was created that was separate and distinct from the individual components of which it was composed.

HQ 735608 dated April 27, 1995, involved various scenarios pertaining to the assembly of a desktop computer in the U.S. and the Netherlands. In one of the scenarios, foreign components assembled in the U.S. were the case assembly (including the computer case, system power supply and floppy disk drive), partially completed motherboard, CPU (which controls the interpretation and execution of instructions and included the arithmetic-logic unit and control unit), hard disc drive, slot board, keyboard BIOS and system

BIOS (basic input and output system). Additional components manufactured in the U.S. or the Netherlands were assembled into the finished desktop computers depending on the model included an additional floppy drive, CD ROM disk, and memory boards. In that case, CBP found that the foreign case assemblies, partially completed motherboards, hard disk drives and slot boards underwent a change in name, character and use as a result of the operations done in the U.S. and that the components lost their separate identities in becoming an integral part of a desktop computer. CBP noted that the finished article, a desktop computer, was visibly different from any of the individual foreign components, acquiring a new use, processing and displaying information. Accordingly, CBP held that the individual components underwent a substantial transformation as a result of the operations performed in the U.S. *See also* HQ 559336 dated March 13, 1996, in which CBP also determined that foreign components, such as clamshell base, LCD video display, hard disk drive, floppy disk drive, AC power adapter were substantially transformed by the processing and assembly operations performed in the United States; and HQ 560633, dated November 17, 1997.

In this case, in addition to the components and parts being assembled in Canada, the GTX Mobile hand computers are programmed in Canada by the installation of Canadian developed software onto the devices. In *Data General v. United States*, 4 Ct. Int'l Trade 182 (1982), the Court of International Trade found that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (the predecessor provision to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign Programmable Read-Only Memory ("PROM") chip, substantially transformed the PROM into a U.S. article. The court noted that it was undisputed that programming altered the character of a PROM, effecting a physical change. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read-only memory device possessing a desired distinctive circuit pattern constituted "substantial transformation. After the *Data General* decision, in a number of previous rulings, CBP has considered whether the programming devices and electronic equipment constitutes a substantial transformation of such devices.

In HQ 735027, dated September 7, 1993, CBP considered a "MemoPlug," used to protect software from piracy. It was assembled in Israel from Taiwanese parts (such as various connectors and an Electronically Erasable Programmable Read Only Memory, or "EEPROM") and Israeli parts (such as an internal circuit board). After assembly, the EEPROM was programmed in the U.S. with special software. Such processing in the United States accounted for approximately 50 percent of the final selling price of the MemoPlugs. In finding that the foreign-origin components were substantially transformed in the United States, CBP noted that the U.S. processing transformed a blank media, the EEPROM, into a device that performed functions necessary to the prevention of software piracy.

HQ H034843, dated May 5, 2009, concerned encrypted USB flash devices ("UFD"), used to protect data when a UF is lost or stolen. The key hardware component of the UFD was a Japanese origin flash memory chip. Other components were shipped to China where they were assembled. In one

scenario, the UFD's were shipped to Israel where firmware application software developed in Israel was installed and customized into the device. Without application software, the UFD did not exhibit its security features. CBP held that the country origin of the encrypted UFD was Israel.

In this instance, we note that the building of the GTX Mobile requires the assembly of components in Canada, together with an imager of Canadian origin using subassemblies of various origins. Taking into account the Canadian assembly of the imager, the total assembly process requires a number of discrete steps that permit the individual components to function together as a single unit able to gather, process, display and transmit information from field operations to office locations. We, moreover, take note that a complex software program is loaded onto the GTX Mobile which has been designed and written entirely in Canada. This software has been designed so that the customer may centrally manage and troubleshoot remote computer applications, allowing for communication between computers in distant locations. We find the creation and installation of the software to be a crucial element that permits the functioning of the hand held computers. Therefore, we find that the assembly processes that will occur in Canada, coupled with the configuration operations also performed in Canada that require the installation of Canadian-origin software, will substantially transform the components of non-Canadian origin into a product with a new name, character, and use. Accordingly, we find that the country of origin of the GTX Mobile is Canada.

HOLDING:

The non-Canadian component parts and subassemblies are substantially transformed in Canada, the location where the subassemblies and components from various countries are assembled together to make the GTX Mobile, and where the complex software is developed and installed onto the device. Therefore, we find that the country of origin of the GTX Mobile for government procurement purposes is Canada.

Notice of this final determination will be given in the Federal Register, as required by 19 CFR § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR § 177.31 that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR § 177.30, any party-at-interest may, within 30 days after publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

SANDRA L. BELL
Executive Director
Office of Regulations and Rulings
Office of International Trade

GENERAL NOTICE

19 CFR PART 177

Proposed Revocation and Modification of Two Ruling Letters and Revocation of Treatment Relating to the Tariff Classification of FM Transmitters for IPODS and a Plastic Car Mount for use with an FM Transmitter

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed revocation of a ruling letter and modification of a ruling letter and revocation of treatment relating to tariff classification of FM Transmitters for iPods and a plastic car mount for use with an FM Transmitter.

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 and modify one ruling letter pertaining to the tariff classification of FM transmitters for iPods and a plastic car mount for use with the FM transmitter under the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP is also proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

DATES: Comments must be received on or before July 23, 2010.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229–1179. Comments submitted 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 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 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 proposes to revoke a ruling letter pertaining to the classification of a TuneFM™ for iPod® Nano, a TuneBase™ FM for iPod® Nano, and a TuneCast™ Mobile FM Transmitter and modify a ruling letter pertaining to the classification of an FM Transmitter kit. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) N008149, dated April 9, 2007 (Attachment A) and modification of NY N005439, dated February 7, 2007 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. In addition, CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two 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 N008149, CBP classified a TuneFM™ for iPod® Nano, a TuneBase™ FM for iPod® Nano, and a TuneCast™ Mobile FM Transmitter in heading 8517, HTSUS, specifically subheading 8517.69.00, HTSUS, as: "[t]elephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527,or 8528; parts thereof: [o]ther apparatus for transmission or reception of voice, images or other data, including apparatus of communication in a wired or wireless network (such as a local or wide area network): [o]ther". It is now CBP's position that the products at issue are classified in heading 8525, HTSUS, specifically in subheading 8525.50.70, HTSUS, as "[t]ransmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders: [t]ransmission apparatus: [f]or radiobroadcasting..."

In NY N005439, CBP classified a FM Transmitter in heading 8525, HTSUS, specifically subheading 8525.60.20 as "[t]ransmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders: [t]ransmission apparatus incorporating reception apparatus: [o]ther..." It is now CBP's position that the product at issue is classified in subheading 8525.50.70, HTSUS, as "[t]ransmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders: [t]ransmission apparatus: [f]or radiobroadcasting..." Also in NY N005439, CBP classified a plastic car mount in heading 3926, HTSUS, specifically in subheading 3926.30.50, HTSUS as "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: [f]ittings for furniture, coachwork or the like: [o]ther..." It is now CBP's position that the car mount is classified in heading 8708, HTSUS, specifically in subheading 8708.29.50 which provides for

"[p]arts and accessories of the motor vehicles of headings 8701 to 8705: [o]ther parts and accessories of bodies (including cabs): [o]ther: [o]ther..."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N008149 and modify NY N005439, and revoke or modify any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letters (HQ) H023819 and HQ H007467 (Attachments C and D). 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, we will give consideration to any written comments timely received.

Dated: June 8, 2010

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

Attachments

[ATTACHMENT A]

April 9, 2007
CLA-2–85:RR:E:NC:N1:109
CATEGORY: Classification
TARIFF NO.: 8517.69.0000

MS. TAMRA S. NELSON
IMPORT/EXPORT COMPLIANCE SUPERVISOR
BELKIN INTERNATIONAL, INC.
501 W. WALNUT STREET
COMPTON, CA 90220

RE: The tariff classification of a TuneFM™ for iPod® nano, a TuneBase™ FM for iPod® nano, and a TuneCast™ Mobile FM Transmitter from China

DEAR MS. NELSON:

In your letter dated March 12, 2007 you requested a tariff classification ruling.

The merchandise subject to this ruling is a TuneFM™ for iPod® nano, a TuneBase™ FM for iPod® nano, and a TuneCast™ Mobile FM Transmitter. Each of these three devices is a radiotelephony point-to-point wireless transmitter for an iPod nano, an iPod, other music players, and personal or laptop computers. Once either of the transmitters is connected to one of these devices, they enable the user to hear pre-recorded music files through the speakers within a car or a home or portable stereo. The TuneFM™ for iPod® nano, a TuneBase™ FM for iPod® nano, and a TuneCast™ Mobile FM Transmitter are one-to-one closed communication devices for radiotelephony (wireless) communications and not transmitters used for radiobroadcasting over a broad geographic area, with the intention of reaching a broad audience, such as in a one-to-many system, which is open to all.

The TuneFM™ for iPod® nano is identified in your letter as Part # F8Z061-BLK. It wirelessly connects your iPod® to your car, home or portable stereo enabling the pre-recorded music to be heard through the car, home or portable stereo's speakers. The TuneFM™ plugs into the dock connector of an iPod® nano. The user then tunes the stereo to a clear FM frequency and the pre-recorded music on the iPod is heard through the speakers.

The TuneBase™ FM for iPod® nano is identified in your letter as Part # F8Z063-BLK. It contains a built-in FM wireless transmitter that connects to your car stereo on multiple FM channels, from 88–1MHz to 107.9 MHz. The pre-recorded contents (music files) of a iPod® nano is transmitted through an FM channel and the TuneBase™ FM allows the user to chose the best available frequency for listening to the music files through a car's stereo speakers. This wireless device features four single-touch programmable preset memory buttons, which enable the user to find the clearest frequencies and toggle among them for best performance/reception. This item sits in a swivel holder cradle with a flexible steel neck that is connected to a car power adapter. The flexibility of the steel neck enables the user to vary the positioning of the iPod® nano.

The TuneCast™ Mobile FM Transmitter is identified in your letter as Part # F8V367-APL. It enables the user to listen to the pre-recorded tunes (music files) from an iPod® mobile digital device through an FM stereo receiver. The TuneCast™ Mobile FM Transmitter wirelessly connects portable music play-

ers to a car or home stereo. It plugs into the headphone jack of an iPod® or any audio source, such as a PDA, MP3, CD or cassette player, or a personal or laptop computer. Once a clear FM frequency is tuned-in, the music coming from each of these devices can be heard through the car or home stereo's speakers.

The applicable subheading for the TuneFM™ for iPod® nano (Part # F8Z061-BLK), a TuneBase™ FM for iPod® nano (Part # F8Z063-BLK), and a TuneCast™ Mobile FM Transmitter (Part # F8V367-APL) will be 8517.69.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide are network): Other. The rate of duty will be free.

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 Linda M. Hackett at 646–733–3015.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT B]

February 7, 2007
CLA-2–85:RR:NC:1:108
CATEGORY: Classification
TARIFF NO.: 8525.60.2000; 3926.30.5000

MR. DARREN LENOX
CUSTOMS COMPLIANCE MANAGER
ACCO BRANDS CORPORATION
300 TOWER PARKWAY
LINCOLNSHIRE, IL 60069—3640

RE: The tariff classification of a FM receiver/transmitter auto kit and a plastic car mount from China.

DEAR MR. LENOX:

In your letter received in this office on January 16, 2007, you requested a tariff classification ruling. Sample is being returned as requested.

The subject merchandise, based on the submitted sample, is a FM receiver/transmitter auto kit, item number 33387, which consists of the following:

(1) a FM receiver/transmitter that is designed to be plugged into the car's DC power outlet (i.e., cigarette lighter) for activating the transmitter's display; this device has a self-contained cable with a 30-pin dock connector that is designed for insertion into an iPod's dock-connecting port for charging an iPod (not included). When the iPod is turned on, the transmitter receives the iPod's music files and wirelessly transmits (not enabled by the DC power outlet) the music to the car radio through an unused FM channel/frequency, which is selected by the user.

(2) a plastic car mount that is designed to hold an iPod or a similarly constructed MP3 Player; this article incorporates, at one end, a flexible, goose-like arm with a suction cup, as well as a rectangular-shaped holder, at the other end, with adjustable, expanding sides, which possess inner foam-like padding.

When imported as a kit, this merchandise, at the time of importation, will be put up in a manner suitable for sale directly to users without repacking. Further, this kit is considered to be a set for tariff classification purposes in noting that the essential character of the set is imparted by the FM receiver/transmitter.

When the car mount is imported alone under item number 33412, you claim this article should be classified under subheading 8522.90.75, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521: Other: Other. Alternatively, you suggest that this car mount would be classified under subheading 8708.29.50, HTSUS, which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies ... Other.

First of all, since this car mount is considered to be specifically designed to function as a plastic mounting, under heading 3926, HTS, in securing an iPod or MP3 Player to the interior of an automobile, consideration of classification

under heading 8522, HTS (covered under section XV1 of the HTSUS) is precluded since legal note 1(g) to section XV1 reads: "this section does not cover parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39)."

Moreover, since it has been determined that the car mount neither functions as a part nor an accessory of motor vehicles, classification under heading 3926, HTS, is confirmed.

The applicable subheading for the FM receiver/transmitter auto kit will be 8525.60.2000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders: Transmission apparatus incorporating reception apparatus: Other. The rate of duty will be free. The applicable subheading for the plastic car mount will be 3926.30.5000, HTSUS, which provides for other articles of plastics: fittings for furniture, coachwork or the like: other. The rate of duty will be 5.3 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/htsl.

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 Lisa Cariello at 646–733–3014.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT C]

HQ H023819
CLA-2 OT:RR:CTF:TCM H023819 JRB
CATEGORY: Classification
TARIFF NO.: 8525.50.70

MS. TAMRA S. NELSON
IMPORT/EXPORT COMPLIANCE SUPERVISOR
BELKIN INTERNATIONAL, INC.
501 W. WALNUT STREET
COMPTON, CALIFORNIA 90220

RE: Revocation of NY N008149; Classification of a TuneFM™ for iPod® Nano, TuneBase™ FM for iPod® Nano, and a TuneCast™ Mobile FM Transmitter from China

DEAR MS. NELSON:

This letter is in reference to New York Ruling Letter ("NY") N008149, issued to you on April 9, 2007, concerning the tariff classification of a TuneFM, a TuneBase, and a TuneCast transmitter for iPods, MP-3 players, and computers. In that ruling, U.S. Customs and Border Protection ("CBP") classified the merchandise under heading 8517, Harmonized Tariff Schedule of the United States ("HTSUS"), as a transmission apparatus for voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network). We have reviewed NY N008149 and found it to be in error. For the reasons set forth below, we hereby revoke NY N008149.

FACTS:

In NY N008149 we described the merchandise, in relevant part, as follows:

> The TuneFM™ for iPod® nano is identified in your letter as Part # F8Z061-BLK. It wirelessly connects your iPod® to your car, home or portable stereo enabling the pre-recorded music to be heard through the car, home or portable stereo's speakers. The TuneFM™ plugs into the dock connector of an iPod® nano. The user then tunes the stereo to a clear FM frequency and the pre-recorded music on the iPod is heard through the speakers.
>
> The TuneBase™ FM for iPod® nano is identified in your letter as Part # F8Z063-BLK. It contains a built-in FM wireless transmitter that connects to your car stereo on multiple FM channels, from 88–1MHz to 107.9 MHz. The pre-recorded contents (music files) of a iPod® nano is transmitted through an FM channel and the TuneBase™ FM allows the user to chose the best available frequency for listening to the music files through a car's stereo speakers. This wireless device features four single-touch programmable preset memory buttons, which enable the user to find the clearest frequencies and toggle among them for best performance/reception. This item sits in a swivel holder cradle with a flexible steel neck that is connected to a car power adapter. The flexibility of the steel neck enables the user to vary the positioning of the iPod® nano.
>
> The TuneCast™ Mobile FM Transmitter is identified in your letter as Part # F8V367-APL. It enables the user to listen to the pre-recorded tunes (music files) from an iPod® mobile digital device through an FM stereo

receiver. The TuneCast™ Mobile FM Transmitter wirelessly connects portable music players to a car or home stereo. It plugs into the headphone jack of an iPod® or any audio source, such as a PDA, MP3, CD or cassette player, or a personal or laptop computer. Once a clear FM frequency is tuned-in, the music coming from each of these devices can be heard through the car or home stereo's speakers.

Since the issuance of NY N008149, it has come to our attention that these devices are not operating as closed communication devices. We understand that while the devices are not capable of transmitting signals to a large geographical area, they still use radio broadcasting frequencies to transmit data so that anyone in the vicinity may listen to those transmissions.

ISSUE:

Whether the TuneFM™ for iPod® Nano, TuneBase™ FM for iPod® Nano, and a TuneCast™ Mobile FM Transmitter are classified in heading 8517, HTSUS, as an apparatus for communication in a wireless network or in heading 8525, HTSUS, as a transmission apparatus for radio-broadcasting?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

8517	Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527, or 8528; parts thereof:
8525	Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders:
8525.50	Transmission apparatus:
8525.50.70	For radiobroadcasting...
8525.60	Transmission apparatus incorporating reception apparatus:
8525.60.20	Other...

The terms of heading 8517, HTSUS, are limited to transmission apparatus which are not classified in heading 8525, HTSUS. As such, if the merchandise is classified in heading 8525, HTSUS, it cannot be classified in heading 8517, HTSUS. As a result, heading 8525, HTSUS, must be considered before classification in heading 8517, HTSUS, is appropriate. The legal text of heading

8525, HTSUS, as further illustrated by EN 85.25, provides that the goods of heading 8525 must transmit radio-broadcasting signals through the ether without a line connection.[1]

Applying these principles to the present case, all of the products at issue are apparatus that broadcast signals by means of electro-magnetic waves through the ether without any line connection. The products transmit a signal through recognized FM radio bands that any radio can receive, including car radios, portable radios, and permanent radio tuners that are in the broadcast area of the product. In other words, there is no limitation to accessing the transmission nor is there any way to limit access to the transmission. As a result, these devices cannot be excluded from heading 8525, HTSUS.

Insofar as the subject FM transmitters do not have the ability to receive an FM signal that is being broadcast through the ether, the proper subheading classification of these devices is 8525.50.70, HTSUS, which provides for transmission apparatus for radio-broadcasting that do not incorporate a reception apparatus.

HOLDING:

By application of GRI 1, the TuneFM™ for iPod® nano; the TuneCast™ Mobile FM Transmitter; and a TuneCast™ Mobile FM Transmitter are classified in heading 8525, HTSUS. Specifically they are classified in subheading 8525.50.70, HTSUS, which provides for "[t]ransmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders: [t]ransmission apparatus: [f]or radio-broadcasting..." The general column one rate of duty is 3% *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 *http://www.usitc.gov.tata/hts/*.

EFFECT ON OTHER RULINGS:

NY N008149, dated April 9, 2007, is hereby revoked.

Sincerely,

MYLES B. HARMON
Director,
Commercial and Trade Facilitation Division

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[1] The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) constitute the official interpretation of the HTSUS. While not legally dispositive, the ENs provide 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. CBP believes the EN's should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

[ATTACHMENT D]

HQ H007467
CLA-2 OT:RR:CTF:TCM H007467 JRB
CATEGORY: Classification
TARIFF NO.: 8525.50.70; 8708.29.50

MR. DARREN LENOX
CUSTOMS COMPLIANCE MANAGER
ACCO BRANDS CORP.
300 TOWER PARKWAY
LINCOLNSHIRE, ILLINOIS 60069–3640

RE: Modification of New York Ruling Letter (NY) N005439; classification of an iPod® FM Transmitter and a plastic car mount

DEAR MR. LENOX:

This is in response to your letter, dated February 14, 2007, in which you requested that we reconsider the classification of the plastic car mount that was the subject of NY N005439, issued to you on February 7, 2007. We also considered additional information that you submitted to this office on August 6, 2009.

In NY N005439, U.S. Customs and Border Protection ("CBP") classified the merchandise under heading 3926, Harmonized Tariff Schedule of the United States ("HTSUS"), as an article of plastic. In addition, NY N005439 also classified an FM transmitter in heading 8525, HTSUS, specifically in subheading 8525.60.20, HTSUS, which provides for transmission apparatus for radio-broadcasting which incorporate a reception apparatus. We have reviewed this ruling letter in its entirety and believe that it is incorrect. For the reasons set forth below, we hereby modify NY N005439 with respect to the classification of both the plastic car mount and the FM transmitter.

FACTS:

In NY N005439 we described the products as follows:

> The subject merchandise, based on the submitted sample, is an FM transmitter auto kit, item number 33387, which consists of the following:
>
> (1) a FM receiver/transmitter that is designed to be plugged into the car's DC power outlet (i.e., cigarette lighter) for activating the transmitter's display; this device has a self-contained cable with a 30-pin dock connector that is designed for insertion into an iPod's dock-connecting port for charging an iPod (not included). When the iPod is turned on, the transmitter receives the iPod's music files and wirelessly transmits (not enabled by the DC power outlet) the music to the car radio through an unused FM channel/frequency, which is selected by the user.
>
> (2) a plastic car mount that is designed to hold an iPod or a similarly constructed MP3 Player; this article incorporates, at one end, a flexible, goose-like arm with a suction cup, as well as a rectangular-shaped holder, at the other end, with adjustable, expanding sides, which possess inner foam-like padding.

When imported as a kit, this merchandise, at the time of importation, will be put up in a manner suitable for sale directly to users without repacking.

ISSUES:

(i) Whether the plastic car mount is classifiable in heading 3926, HTSUS, as an article of plastic or in heading 8708, HTSUS, as an accessory to an automobile?

(ii) Whether the FM transmitter is properly classifiable in subheading 8525.50.70, HTSUS, as a transmission apparatus for radiobroadcasting or in subheading 8525.60.20, HTSUS, as a transmission apparatus incorporating a reception apparatus?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
	* * *
8525	Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders:
8525.50	Transmission apparatus:
8525.50.70	For radiobroadcasting...
8525.60	Transmission apparatus incorporating reception apparatus:
8525.60.20	Other...
	* * *
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
8708.29.50	Other parts and accessories of bodies (including cabs): Other: Other...

Note 2(b) to Section XVII (which includes heading 8708), HTSUS, provides that the expressions "parts" or "parts and accessories" do not apply to "[p]arts of general use, as defined in note 2 to section XV, of base metal (section XV) or similar goods of plastics (chapter 39)".

With respect to the plastic car mount, you contend that it should be classified in heading 8708, HTSUS, which provides for parts and accessories to automobiles of headings 8701 to 8705. The term "accessory" is not defined

in the HTSUS or in the Explanatory Notes (EN's).[1] However, this office has stated that the term "accessory" is generally understood to mean an article which is not necessary to enable the goods with which they are intended to function. They are of secondary importance, but must, however, contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the particular article, widen the range of its uses, or improve its operation). *See* Headquarters Ruling Letter (HQ) 958710, dated April 8, 1996; HQ 950166, dated November 8, 1991. We also employ the common and commercial meanings of the term "accessory", as provided by the courts in *Rollerblade v. United States*, wherein the Court of International Trade derived from various dictionaries that an accessory must relate directly to the thing accessorized. *Rollerblade v. United States*, 116 F. Supp. 2d 1247 (Ct. Int'l Trade 2000), *aff'd*, 282 F.3d 1349 (Fed. Cir. 2002) (holding that inline roller skating protective gear is not an accessory because the protective gear does not directly act on or contact the roller skates in any way); *see also* HQ 967858, dated May 19, 2006. The court in *Rollerblade* held that an accessory must have a direct relationship to a car. *See Rollerblade*, 116 F. Supp. 2d at 1253. In particular the court found that an accessory must add to the particular product it is accessorizing. *Id.* at 1254–1255.

Applying this principle to the present case, the plastic car mount is an accessory to the automobile. The mount attaches to the car's interior and holds the iPod®. The user can then easily access their personal playlist so that they can control the songs that are playing on their car radio. Thus, the stand is not a necessary piece of the car's interior.

However, Section XVII Note 2(b), HTSUS, excludes parts of general use as defined in Section XV, Note 2, and similar goods of plastics from being classified in heading 8708, HTSUS. A part of general use as defined by Section XV, Note 2, HTSUS, in pertinent part, is any article of heading 8302, HTSUS, which provides for the classification of base metal mountings fittings and similar articles for coachwork. Relying on the common meaning of the term "mounting", CBP determines that it means "a component that serves to join two parts together." *See* HQ H025860, dated November 20, 2009, quoting HQ 965970, dated October 13, 2003 (citing *Webster's Ninth New Collegiate Dictionary*, pg. 775–776 (1990)). In addition, the common meaning of the term "coachwork" means "finishing work done on a coach, esp. an automobile body."[2] *See* HQ H025860 quoting HQ 087542, dated October 31, 1990 (citing *Webster's New International Dictionary*, 2nd Ed. (1994)).

Applying these definitions to the present case we find that the plastic car mount is not a similar plastic mounting or fitting because it is not a mounting suitable for coachwork or furniture because it is made to attach to the window or the dashboard of the car which is not the automobile's body. The subject merchandise is not a standardized part that is similar to a coupling, valve, or gauge, which excludes it from being considered a fitting. In addition, the subject merchandise does not meet the definition of a mounting because it is

[1] The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) constitute the official interpretation of the HTSUS. While not legally dispositive, the ENs provide 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. CBP believes the EN's should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

[2] *See also: http://www.merriam-webster.com/dictionary/coachwork*

not a component that connects two parts together. Therefore, classification in heading 8708, HTSUS, is appropriate.

Since, the car mount is described by heading 8708, HTSUS, it cannot be classified in heading 3926, HTSUS, because this heading can only be considered when no other heading in the HTSUS describes the merchandise. *See* EN to 39.26 which provides "[t]his heading covers articles, not elsewhere specified or included, of plastics..."

Classification in heading 8708, HTSUS, is supported by prior New York (NY) and Headquarters (HQ) Ruling Letters. *See* NY N0022533, dated February 8, 2008; NY R04768, dated September 11, 2006; NY R03250, dated March 1, 2006; NY L81497, dated January 4, 2005; NY I87876, dated November 7, 2002; NY H84269, dated August 2, 2001; NY F87146, dated May 24, 2000; NY D86796, dated January 28, 1999; NY D85523, dated December 11, 1998; NY C88188, dated June 17, 1998; NY 804989, dated January 5, 1995; and HQ 087867, dated December 14, 1990.

Thus, we agree with your contention that the plastic car mount is properly classified in heading 8708, HTSUS, because heading 8708, HTSUS, completely describes the subject merchandise.

Upon receipt of your request for reconsideration of this ruling letter, we determined that the subject FM transmitter does not incorporate a reception apparatus. There is no information in your recent submissions, or in your initial submissions requesting a binding ruling, indicating that the device contains a reception apparatus. Therefore, the proper subheading for the FM transmitter is subheading 8525.50.70, HTSUS, which provides for a transmission apparatus for radio-broadcasting.

Finally, the determination that the plastic car mount and FM transmitter, when imported together in a package for retail sale are considered a set pursuant to GRI 3(b) remains the same. However, the classification of the set will change to reflect the reclassification of the FM transmitter as provided in this letter.

HOLDING:

By application of GRI 1, the plastic car mount is classified in heading 8708, HTSUS. Specifically it is classified in subheading 8708.29.50, HTSUS, which provides for "[p]arts and accessories of the motor vehicles of headings 8701 to 8705: [o]ther parts and accessories of bodies (including cabs): [o]ther: [o]ther..." The column one general rate of duty is 2.5% *ad valorem*.

By application of GRI 1, the FM transmitter is classified in heading 8525, HTSUS, specifically in subheading 8525.50.70, HTSUS, which provides for "[t]ransmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders: [t]ransmission apparatus: [f]or radiobroadcasting..." The column one general rate of duty is 3% *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 *http://www.usitc.gov.tata/hts/*.

EFFECT ON OTHER RULINGS:

NY N005439, dated February 14, 2007, is hereby modified.

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 CERTAIN SANDALS

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

ACTION: Notice of proposed revocation of a ruling letter and revocation of treatment relating to tariff classification of certain sandals.

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 sandals 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 July 23, 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. 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 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 a ruling letter pertaining to the tariff classification of certain sandals. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N087097, dated April 17, 2008 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N087097, set forth as Attachment A to this document, CBP determined that the subject sandals, identified as Style #2H070, Style #2H048 and Style #2H073, were classified in subheading 6402.99.40, HTSUS, which provides for "Other footwear with outer

soles and uppers of rubber or plastics: Other footwear: Other: Other: Other: Other: Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6402.99.20 and except footwear having a foxing or a foxing-like band wholly or almost wholly of rubber." It is now CBP's position that the subject sandals are properly classified in subheading 6402.99.31, HTSUS, which provides for "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N087097 and to 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 (HQ) H092482, 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: June 8, 2010

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

Attachments

[ATTACHMENT A]

NY N087097
December 22, 2009
CLA-2–64:OT:RR:NC:N4:447
CATEGORY: Classification
TARIFF NO.: 6402.99.4060

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

RE: The tariff classification of footwear from China

DEAR MR. PETERSON:

In your letter dated December 4, 2009 you requested a tariff classification ruling on behalf of ESNY Division of Totes-Isotoner Corporation for three styles of ladies thong sandals.

The three submitted samples which you identify as Style #2H070, Style #2H048 and Style #2H073, are all ladies thong sandals with outer soles and uppers of rubber/plastics. They all have "V" or "Y" shaped straps with plugs at their ends that penetrate the sole and a thong which goes between the first and second toes. You state in your letter that all three sandals have metal ornamentation attached to the upper. This ornamentation accounts for more than 10 percent of the external surface area of the upper. The soles are not of uniform thickness and they all have separate leather insoles.

The applicable subheading for the samples identified as Style #2H070, Style #2H048 and Style #2H073 will be 6402.99.4060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for footwear with outer soles and uppers of rubber or plastics: other footwear: other: other: not having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements) is rubber or plastics: footwear with open toes or open heels; footwear of the slip-on type that is held to the foot without the use of laces or buckles or other fasteners: other: for women. The rate of duty will be 37.5 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/.

The submitted samples are not marked with the country of origin. Therefore, if imported as is, they will not meet the country of origin marking requirements of 19 U.S.C. 1304. Accordingly, the footwear would be considered not legally marked under the provisions of 19 C.F.R. 134.11 which states, "every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article."

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 Stacey Kalkines at (646) 733–3042.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

[ATTACHMENT B]

HQ H092482
CLA-2 OT:RR:CTF:TCM H092482 CkG
CATEGORY: Classification
TARIFF NO: 6402.99.31

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

RE: Proposed revocation of New York Ruling Letter N087097; footwear

DEAR MR. PETERSON:

This is in response to your letter of January 22, 2010 on behalf of your client, ESNY Division of Totes-Isotoner Corporation, requesting the reconsideration of New York Ruling Letter (NY) N087097, dated April 17, 2008. At issue in that ruling was the classification of footwear under the Harmonized Tariff Schedule of the United States (HTSUS). U.S. Customs and Border Protection (CBP) classified the merchandise in subheading 6402.99.40, HTSUS, which provides for other footwear with outer soles and uppers of rubber or plastics, with open toes or heels.

FACTS:

In NY N087097, the subject merchandise was described as follows:

> The three submitted samples which you identify as Style #2H070, Style #2H048 and Style #2H073, are all ladies thong sandals with outer soles and uppers of rubber/plastics. They all have "V" or "Y" shaped straps with plugs at their ends that penetrate the sole and a thong which goes between the first and second toes. You state in your letter that all three sandals have metal ornamentation attached to the upper. This ornamentation accounts for more than 10 percent of the external surface area of the upper. The soles are not of uniform thickness and they all have separate leather insoles.

ISSUE:

Whether the instant sandals are classified in subheading 6402.99.31, as footwear having uppers of which over 90% of the external surface area is rubber or plastics, or in subheading 6402.99.40, HTSUS, as "other" footwear-i.e., with an ESAU of less than 90% rubber or plastics.

LAW AND ANALYSIS:

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

The HTSUS provisions at issue are as follows:

6402:	Other footwear with outer soles and uppers of rubber or plastics:						
		Other footwear:					
6402.99:			Other:				
				Other:			
					Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather):		
						Other:	
6402.99.31:							Other . . .
				Other:			
						Other:	
6402.99.40:							Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6402.99.20 and except footwear having a foxing or a foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper . . .

* * * * *

You contend that the subject footwear should be classified in subheading 6402.99.31, HTSUS, as footwear having uppers of which over 90% of the external surface area is rubber or plastics. To that end, you claim that NY N087097 erroneously considered the attached metal ornamentation in its calculation of the external surface area of the upper.

Note 4(a) to Chapter 64, HTSUS, provides that the material of the upper shall be taken to be the constituent material having the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, edging, ornamentation, buckles, tabs, eyelet stays or similar attachments.

Subheading 6402.99.31, HTSUS, however, provides for footwear having uppers of which over 90 percent of the external surface area is rubber or plastics, *including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter*. In other words, for the purposes of this subheading, we must disregard the instruction in note 4(a) to exclude such accessories and reinforcements from the calculation of the ESAU. However, CBP has generally held that the noted subheadings do not require that everything that was excluded under Note 4(a) must be taken into account in determining classification under those provisions. Instead "loosely attached appurtenances" are not part of the upper and therefore are not considered in the

external surface area measurement. *See e.g.*, HQ H084599, dated February 1, 2010; HQ 960625, dated September 17, 1999; HQ 952167, dated August 23, 1993; HQ 089992, dated May 11, 1992; and HQ 084067, dated June 13, 1989.

In determining whether or not an item is a loosely attached appurtenance, (LAA), CBP will take the following factors into consideration:

(1) LAA must be purely decorative, not functional no matter how minor or non-essential.

(2) An appurtenance must be secured by minimal stitching (one or two stitches), tacking or a single rivet.

(3) Removal must not result in excessive holes rendering upper unserviceable.

(4) LAAs are generally not measurable in any objective way (tassels, pom-poms)

(5) Examples of LAAs are textile flowers, fabric bows secured with minimal (one or two) stitching or a single rivet or tack, pom-poms, non-functional three-dimensional buttons and tassels.

(6) Sequins, beads, buckles, studs, decorative rivets, sewn down flowers or bows, imitation jewels, rhinestones, shells, wooden decorations etc. are generally accessories or reinforcements.

See e.g ; NY N048159, dated January 6, 2009; NY N046199, dated December 10, 2008; N046819, dated December 19, 2008; and NY N047259, dated December 19, 2008.

The metal ornamentation attached to the upper is purely decorative and not functional. You state that the metal ornaments are all affixed by a single screw. For those styles where the ornament is attached to the upper at a single small point, we agree that they are "loosely attached" for the purposes of the second requirement. We agree that removal of the ornaments would not result in excessive holes or otherwise render the upper unserviceable. Unserviceable is interpreted to mean incapable of being used or unfit for use. As the shoes are completely usable without their decorative attachments, they are therefore serviceable. We further agree that the ornaments are not easily measurable due to their irregular shape and surface area. Although the typical examples of LAA's consist of textile tassels, flowers, bows, etc., whereas studs, beads, and other similar articles of metal or jewelry are typically regarded as accessories or reinforcements, the instant ornaments are not attached in the manner of a buckle or stud. They are not embedded in the shoe, nor are they attached at multiple points. CBP has also considered glass or metal ornaments attached in a similar manner to constitute loosely attached appurtenances in prior rulings. *See e.g.*, HQ H084599, dated February 1, 2010; NY N019702, dated December 3, 2007; NY M86620, dated October 18, 2006; NY L89802, dated February 3, 2006.

As they meet the other criteria for loosely attached appurtenances laid out in prior rulings, the decorative attachments are to be considered loosely attached appurtenances and excluded from the calculation of ESAU. This exclusion brings the total ESAU to more than 90% rubber or plastic. The instant sandals are thus classified in subheading 6402.99.31, HTSUS.

HOLDING:

The instant sandals are classified in heading 6402, HTSUS, specifically subheading 6402.99.31, HTSUS, which provides for "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Other." The 2009 general, column one rate of duty is 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/.

EFFECT ON OTHER RULINGS:

NY N087097, dated December 22, 2009, is hereby revoked.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

GENERAL NOTICE

19 C.F.R. PART 177

Proposed Moficiation of One Ruling Letter and Proposed Revocation of One Ruling Letter Concerning the Classification of Parts of a Pendant Suspension System and Proposed Revocation of Treatment

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

ACTION: Notice of proposed modification of one ruling letter and proposed revocation of one ruling letter concerning the tariff classification of parts of a pendant suspension system and proposed revocation of treatment.

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 modify one ruling letter and revoke one ruling letter concerning the tariff classification of parts of a pendant suspension system 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 July 23, 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 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: 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 modify one ruling letter and revoke one ruling letter concerning the tariff classification of parts of a pendant suspension system. Although in this notice, CBP is specifically referring to the modification of Headquarters Ruling Letter (HQ) 967159, dated November 17, 2004, (Attachment A) and the

revocation of New York Ruling Letter ("NY") L83104, dated March 11, 2005 (Attachment 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 HQ 967159 and NY L83104, CBP classified selected parts of the Steris® Harmony Surgical Lighting and Visualization System (HSLVS) as follows: (1) the central axis and spring load arms in subheading 8302.50.00, HTSUS, as "Brackets and similar fixtures ...: Hat-racks, hat pegs, brackets and similar fixtures, and parts thereof," and (2) the ceiling mounts in subheading 9405.99.40, HTSUS, as "Lamps and lighting fittings ... and parts thereof, not elsewhere specified or included ...: Parts: Other: Other."

We have reviewed HQ 967159 and NY L83104 and determined that the classification set forth in those rulings is partially incorrect. The parts of the HSLVS at issue (namely, the central axis, spring load arms, and ceiling mounts) are classified under heading 8479, HTSUS, specifically in subheading 8479.90.94, as "Machines and mechanical appliances having individual functions, not specified elsewhere or included in this chapter; parts thereof," pursuant to GRI 1 and Note 2(b) to Section XVI. Our determination with regard to the classification of the flat panel monitor adapters and the light heads set forth in HQ 967159 remains unchanged.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify HQ H967159, revoke NY L83104, and to modify or revoke any other ruling not specifically identified, to reflect the proper classification of the subject merchandise according to the analysis contained in proposed HQ H036398 (Attachment C) and HQ H103378 (Attachment D). 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: June 8, 2010

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

Attachments

[ATTACHMENT A]

November 17, 2004
CLA-2 RR:CR:GC 967159
CATEGORY: CLASSIFICATION
TARIFF NO.: 9405.40.60

MR. WADE GOSSET
STERIS CORP.
5960 HEISLEY RD.
MENTOR, OH 44060–1834

RE: Selected part of the Harmony Surgical Lighting and Visualization System

DEAR MR. GOSSET:

This is in reference to your letter, dated May 21, 2004, requesting reconsideration of New York Ruling Letter (NY) K84508, issued to you on April 21, 2004, by the Director of Customs National Commodity Specialist Division, New York, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of selected parts of the Harmony Surgical Lighting and Visualization System (HSLVS).

FACTS:

The HSLVS is the overhead light used in surgical suites by surgeons. It contains many special features for this purpose, such as balanced suspension arms for exact positioning, spot light feature, back up lighting system, color temperature regulation to prevent burning of tissues and color reading index to reflect the true color of tissue, installation ports for endoscopy equipment and monitors, among others. The imported merchandise consists of the following parts for the HSLVS which are assembled in the U.S. with American made electrical components to produce an HSLVS:

1) a central axis, composed of carbon steel, that allows the lights and apparatus to move in circular motion around the patient to assist the surgeon during the surgical process.

2) the spring load arms, composed of carbon steel, that extend from the central axis and allow for either the lights or equipment to be mounted.

3) flat monitor adapters, composed of carbon steel, that connect with a spring load arm to mount a flat LCD monitor to the lighting system.

4) ceiling sets that allow for the lighting system to be mounted into the ceiling and consist of mounting components (nuts, bolts and clamp rings) to attach to the ceiling; a carbon steel suspension tube to which the lighting assembly is attached and which houses the system cables and wires; and a plastic ceiling hood or cover.

5) light heads of carbon steel that provide the essential lighting function of the HSLVS.

It is stated that these lamp components also incorporate the necessary operating parts, including electrical components, bearings, commutators, plastic components, wiring, et cetera.

It is noted that this merchandise can be imported in the following ways: as individual lamp parts and accessories; as unassembled parts put up in a manner to create incomplete lamps which are considered to be parts; and as unassembled parts that are put up in a manner to create complete lamps.

ISSUE:

Is the overhead surgical lamp found in surgical suites an appliance used in surgical sciences and is the imported merchandise "parts thereof?"

LAW AND ANALYSIS:

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

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

The following HTSUS headings are under consideration:

7326	Other articles of iron or steel:
	Other:
	Other:
7326.90.85	Other
* * * * * *	
8302	Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof:
8302.50.00	Hat-racks, hat pegs, brackets and similar fixtures, and parts thereof
* * * * * *	
9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof:
9018.90	Other instruments and appliances and parts and accessories thereof:
	Other:
	Electro-medical instruments and appliances and parts and accessories thereof:
9018.90.60	Electro-surgical instruments and appliances, other than extracorporeal shock wave lithotripters; all the foregoing and parts and accessories thereof
* * * * * *	

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:
9405.10	Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares:
	Of base metal:
9405.10.60	Other
* * * * * *	
9405.99	Other:
9405.99.40	Other

The Chapter 90 legal notes state, in pertinent part, the following:

1. This chapter does not cover:

***** (h) Searchlights or spotlights of a kind used for cycles or motor vehicles (heading 8512); portable electric lamps of heading 8513; cinematographic sound recording, reproducing or re-recording apparatus (heading 8519 or 8520); sound-heads (heading 8522); still image video cameras, other video camera recorders and digital cameras (heading 8525); radar apparatus, radio navigational aid apparatus and radio remote control apparatus (heading 8526); numerical control apparatus (heading 8537); sealed beam lamp units of heading 8539; optical fiber cables of heading 8544;

(ij) Searchlights or spotlights of heading 9405; EN 90.18 states, in pertinent part, the following:

INSTRUMENTS AND APPLIANCES FOR HUMAN MEDICINE OR SURGERY

This group includes:

* * * * * *

(r) Lamps which are specially designed for diagnostic, probing, irradiation, etc. purposes. Torches, such as those in the shape of a pen are excluded (heading 8513) as are other lamps which are not clearly identifiable as being for medical or surgical use (heading 94.05).

EN 94.05 states, in pertinent part, the following:

(I) LAMPS AND LIGHTING FITTINGS, NOT ELSEWHERE SPECIFIED OR INCLUDED

Lamps and lighting fittings of this group can be constituted of any material (excluding those materials 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., or, as in the case of fluorescent strip fixtures, a starter or a ballast.

This heading covers in particular: . . . .

(3) Specialised lamps, e.g.: darkroom lamps; machine lamps (presented separately); photographic studio lamps; inspection lamps (other than those of heading 85.12); non-flashing beacons for aerodromes; shop window lamps; electric garlands (including those fitted with fancy lamps for carnival or entertainment purposes or for decorating Christmas trees).

EN 94.05 states, in pertinent part, the following:

This heading also excludes :

* * * * * *

(l) Medical diagnostic, probing, irradiation, etc., lamps (heading 90.18).

Spotlights are specifically excluded from heading 9018, HTSUS, in favor of eo nominee classification in heading 9405, HTSUS. The instant merchandise comprises parts of a lamp. The issue is whether the lamp is a spotlight of heading 9405, or a surgical appliance of heading 9018, HTSUS.

Lamps which "are specially designed for diagnostic, probing, irradiation, etc. purposes" are included in heading 9018, HTSUS. However, the instant HSLVS parts can not be said to have been designed for a lamp used in probing or irradiation. Lamps so designed are those that are part of an instrument which probes the body, such as an endoscope, which enables the clinician to *see* the internal organ and take a cell sample so as to diagnose a disease. Lamps used for irradiation are those which employ radiation to reveal, most commonly, skin diseases. Instead, you argue that the HSLVS is specially designed for diagnostic purposes. The HSLVS has certain temperature and lighting features which will not harm the patient during a surgical procedure. It also has ports for the attachment of visualization equipment during certain surgical procedures and a handle to position it during surgery. These facts, while important, do not lead us to believe that the lamp function is specialized for the diagnosis of disease. Precision overhead room lighting is necessary for the surgeon to do his or her job. But the instant merchandise is not used in direct contact or even in close proximity with the patient for the sole benefit of diagnosis of disease. While it is specialized lighting to be sure, it is more akin to the explicitly excluded spotlight of heading 9405, HTSUS, than it is to the included lamps attached to endoscopes and the like, that are used in intimate contact with the patient.

HOLDING:

In this regard, the components of this lighting system that are considered to be lamp parts (not accessories), whether imported individually in bulk form or unassembled in kits for lamp parts or complete lamps, are found to be properly classified under heading 9405, HTSUS.

The applicable subheading for the individual carbon steel lamp parts imported in bulk packaging (excluding the ceiling sets, the accessories covering the central axis and spring load arms for the flat monitor adapters, and the actual flat monitor adapters) will be 9405.99.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for lamps and lighting

fittings...and parts thereof, not elsewhere specified or included...parts: other: other. The rate of duty will be 6 percent ad valorem.

The applicable subheading for the individual central axis and spring load arms of carbon steel, imported in bulk packaging, for the flat monitor adapters will be 8302.50.0000, HTSUS, which provides for hat-racks, hat pegs, brackets and similar fixtures, and parts thereof, of base metal. The rate of duty will be free.

The applicable subheading for the individual flat monitor adapters of carbon steel, imported in bulk packaging, will be 7326.90.8587, HTSUS, which provides for other articles of iron or steel, other, other, other, other, other. The rate of duty will be 2.9 percent ad valorem.

The applicable subheading for the lamp parts, not accessories, when imported in an unassembled condition to create an incomplete lamp, which is then considered to be a part, will be 9405.99.4000, HTSUS, which provides for lamps and lighting fittings...parts: other: other. The rate of duty will be 6 percent ad valorem.

The applicable subheading for this merchandise when imported in an unassembled condition to create a complete lamp will be 9405.10.6020, HTSUS, which provides for lamps and lighting fittings...chandeliers and other electric ceiling or wall lighting fittings...of base metal: other than of brass, other. The rate of duty will be 7.6 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 the internet at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY K84508 is affirmed.

Sincerely,

MYLES B. HARMON,
Director
Commercial Rulings Division

[ATTACHMENT B]

March 11, 2005
CLA-2–94:RR:NC:1:108 L83104
CATEGORY: Classification
TARIFF NO.: 9405.99.4000

MR. WADE GOSSETT
STERIS CORPORATION
5960 HEISLEY ROAD
MENTOR, OH 44060–1834

RE: The tariff classification of a surgical-lighting ceiling mount from Germany.

DEAR MR. GOSSETT:

In your letter dated February 18, 2005, you requested a tariff classification ruling.

The subject merchandise, based on the submitted information, is a surgical-lighting ceiling mount for the Harmony Surgical Lighting and Visualization System (HSLV), which is stated to consist of the following components: a carbon steel suspension tube for the lighting assembly; a safety ring, a clamping bushing, a nut din, a ring-grip quick-release pin, a ceiling plate, a star washer, a canopy ring and ceiling-cover accessories, all composed of steel; and a canopy cover, a tube grommet, a earthing sign din and ceiling-cover accessories, all composed of plastic. It is noted that this merchandise will also be imported with the appropriate labeling and packaging material.

The applicable subheading for the surgical-lighting ceiling mount will be 9405.99.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for Lamps and lighting fittings...Parts: Other: Other. The rate of duty will be 6 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 Michael Contino at 646–733—3014.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT C]

HQ H036398
CLA-2 OT: RR: CTF: TCM H036398 RM
CATEGORY: Classification
TARIFF NO.: 8479.90.94

MR. WADE GOSSET
STERIS CORPORATION
5960 HEISLEY RD.
MENTOR, OH 44060

RE: Modification of Headquarters Ruling Letter 967159, dated November 17, 2004; Classification of Parts of the Steris® Harmony Surgical Lighting and Visualization System

DEAR MR. GOSSET:

This is in reference to Headquarters Ruling Letter ("HQ") 967159, issued to you on November 17, 2004. In that ruling, U.S. Customs and Border Protection ("CBP") addressed the tariff classification of selected parts of the Steris® Harmony Surgical Lighting and Visualization System ("HSLVS"). We have reviewed HQ 967159 and found our determination on the classification of selected parts of the HSLVS, namely, the central axis, the spring load arms, and the ceiling set, to be incorrect. For the reasons set forth below, we intend to modify that ruling.

FACTS:

In HQ 967159, without the benefit of samples, and on the basis of the importer's description, CBP described the subject merchandise as follows:

> The HSLVS is the overhead light used in surgical suites by surgeons. It contains many special features for this purpose, such as balanced suspension arms for exact positioning, spot light feature, back up lighting system, color temperature regulation to prevent burning of tissues and color reading index to reflect the true color of tissue, installation ports for endoscopy equipment and monitors, among others.
>
> The imported merchandise consists of the following parts for the HSLVS which are assembled in the U.S. with American-made electrical components:
>
> 1) A central axis, composed of carbon steel, that allows the lights and apparatus to move in circular motion around the patient to assist the surgeon during the surgical process.
>
> 2) The spring load arms, composed of carbon steel, that extend from the central axis and allow for either the lights or equipment to be mounted.
>
> 3) Flat monitor adapters, composed of carbon steel, that connect with a spring load arm to mount a flat LCD monitor to the lighting system.
>
> 4) Ceiling sets that allow for the lighting system to be mounted into the ceiling and consist of mounting components (nuts, bolts and clamp rings) to attach to the ceiling; a carbon steel suspension tube to which the lighting assembly is attached and which houses the system cables and wires; and a plastic ceiling hood or cover.

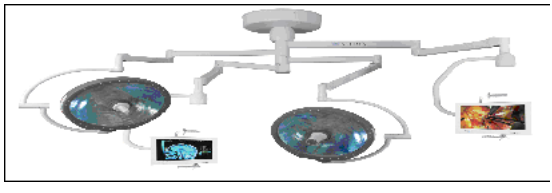
5) Light heads of carbon steel that provide the essential lighting function of the HSLVS.

It is stated that these lamp components also incorporate the necessary operating parts, including electrical components, bearings, commutators, plastic components, wiring, et cetera.

In that ruling, CBP classified the complete HSLVS in heading 9405 of the Harmonized Tariff Schedule of the United States ("HTSUS"), specifically, in subheading 9405.10.60, as "Lamps ...not elsewhere specified or included ...: Chandeliers and other electric ceiling or wall fittings ... of base metal: Other than of brass: Other."

Moreover, we classified the component parts of the HSLVS as follows: (1) the central axis and spring load arms in subheading 8302.50.00, HTSUS, as "Brackets and similar fixtures ...: Hat-racks, hat pegs, brackets and similar fixtures, and parts thereof"; (2) the flat monitor adapters in subheading 7326.90.85, HTSUS, as "Other articles of iron or steel: Other: Other: Other"; and (3) the light heads of carbon steel in subheading 9405.99.40, HTSUS, as "Lamps and lighting fittings ... and parts thereof, not elsewhere specified or included ...: Parts: Other: Other." We did not address the ceiling sets because counsel did not provide sufficient information on which to issue a classification determination.

We have since viewed samples of the merchandise and learned that the HSLVS is not an overhead lamp, as we previously concluded, but a pendant spring-arm suspension system to which lamps, video monitors, cameras, and other electrical equipment can be mounted. It contains an adjustable break system that allows for each arm to remain in a defined position. (The complete system is pictured below.) Its component parts are imported separately, in bulk, and disassembled.



ISSUE:

What is the correct tariff classification under the HTSUS of the central axis, spring load arms, and ceiling set of Steris' HSLVS?

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 2010 HTSUS provisions under consideration are as follows:

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

8479.90	Parts:
8479.90.94	Other ...
	* * *
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included;
	Parts:
9405.99	Other:
9405.99.40	Other ...
	* * *

The Legal Notes to Section XVI, HTSUS, in which Chapter 84 is located, provide, in relevant part:

> 2. Subject to note 1 to this section, note 1 to chapter 84 and note 1 to chapter 85, parts of machines (not being parts of the articles of heading 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 chapters 84 and 85 (other than headings 8485 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; ...
>
> ...
>
> 5. For the purposes of these notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of chapter 84 or 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 8479, HTSUS, provide, in relevant part:

> The machinery of this heading is distinguished from the parts of machinery, etc., that fall to be classified in accordance with the general provisions concerning parts, by the fact that it has individual functions.
>
> For this purpose the following are regarded as having "individual functions":
>
> (A) Mechanical devices, with our without motors or other driving force, whose function can be performed distinctly from and independently of any other machine or appliance.
>
> ...

I. *The HSLVS*

Steris' HSLVS is a pendant spring-arm suspension system upon which lamps, video monitors, cameras, and other electronic devices can be mounted. Its adjustable break system enables each spring arm to remain in place even if the center of gravity of the equipment it holds is moved. This mechanical function is performed independently from any other machine. *See* EN 84.79(A). Therefore, as the HSLVS is not classified elsewhere in the tariff, we find that it is classified in heading 8479, HTSUS, which provides for "Machines and mechanical appliances having individual functions, not specified or included elsewhere in [Chapter 85]."

II. *Selected Parts of the HSLVS*

In *Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774 (Fed. Cir. 1997) (hereinafter "*Bauerhin*"), the Court of Appeals for the Federal Circuit considered the nature of "parts" under the HTSUS and two distinct though not inconsistent tests resulted. *See* 110 F.3d at 779 (citing *United States v. Willoughby Camera Stores, Inc.*, 21 C.C.P.A. 322 (1933) and *United States v. Pompeo*, 43 C.C.P.A. 9 (1955)).

The court in *Bauerhin* explained:

> As set forth in *Willoughby Camera*, "an integral, constituent, or component part, without which the article to which it is to be joined could not function as such article" is surely a part for classification purposes. 221 C.C.P.A. at 324. However that test is not exclusive. *Willoughby Camera* does not address the situation where an imported item is dedicated solely for use with the article. *Pompeo* addresses that scenario and states that such an item can also be classified as a part.
>
> Reconciling *Willoughby Camera* with *Pompeo*, we conclude that where, as here, an imported item is dedicated solely for use with another article and is not a separate and distinct commercial entity, *Pompeo* is a closer precedent and Willoughby Camera does not apply [...] Under *Pompeo*, an imported item dedicated solely for use with another article is a "part" of that article within the meaning of the HTSUS.

The central axis, spring load arms, and ceiling set are integral components of the HSLVS. Without them, the HSLVS could not function as a pendant suspension system. Therefore, applying *Bauerhin*, we find that they are "parts" of the HSLVS.

Subject to certain exceptions not relevant here, parts of machines or apparatus of Chapter 84, HTSUS, are classified in accordance with Note 2 to Section XVI, HTSUS. The parts at issue are suitable for use solely with the HSLVS (they are used exclusively for that purpose), and are not described by any of the headings of Chapter 84 or 85, HTSUS. Accordingly, by operation of Note 2(b), they are classified as parts of the HSLVS, in subheading 8479.90.94, HTSUS.

HOLDING:

By application of GRI 1 and Note 2(b) to Section XVI, HTSUS, the central axis, spring load arms, and ceiling sets of the HSLVS are classified in heading 8479, specifically in subheading 8479.90.94, HTSUS, which provides for: "Machines and mechanical appliances having individual functions, not specified elsewhere or included in this chapter; parts thereof." The 2010 column one, general rate of duty is: Free.

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*.

A copy of this ruling letter should be attached to the 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.

EFFECT ON OTHER RULINGS:

This ruling modifies HQ 967159, dated November 17, 2004. The classification of the flat monitor adapters and light heads of the HSLVS remains unchanged.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT D]

HQ H103378
CLA-2 OT:RR:CTF:TCM H103378 RM
CATEGORY: Classification
TARIFF NO.: 8479.90.94

MR. WADE GOSSET
STERIS CORPORATION
5960 HEISLEY RD.
MENTOR, OH 44060

RE: Revocation of New York Ruling Letter L83104, dated March 11, 2005; Classification of a ceiling mount for the Steris® Harmony Surgical Lighting and Visualization System

DEAR MR. GOSSET:

This is in reference to New York Ruling Letter ("NY") L83104, issued to you on March 11, 2005, by U.S. Customs and Border Protection ("CBP"), concerning the tariff classification of a ceiling mount for the Steris® Harmony Surgical Lighting and Visualization System ("HSLVS") under the Harmonized Tariff Schedule of the United States ("HTSUS"). We have reviewed NY L83104 and found it to be in error. For the reasons set forth below, we intend to revoke that ruling.

FACTS:

The merchandise at issue is a ceiling mount designed for Steris' HSLVS; a pendant, spring-arm suspension system with an adjustable break to which lamps, video monitors, cameras, and other electrical equipment can be mounted.[1] The ceiling mount allows for installation of the HSLVS into the ceiling. It is comprised primarily of a suspension tube, a ceiling plate, a plastic canopy, and various fittings (e.g., rings, dins, washers, pins, grommets and covers).

ISSUE:

What is the correct tariff classification under the HTSUS of the ceiling mounts?

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 2010 HTSUS provisions under consideration are as follows:

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

[1] *See http://www.steris.com/documents.cfm?id=M2353EN* (for pictures and technical literature on the HSLVS and the ceiling mounts).

8479.90	Parts:
8479.90.94	Other ...
	* * *
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included;
	Parts:
9405.99	Other:
9405.99.40	Other ...
	* * *

The Legal Notes to Section XVI, HTSUS, in which Chapter 84 is located, provide, in relevant part:

3. 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 chapters 84 and 85 (other than headings 8485 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; ...

   ...

6. For the purposes of these notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of chapter 84 or 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 8479, HTSUS, provide, in relevant part:

> The machinery of this heading is distinguished from the parts of machinery, etc., that fall to be classified in accordance with the general provisions concerning parts, by the fact that it has individual functions.
>
> For this purpose the following are regarded as having "individual functions":
>
> (B) Mechanical devices, with our without motors or other driving force, whose function can be performed distinctly from and independently of any other machine or appliance.
>
> ...

In NY L83104, without the benefit of samples, and on the basis of the importer's description, CBP classified the ceiling mount under heading 9405, HTSUS, specifically, in subheading 9405.99.40, as a part of a lamp.

However, as indicated in the FACTS section, Steris' HSLVS is not a lamp, but rather, a pendant suspension system upon which lamps, video monitors, cameras, and other electronic devices can be mounted. Its adjustable break system enables each spring arm to remain in place even if the center of gravity of the equipment it holds is moved. This mechanical function is performed independently from any other machine. *See* EN 84.79(A). Therefore, as the HSLVS is not classified elsewhere in the tariff, it is classified in heading 8479, HTSUS, which provides for "Machines and mechanical appliances having individual functions, not specified or included elsewhere in [Chapter 85]."

In *Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774 (Fed. Cir. 1997) (hereinafter "Bauerhin"), the Court of Appeals for the Federal Circuit considered the nature of "parts" under the HTSUS and two distinct though not inconsistent tests resulted. *See* 110 F.3d at 779 (citing *United States v. Willoughby Camera Stores, Inc.*, 21 C.C.P.A. 322 (1933) and *United States v. Pompeo*, 43 C.C.P.A. 9 (1955)).

The court in *Bauerhin* explained:

> As set forth in *Willoughby Camera*, "an integral, constituent, or component part, without which the article to which it is to be joined could not function as such article" is surely a part for classification purposes. 221 C.C.P.A. at 324. However that test is not exclusive. *Willoughby Camera* does not address the situation where an imported item is dedicated solely for use with the article. *Pompeo* addresses that scenario and states that such an item can also be classified as a part.
>
> Reconciling *Willoughby Camera* with *Pompeo*, we conclude that where, as here, an imported item is dedicated solely for use with another article and is not a separate and distinct commercial entity, *Pompeo* is a closer precedent and Willoughby Camera does not apply [...] Under *Pompeo*, an imported item dedicated solely for use with another article is a "part" of that article within the meaning of the HTSUS.

The ceiling mount is integral to the pendant suspension system in that it enables installation into the ceiling. Therefore, applying Bauerhin, we find that it is a "part" of the HSLVS.

Subject to certain exceptions not relevant here, parts of machines or apparatus of Chapter 84, HTSUS, are classified in accordance with Note 2 to Section XVI, HTSUS. The instant ceiling mount is suitable for use solely with the HSLVS (it is used exclusively for that purpose), and is not described by any of the headings of Chapter 84 or 85, HTSUS. Accordingly, by operation of Note 2(b), it is classified as a part of the HSLVS, in subheading 8479.90.94, HTSUS.

HOLDING:

By application of GRI 1 and Note 2(b) to Section XVI, HTSUS, the ceiling mount is classified in heading 8479, specifically in subheading 8479.90.94, HTSUS, which provides for: "Machines and mechanical appliances having

individual functions, not specified elsewhere or included in this chapter; parts thereof." The 2010 column one, general rate of duty is: Free.

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*.

A copy of this ruling letter should be attached to the 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.

EFFECT ON OTHER RULINGS:

This ruling revokes NY L83104, dated March 11, 2005.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF A RULING LETTER RELATING TO THE CLASSIFICATION AND COUNTRY OF ORIGIN MARKING OF A RUBBER HOSE ASSEMBLY FOR VACCUM CLEANERS AND PROPOSED MODIFICATION OF A RULING LETTER RELATING TO THE CLASSIFICATION OF A PLASTIC HOSE ASSEMBLY FOR VACUUM CLEANERS

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

ACTION: Notice of proposed revocation of a ruling letter concerning the classification and country of origin marking of a rubber hose assembly for vacuum cleaners and proposed modification of a ruling letter relating to the classification of a plastic hose assembly for vacuum cleaners.

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 one ruling letter relating to the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") and country of origin marking of a rubber hose assembly for vacuum cleaners, and to modify one ruling letter relating to the classification of a plastic hose assembly for vacuum cleaners. 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 July 23, 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 Street N.W., Mint Annex, Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118 during regular business hours.

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 a ruling letter pertaining to the tariff classification and country of origin marking of a rubber hose assembly for vacuum cleaners and to modify a ruling letter pertaining to the classification of a plastic hose assembly for vacuum cleaners. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter ("HQ") 735542, dated March 21, 1994 [rubber hose assembly] (Attachment A), and the modification of New York Ruling Letter ("NY") K85099, dated May 5, 2004 [plastic hose assembly] (Attachment 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.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke HQ 735542 and any other ruling not specifically identified, to reflect the proper classification and country of origin marking of the rubber hose assembly according to the analysis contained in proposed HQ H024323, set forth as Attachment C to this document. CBP is also proposing to modify NY K85099 any other ruling not specifically identified, to reflect the proper classification of the plastic hose assembly according to the analysis contained in proposed HQ H024320, set forth as attachment D. 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: June 8, 2010

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

Attachments

[ATTACHMENT A]

HQ 735542
March 21, 1994
MAR 2–05 CO:R:C:V 735542
CATEGORY: Marking

MR. ED BAKER
A. N. DERINGER, INC.
30 WEST SERVICE ROAD
CHAMPLAIN, N.Y. 12919

RE: Country of origin marking; classification; hose assembly for hoses for vacuum cleaners; NAFTA Marking Rules

DEAR MR. BAKER:

This is in response to your letter dated February 8, 1993, submitted on behalf of Tiger-Vac. Inc., requesting a ruling on the tariff classification and country of origin marking requirements of a rubber hose assembly. Your request was forwarded to us by Customs, New York Seaport, for response. We regret the delay in responding.

FACTS:

The article in question is a hose assembly for a vacuum cleaner, item #75A, P/N 381120. This article is assembled in Canada from:

1. U.S. origin Flexible Neoprene Hose (item #74D, P/N 381180)

2. U.S. origin Stainless Steel Male Connector (item #60, P/N 381147)

3. Metal Female Adaptor (item #73, P/N 381144) assembled in Canada from
   i. metal adaptor (Taiwanese origin) and
   ii. aluminum tubing (Canadian origin).

The hose is indelibly marked "Made in USA" throughout the length of the hose.

ISSUES:

1. What is the classification of the imported hose assembly?

2. How should the imported hose assembly be marked?

LAW AND ANALYSIS:

CLASSIFICATION

The classification of merchandise under the HTSUS is governed by a the General Rules of Interpretation (GRI's). GRI 1, HTSUS, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes...."

Upon importation into the U.S., the hose assembly is classified under subheading 8509.90.15, HTSUS, which provides for "Electromechanical domestic appliances, with self-contained electric motor; parts thereof-...Parts....Parts of vacuum cleaners...Other...."

COUNTRY OF ORIGIN MARKING

Section 304 of the Tariff Act of 1930, as amended, (19 U.S.C. 1304), provides that unless excepted, every article of foreign origin imported into the U.S. 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 U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. 1304.

The North American Free Trade Agreement (NAFTA) was implemented under the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993). NAFTA Annex 311 provides for the promulgation of "Marking Rules" used for determining whether a good is a good of a NAFTA country and sets forth general marking principles pertaining to the methods and procedures relating to the country of origin marking of such goods.

The NAFTA Marking Rules are set forth in Treasury Decision (T.D.) 94–4, published in the Federal Register (59 FR 110) on January 3, 1994, as interim regulations. Corrections to the interim regulations were published on February 3, 1994 (59 FR 5082). Additional provisions implementing Annex 311 of the NAFTA are contained in the interim regulations amending part 134, Customs Regulations, published as T.D. 94–1 in the Federal Register (58 FR 69460) on December 30, 1993.

Section 134.1(b), of the interim Customs Regulations states that for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. Under §134.1(g) of the interim regulations, a "good of a NAFTA country" is an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.

The NAFTA Marking Rules appear in Part 102 of the interim regulations published as T.D. 94–4. Section 102.11(a) states that 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.

In order to determine the country of origin marking requirements of the imported rubber hose assembly, we must determine its country of origin under the NAFTA Marking Rules. Since the hose assembly is not wholly obtained or produced in Canada or produced exclusively from domestic materials in Canada, we must determine whether under section §102.11(a)(3) each foreign material incorporated in the assembly undergoes an applicable change in tariff classification set out in §102.20 in Canada. "Foreign material" is defined in §102.1(e) as a material whose country of origin as determined under these rules is not the same as the country in which the good is produced. As determined above, the imported hose assembly is classified under subheading 8509.90.15, HTSUS. §102.20(p) provides the applicable tariff shift rule for this subheading as follows:

"A change to subheading 8509.10 from any other heading, except heading 8501 when resulting from simple assembly."

The foreign materials incorporated in the hose assembly are the Taiwanese-origin metal adapter, the U.S.-origin hose imported into Canada in 50 foot coils, and the U.S.-origin stainless steel male connector for one end of the hose. None of these materials is classified in heading 8509 or 8501. The U.S.-origin flexible neoprene hose is classified in heading 4006 or 4009. The exact classification is dependent upon whether the tube is vulcanized. The U.S.-origin stainless steel male connector and Taiwanese-origin base metal adaptor appear to be classified in heading 7326. Accordingly, each foreign material incorporated in the imported hoses undergoes an applicable change in tariff classification in Canada and the country of origin of the finished product for marking purposes is Canada.

The hose assembly must be marked legibly, conspicuously and permanently to indicate the name of the country of origin, i.e., Canada, to the ultimate purchaser in the United States. (Without information regarding how the hose assembly will be used after importation and to whom it is sold, we cannot determine whether it is eligible for any of the exceptions from marking specified in 19 U.S.C. 1304 and 19 CFR 134.32(d)). It is unacceptable to import the hose assembly with "Made in USA" markings on the hose unless it can be made clear that the hose assembly is a product of Canada. We suggest either removing the "Made in USA" marking or discussing possible remedies with Customs officials at the port of entry.

HOLDING:

The hose assembly, item #75a, P/N 381120, is classified under subheading 8509.90.15, HTSUS, as other parts of vacuum cleaners, dutiable at the Column 1 rate of 3.4 percent ad valorem. The hose assembly must be marked Canada.

Sincerely,

JOHN DURANT,
Director
Commercial Rulings Division

[ATTACHMENT B]

NY K85099

May 5, 2004
CLA-2–39:RR:NC:SP:221 K85099
CATEGORY: Classification
TARIFF NO. 3924.90.5500; 3923.50.0000;
8509.90.1560; 9603.90.8050

MS. FRANCINE MARCOUX
HAMPTON DIRECT, INC.
P.O. BOX 1199
WILLISTON, VT 05495

RE: The tariff classification of plastic can sealers, measuring scoop, air conditioner covers, vacuum hose and crumb brush from China and Taiwan.

DEAR MS. MARCOUX:

In your letter dated April 7, 2004, you requested a classification ruling.

You have submitted illustrations of five products. Product number one is identified as can sealers, item number 19830. The can sealers are plastic lids that will be sold in sets of eight. The sets will include three different sizes: 2 with a 4" diameter, 2 with a 3-1/2" diameter and 4 with a 3–1/4" diameter. The can sealers are used to keep foods fresher for a longer period of time. The country of origin for this item is China.

Product number two is a plastic measuring scoop & clip identified as item number 23500. The handle of the large measuring scoop doubles as a bag clip. This item can be used in and around the home to scoop potting soil, grass seeds, cereal, flour, sugar and cornmeal. The bag can be closed with the clip to lock in freshness. The measuring scoop & clip holds approximately 6.8 ounces. The country of origin for this item is Taiwan.

Product number three is identified as outdoor air conditioner covers. The vinyl air conditioner covers will be available in three sizes: item number 23920, small (8" x 20" x 20"), item number 23922, medium (28" x21" x 21") and item number 23924, large (21" x 27" x 27"). The cover is tightly secured around the unit with cord fasteners for protection during weather changes. The country of origin for the outdoor air conditioner covers is China.

Product number four is identified as a vacuum clean flex, item number 25570. This product consists of a polyvinyl chloride (PVC) hose, a nylon brush and a connector and nozzle made of polypropylene. The flexible vacuum hose extends to clean hard to reach areas and it fits most standard vacuum cleaners. The extension adds an extra 22" to your vacuum hose. The country of origin for this product is China.

Product number five is identified as a roll-away crumbs brush, item number 26410. The hand held brush is composed of nylon bristles in a stainless steel base. The brush fits in the palm of the hand for removal of crumbs and lint with one sweep over tablecloths. The brush is designed with rotating bristles and a plastic snap-on cover. The bristles of the brush rotate for easy pickup of crumbs and the snap-on cover retains the contents. The cover can be removed for cleaning and disposal of the crumbs and lint. The country of origin for this item is China.

The applicable subheading for the plastic can sealers, item number 19830, will be 3923.50.0000, Harmonized Tariff Schedule of the United States

(HTS), which provides for stoppers, lids, caps and other closures, of plastics. The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for the plastic measuring scoop & clip, item number 23500, and the vinyl outdoor air conditioner covers, item numbers 23920, 23922 and 23924, will be 3924.90.5500, HTS, which provides for...other household articles...of plastics: Other: Other. The rate of duty will be 3.4 percent ad valorem.

The applicable subheading for the vacuum clean flex hose, item number 25570, will be 8509.90.1560, HTS, which provides for parts of vacuum cleaners, other, other. The rate of duty will be 2 percent ad valorem.

The applicable subheading for the roll-away crumbs hand brush will be 9603.90.8050, HTS, which provides for brooms, brushes... other. The rate of duty will be 2.8 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 Joan Mazzola at 646–733–3023.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT C]

HQ H024323
CLA-2 OT:RR:CTF:TCM H024323 RM
CATEGORY: Classification/ Marking
TARIFF NO.: 4009.12.00

MR. ED BAKER
A.N. DERINGER, INC.
30 W. SERVICE ROAD
CHAMPLAIN, NY 12919

RE: Revocation of Headquarters Ruling Letter 735542; Classification and Country of Origin Marking of a Rubber Hose Assembly for a Vacuum Cleaner

DEAR MR. BAKER:

This is in reference to Headquarters Ruling Letter ("HQ") 735542, dated March 21, 1994, issued to you on behalf of Tiger-Vac, Inc., regarding the tariff classification and country of origin marking requirements of a rubber hose assembly for vacuum cleaners. In that ruling, U.S. Customs and Border Protection ("CBP") classified the merchandise in heading 8509, Harmonized Tariff Schedule of the United States ("HTSUS"), as a "part" of a vacuum cleaner, and determined that it was a product of Canada. We have reviewed HQ 735542 and found it to be incorrect.

FACTS:

In HQ 735542, CBP described the merchandise as follows:

> The article in question is a hose assembly for a vacuum cleaner, item #75A, P/N 381120. This article is assembled in Canada from:
>
> (1) U.S. origin Flexible Neoprene Hose (item #74D, P/N 381180)
>
> (2) U.S. origin Stainless Steel Male Connector (item #60, P/N 381147)
>
> (3) Metal Female Adaptor (item #73, P/N 381144) assembled in Canada from:
>
> i. metal adaptor (Taiwanese origin) and
>
> ii. aluminum tubing (Canadian origin).

In that ruling, CBP concluded that the hose assembly was a product of Canada for marking purposes because it satisfied the NAFTA tariff shift rule specified in section 102.20(p) of the CBP Regulations (19 C.F.R. §102.20(p)) for subheading 8509.90.15, HTSUS, which requires "[a] change to subheading 8509.90 from any other heading except heading 8501 when resulting from simple assembly." CBP explained:

> The foreign materials incorporated in the hose assembly are the Taiwanese-origin metal adapter, the U.S.-origin hose imported into Canada in 50 foot coils, and the U.S.-origin stainless steel male connector for one end of the hose. None of these materials is classified in heading 8509 or 8501. The U.S.-origin flexible neoprene hose is classified in heading 4006 or 4009. The exact classification is dependent upon whether the tube is vulcanized. The U.S.-origin stainless steel male connector and Taiwanese-origin base metal adaptor appear to be classified in heading

7326. Accordingly, each foreign material incorporated in the imported hoses undergoes an applicable change in tariff classification in Canada and the country of origin of the finished product for marking purposes is Canada.

ISSUES:

(i) Whether the rubber hose assembly is classified in heading 4009, HTSUS, as a rubber hose with fittings, or in heading 8508, HTSUS, as a "part" of a vacuum cleaner?

(ii) Whether the rubber hose assembly was properly marked as a product of Canada?

LAW AND ANALYSIS:

I. *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 2009 HTSUS provisions under consideration are as follows:

4009 Tubes, pipes and hoses, of vulcanized rubber other than hard rubber, with or without their fittings (for example, joints, elbows, flanges):

8508 Vacuum cleaners; parts thereof:

Legal Note 2 to Section XVI, HTSUS, provides:

> Subject to note 1 to this section, note 1 to chapter 84 and to note 1 of chapter 85, parts of machines ... are to be classified according to the following rules:
>
> (a) Parts which are goods included in any of the headings of chapters 84 and 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;
>
> (c) All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529, or 8538 as appropriate or, failing that, in heading 8487 or 8548.

Legal Note 2(d) to Chapter 40, HTSUS, provides:

This Chapter does not cover:

(d) Mechanical and electrical appliances or parts thereof of Section XVI (including electrical goods of all kinds), of hard rubber.

Additional U.S. Rule of Interpretation 1(c) provides:

In the absence of special language or context which otherwise requires —

(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 or accessory;

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 General ENs to Chapter 40, HTSUS, provide, in relevant part:

Hard rubber, (for example, ebonite) is obtained by vulcanizing rubber with a high proportion of sulfur to the point where it becomes practically inflexible and inelastic.

The ENs to heading 8508, HTSUS, provide, in relevant part:

EQUIPMENT PRESENTED WITH THE APPLIANCES OF THIS HEADING

Vacuum cleaners of this heading may be presented with auxiliary devices (accessories) (for brushing, polishing, insecticide spraying etc.) or interchangeable parts (carpet devces, rotary brushed, multi-function suction heads, etc.). Such an appliance is classified here together with the parts and accessories presented with it, **provided** they are of a kind commonly used with the appliance. **When presented separately, they are classified by reference to their nature**. (Emphasis added).

PARTS

Subject to the provisions regarding the classification of parts (See General Explanatory Notes to Section XVI), parts of appliances of this heading are also classified here.

In HQ 735542, CBP classified the rubber hose assembly in heading 8509, specifically in subheading 8509.90.15, HTSUS, as "Electromechanical domestic appliances, with self-contained electric motor; parts thereof: Parts: Parts of Vacuum Cleaners: Other." As a threshold matter, we note that effective February 3, 2007, parts of vacuum cleaners are classified in heading 8508,

HTSUS, which provides for "Vacuum cleaners; parts thereof."[1] Accordingly, we will discuss heading 8508, HTSUS, as the applicable provision for parts of vacuum cleaners.

The courts have considered the nature of "parts" under the HTSUS and two distinct though not inconsistent tests have resulted. *See Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774 (Fed. Cir. 1997), citing *United States v. Willoughby Camera Stores, Inc.*, 21 C.C.P.A. 322 (1933) and *United States v. Pompeo*, 43 C.C.P.A. 9 (1955).

The court in *Bauerhin* explained:

> As set forth in *Willoughby Camera*, "an integral, constituent, or component part, without which the article to which it is to be joined could not function as such article" is surely a part for classification purposes. 221 C.C.P.A. at 324. However that test is not exclusive. *Willoughby Camera* does not address the situation where an imported item is dedicated solely for use with the article. *Pompeo* addresses that scenario and states that such an item can also be classified as a part.
>
> Reconciling *Willoughby Camera* with *Pompeo*, we conclude that where, as here, an imported item is dedicated solely for use with another article and is not a separate and distinct commercial entity, *Pompeo* is a closer precedent and Willoughby Camera does not apply [...] Under *Pompeo*, an imported item dedicated solely for use with another article is a "part" of that article within the meaning of the HTSUS.

Applying *Bauerhin*, we find that the rubber hose assembly is a "part" because it is dedicated for use solely with a vacuum cleaner. However, under Additional U.S. Rule of Interpretation 1(c), HTSUS, even though the assembly is a part of vacuum cleaner, in the absence of special language or context which otherwise requires, a specific provision for this part will prevail.

Note 2(b) to Section XVI, HTSUS, provides that parts not included in any of the headings of Chapters 84 or 85, HTSUS, suitable for use solely or principally with a particular kind of machine, are classified with that machine.[2] The Note does not apply, however, when one of the competing provisions falls outside of Section XVI. *See, e.g*, HQ 966963, dated April 30, 2004 (holding that plastic screw caps used to cover the oil filters of diesel engine trucks are classified in heading 3923, as plastic caps, not as parts of oil filters). Therefore, in this case, because one of the competing provisions falls outside of Section XVI (i.e., heading 4009, HTSUS), Note 2(b) does not supersede Additional U.S. Rule of Interpretation 1(c), HTSUS.

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[1] Pursuant to title 19 United States Code, Section 3005, the Harmonized Tariff Schedule of the United States was amended to reflect changes recommended by the World Customs Organization. The proclaimed changes are effective for goods entered or withdrawn from warehouse for consumption on or after February 3, 2007. *See* Presidential Proclamation 8097, 72 FR 453, Volume 72, No. 2 (January 4, 2007).

[2] Note 5 to Section XVI, HTSUS, reads: "For purposes of these notes, the expression "*machine*" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of chapter 84 or 85."

Heading 4009, HTSUS, provides for "Tubes, pipes and hoses, of vulcanized rubber other than hard rubber, with or without their fittings (for example, joints, elbows, flanges)." The instant merchandise consists of a neoprene (a flexible synthetic rubber) hose with metal fittings. The hose is not of "hard rubber." *See* General ENs to Chapter 40. Accordingly, by application of GRI 1 and Additional U.S. Rule of Interpretation 1(c), HTSUS, we find that the rubber hose assembly is more specifically provided in heading 4009, HTSUS. *See* HQ 089296, dated August 21, 1991 (rubber hoses that were parts of forklift trucks classified as hoses in heading 4009, HTSUS).

II. *MARKING*

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. § 1304), provides that unless excepted, every article of foreign origin imported into the United States "shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such a manner as to indicate to an 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 markings on the imported goods the country of which the good is the product. "The evident purpose is to mark the goods so 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." *See United States v. Friedlaender & Co.*, 27 C.C.P.A. 297, 302 (C.C.P.A. 1940).

Part 134 of the CBP 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) of the CBP Regulations (19 C.F.R. § 134.1(b)), defines "country of origin" as the 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 this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Section 134.1(j) of the CBP Regulations (19 C.F.R. § 134.1(j)), provides that the "NAFTA Marking Rules" are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the CBP Regulations (19 C.F.R. § 134.1(g)), defines a "good of a NAFTA country" as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules, set forth at 19 C.F.R. §102.

Section 102.11(a) of the CBP Regulations (19 C.F.R. § 102.11(a)), sets forth the required hierarchy under the NAFTA Marking Rules for determining country of origin for marking purposes. This section states that 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 [section] 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

Section 102.1(g) of the CBP Regulations (19 C.F.R. § 102.1(g)), defines a good wholly obtained or produced as including "A good produced in that country exclusively from goods referred to in paragraphs (g)(1) through (g)(10) of this section or from their derivatives, at any stage of production."

The rubber hose assembly at issue is neither wholly obtained or produced in Canada, nor produced exclusively from foreign materials. It is assembled in Canada from components manufactured in the United States (hose and steel male connector), Taiwan (metal female adaptor), and Canada (aluminum tubing). Accordingly, we must determine whether, under § 102.11(a)(3), each foreign material incorporated in the assembly undergoes the applicable change in tariff classification set out in § 102.20 in Canada.

Section 102.1(e) of the CBP Regulations (19 C.F.R. § 102.1(e)), defines "foreign material" as "a material whose country of origin as determined under these rules is not the same as the country in which the good is produced." As determined above, the imported hose assembly is classified in heading 4009, HTSUS. Section 102.20(g) of the CBP Regulations (19 C.F.R. § 102.20(g)), the applicable tariff shift rule for this heading, requires "[a] change to heading 4006 through 4010 from any other heading, including another heading within that group."

In this case, the foreign materials incorporated in the rubber hose assembly are the U.S.-origin rubber hose [heading 4009, HTSUS], the U.S.-origin steel male connector [heading 7326, HTSUS], and the Taiwanese-origin metal female adapter [heading 7326, HTSUS]. The rubber hose does not undergo the applicable change in tariff classification set out in § 102.20(g) in Canada in that it remains in heading 4009, HTSUS. Accordingly, the country of origin of the good may not be determined in accordance with that provision.

As the country of origin cannot be determined by application of § 102.20(a), we turn to section 102.11(b) of the CBP Regulations (19 C.F.R. § 102(b)) which states, in part:

> 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 origin cannot be determined under paragraph (a), of this section:
>
> (1) The country of origin of the good is the country or countries of the origin of the single material that imparts the essential character of the good;
>
> * * *

Section 102.18 of the CBP Regulations (19 C.F.R. § 102.18) provides, in part:

> (b) (1) For purposes of identifying the material that imparts the essential character to a good under § 102.11, the only materials that shall be taken into consideration are those domestic or foreign materials that are classified in a tariff provision from which a change in tariff classification is not allowed under the § 102.20 specific rule or other requirements applicable to the good.
>
> * * *

Applying §102(b) and §102.18, we find that the U.S-originating rubber hose imparts the essential character of the rubber hose assembly. As such, the country of origin for marking purposes is the United States. Inasmuch as the

marking requirements of 19 U.S.C. § 1304 are applicable only to articles of "foreign origin," the assembly need not be marked with a reference to the United States origin upon importation into the United States. *See, e.g.*, HQ H015361, dated November 2, 2007.

Note, however, that the NAFTA Preference Override, set forth in 19 C.F.R. §102.19, is applicable to the subject merchandise. § 102.19(b) states:

> (b) If, under any other provision of this part, the country of origin of a good which is originating ... is determined to be the United States and that good has been exported from, and returned to, the United States after having been advanced in value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States.

The U.S.-originating rubber hose was exported from, and returned to, the U.S. after having been advanced in value in Canada. Namely, it was fitted with steel connectors and adapters for use with a vacuum cleaner. Accordingly, for CBP duty purposes, the country of origin of the merchandise is Canada.

HOLDING:

By application of GRI 1 and Additional U.S. Rule 1(c), HTSUS, the rubber hose assembly is classified in heading 4009, specifically in subheading 4009.12.00, HTSUS, which provides for: "Tubes, pipes and hoses, of vulcanized rubber other than hard rubber, with our without their fittings (for example, joints, elbows, flanges): Not reinforced or otherwise combined with other materials: With fittings." The 2009 column one, special rate of duty is: Free.

Pursuant to section 102.11(b) of the CBP Regulations, for marking purposes, the country of origin of the rubber hose assembly is the United States Claims of domestic origin are a matter under the jurisdiction of the Federal Trade Commission ("FTC"). Therefore, should you wish to identify any of the articles as "Made in the USA", we recommend that you contact that agency at the following address: Federal Trade Commission, Division of Enforcement, 600 Pennsylvania Avenue, N.W. Washington, D.C. 20580.

Pursuant to section 102.19(b) of the CBP Regulations, for duty purposes, the country of origin of the merchandise is Canada.

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:

This ruling revokes HQ 735542, dated March 21, 1994.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT D]

HQ H024320
CLA-2 OT:RR:CTF:TCM H024320 RM
CATEGORY: Classification
TARIFF NO.: 3917.33.00

MS. FRANCINE RAMSEY
HAMPTON DIRECT, INC.
P.O. BOX 1199
WILLISTON, VT 050495

RE: Modification of New York Ruling Letter K85099; Classification of a Plastic Hose Assembly for Vacuum Cleaners

DEAR MS. RAMSEY:

This is in reference to New York Ruling Letter ("NY") K85099, dated May 5, 2004, issued to Hampton Direct, Inc., concerning the classification of can sealers, a plastic measuring scoop and clip, outdoor air conditioner covers, and a plastic hose assembly for vacuum cleaners. In that ruling, U.S. Customs and Border Protection ("CBP") classified the plastic vacuum hose assembly in heading 8509, Harmonized Tariff Schedule of the United States ("HTSUS"), as a "part" of a vacuum cleaner. We have reviewed NY K85099 as it pertains to the classification of the plastic hose assembly and found it to be incorrect.

FACTS:

In NY K85099, we described the subject merchandise as follows:

> Product number four is identified as [the] vacuum clean flex, item number 25570. This product consists of a polyvinyl chloride (PVC) hose, a nylon brush and a connector and nozzle made of polypropylene. The flexible vacuum hose extends to clean hard to reach areas and it fits most standard vacuum cleaners. The extension adds an extra 22" to [the] vacuum hose.

ISSUE:

What is the correct classification of the plastic hose assembly under the 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 the classification of goods 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.

GRI 3 provides, in pertinent part:

> When by application of rule 2(b) or for any other reason, goods are, *prima facie* classifiable under two or more headings, classification shall be effected as follows:

* * * *

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), 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 2009 HTSUS headings under consideration are as follows:

3917 Tubes, pipes and hoses and fittings therefor (for example, joints, elbows, flanges), of plastics:

8508 Vacuum cleaners; parts thereof:

9603 Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees):

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the HTSUS. While not legally binding or 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).

EN (X) to GRI 3(b) provides, in relevant part:

For the purpose of this Rule, the term 'goods put up in sets for retail sale' shall be taken to mean goods which:

(a) consist of at least two different articles which are, prima facie, classifiable in different headings . . . ;

(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and

(c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

In NY K85099, CBP applied GRI 1 to classify the subject plastic vacuum hose assembly in heading 8509, specifically in subheading 8509.90.1530, HTSUS, the provision in effect in 2006 for "Electromechanical domestic appliances, with self-contained electric motor; parts thereof: Parts: Parts of Vacuum Cleaners: Other: Of wet/dry vacuum cleaners." As a threshold matter, we note that effective February 3, 2007, parts of vacuum cleaners are classified in heading 8508, HTSUS, which provides for "Vacuum cleaners; parts thereof."[1]

The plastic hose assembly is a kit that consists of three components that are, *prima facie*, classifiable in different headings. If imported separately, the PVC hose and its fittings *i.e.*, the polypropylene connector and nozzle, would be classified in heading 3917, HTSUS [hoses and fittings therefor, of plastics].

[1] Pursuant to title 19 United States Code, Section 3005, the Harmonized Tariff Schedule of the United States was amended to reflect changes recommended by the World Customs Organization. The proclaimed changes are effective for goods entered or withdrawn from warehouse for consumption on or after February, 3 2007. *See* Presidential Proclamation 8097, 72 FR 453, Volume 72, No. 2 (January 4, 2007).

The nylon brush would be classified in heading 9603, HTSUS [brushes]. Since no single heading describes the merchandise in its entirety, the kit cannot be classified by application of GRI 1. *See, e.g.*, HQ 967620, dated November 23, 2005. We turn instead to GRI 3.

Applying GRI 3(b), we find that the hose assembly satisfies the criteria of a "set" for classification purposes. *See* EN (X) to GRI 3(b). First, it consists of at least two different articles that are classified in different headings, as explained above. Second, all of the items are packaged together when imported to meet a particular need, i.e., extending a vacuum cleaner's reach. Third, the assembly is put up in a manner suitable for sale directly to users without repacking.

GRI 3(b) directs that a "set" is classified in the heading appropriate to the component that imparts its essential character. EN (VII) to GRI 3(b) provides, in relevant part:

> 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.

In this case, we conclude that the 22-inch PVC hose provides the essential character of the hose assembly because, by extending the vacuum cleaner's reach, it enables the user to vacuum in hard to reach places. The nylon brush simply contributes to that use by gathering small particles on the surface being cleaned. Accordingly, the merchandise is classified in the same provision as the PVC hose, heading 3917, HTSUS.

HOLDING:

By application of GRI 3(b), the plastic hose assembly is classified as a "set" in heading 3917, HTSUS. It is specifically provided for in subheading 3917.33.00, HTSUS, which provides for "Tubes, pipes and hoses and fittings therefore (for example, joints, elbows, flanges), of plastics: Other tubes, pipes and hoses: Other, not reinforced or otherwise combined with other materials, with fittings." The 2009 column one, general rate of duty is 3.1 percent *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:

This ruling modifies NY K85099, dated May 5, 2004.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

NOTICE OF REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF SOLAR POWERED DECORATIVE LANTERNS

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

ACTION: Notice of revocation and modification of ruling letters and treatment concerning the tariff classification of solar powered lanterns.

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 one ruling letter and modifying one ruling letter, both relating to the tariff classification of solar powered lanterns 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 revocations was published on March 31, 2010, in the Customs Bulletin, Vol. 44, No. 14. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 23, 2010.

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 commu-

nity'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. 44, No. 14, on March 31, 2010, proposing to modify NY N022872, and revoke NY N024029, pertaining to the tariff classification of solar powered decorative lanterns imported by Garden Meadow, Inc. No comments were received in response to the notice. As stated in the proposed notice, this action will cover any ruling 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 rulings identified above. 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 comment 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 this action.

In NY N022872 and NY N024029, CBP classified solar powered decorative lanterns in heading 9405, HTSUS, specifically subheading 9405.40.60, HTSUS, which provides for other electric lamps and lighting fittings of base metal. It is now CBP's position that the lanterns are properly classified in heading 8306, HTSUS, specifically under subheading 8306.29.00, HTSUS, which provides for statuettes and other ornaments of base metal.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying ruling NY N022872 and revoking ruling NY N024029, and any other ruling not specifically identified, in order to reflect the proper classification of

solar powered decorative lanterns, according to the analysis contained in rulings HQ H024761 (Attachment A) and HQ H084499 (Attachment B). CBP is also revoking any treatment previously accorded by it 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: May 28, 2010

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

[ATTACHMENT A]

HQ H024761

May 28, 2010
CLA-2 OT:RR:CTF:TCM H024761 DSR
CATEGORY: Classification
TARIFF NO.: 8306.29.00

MRS. SANDY COOPER, PRESIDENT
GARDEN MEADOW INC.
124 RESEARCH DRIVE
BLDG. G & H
MILFORD, CT 06460

RE: Revocation of NY N024029, dated March 6, 2008; classification of solar powered lanterns from China

DEAR MRS. COOPER:

This is in response to your letter, dated March 11, 2008, requesting reconsideration of New York Ruling Letter (NY) N024029, dated March 6, 2008, which pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of solar powered lanterns from China. The ruling classified the articles in heading 9405, HTSUS, which provides for "Lamps and lighting fittings ... not elsewhere specified or included; ..." U.S. Customs and Border Protection (CBP) has reviewed the tariff classification of the articles and has determined that the cited ruling is in error. Therefore, NY N024029 is revoked for the reasons set forth in this ruling.

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 Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on March 31, 2010, in the Customs Bulletin, Vol. 44, No. 14. No comments were received in response to the notice.

FACTS:

The subject articles are described as follows in NY N024029:

> The submitted samples are constructed of base metal with a rustic finish and feature frosted translucent plastic [panels] on all four sides. Each lantern measures approximately 41/2 inches square by 12 inches tall and feature four metal balls as legs. The Solar Etched Flower Lantern features a metal tulip on a stem with two leaves on all four sides. The Solar Etched Column Patio Light features metal screens with a scroll-like design on all four sides. In the base of each lantern is a removable disk measuring approximately 3 inches in diameter by 1 inch tall with a light emitting diode (LED) lamp, two solar panels, printed circuit board, rechargeable battery, ON/OFF switch and photocell. These lanterns are not designed to be carried in the hand or on the person. The lanterns' batteries are charged by the solar panels during the day and [the LED's] automatically light up at night for up to 8 hours.

ISSUE:

Whether the Solar Etched Flower Lantern and the Solar Etched Column Patio Light are classified as "statuettes and other ornaments, of base metal"

of heading 8306, HTSUS, "portable electric lamps" of heading 8513, HTSUS, or "lamps or lighting fittings ... not elsewhere specified of included" of heading 9405, HTSUS.

LAW AND ANALYSIS:

Proper analysis of classification of the subject lanterns encompasses discussion of the following provisions:

8306	Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; ...
	* * *
	Statuettes and other ornaments, and parts thereof:
8306.29.00	Other.
* * * *	
8513	Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof:
	* * *
8513.10	Lamps:
	* * *
8513.10.40	Other.
* * * *	
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; ...
	* * *
9405.40	Other electric lamps and lighting fittings:
	* * *
	Of base metal:
9405.40.60	Other.
* * * *	

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

Commencing with classification of the articles, Notes 1(f) and 1(k) to Section XV, HTSUS (which governs chapter 83, HTSUS), exclude articles of section XVI, HTSUS (and thus heading 8513, HTSUS) and articles of chapter 94 (and thus heading 9405, HTSUS), respectively. Therefore, we must first

determine whether the subject articles are portable electric lamps of heading 8513, HTSUS, or lamps and lighting fittings, not elsewhere specified or included, of heading 9405, HTSUS.

Both headings 8513, HTSUS, and 9405, HTSUS, refer to "lamps." However, the term is not defined in the HTSUS or in the Explanatory Notes. A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meaning. *Nippon Kogaku (USA) Inc. v. United States*, 69 CCPA 89, 92, 673 F.2d 380, 382 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 134, 673 F.2d 1268, 1271 (1982). The Oxford English Dictionary defines "lamp" as a "vessel containing oil, which is burnt at a wick, for the purpose of illumination. Now also a vessel of glass or some similar material, enclosing the source of illumination, whether a candle, oil, gas-jet, or incandescent wire." Moreover, CBP has consistently determined that classification of articles under headings 8513, HTSUS, and 9405, HTSUS, requires that the articles provide practical or usable light to the surrounding area, and not merely highlight the articles themselves. *See* HQ H011693 (December 18, 2007); HQ H017657 (December 12, 2007); HQ W968029 (April 12, 2007); NY N059592 (May 20, 2009); NY N053561 (March 24, 2009); NY N024027 (March 7, 2008); NY R01525 (February 28, 2005); NY 807513 (March 31, 1995). Note that there have been instances where CBP has determined that classification under heading 9405, HTSUS, was appropriate even where the emitted light was considered merely to be decorative. However, the articles in those cases were also not elsewhere specified or included, and thus aptly fell into the residual subheading for "other electric lamps and lighting fittings" of heading 9405, HTSUS. *See* HQ 966327 (May 28, 2003) (various decorative lighting accessories used in automobiles); HQ 962901 (September 28, 1999) (plastic Hanukkah-themed light set); NY F83270 (March 6, 2000) (plastic illuminated scarecrow); NY G81588 (September 18, 2000) (plastic illuminated ice cube).

Here, the articles were charged for forty-eight hours and then viewed in complete darkness. The articles' LED's did not provide enough illumination to view the surrounding area but instead merely provided soft glows that were visible through the articles' translucent panels, and which served only to highlight the patterns on their sides, thus enhancing their decorative appeal. It was very difficult to discern objects that were even less then one foot away from the articles. Thus, we find that the articles do not provide practical or usable light and are not "lamps" as contemplated by headings 8513, HTSUS, and 9405, HTSUS.

With regard to the applicability of heading 8306, HTSUS, EN 83.06 states that the group "statuettes and other ornaments" comprises a wide range of "ornaments of base metal of a kind designed essentially for decoration, e.g., in homes, offices, assembly rooms, places of religious worship, and gardens," and which have no utility value but are wholly ornamental. Here, as discussed, the articles do not serve as sources of practical or usable light, and are merely meant to provide decorative mood lighting in gardens. Thus, it is now the position of CBP that the articles in NY 024029 are classified as "statuettes and other ornaments, of base metal" in heading 8306, HTSUS.

HOLDING:

By application of GRI 1, the articles identified as the "Solar Etched Flower Lantern" and the "Solar Etched Column Patio Light" are classifiable under heading 8306, HTSUS. Specifically, they are classifiable under subheading 8306.29.00, HTSUS, which provides for "... statuettes and other ornaments, of base metal ...: Statuettes and other ornaments, and parts thereof: 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 N024029, dated March 6, 2008, is hereby revoked.

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

Sincerely,

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

[ATTACHMENT B]

HQ H084499

May 28, 2010
CLA-2 OT:RR:CTF:TCM H084499 DSR
CATEGORY: Classification
TARIFF NO.: 8306.29.00

MRS. SANDY COOPER, PRESIDENT
GARDEN MEADOW INC.
124 RESEARCH DRIVE
BLDG. G & H
MILFORD, CT 06460

RE: Modification of NY N022872, dated February 21, 2008; classification of solar powered lanterns from China

DEAR MRS. COOPER:

This is in reference to New York Ruling Letter (NY) N022872, issued to you on February 21, 2008, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of solar powered lanterns from China. The ruling classified two solar powered lanterns — the "Solar Musical Belly Frog" and the "Solar Garden Vine Light." The Solar Musical Belly Frog was classified in heading 8306, HTSUS, which provides for "...statuettes and other ornaments, of base metal; ..." The Solar Garden Vine Light was classified in heading 9405, HTSUS, which provides for "Lamps and lighting fittings ... not elsewhere specified or included; ..." U.S. Customs and Border Protection (CBP) has reviewed the tariff classification of the Solar Garden Vine Light and has determined that the cited ruling is in error. Therefore, NY N022872 is modified for the reasons set forth in this ruling

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 Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on March 31, 2010, in the *Customs Bulletin*, Vol. 44, No. 14. No comments were received in response to the notice.

FACTS:

The subject article is described as follows in NY N022872:

> The Solar Garden Vine Light is a lantern in the shape of a cylinder measuring approximately 11 inches tall overall with an outside diameter of approximately 6 inches. It is constructed of base metal with a rustic finish. The top of the lantern features a cone-shaped cap with hanging ring and is supported to the base by three metal rods. The midsection of the lantern features a frosted translucent plastic [panel] making up 8 inches of the lantern with a diameter of 4 inches. Metal bands with leaves form a vine-like pattern around the top and bottom of the lens. In the base of the lantern is a removable hockey puck size disk with a light emitting diode (LED) lamp, two solar panels, printed circuit board, rechargeable battery, photocell and ON/OFF switch. The solar panels recharge the battery by day and [the LED] automatically light[s] up at night.

Due to the small size of the hanging ring, the Solar Garden Vine Light is not designed to be carried in the hand or on the person.

ISSUE:

Whether the Solar Garden Vine Light is classified under heading 8306, HTSUS, as "statuettes and other ornaments, of base metal," or under heading 9405, HTSUS, as "lamps or lighting fittings ... not elsewhere specified of included."

LAW AND ANALYSIS:

Proper analysis of classification of the subject lantern encompasses discussion of the following provisions:

8306	Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; ...
	* * *
	Statuettes and other ornaments, and parts thereof:
8306.29.00	Other.
* * * *	
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; ...
	* * *
9405.40	Other electric lamps and lighting fittings:
	* * *
Of base metal:	
9405.40.60	Other.
* * * *	

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

Commencing with classification of the article, Note 1(k) to Section XV, HTSUS (which governs chapter 83, HTSUS), excludes articles of chapter 94 (and thus heading 9405, HTSUS). Therefore, we must first determine whether the subject article is a lamp, not elsewhere specified or included, of heading 9405, HTSUS.

Heading 9405, HTSUS, refers to "lamps." However, the term is not defined in the HTSUS or in the Explanatory Notes. A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meaning. *Nippon Kogaku (USA) Inc. v. United States*, 69 CCPA 89, 92, 673 F.2d 380, 382 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and

other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 134, 673 F.2d 1268, 1271 (1982). The Oxford English Dictionary defines "lamp" as a "vessel containing oil, which is burnt at a wick, for the purpose of illumination. Now also a vessel of glass or some similar material, enclosing the source of illumination, whether a candle, oil, gas-jet, or incandescent wire." Moreover, CBP has consistently determined that classification of articles under headings 8513, HTSUS, and 9405, HTSUS, requires that the articles provide practical or usable light to the surrounding area, and not merely highlight the articles themselves. *See* HQ H011693 (December 18, 2007); HQ H017657 (December 12, 2007); HQ W968029 (April 12, 2007); NY N059592 (May 20, 2009); NY N053561 (March 24, 2009); NY N024027 (March 7, 2008); NY R01525 (February 28, 2005); NY 807513 (March 31, 1995). Note that there have been instances where CBP has determined that classification under heading 9405, HTSUS, was appropriate even where the emitted light was considered merely to be decorative. However, the articles in those cases were also not elsewhere specified or included, and thus aptly fell into the residual subheading for "other electric lamps and lighting fittings" of heading 9405, HTSUS. *See* HQ 966327 (May 28, 2003) (various decorative lighting accessories used in automobiles); HQ 962901 (September 28, 1999) (plastic Hanukkah-themed light set); NY F83270 (March 6, 2000) (plastic illuminated scarecrow); NY G81588 (September 18, 2000) (plastic illuminated ice cube).

Here, the article was charged for forty-eight hours and then viewed in complete darkness. The article's LED did not provide enough illumination to view the surrounding area but instead merely provided a soft glow that was visible through the article's translucent panel and which served only to highlight the patterns on its surface, thus enhancing its decorative appeal. It was very difficult to discern objects that were even less then one foot away from the article. Thus, we find that the article does not provide a practical or usable light and is not a "lamp" as contemplated by heading 9405, HTSUS.

With regard to the applicability of heading 8306, HTSUS, EN 83.06 states that the group "statuettes and other ornaments" comprises a wide range of "ornaments of base metal of a kind designed essentially for decoration, e.g., in homes, offices, assembly rooms, places of religious worship, and gardens," and which have no utility value but are wholly ornamental. Here, as discussed, the article does not serve as a source of practical or usable light, and is merely meant to provide decorative mood lighting in gardens. Thus, it is now the position of CBP that the Solar Garden Vine Light in NY N022872 is classified in heading 8306, HTSUS, as "statuettes and other ornaments, of base metal."

HOLDING:

By application of GRI 1, the subject article identified as the Solar Garden Vine Light is classifiable under heading 8306, HTSUS. Specifically, it is classifiable under subheading 8306.29.00, HTSUS, which provides for "... statuettes and other ornaments, of base metal ...: Statuettes and other ornaments, and parts thereof: 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 N022872, dated February 21, 2008, is hereby modified.

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

Sincerely,

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