

U.S. Customs and Border Protection

19 CFR PART 101

CBP DEC. 11-08

TECHNICAL AMENDMENT TO LIST OF CBP PRECLEARANCE OFFICES IN FOREIGN COUNTRIES: ADDITION OF DUBLIN, IRELAND.

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Final rule; technical amendment.

SUMMARY: This document amends title 19 of the Code of Federal Regulations (CFR) to reflect that U.S. Customs and Border Protection (CBP) has added a preclearance station in Dublin, Ireland. CBP officers at preclearance stations conduct inspections and examinations to ensure compliance with U.S. customs, immigration, and agriculture laws, as well as other laws enforced by CBP at the U.S. border. Such inspections and examinations prior to arrival in the United States generally enable travelers to exit the domestic terminal or connect directly to a U.S. domestic flight without undergoing further CBP processing.

EFFECTIVE DATE: April 25, 2011.

FOR FURTHER INFORMATION CONTACT: Kathleen Conway, Office of Field Operations, Preclearance Operations, (202) 344-1759.

SUPPLEMENTARY INFORMATION:

BACKGROUND

CBP preclearance operations have been in existence since 1952. Preclearance facilities are established through the cooperative efforts of CBP, foreign government representatives, and the local facility authorities and are evidenced with signed preclearance agreements. Each facility is staffed with CBP officers responsible for conducting inspections and examinations in connection with preclearing passengers, crew, and their goods bound for the United States. Generally, travelers who are inspected at a preclearance facility are permitted to

arrive at a U.S. domestic facility and exit the U.S. domestic terminal upon arrival or connect directly to a U.S. domestic flight without further CBP processing. Preclearance facilities primarily serve to facilitate low risk travelers, relieve passenger congestion at federal inspection facilities in the United States, and enhance security in the air environment through the screening and inspection of travelers prior to their arrival in the United States. In Fiscal Year 2010, over 14 million aircraft travelers were processed at preclearance locations. This figure represents more than 16 percent of all commercial aircraft travelers cleared by CBP in FY 2010.

The Agreement Between the Government of the United States of America and the Government of Ireland on Air Transport Preclearance was signed on November 17, 2008. Preclearance operations began in Dublin, Ireland on January 19, 2011. The Dublin preclearance station is open for use by commercial flights.

Section 101.5 of the CBP regulations (19 CFR 101.5) sets forth a list of CBP preclearance offices in foreign countries. This document amends this section to add Dublin, Ireland to the list of preclearance offices.

INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

This amendment reflects the addition of a new CBP preclearance office that was established through a signed agreement between the United States and the Government of Ireland. Accordingly, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary. For the same reason, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. This amendment does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866

SIGNING AUTHORITY

This document is being issued in accordance with 19 CFR 0.2(a).

LIST OF SUBJECTS IN 19 CFR PART 101

Customs duties and inspection, Customs ports of entry, Foreign trade statistics, Imports, Organization and functions (Government agencies), Shipments, Vessels.

AMENDMENTS TO REGULATIONS

For the reasons set forth above, Part 101 of the Code of Federal Regulations (19 CFR part 101), is amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 and the specific authority citation for section 101.5 continue to read as follows:

Authority : 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * * *

Section 101.5 also issued under 19 U.S.C. 1629.

* * * * *

2. Revise §101.5 to read as follows:

§ 101.5 CBP preclearance offices in foreign countries.

Listed below are the preclearance offices in foreign countries where CBP officers are located. A Director, Preclearance, located in the Office of Field Operations at CBP Headquarters, is the responsible CBP officer exercising supervisory control over all preclearance offices.

Country	CBP office
Aruba	Orangestad
The Bahamas	Freeport Nassau
Bermuda	Kindley Field
Canada.....	Calgary, Alberta Edmonton, Alberta Halifax, Nova Scotia Montreal, Quebec Ottawa, Ontario Toronto, Ontario Vancouver, British Columbia Win- nipeg, Manitoba
Ireland	Dublin Shannon

Dated: February 11, 2011

ALAN D. BERSIN
Commissioner
U.S. Customs and Border Protection

NOTICE OF CANCELLATION OF CUSTOMS BROKER LICENSES

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

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the U.S. Customs and Border Protection regulations (19 CFR 111.51), the following Customs broker licenses and all associated permits are cancelled without prejudice.

<i>Name</i>	<i>License #</i>	<i>Issuing Port</i>
David W. Price	11001	San Francisco
Liner Services International, Inc.	20794	Mobile
Coronet of California, Inc.	04400	Los Angeles
Bruni International, Inc.	11179	Laredo
Seattle Logistics, Inc.	23509	Seattle
Berardino & Associates, Inc.	09464	Chicago
Zimmer Worldwide Logistics, Inc.	23285	Houston

Dated: April 14, 2011

ALLEN GINA
Assistant Commissioner
Office of International Trade

[Published in the Federal Register, April 25, 2011 (76 FR 22912)]

NOTICE OF REVOCATION OF CUSTOMS BROKER LICENSE

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

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the U.S. Customs and Border Protection regulations (19 CFR 111.51(b)), the following Customs broker license and all associated permits are revoked with prejudice.

<i>Name</i>	<i>License #</i>	<i>Issuing Port</i>
I.F.T.C., Inc.	11373	Miami

Dated: April 14, 2011

ALLEN GINA
Assistant Commissioner
Office of International Trade

[Published in the Federal Register, April 25, 2011 (76 FR 22912)]

**NOTICE OF CANCELLATION OF CUSTOMS BROKER
 LICENSES DUE TO DEATH OF THE LICENSE HOLDER**

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

ACTION: General Notice

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations at section 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

<i>Name</i>	<i>License #</i>	<i>Issuing Port</i>
Leandro U. Guevarra	16332	Los Angeles
Jill O'Brien	74245	Miami

Dated: April 14, 2011

ALLEN GINA
Assistant Commissioner
Office of International Trade

[Published in the Federal Register, April 25, 2011 (76 FR 22912)]

**REVOCAION OF RULING LETTER AND REVOCAION OF
 TREATMENT RELATING TO THE TARIFF
 CLASSIFICATION OF CERTAIN SANDALS**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to 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) is revoking New York Ruling Letter (NY) N087097, dated December 22, 2009,

relating to the tariff classification of sandals under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* Vol. 44, No. 26, on June 23, 2010.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 11, 2011.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N087097 was published on June 23, 2010, in Volume 44, Number 26, of the *Customs Bulletin*. CBP received one comment in response to the notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision

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

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

In NY N087097, 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."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N087097, in order to reflect the proper classification of the subject sandals according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H092482, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: April 12, 2011

ALLYSON MATTANAH
For

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H092482

April 12, 2011

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: 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 December 22, 2009. 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.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N087097 was published on June 23, 2010, in Volume 44, Number 26, of the *Customs Bulletin*. One comment was received in support of the proposed action, and is addressed below.

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 un-serviceable.
- (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 un-serviceable. 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 LAAs 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 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.

Commenter inquires as to whether appurtenances can be secured by means of one or two screws, rivets, or other points of attachment. Our rulings have held that in order to be considered “loosely attached” an ornament must be attached to the upper by one or two stitches, or a single rivet or tack. We consider the limit of one rivet to apply to screws as well. Thus an ornament attached by more than one screw would not be considered a loosely attached appurtenance.

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 2010 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,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A CERTAIN
THREADED FASTENER**

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

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to tariff classification of the Rolls-Royce double hexagon head extended washer fastener (hex head fastener).

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) proposes to revoke one ruling letter relating to the tariff classification of the hex head fastener 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 June 10, 2011.

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. (Mint Annex), Fifth Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the above address 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: Elizabeth Green, Tariff Classification and Marking Branch: (202) 325–0347.

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 intends to revoke a ruling letter pertaining to the tariff classification of the hex head fastener. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N004775, dated December 29, 2006, (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N004775, CBP determined that the subject hex head fastener was classified in subheading 7318.15.20, HTSUS, which provides for "Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: threaded articles: other screws and bolts, whether or not with their nuts or washers: bolts and bolts and their nuts or washers entered or ex-

ported in the same shipment . . .”. It is now CBP’s position that the hex head fastener is properly classified in subheading 7318.15.80, HTSUS, which provides for “Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: threaded articles: other screws and bolts, whether or not with their nuts or washers: other . . .”.

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY N004775 and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the hex head fastener according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H110418, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 12, 2011

RICHARD MOJICA
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N004775

December 29, 2006

CLA-2-73:RR:E:NC:N1:118

CATEGORY: Classification

TARIFF NO.: 7318.15.2091

MR. JOSHUA BLOOMFIELD
SR. CUSTOMS COMPLIANCE SPECIALIST
ROLLS-ROYCE NORTH AMERICA
2001 S. TIBBS AVENUE
INDIANAPOLIS, IN 46206

RE: The tariff classification of a stainless steel bolt from the United Kingdom.

DEAR MR. BLOOMFIELD:

In your letter dated December 22, 2006, you requested a tariff classification ruling.

You have described the item, part number AS21023, as a double hex head stainless steel bolt. It is 0.25" in diameter and designed to always be used with a nut in a Rolls-Royce gas turbine engine.

The applicable subheading for the double hex head stainless steel bolt, part number AS21023, will be 7318.15.2091, Harmonized Tariff Schedule of the United States (HTSUS), which provides for screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: threaded articles: other screws and bolts, whether or not with their nuts or washers: bolts and bolts and their nuts or washers entered or exported in the same shipment: having shanks or threads with a diameter of 6 mm or more: other: other: of stainless steel. 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/>.

Consideration was given to classifying this item within subheading 7318.15.2061, HTSUS, as you suggested. Subheading 7318.15.2061 provides for bolts with hexagonal heads (six angles and six sides). Inasmuch as the referenced bolt is a double hex head, it is not described by this subheading.

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 Kathy Campanelli at 646-733-3021.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT B]

HQ H110418

CLA-2 OT:RR:CTF:TCM H110418 EG**CATEGORY:** Classification**TARIFF NO.:** 7318.15.80

CARMEN R. MORROW
CUSTOMS COMPLIANCE ANALYST
ROLLS-ROYCE NORTH AMERICA, INC.
2001 SOUTH TIBBS AVE.
INDIANAPOLIS, IN 46241

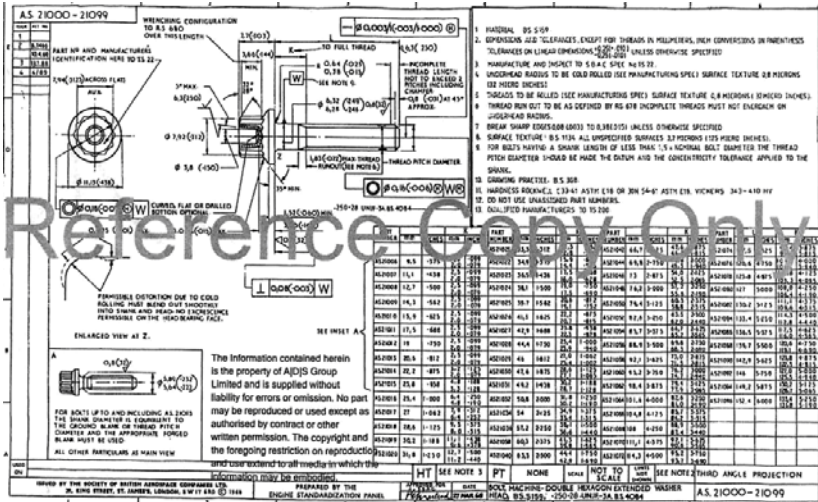
RE: Revocation of NY N004775: Tariff classification of Double Hexagon Head Extended Washer Stainless Steel Fastener

DEAR Ms. MORROW:

This letter is in response to your request, dated May 20, 2010, for U.S. Customs and Border Protection (CBP) to reconsider New York Ruling Letter (NY) N004775, dated December 29, 2006. NY N004775 concerns the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a double hexagon head extended washer stainless steel fastener, part number AS21023 (hex head fastener), imported by your company. We have reviewed NY N004775 and find it to be in error.

FACTS:

The article in question is a stainless steel hex head fastener imported from the United Kingdom by Rolls-Royce North America, Inc. (Rolls-Royce). Rolls-Royce imports the hex head fasteners for use in airplane engines. It is 6.3 mm in diameter and 36.5 mm in length. The top of the hex head fastener includes a twelve-point wrench configuration for torquing. Underneath the twelve-point wrench configuration is a flange, or extended washer head. The hex head fastener's shank attaches to the flange at a curved fillet instead of at a hard right angle. The hex head fastener's shank is fully threaded with a chamfered point at the end. The request included the following drawing of the hex head fastener:



1 A|D|S AEROSPACE INDUSTRY STANDARDS: FOREWORD

A|D|S was formed by the merger of the Society of British Aerospace Companies (SBAC), the Defence Manufacturers Association (DMA) and the Association of Police and Public Security Suppliers (APPSS) on 1st October 2009 to form a new, more powerful and influential body to promote Advancing the UK Aerospace, Defence and Security Industries. The legal obligations and copyright authority of all standards issued by SBAC are therefore assigned / transferred to ADS Group Ltd. A|D|S is a non-profit making body made up of members from the Aerospace, Defence Manufacturers and Security Industries. These Standards are produced by A|D|S with the assistance of, and for the benefit of the Aerospace Industry as part of a continuous programme of Standardisation for Aerospace application under the control of the Technical Standards Committee of A|D|S. A|D|S Standards are published as part of the series of A|D|S Aerospace Industry Standards, and where appropriate, additional manufacturing and inspection requirements are issued as Reference Sheets (RS) or Technical Specifications (TS). It is the responsibility of those using or specifying a Standard to ensure that the product, process or manufacturer so used or specified is appropriate for the task or role in question. A|D|S wishes to draw special attention to the fact that Technical Specifications (TS) include testing and procedures by which a user or Design Authority can establish whether a particular manufacturer, prima facie, has the capability to produce hardware in accordance with the appropriate drawings and related specifications. A|D|S, its servants or representatives accept no responsibility for the continued quality of hardware items produced against the relevant drawings and specifications, this responsibility remains with the user. Whilst A|D|S takes all reasonable care in the preparation of all Standards, neither the A|D|S, its officers, employees, servants, agents or representatives shall have any responsibility or liability whatsoever with respect to any act or omission (whether negligent or not) of whatsoever nature of, or in connection with, the preparation of the Standards or any part thereof. These responsibilities are those of the user or Design Authority. Users of A|D|S Standards agree that any such liability on the part of A|D|S is excluded to the maximum extent permitted by law. A|D|S Standards may be changed from time to time, and both users and manufacturers of these parts should ensure that they are in possession of the latest issue of the Standards and supporting documentation before adoption or the commencement of production. It is recommended that TS260, Metallic Materials List of Alternative Material Standards be consulted prior to manufacture of A|D|S products. Each Standard sheet in the series is a photographic or electronic reproduction of a master drawing and references to scales are not

The drawing provides dimensional specifications for the hex head fastener. The hex head fastener's body diameter is a minimum of 6.25 mm and a maximum of 6.32 mm. The under-head fillet has a minimum radius of 0.38 mm and a maximum radius of 0.64 mm. The drawing sets forth the permissible variation of the thread concentricity by stating that "for bolts having a shank length of less than 1.5 mm x nominal bolt diameter, the thread pitch diameter should be made the datum [or reference] and the concentricity tolerance applied to the shank."

According to the drawing, the thread length at the shank bottom cannot exceed two pitches including the chamfer. The drawing indicates that the incomplete threads at the top of the shank must not encroach on the under-head radius. Within these boundaries, the shank is fully threaded. The drawing also indicates that the under-head bearing surface of the flange must be blended out smoothly into the shank, and that no excrescence or bumps are permissible on the under-head bearing surface.

In NY N004775, CBP classified the hex head fastener as a bolt under subheading 7318.15.20, HTSUS. Rolls-Royce now asserts that the fastener is sometimes, but not always, used with a nut. Moreover, Rolls-Royce claims that the extended washer head of the fastener renders it a cap screw and not a bolt. Therefore, Rolls-Royce requests that CBP revoke NY N004775 and reclassify the hex head fastener as a screw under subheading 7318.15.80, HTSUS.

ISSUE:

Whether the subject hex head fastener is classified as a bolt under subheading 7318.15.20, HTSUS, or as a screw under subheading 7318.15.80, HTSUS?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs 1 through 5.

The 2011 HTSUS provisions under consideration in this case are as follows²:

necessarily correct. A Master Index to all of these Standards is published separately. All references to Standards include reference to RS and TS publications. Details of this and any further information can be obtained from A|D|S. ADS Group Limited Registered in England and Wales no. 7016635 ©2011 ADS Group Ltd. The information in this document is copyright and the property of ADS Group Ltd. It shall not be copied, or communicated to a third party, or used, for any purpose other than that for which it is supplied without the express written consent of ADS Group Ltd.

² The 2011 HTSUS provisions and duty rates are identical to the 2006 HTSUS provisions and duty rates.

7318	Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: Threaded articles:
7318.15	Other screws and bolts, whether or not with their nuts or washers:
7318.15.20	Bolts and bolts and their nuts or washers entered or exported in the same shipment . . . * * *
7318.15.80	Other . . . * * *

CBP uses fastener industry standards to distinguish bolts from screws. When a fastener is described in a fastener industry dimensional standard as either a screw or a bolt, we follow that standard. When, as in this case, we have no dimensional standard, we consult the “Specification for Identification of Bolts and Screws,” in the American National Standards Institute (ANSI)/ American Society of Mechanical Engineers (ASME) B18.2.1 specification (1981). In *Rocknel Fastener, Inc. v. United States*, the court cited ANSI/ASME B18.2.1 as “provid[ing] a well-recognized, comprehensive basis for the common and commercial meaning of bolt and screw as understood by the fastener industry in the United States.” 24 Ct. Int’l Trade 900, 906 (2000).

ANSI/ASME B18.2.1 provides as follows:

A bolt is an externally threaded fastener designed for insertion through holes in assembled parts, and is normally intended to be tightened or released by torquing a nut.

A screw is an externally threaded fastener capable of being inserted into holes in assembled parts, of mating with a preformed internal thread or forming its own thread, and of being tightened or released by torquing the head.

A bolt is designed for assembly with a nut. A screw has features in its design which makes it capable of being used in a tapped or other preformed hole in the work. Because of the basic design, it is possible to use certain types of screws in combination with a nut. Any externally threaded fastener which has a majority of the design characteristics which assist its proper use in a tapped or other preformed hole is a screw, regardless of how it is used in its service application.

ANSI/ASME B18.2.1 provides four Primary Criteria and nine Supplementary Criteria for consideration in distinguishing bolts from screws. If the fastener conforms to any of the Primary Criteria for either a bolt or a screw, it is classified accordingly. If none of the Primary Criteria are met, CBP consults the Supplementary Criteria.³ The Supplementary Criteria detail the principal features in the design of an externally threaded fastener which contribute to its proper use as a screw. A fastener having a majority of these

³ U.S. Customs and Border Protection, “What Every Member of the Trade Community Should Know About: Distinguishing Bolts from Screws,” Informed Compliance Publication (March 2010) at http://www.cbp.gov/linkhandler/cgov/trade/legal/informed_compliance_pubs/icp013.ctt/icp013.pdf.

characteristics is classified as a screw. *See, e.g.* Headquarters Ruling Letter (HQ) 951362, dated June 24, 1992 and HQ 965864, dated January 10, 2003.

The Primary Criteria are the following: 1) a fastener which can only be tightened or released by torquing a nut is a bolt; 2) a fastener which has a thread form which prohibits assembly with a nut is a screw; 3) a fastener which must be assembled with a nut to perform its intended service is a bolt; 4) a fastener which must be torqued by its head into a tapped or other preformed hole to perform its intended service is a screw. Since the subject hex head fastener is sometimes, but not always, used with a nut, it does not satisfy any of the Primary Criteria.

As such, we must examine the hex head fastener under the Secondary Criteria. If the hex head fastener satisfies a majority of the criteria, then it is classified as a screw. The nine Secondary Criteria are: 1) a screw must have a controlled fillet at the junction of the head with the body; 2) the under-head bearing surface of a screw should be smooth and flat; 3) the under-head bearing surface should be square with the shank of a screw; 4) the body diameter of a screw should be closely controlled; 5) the shank of a screw must be straight; 6) the threads of a screw must be concentric with the body axis within close limits; 7) the length of the thread must be sufficient to develop the full strength of the fastener in the hole; 8) a screw should have a chamfered or specially prepared point and 9) the length of a screw (from bearing surface to end point) should be closely controlled.

An examination of the drawing submitted by Rolls-Royce shows that the hex head fastener satisfies at least seven of the nine Secondary Criteria. Specifically, the hex head fastener: 1) has a controlled under-head fillet with a minimum radius of 0.38 mm and a maximum radius of 0.64 mm; 2) has a smooth under-head bearing surface; 3) has a closely controlled body diameter with a minimum diameter of 6.25 mm and a maximum diameter of 6.32 mm; 4) has a closely controlled thread concentricity; 5) has a fully-threaded shaft to develop the full strength of the fastener; 6) has a chamfered point and 7) has a controlled length of 36.5 mm. The drawing does not provide information regarding the following two criteria: the squareness of the under-head bearing to the hex head fastener's shank and the straightness of the hex head fastener's shank.

We note, additionally, that the hex head fastener has an extended washer head to facilitate torquing with a wrench. The washer-like flange on the underside of the head is the functional equivalent of a washer face. CBP has previously treated a washer face, or its equivalent, as a characteristic of screws. *See Heads and Threads, Div. of MSL Industries, Inc. v. United States*, 56 C.C.P.A. 95, 98–99 (1969); *see also* Headquarters Ruling Letter (HQ) 956811, dated April 14, 1995, and HQ 959280, dated December 19, 2000. For all of the foregoing reasons, the hex head fastener is classifiable as a screw and not as a bolt.

HOLDING:

By application of GRI 1 and GRI 6, the subject hex head fastener is classified in heading 7318, HTSUS, and is specifically provided for in sub-heading 7318.15.80, HTSUS, which provides for: "Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: threaded articles: other screws and bolts, whether or not with their nuts or washers: other." The 2011

column one, general rate of duty is 8.5 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N004775, dated December 29, 2006, is hereby revoked.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION AND REVOCATION OF
RULING LETTERS AND PROPOSED REVOCATION OF
TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CERTAIN MONOCLONAL ANTIBODY
MEDICAMENTS**

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

ACTION: Notice of proposed modification and revocation of ruling letters and treatment relating to tariff classification of monoclonal antibody medicaments.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to modify and/or revoke ruling letters relating to the tariff classification of certain monoclonal antibody medicaments 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 June 10, 2011.

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. (Mint Annex), Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20001 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: Aaron Marx, Tariff Classification and Marking Branch: (202) 325–0195.

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 intends to modify or revoke four ruling letters pertaining to the tariff classification of certain monoclonal antibody medicaments. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) K83806, dated March 15, 2004 (Attachment A), and NY K83509, dated March 12, 2004 (Attachment B), and the revocation of NY K86861, dated June 18, 2004 (Attachment C), and NY H85059, dated August 22, 2001 (Attachment D), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should 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 K83806, CBP determined that the drugs Raptiva® (Efalizumab), Rituxan® (Rituximab), and Xolair® (Omalizumab) were classified in heading 3004, HTSUS, specifically subheading

3004.90.91, HTSUS, which provides for “Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: Other: Other”. In NY K83509, CBP similarly determined that the drugs Avastin™ (Bevacizumab) and Herceptin® (Trastuzumab) were classified in subheading 3004.90.91, HTSUS. In NY K86861, CBP similarly determined that the drug Antegren® (Natalizumab) was classified in subheadings 3003.90.00 and 3004.90.91, HTSUS, depending on whether the drug was in bulk or single-dose form. In NY H85059, CBP similarly determined that the drug Campath® (Alemtuzumab) was classified subheading 3004.90.90 HTSUS (revision 2001), which provides for “Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: Other: Other”.

It is now CBP’s position that the above-identified monoclonal antibody products are properly classified in heading 3002, HTSUS, specifically subheading 3002.10.01, HTSUS, which provides for: which provides for “Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes”.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY K83806 and NY K83509, revoke NY K86861 and NY H85059, and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject monoclonal antibody medicaments according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H110421, set forth as Attachment E to this document, HQ H110420 (Attachment F), HQ H110419 (Attachment G), and HQ H128157 (Attachment G). 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: April 20, 2011

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY K83806

March 15, 2004

CLA-2-30:RR:NC:2:238 K83806

CATEGORY: Classification

TARIFF NO.: 3004.90.9185; 3004.90.9115;
3004.90.9120

MR. RON REUBEN
 DANZAS AEI CUSTOMS BROKERAGE SERVICES
 5510 WEST 102ND STREET
 LOS ANGELES, CA 90045

RE: The tariff classification of Pulmozyme® (dornase alfa) Inhalation Solution; Raptiva® (Efalizumab) for injection, subcutaneous; Rituxan® (Rituximab); TNKase™ (Tenecteplase); and Xolair® (Omalizumab) for subcutaneous use

DEAR MR. REUBEN:

In your letter dated February 26, 2004, on behalf of your client, Genentech, Inc., you requested a tariff classification ruling.

The first product, Pulmozyme® (dornase alfa) Inhalation Solution, is a medicament containing recombinant human deoxyribonuclease I (rhDNase), an enzyme which selectively cleaves DNA, as the active ingredient. It is indicated for the treatment of Cystic fibrosis. Pulmozyme® (dornase alfa) Inhalation Solution is supplied as a sterile, clear, colorless, aqueous solution in single-use ampules.

The second product, Raptiva® (Efalizumab) for injection, subcutaneous, is a medicament containing Efalizumab, an immunosuppressive recombinant humanized IgG1 kappa isotype monoclonal antibody, as the active ingredient. It is indicated for the treatment of adults with with chronic moderate-to-severe plaque psoriasis. Raptiva® (Efalizumab) for injection is supplied as a lyophilized, sterile powder to deliver 125 mg of efalizumab per single-use vial. Each Raptiva® carton contains four trays, with each tray containing one single-use vial designed to deliver 125 mg of efalizumab, one single-use prefilled diluent syringe containing 1.3 mL sterile water for injection, two 25 gauge x $\frac{5}{8}$ inch needles, two alcohol prep pads, and a package insert with an accompanying patient information insert.

The third product, Rituxan® (Rituximab), is a medicament containing Rituximab (a genetically engineered chimeric murine/human monoclonal antibody directed against the CD20 antigen found on the surface of normal and malignant B lymphocytes) as the active ingredient. It is intended for use in the treatment of CD20-positive, B-cell non-Hodgkin's lymphoma. Rituxan® (Rituximab) is supplied as a sterile, clear, colorless, preservative-free liquid put up in single-use vials.

The fourth product, TNKase™ (Tenecteplase), is a medicament containing Tenecteplase, a tissue plasminogen activator (tPA) produced by recombinant DNA technology, as the active ingredient. It is indicated for the treatment of acute myocardial infarction. TNKase is supplied as a sterile, lyophilized powder in a 50 mg vial. Each vial is packaged with one 10 mL vial of sterile water for injection (for reconstitution), the B-D® 10 cc syringe with Twin-Pak™ Dual Cannula Device, and three alcohol prep pads.

The fifth product, Xolair® (Omalizumab) for subcutaneous use, is a medicament containing Omalizumab [a recombinant DNA-derived humanized IgG1 kappa monoclonal antibody that selectively binds to human immunoglobulin E (IgE)] as the active ingredient. It is indicated for the treatment of asthma. Xolair® (Omalizumab) for subcutaneous use is supplied as a lyophilized, sterile powder in a single-use, 5-cc vial that is designed to deliver 150 mg of Xolair® upon reconstitution with 1.4 mL of sterile water.

The applicable subheading for Pulmozyme® (dornase alfa) Inhalation Solution and Xolair® (Omalizumab) will be 3004.90.9185, Harmonized Tariff Schedule of the United States (HTS), which provides for “Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: Other: Other: Medicaments primarily affecting the eyes, ears or respiratory system: Other: Other.” The rate of duty will be free.

The applicable subheading for Raptiva® (Efalizumab) for injection, subcutaneous and Rituxan® (Rituximab) will be 3004.90.9115, HTS, which provides for “Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: Other: Other: Other: Antineoplastic and immunosuppressive medicaments.” The rate of duty will be free.

The applicable subheading for TNKase™ (Tenecteplase) will be 3004.90.9120, HTS, which provides for “Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: Other: Other: Other: Cardiovascular medicaments.” The rate of duty will be free.

This merchandise may be subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number 1-888-443-6332.

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 Harvey Kuperstein at 646-733-3033.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT B]

NY K83509

March 12, 2004

CLA-2-30:RR:NC:2:238 K83509

CATEGORY: Classification

TARIFF NO.: 3004.90.9120; 3004.90.9115

MR. RON REUBEN

DANZAS AEI CUSTOMS BROKERAGE SERVICES

5510 WEST 102ND STREET

LOS ANGELES, CA 90045

RE: The tariff classification of Activase® (Alteplase recombinant), Avastin™ (bevacizumab), Cathflo™ Activase® (Alteplase) and Herceptin® (Trastuzumab)

DEAR MR. REUBEN:

In your letter dated February 23, 2004, on behalf of your client, Genentech, Inc., you requested a tariff classification ruling.

The first product, Activase® (Alteplase recombinant), is a medicament containing Alteplase, a tissue plasminogen activator (serine protease) produced by recombinant DNA technology, as the active ingredient. It is indicated for use in the management of acute myocardial infarction, acute ischemic stroke and acute massive pulmonary embolism in adults. Activase® (Alteplase recombinant) is supplied as a sterile, lyophilized powder, put up in vials. Each vial, in turn, is packaged in a paperboard box that also contains a vial of diluent and a double-sided, sterile, siliconized transfer device.

The second product, Avastin™ (bevacizumab) is a medicament containing Bevacizumab, a recombinant humanized monoclonal antibody to vascular endothelial growth factor (VEGF), as the active ingredient. It is indicated for the treatment of metastatic carcinoma of the colon or rectum. Avastin™ (bevacizumab) is supplied as a sterile solution in single-use glass vials.

The third product, Cathflo™ Activase® (Alteplase), is a medicament containing Alteplase, a tissue plasminogen activator (serine protease) produced by recombinant DNA technology, as the active ingredient. It is indicated for the restoration of function to central venous access devices, by intracatheter instillation, as assessed by the ability to withdraw blood. Cathflo™ Activase® (Alteplase) is supplied as a sterile, lyophilized powder in 2 mg vials.

The fourth product, Herceptin® (Trastuzumab) is a medicament containing Trastuzumab, a recombinant DNA-derived humanized monoclonal antibody, as the active ingredient. It is indicated for the treatment of metastatic breast cancer. Herceptin® (Trastuzumab) is supplied as a lyophilized, sterile powder in multi-dose vials. Each vial, in turn, is packaged with a vial of diluent in a paperboard box.

The applicable subheading for Activase® (Alteplase recombinant) and Cathflo™ Activase® (Alteplase) will be 3004.90.9120, Harmonized Tariff Schedule of the United States (HTS), which provides for "Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: Other: Other: Cardiovascular medicaments." The rate of duty will be free.

The applicable subheading for Avastin™ (bevacizumab) and Herceptin® (Trastuzumab) will be 3004.90.9115, HTS, which provides for "Medicaments

... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: Other: Other: Other: Antineoplastic and immunosuppressive medicaments.” The rate of duty will be free.

This merchandise may be subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number 1-888-443-6332.

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 Harvey Kuperstein at 646-733-3033.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT C]

NY K86861

June 18, 2004

CLA-2-30:RR:NC:2:238 K86861

CATEGORY: Classification

TARIFF NO.: 3003.90.0000; 3004.90.9140

HERBERT J. LYNCH, ESQ.
SULLIVAN & LYNCH, P.C.
56 ROLAND STREET, SUITE 303
BOSTON, MA 02129-1223

RE: The tariff classification of ANTEGREN® (natalizumab) mixed with excipients and imported in bulk form, and ANTEGREN® (natalizumab) mixed with excipients and imported put up in single-dose vials, from Germany and other countries

DEAR MR. LYNCH:

In your letter dated June 3, 2004, on behalf of your client, Biogen Idec Inc., you requested a tariff classification ruling.

The subject products consist of ANTEGREN® (natalizumab) mixed with excipients and imported in bulk form, and ANTEGREN® (natalizumab) mixed with excipients and imported put up in single-dose vials. ANTEGREN® is the registered trade name for an investigational drug having the nonproprietary (generic) name: natalizumab, a humanized monoclonal antibody designed to inhibit the migration of immune cells into chronically inflamed tissue where these cells may cause or maintain inflammation. You indicate in your letter that, on May 25, 2004, your client submitted a Biologics License Application (BLA) to the FDA, based on data obtained and analyzed from the first year of FDA-regulated Phase III clinical trials, for the approval of ANTEGREN® (natalizumab) for the treatment of multiple sclerosis (MS). You further indicate that ANTEGREN® (natalizumab) is currently in FDA-regulated Phase III clinical trials to evaluate its efficacy for use in the treatment of Crohn's disease, and in FDA-regulated Phase II clinical trials to evaluate its efficacy for use in the treatment of rheumatoid arthritis.

Pursuant to the General Notice entitled *Guidance Concerning the Tariff Classification of Pharmaceutical Products Imported for Clinical Research* (see Customs Bulletin and Decisions, Vol. 34, No. 21, May 24, 2000), the applicable subheading for ANTEGREN® (natalizumab) mixed with excipients and imported in bulk form will be 3003.90.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Medicaments ... consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale: Other." The rate of duty will be free.

Pursuant to the General Notice entitled *Guidance Concerning the Tariff Classification of Pharmaceutical Products Imported for Clinical Research* (see Customs Bulletin and Decisions, Vol. 34, No. 21, May 24, 2000), the applicable subheading for ANTEGREN® (natalizumab) mixed with excipients and imported put up in single-dose vials will be 3004.90.9140, Harmonized Tariff Schedule of the United States (HTS), which provides for "Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of

transdermal administration systems) or in forms or packings for retail sale: Other: Other: Other: Medicaments primarily affecting the central nervous system: Other.” The rate of duty will be free.

This merchandise may be subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number 1-888-443-6332.

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 Harvey Kuperstein at 646-733-3033.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

*National Commodity
Specialist Division*

[ATTACHMENT D]

NY H85059

August 22, 2001

CLA-2-30:RR:NC:2:238 H85059

CATEGORY: Classification

TARIFF NO.: 3004.90.9015

MR. JOSEPH R. HOFFACKER
BARTHCO TRADE CONSULTANTS, INC.
7575 HOLSTEIN AVENUE
PHILADELPHIA, PA 19153

RE: The tariff classification of Campath® (Alemtuzumab) from Germany

DEAR MR. HOFFACKER:

In your letter dated August 13, 2001, on behalf of your client, Millennium Pharmaceuticals, Inc., you requested a tariff classification ruling.

The subject product, Campath® (Alemtuzumab), consists of a medicament containing Campath-1H, a recombinant DNA-derived humanized monoclonal antibody, as the active ingredient. Campath® (Alemtuzumab), which is supplied put up in single-use clear-glass ampoules, is indicated for the treatment of B-cell chronic lymphocytic leukemia.

The applicable subheading for Campath® (Alemtuzumab), imported put up in single-use clear-glass ampoules, will be 3004.90.9015, Harmonized Tariff Schedule of the United States (HTS), which provides for "Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: Other: Other: Other: Antineoplastic and immunosuppressive medicaments." The rate of duty will be free.

This merchandise may be subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number 301-443-1544.

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 Harvey Kuperstein at 212-637-7068.

Sincerely,

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

[ATTACHMENT E]

HQ H110421

CLA-2 OT:RR:CTF:TCM H110421 AMM

CATEGORY: Classification

TARIFF NO.: 3002.10.01

MR. RON REUBEN

DANZAS AEI CUSTOMS BROKERAGE SERVICES

5510 WEST 102nd STREET

LOS ANGELES, CA 90045

RE: Modification of New York Ruling Letter K83806; classification of monoclonal antibody medicaments

DEAR MR. REUBEN,

This is in regard to New York Ruling Letter (NY) K83806, dated March 15, 2004, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain monoclonal antibody drug products. In NY K83806, Customs and Border Protection (CBP) classified the drug products Raptiva® (Efalizumab), Rituxan® (Rituximab), and Xolair® (Omalizumab) under heading 3004, HTSUS. We have reconsidered this ruling and have determined that these monoclonal antibody drug products are provided for in heading 3002, HTSUS.

FACTS:

Raptiva® is a medicament containing Efalizumab, an immunosuppressive recombinant humanized IgG1 kappa isotype monoclonal antibody, as the active ingredient. It is indicated for the treatment of adults with with chronic moderate-to-severe plaque psoriasis. Raptiva® (Efalizumab) for injection is supplied as a lyophilized, sterile powder to deliver 125 mg of efalizumab per single-use vial. Each Raptiva® carton contains four trays, with each tray containing one single-use vial designed to deliver 125 mg of efalizumab, one single-use prefilled diluent syringe containing 1.3 mL sterile water for injection, two 25 gauge x $\frac{5}{8}$ inch needles, two alcohol prep pads, and a package insert with an accompanying patient information insert.

Rituxan® is a medicament containing Rituximab, a genetically engineered chimeric murine/human monoclonal antibody directed against the CD20 antigen found on the surface of normal and malignant B lymphocytes, as the active ingredient. It is intended for use in the treatment of CD20-positive, B-cell non-Hodgkin's lymphoma. Rituxan® (Rituximab) is supplied as a sterile, clear, colorless, preservative-free liquid put up in single-use vials.

Xolair® is a medicament containing Omalizumab, a recombinant DNA-derived humanized IgG1 kappa monoclonal antibody that selectively binds to human immunoglobulin E (IgE), as the active ingredient. It is indicated for the treatment of asthma. Xolair® (Omalizumab) for subcutaneous use is supplied as a lyophilized, sterile powder in a single-use, 5-cc vial that is designed to deliver 150 mg of Xolair® upon reconstitution with 1.4 mL of sterile water.

NY K83806 classified Raptiva®, Rituxan®, and Xolair® under subheading 3004.90.91, HTSUS, which provides for: "Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: Other: Other".

ISSUE:

Are the the subject monoclonal antibody medicaments properly classified under heading 3002, HTSUS, as “modified immunological products,” or under heading 3004, HTSUS, as “medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses?”

LAW AND ANALYSIS:

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

The HTSUS provisions at issue are as follows:

3002	Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products:
3002.10.01	Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes:

3004	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale:
3004.90	Other:
3004.90.91	Other:

Note 2 of Chapter 30, HTSUS, states: “For the purposes of heading 3002, the expression ‘modified immunological products’ applies only to monoclonal antibodies (MABs), antibody fragments, antibody conjugates and antibody fragment conjugates.”

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP’s practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to Heading 30.02 states, in pertinent part:

This heading covers:

* * *

- (C) Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes. These products include:

* * *

- (2) Modified immunological products, whether or not obtained by means of biotechnological processes. Products used for diagnostic or therapeutic purposes and for immunological tests are to be regarded as falling within this product group. They can be defined as follows:
- (a) Monoclonal antibodies (MABs) - specific immunoglobulins from selected and cloned hybridoma cells cultured in a culture medium or ascites.

* * *

The products of this heading remain classified here whether or not in measured doses or put up for retail sale and whether in bulk or in small packings.

Ruling K83806 classified the above-identified products under heading 3004, HTSUS. However, the heading specifically excludes goods which can be classified under heading 3002, HTSUS. Therefore, if the above-identified products can be properly classified under heading 3002 HTSUS, they are precluded from classification under heading 3004, HTSUS.

All three products, Raptiva®, Rituxan®, and Xolair®, contain monoclonal antibodies as their active ingredient. Monoclonal antibodies (MAbs) are included within the definition of “modified immunological products”. See Note 2 to Chapter 30, HTSUS; EN 30.02(C)(2)(a). MAbs are used therapeutically to stimulate the immune system. Here, the MAbs are put up in measured doses for retail sale, but remain classified in heading 3002, HTSUS. See EN 30.02. Therefore, the above identified drug products are properly classified under heading 3002, HTSUS, and are excluded from classification under heading 3004, HTSUS. The products are specifically provided for under subheading 3002.10.01, HTSUS, which provides for: “Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes”.

HOLDING:

By application of GRI 1, the drug products Raptiva®, Rituxan®, and Xolair® are classified in subheading 3002.10.01, HTSUS, which provides for “... modified immunological products, whether or not obtained by means of biotechnological processes ...: Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes”. The rate of duty is free. Duty rates are provided for your convenience and are subject to change.

EFFECT ON OTHER RULINGS:

New York Ruling Letter K83806, dated March 15, 2004, is hereby modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT F]

HQ H110420

CLA-2 OT:RR:CTF:TCM H110420 AMM

CATEGORY: Classification

TARIFF NO.: 3002.10.01

MR. RON REUBEN

DANZAS AEI CUSTOMS BROKERAGE SERVICES

5510 WEST 102ND STREET

LOS ANGELES, CA 90045

RE: Modification of New York Ruling Letter K83509; classification of monoclonal antibody medicaments

DEAR MR. REUBEN,

This is in regard to New York Ruling Letter (NY) K83509, dated March 12, 2004, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain monoclonal antibody drug products. In NY K83509, Customs and Border Protection (CBP) classified the drug products Avastin™ (bevacizumab), and Herceptin® (trastuzumab) under heading 3004, HTSUS. We have reconsidered this ruling and have determined that these monoclonal antibody drug products are provided for in heading 3002, HTSUS.

FACTS:

Avastin™ (bevacizumab) is a medicament containing Bevacizumab, a recombinant humanized monoclonal antibody to vascular endothelial growth factor (VEGF), as the active ingredient. It is indicated for the treatment of metastatic carcinoma of the colon or rectum. Avastin™ (bevacizumab) is supplied as a sterile solution in single-use glass vials.

Herceptin® (trastuzumab) is a medicament containing Trastuzumab, a recombinant DNA-derived humanized monoclonal antibody, as the active ingredient. It is indicated for the treatment of metastatic breast cancer.

Herceptin® (trastuzumab) is supplied as a lyophilized, sterile powder in multi-dose vials. Each vial, in turn, is packaged with a vial of diluent in a paperboard box.

NY K83509 classified Avastin™ and Herceptin® under subheading 3004.90.91, HTSUS, which provides for: "Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: Other: Other".

ISSUE:

Are the the subject monoclonal antibody medicaments properly classified under heading 3002, HTSUS, as "modified immunological products," or under heading 3004, HTSUS, as "medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses?"

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be

classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The HTSUS provisions at issue are as follows:

- 3002 Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products:
- 3002.10.01 Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes:
-
- 3004 Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale:
- 3004.90 Other:
- 3004.90.91 Other:

Note 2 of Chapter 30, HTSUS, states: “For the purposes of heading 3002, the expression ‘modified immunological products’ applies only to monoclonal antibodies (MABs), antibody fragments, antibody conjugates and antibody fragment conjugates.”

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP’s practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to Heading 30.02 states, in pertinent part:

This heading covers:

- * * *
- (C) Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes. These products include:
 - * * *
 - (2) Modified immunological products, whether or not obtained by means of biotechnological processes. Products used for diagnostic or therapeutic purposes and for immunological tests are to be regarded as falling within this product group. They can be defined as follows:
 - (a) Monoclonal antibodies (MABs) - specific immunoglobulins from selected and cloned hybridoma cells cultured in a culture medium or ascites.
 - * * *

The products of this heading remain classified here whether or not in measured doses or put up for retail sale and whether in bulk or in small packings.

Ruling K83509 classified the above-identified products under heading 3004, HTSUS. However, the heading specifically excludes goods which can be

classified under heading 3002, HTSUS. Therefore, if the above-identified products can be properly classified under heading 3002 HTSUS, they are precluded from classification under heading 3004, HTSUS.

Both products, Avastin™ and Herceptin®, contain monoclonal antibodies as their active ingredient. Monoclonal antibodies (MABs) are included within the definition of “modified immunological products”. See Note 2 to Chapter 30, HTSUS; EN 30.02(C)(2)(a). MABs are used therapeutically to stimulate the immune system. Here, the MABs are put up in measured doses for retail sale, but remain classified in heading 3002, HTSUS. See EN 30.02. Therefore, the above identified drug products are properly classified under heading 3002, HTSUS, and are excluded from classification under heading 3004, HTSUS. The products are specifically provided for under subheading 3002.10.01, HTSUS, which provides for: “Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes”

HOLDING:

By application of GRI 1, the drug products Avastin™ and Herceptin® are properly classified under subheading 3002.10.01, HTSUS, which provides for “... modified immunological products, whether or not obtained by means of biotechnological processes ...: Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes”. The rate of duty is free. Duty rates are provided for your convenience and are subject to change.

EFFECT ON OTHER RULINGS:

New York Ruling Letter K83509, dated March 12, 2004, is hereby modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT G]

HQ H110419

CLA-2 OT:RR:CTF:TCM H110419 AMM

CATEGORY: Classification

TARIFF NO.: 3002.10.01

MR. HERBERT J. LYNCH, ESQ.
SULLIVAN & LYNCH, P.C.
56 ROLAND STREET, SUITE 303
BOSTON, MA 02129-1223

RE: Revocation of New York Ruling Letter K86861; classification of monoclonal antibody medicaments

DEAR MR. LYNCH,

This is in regard to New York Ruling Letter (NY) K86861, dated June 18, 2004, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain monoclonal antibody drug products. In NY K86861, Customs and Border Protection (CBP) classified the drug product Antegren® (natalizumab) under headings 3003 and 3004, HTSUS. We have reconsidered this ruling and have determined that these monoclonal antibody drug products are provided for in heading 3002, HTSUS.

FACTS:

NY K86861 described the Antegren® product as follows:

The subject products consist of Antegren® (natalizumab) mixed with excipients and imported in bulk form, and Antegren® (natalizumab) mixed with excipients and imported put up in single-dose vials. Antegren® is the registered trade name for an investigational drug having the nonproprietary (generic) name: natalizumab, a humanized monoclonal antibody designed to inhibit the migration of immune cells into chronically inflamed tissue where these cells may cause or maintain inflammation. You indicate in your letter that, on May 25, 2004, your client submitted a Biologics License Application (BLA) to the FDA, based on data obtained and analyzed from the first year of FDA-regulated Phase III clinical trials, for the approval of Antegren® (natalizumab) for the treatment of multiple sclerosis (MS). You further indicate that Antegren® (natalizumab) is currently in FDA-regulated Phase III clinical trials to evaluate its efficacy for use in the treatment of Crohn's disease, and in FDA-regulated Phase II clinical trials to evaluate its efficacy for use in the treatment of rheumatoid arthritis.

NY K86861 classified Antegren® mixed with excipients and imported in bulk form under subheading 3003.90.00, HTSUS, which provides for: "Medicaments ... consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale: Other", and Antegren® mixed with excipients and imported put up in single dose vials under subheading 3004.90.91, HTSUS, which provides for: "Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: Other: Other".

ISSUE:

What is the proper classification of the subject monoclonal antibody medicaments?

LAW AND ANALYSIS:

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

The HTSUS provisions at issue are as follows:

3002	Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products:
3002.10.01	Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes:

3003	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale:
3003.90.00	Other

3004	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale:
3004.90	Other:
3004.90.91	Other:

Note 2 of Chapter 30, HTSUS, states: "For the purposes of heading 3002, the expression 'modified immunological products' applies only to monoclonal antibodies (MABs), antibody fragments, antibody conjugates and antibody fragment conjugates."

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to Heading 30.02 states, in pertinent part:

This heading covers:

- * * *
- (C) Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes. These products include:
- * * *
- (2) Modified immunological products, whether or not obtained by means of biotechnological processes. Products used for diagnostic or therapeutic purposes and for immunological tests are to be regarded as falling within this product group. They can be defined as follows:
- (a) Monoclonal antibodies (MABs) - specific immunoglobulins from selected and cloned hybridoma cells cultured in a culture medium or ascites.
- * * *

The products of this heading remain classified here whether or not in measured doses or put up for retail sale and whether in bulk or in small packings.

Ruling K83806 classified Antegren® under headings 3003 and 3004, HTSUS, depending on whether it was imported in bulk form or put up in single-dose vials. However, both headings specifically exclude goods which can be classified under heading 3002, HTSUS. Therefore, if the above-identified product can be properly classified under heading 3002 HTSUS, it is precluded from classification under headings 3003 or 3004, HTSUS.

Antegren® contains monoclonal antibodies as its active ingredient. Monoclonal antibodies (MABs) are included within the definition of “modified immunological products”. See Note 2 to Chapter 30, HTSUS; EN 30.02(C)(2)(a). MABs are used therapeutically to stimulate the immune system. Here, the MABs are put up in measured doses for retail sale, but remain classified in heading 3002, HTSUS. See EN 30.02. Therefore, the above identified drug product is properly classified under heading 3002, HTSUS, and is excluded from classification under headings 3003 and 3004, HTSUS. The product is specifically provided for under subheading 3002.10.01, HTSUS, which provides for: “Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes”

HOLDING:

By application of GRI 1, the drug product Antegren® is classified in subheading 3002.10.01, HTSUS, which provides for “... modified immunological products, whether or not obtained by means of biotechnological processes ...: Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes”. The rate of duty is free. Duty rates are provided for your convenience and are subject to change.

EFFECT ON OTHER RULINGS:

New York Ruling Letter K86861, dated June 18, 2004, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT H]

HQ H128157

CLA-2 OT:RR:CTF:TCM H128157 AMM

CATEGORY: Classification

TARIFF NO.: 3002.10.01

MR. JOSEPH R. HOFFACKER
BARTHCO TRADE CONSULTANTS, INC.
7575 HOLSTEIN AVENUE
PHILADELPHIA, PA 19153

RE: Revocation of New York Ruling Letter H85059; classification of monoclonal antibody medicaments

DEAR MR. HOFFACKER,

This is in regard to New York Ruling Letter (NY) H85059, dated August 22, 2001, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain monoclonal antibody drug products. In NY H85059, Customs and Border Protection (CBP) classified the drug product Campath® (alemtuzumab) under heading 3004, HTSUS. We have reconsidered this ruling and have determined that these monoclonal antibody drug products are provided for in heading 3002, HTSUS.

FACTS:

NY H85059 described the Campath® product as follows:

Campath® (Alemtuzumab), consists of a medicament containing Campath-1H, a recombinant DNA-derived humanized monoclonal antibody, as the active ingredient. Campath® (Alemtuzumab), which is supplied put up in single-use clear-glass ampoules, is indicated for the treatment of B-cell chronic lymphocytic leukemia.

NY H85059 classified Campath® under subheading 3004.90.90, HTSUS (revision 2001), which provides for: “Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: Other: Other”.

ISSUE:

Are the the subject monoclonal antibody medicaments properly classified under heading 3002, HTSUS, as “modified immunological products,” or under heading 3004, HTSUS, as “medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses?”

LAW AND ANALYSIS:

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

The HTSUS provisions at issue are as follows:

- 3002 Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products:
- 3002.10.01 Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes:
-
- 3004 Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale:
- 3004.90 Other:
- 3004.90.91 Other:

Note 2 of Chapter 30, HTSUS, states: "For the purposes of heading 3002, the expression 'modified immunological products' applies only to monoclonal antibodies (MABs), antibody fragments, antibody conjugates and antibody fragment conjugates."

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to Heading 30.02 states, in pertinent part:

This heading covers:

- * * *
- (C) Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes. These products include:
- * * *
- (2) Modified immunological products, whether or not obtained by means of biotechnological processes. Products used for diagnostic or therapeutic purposes and for immunological tests are to be regarded as falling within this product group. They can be defined as follows:
- (a) Monoclonal antibodies (MABs) - specific immunoglobulins from selected and cloned hybridoma cells cultured in a culture medium or ascites.
- * * *

The products of this heading remain classified here whether or not in measured doses or put up for retail sale and whether in bulk or in small packings.

Ruling H85059 classified Campath® under heading 3004, HTSUS. However, this heading specifically excludes goods which can be classified under

heading 3002, HTSUS. Therefore, if the above-identified product can be properly classified under heading 3002 HTSUS, it is precluded from classification under heading 3004, HTSUS.

Campath® contains monoclonal antibodies as its active ingredient. Monoclonal antibodies (MAbs) are included within the definition of “modified immunological products”. See Note 2 to Chapter 30, HTSUS; EN 30.02(C)(2)(a). MAbs are used therapeutically to stimulate the immune system. Here, the MAbs are put up in measured doses for retail sale, but remain classified in heading 3002, HTSUS. See EN 30.02. Therefore, the above identified drug product is properly classified under heading 3002, HTSUS, and is excluded from classification under heading 3004, HTSUS. The product is specifically provided for under subheading 3002.10.01, HTSUS, which provides for: “Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes”.

HOLDING:

By application of GRI 1, the drug product Campath® is classified in subheading 3002.10.01, HTSUS, which provides for “... modified immunological products, whether or not obtained by means of biotechnological processes ... : Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes”. The rate of duty is free. Duty rates are provided for your convenience and are subject to change.

EFFECT ON OTHER RULINGS:

New York Ruling Letter H85059, dated August 22, 2001, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF RULING LETTERS AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A CRYOSTAT WINDOW
MADE OF SYNTHETIC DIAMOND**

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

ACTION: Notice of proposed revocation of ruling letters and treatment relating to tariff classification of a Cryostat Window made from synthetic diamond.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to modify and/or revoke ruling letters relating to the tariff classification of a Cryostat Window made of synthetic diamond 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 June 10, 2011.

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. (Mint Annex), Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20001 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: Aaron Marx, Tariff Classification and Marking Branch: (202) 325–0195.

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 intends to modify a ruling letter pertaining to the tariff classification of a Cryostat Window made of synthetic diamond. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N097693, dated April 13, 2010 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should 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 N097693, CBP determined that the Cryostat Window made of synthetic diamond was classified in subheading 7116.20.40, HTSUS, which provides for: “Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Other”. It is now

CBP's position that the Cryostat Window is properly classified in subheading 7116.20.50, HTSUS, which provides for: "Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Other".

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N097693, and to revoke or modify any other ruling not specifically identified, to reflect the proper classification of the Cryostat Window made of synthetic diamond according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H128136, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: April 20, 2011

ALLYSON MATTANAH
For

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N097693

April 13, 2010

CLA-2-90:OT:RR:NC:4:414

CATEGORY: Classification

TARIFF NOS.: 9002.90.9500; 9001.90.5000;
9031.90.5400; 7116.20.4000; 9013.90.9000

MS. MARIAN E. LADNER
LADNER & ASSOCIATES
THE KIRBY MANSION
2000 SMITH STREET
HOUSTON, TEXAS 77002

RE: The tariff classification of CVD diamond components from The Netherlands

DEAR MS. LADNER:

In your letter dated March 12, 2010, you requested a tariff classification ruling on behalf of your client, Element Six NV located in The Netherlands and its related subsidiary Element Six Technologies (“E6”) in the United States.

The E6 affiliate in the Netherlands manufactures various components using chemical vapor deposition (“CVD”) synthetic diamond. You state that CVD synthetic diamond is a relatively new technology material that is increasingly being used in a variety of applications. Uses include as optical components, in wear and cutting applications and in acoustic applications. You indicate that synthetic diamond produced using CVD technology does not use natural diamond in the production process.

The specific products to be imported are components produced from two CVD diamond materials manufactured by E6: Diafilm OP and Illa Optical. They are manufactured using a chemical vapor deposition process that results in a synthetic diamond material that is chemically identical to natural diamonds, but wholly synthetic.

Diafilm OP is a grade of CVD synthetic diamond engineered for use in optical applications. Illa optical is a single-crystal engineering material made from CVD synthetic diamond that is designed for optical applications.

In order to classify the five components, it is necessary to determine the classification of the instruments and appliances for which the components are designed. Then the various section and chapter notes of the HTSUS must be applied.

The first product for which you request a ruling is a CO2 beam splitter, part number 155-104-0084. You describe this as a diamond window made of Diafilm OP material. It is designed as a component for a laser spike anneal system. The laser spike anneal system is used to reduce line width and structures on a computer chip. The CO2 Beam Splitter is used to split the laser beam, allowing the use of one lower power beam to perform the annealing function. By tilting the diamond window to various positions between horizontal and vertical relative to the laser beam, the amount of laser light reaching the computer chip can be controlled. The CO2 beam splitter has an

optical effect in that it splits the light from the laser. At the time of importation, the CO₂ beam splitter is mounted. The only step needed to implement its use in the laser spike anneal system is that of bolting it into the system.

The second product for which you request a ruling is referred to as an IR (infrared) prism accessory, part number 155-104-0560. It is made of IIIa Optical Diamond material. You describe this as a part produced for use in an infrared spectrometer. The IR prism accessory is a circular disk with two facets at opposing 45 degree angles. One of the reasons that diamond is used in the IR prism is that it has excellent transmission in the infrared region of the electromagnetic spectrum. The IR prism is used as an attenuated total reflection crystal in the measurement of the changes that occur in a total internal reflected beam when it comes in contact with the sample material. At the time of importation, the IR prism accessory is not mounted. The only additional processing performed after importation is the application of an anti-reflective coating and mounting of the item for installation into the infrared spectrometer.

The third product for which you request a ruling is a diamond window, part number 155-104-1071. The diamond window is made of Diafilm OP. You describe this as a part of an instrument used to measure the structure and performance of prototype computer chips. The instrument utilizes a microscope and laser to check the connections between individual elements of the chips. You indicate that the diamond window allows light to pass through it but it does not perform any other optical function, which you refer to as lensing or other change in the light itself. At the time of importation, the diamond window is not mounted. The only additional processing required after importation is the application of an anti-reflective coating and mounting of the item for installation in the quality control instrument.

The fourth product for which you request a ruling is a cryostat window, part number 155-104-0934. You describe this as a part designed for a cryostat, which is used for the performance of chemical/physical experiments at extremely low temperatures. The cryostat window is made of Diafilm OP. You indicate that the cryostat window serves as a shield between the inside of the cryostat and the outside world. At the time of importation, the cryostat window is not mounted and is not coated with an anti-reflective (optical) coating. The only processing required after importation is the application of an anti-reflective coating and mounting of the item for installation in the cryostat.

The fifth product for which you request a ruling is a laser window, part number 155-104-0964. You describe this as a part designed for use in a CO₂ industrial laser. The laser window is made of Diafilm OP. The laser window is a wedge that measures approximately 32 mm by 12 mm with two flat surfaces and slightly tapered edges. The laser window is located in the laser cavity. At the time of importation, the laser window is unmounted. The only processing required after importation is the application of an anti-reflective coating and mounting of the item prior to installation in the CO₂ laser.

In your letter, you propose classification under subheading 8486.90.0000, HTSUS, for the CO₂ beam splitter, part number 155-104-0084. Subheading 8486.90.0000, HTSUS, provides for parts and accessories for machines and apparatus of a kind used solely or principally for the manufacture of semi-

conductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; machines and apparatus specified in Note 9(C) to this chapter. However, articles must be classified in accordance with all the relevant section and chapter notes. The item in question is provided for in Section XVIII, chapter 90. Note 1(m) to Section XVI states that said section does not cover articles of chapter 90. Section XVI, General Explanatory Note (I)(A)(f) excludes articles of Section XVIII from classification in Section XVI. Thus, classification of the CO₂ beam splitter, part number 155-104-0084, under subheading 8486.90, HTSUS, is precluded.

In your letter, you propose classification under subheading 9027.90.6400, HTSUS, for the IR prism accessory, part number 155-104-0560. Subheading 9027.90.6400, HTSUS, provides for parts and accessories: other: of optical instruments and apparatus: of instruments and apparatus of subheading 9027.30 (spectrometers, spectrophotometers and spectrographs using optical radiations (ultraviolet, visible, infrared)). The IR prism accessory is not classifiable as a part of a spectrometer because of Note 2 (a) of chapter 90. Note 2 (a) of chapter 90 states that “parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings”. The IR prism accessory is a good of heading 9001, HTSUS; accordingly, it is classified in heading 9001, HTSUS.

In your letter, you propose classification under subheading 9031.90.5400, HTSUS, for the diamond window, part number 155-104-1071. Subheading 9031.90.5400, HTSUS, provides for measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof, parts and accessories: of other optical instruments and appliances, other than test benches: of optical instruments and appliances of subheading 9031.41 or 9031.49.70. You have stated in your letter that the diamond window does not change the light itself, which we take to mean that the diamond window does not reflect, attenuate, filter, diffract, collimate, etc., the light. We consider the diamond window to be a part of the instrument, rather than an optical element, based on this statement. Because the test and measurement equipment is proprietary, you were not able to provide descriptive literature on the specific instrument. However, the description you provided indicates that the test and measurement is part of a quality control test instrument for computer chips and incorporates a microscope and a laser to check connections between individual elements on the chips. Based on this, we would consider the diamond window to be a part under heading 9031, HTSUS.

In your letter, you propose classification under subheading 9027.90.6400, HTSUS, for the cryostat window, part number 155-104-0934. Subheading 9027.90.6400, HTSUS, provides for instruments and apparatus for physical or chemical analysis: parts and accessories: other: of optical instruments and apparatus: of instruments and apparatus of subheading 9027.20, 9027.30, 9027.50, 9027.80, HTSUS. The cryostat window is not considered a part of the instrument for physical or chemical analysis; rather it is part of the cryostat. You indicate that the cryostat simply acts as a vessel to contain material under testing at low temperature and that the cryostat itself does not perform any testing.

Consideration was given toward classifying the cryostat window, part number 155-104-0934, in heading subheading 8479.90, HTSUS, which provides for machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof. This item is said to be wholly of synthetic diamond. Note 2 to Section XVI, states, in pertinent part, "Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8546 or 8547) are to be classified according to the following rules: ...". Note 1(f) to Section XVI states that said section does not cover "Precious or semi-precious stones (natural, synthetic or reconstructed) of headings 71.02 to 71.04, or articles wholly of such stones of heading 71.16, ...". Although the windows are specifically designed to be incorporated into a machine of chapter 84, they are parts which in and of themselves constitute articles covered by a heading of chapter 71 and, as such, are to be classified in their own appropriate heading. Thus, in accordance with Note 1(f) and Note 2 to Section XVI, classification in subheading 8479.90, HTSUS, is precluded.

In your letter, you propose classification of the laser window, part number 155-104-0964, under subheading 8515.90.4000, HTSUS. Subheading 8515.90.4000, HTSUS, provides for electric (including electrically heated gas), laser or other light or photon beam, ultrasonic, electron beam, magnetic pulse or plasma arc soldering, brazing or welding machines and apparatus, ...: parts thereof: parts: other parts. In your response to our question regarding ancillary equipment, you indicated that E6 does not import the CO2 laser and has no knowledge of any ancillary equipment that might come with it. Articles must be classified in accordance with all the relevant section and chapter notes. The item in question is provided for in Section XVIII, Chapter 90. Note 1(m) to Section XVI states that said section does not cover articles of chapter 90. Section XVI, General Explanatory Note (I)(A)(f) excludes articles of Section XVIII from classification in Section XVI. Thus, classification of the laser window, part number 155-104-0964, in subheading 8515.90, HTSUS, is precluded.

You have stated in your letter that the laser window allows for the transmission of the laser beam, but does not perform any lensing effect on the beam. We take this to mean that the laser window does not perform an optical function such as reflecting, attenuating, filtering, diffracting, collimating, etc., the laser light. We consider the laser window to be a part, rather than an optical element, based on this statement. The laser window for the CO2 industrial laser is provided for as a part of a laser in heading 9013, HTSUS.

The applicable subheading for the CO2 beam splitter, part number 155-104-0084, will be 9002.90.9500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments and apparatus, other than such elements of glass not optically worked; other: other: other. The rate of duty will be 3 percent ad valorem.

The applicable subheading for the IR prism accessory, part number 155-104-0560, will be 9001.90.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for lenses, prisms, mirrors and other

optical elements, of any material, unmounted, other than such elements of glass not optically worked: other: prisms. The rate of duty will be 2.8 percent ad valorem.

The applicable subheading for the diamond window, part number 155-104-1071, will be 9031.90.5400, Harmonized Tariff Schedule of the United States (HTSUS), which provides for measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; parts and accessories thereof: of optical instruments and appliances of subheading 9031.41 or 9031.49.70. The rate of duty will be free.

The applicable subheading for the (non-optical) cryostat window, wholly of synthetic diamond, part number 155-104-0934, will be 7116.20.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for articles of precious or semiprecious stones (natural, synthetic or reconstructed); of precious or semiprecious stones...; other: of semiprecious stones: other. The rate of duty will be 10.5 percent ad valorem.

The applicable subheading for the laser window, part number 155-104-0964, will be 9013.90.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for lasers other than laser diodes; parts and accessories: other. The rate of duty will be 4.5 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Barbara Kiefer at (646) 733-3019.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H128136

CLA-2 OT:RR:CTF:TCM H128136 AMM

CATEGORY: Classification

TARIFF NO.: 9002.90.95, 9001.90.50,
7116.20.50, 9013.90.90

MS. MARIAN E. LADNER
LADNER & ASSOCIATES PC
2000 SMITH STREET
HOUSTON, TX 77002

RE: Modification of New York Ruling Letter N097693; classification of certain synthetic diamond products

DEAR Ms. LADNER,

This letter is in response to your request, by letter dated August 30, 2010, to reconsider the classification, under the Harmonized Tariff Schedule of the United States (HTSUS) of five optical components in New York Ruling Letter (NY) N097693, issued to you by Customs and Border Protection (CBP) on April 13, 2010. We have reconsidered that ruling and found the classification of the Cryostat Window to be incorrect. Our analysis of the classification of four products at issue is set forth below.

FACTS:

In NY N097693, CBP classified 5 synthetic diamond products: a **CO2 Beam Splitter**, classified under subheading 9002.90.95, HTSUS, which provides for: “Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked; ...: Other: Other: Other”, an **IR Prism Accessory**, classified under subheading 9001.90.50, HTSUS, which provides for: “...; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked: Other: Prisms”, a **Cryostat Window**, classified under subheading 7116.20.40, HTSUS, which provides for: “Articles of ... precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Other”, a **Laser Window**, classified under subheading 9013.90.90, HTSUS, which provides for: “...; lasers, other than laser diodes; ...; parts and accessories thereof: Parts and accessories: Other”, and a **Laser Heat Sink Window**, whose classification is not in dispute. All the products contain synthetic diamonds used in the electronic industry but are otherwise unrelated in their use.

The **CO2 Beam Splitter**, Part Number 155-104-0084, is made of E6’s Diafilm OP synthetic diamond. It is flat and oval shaped. According to the importer’s documents, it is used to split a laser beam in a laser spike anneal system, allowing the use of one lower power beam to perform the anneal function. A laser spike anneal system is used to reduce line width and structures on a computer chip in order to increase performance. The importer states that the CO2 beam splitter has an optical effect, in that it splits a beam of light. It is imported in a metal mounting which is composed of oxygen/halogen free copper and gold plating.

The **IR Prism Accessory**, Part Number 155–104–0569, is made of E6’s IIIa Optical synthetic diamond. It has a non-standard prism shape, in that the base of the prism is a circle with a diameter of 2.5mm, and it rises to a rectangular top measuring 2.5mm by 0.8mm. Its height is 1.1mm. It is used as part of an infrared spectrometer, which uses the properties of infrared light to identify materials. Specifically, the IR Prism Accessory is used as an attenuated total reflection crystal in the measurement of changes that occur in a total internal reflected beam when it comes in contact with a sample material. It is not mounted in any frame when it is imported.

The **Cryostat Window**, Part Number 155–104–0934, is made of E6’s Diafilm OP synthetic diamond. It is a disc with a diameter of 13mm. The surface has a 1% grade, making it nearly flat. It is used in a Cryostat, an instrument used to perform chemical and physical experiments at extremely low temperatures. The Cryostat Window acts as a shield between the inside and outside of the Cryostat. The Cryostat Window allows light to pass through it, but does not perform any optical or lensing effect.

The **Laser Window**, Part Number 155–104–0964, is made of E6’s Diafilm OP synthetic diamond. It is a nearly flat rectangular plate, measuring 29.44mm long by 12mm wide. It is used in a CO2 industrial laser, which is used to cut, weld, and surface treat a variety of materials. It is located in the laser cavity itself. The physical properties of the synthetic diamond prevent an effect known as “thermal lensing,” which deteriorates the quality of the laser beam. The Laser Window allows light to pass through it, but does not perform any optical or lensing effect.

ISSUE:

- I. What is the proper classification for the CO2 Beam Splitter under the HTSUS?
- II. What is the proper classification for the IR Prism Accessory under the HTSUS?
- III. What is the proper classification for the Cryostat Window under the HTSUS?
- IV. What is the proper classification for the Laser Window under the HTSUS?

LAW AND ANALYSIS:

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

The 2011 HTSUS provisions under consideration are as follows:

- | | |
|------|--|
| 7116 | Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): |
| | Of precious or semiprecious stones (natural, synthetic or reconstructed): |
| | Other: |
| | Of semiprecious stones (except rock crystal): |

7116.20.40	Other
7116.20.50	Other

8486	Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; machines and apparatus specified in Note 9 (C) to this chapter; parts and accessories:
8486.90.00	Parts and accessories

9001	Optical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked:
9001.90	Other:
9001.90.50	Prisms

9002	Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked; parts and accessories thereof:
9002.90	Other:
	Other:
9002.90.95	Other

9013	Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this chapter; parts and accessories thereof:
9013.90	Parts and accessories:
9013.90.90	Other

9027	Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes; parts and accessories thereof:
9027.90	Microtomes; parts and accessories:
	Parts and accessories:
	Other:
	Of optical instruments and apparatus:
9027.90.64	Of instruments and apparatus of sub-heading 9027.20, 9027.30, 9027.50 or 9027.80

Note 3(1) to Chapter 71, HTSUS, states, in pertinent part: “This chapter does not cover: ... (l) Articles of chapter 90, 91 or 92 (scientific instruments, clocks and watches, musical instruments)”.

Note 1 to Section XVI, HTSUS (which covers both chapters 84 and 85), provides, in pertinent part:

This section does not cover:

* * *

(f) Precious or semiprecious stones (natural, synthetic or reconstructed) of headings 7102 to 7104, or articles wholly of such stones of heading 7116, except unmounted worked sapphires and diamonds for styli (heading 8522); . . .

* * *

(m) Articles of chapter 90; . . .

* * *

Note 2 to Chapter 90, HTSUS states, in pertinent part:

Subject to note 1 above, parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

* * *

(a) Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings;

(b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind;

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to heading 90.01(D) states:

Optical elements of any material other than glass, whether or not optically worked, not permanently mounted (e.g., elements of quartz (other than fused quartz), fluorspar, plastics or metal; optical elements in the form of cultured crystals of magnesium oxide or of the halides of the alkali or the alkaline-earth metals). Optical elements are manufactured in such a way that they produce a required optical effect. An optical element does more than merely allow light (visible, ultraviolet or infrared) to pass through it, rather the passage of light must be altered in some way, for example, by being reflected, attenuated, filtered, diffracted, collimated, etc.

The EN to heading 90.02 provides, in pertinent part:

...this heading covers the articles referred to in Items (B), (C) and (D) of the Explanatory Note to heading 90.01 when in a permanent mounting (viz., fitted in a support or frame, etc.) suitable for fitting to an apparatus or instrument. The articles of the heading are mainly designed to be incorporated with other parts to form a specific instrument or part of an instrument. . .

If any of the products can be described by the terms of a heading in Chapter 90, they are excluded from classification in heading 8486, HTSUS, by virtue of Note 1(m) to Section XVI, HTSUS, and excluded from classification in Chapter 71, HTSUS, by virtue of Note 3(1) to Chapter 71, HTSUS. Furthermore, a product described by the terms of a heading in Chapter 90, HTSUS, cannot be classified as a part of another good in another heading, by virtue of Note 2(a) to Chapter 90, HTSUS. Therefore, consideration under Chapter 90, HTSUS, must be conducted first, where applicable.

I. CO₂ Beam Splitter

There are three separate headings under which the CO₂ Beam Splitter has been considered. In the Resubmission of Binding Ruling Request, dated December 17, 2009, the importer proposed classification under heading 8486, HTSUS, which provides for: “Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; ...; parts and accessories”. In NY N097693, dated April 13, 2010, CBP classified the CO₂ Beam Splitter under heading 9002, HTSUS, which provides for: “Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked; ...”. Finally, in the Request for Reconsideration of Binding Ruling for Classification – N097693, dated August 30, 2010, the importer argued for classification under heading 7116, HTSUS, which provides for: “Articles of ... precious or semiprecious stones (natural, synthetic or reconstructed)”.

The CO₂ Beam Splitter is a flat, oval shaped synthetic diamond, imported in a metal mounting composed of oxygen/halogen free copper and gold plating. It is used to split a laser beam in a laser spike anneal system, allowing the use of one lower power beam to perform the anneal function. Heading 9002, HTSUS, includes “other optical elements”. According to EN 90.01(D), “[a]n optical element does more than merely allow light (visible, ultraviolet or infrared) to pass through it, rather the passage of light must be altered in some way ...”. The CO₂ Beam Splitter alters the laser beam passing through it by splitting it into two different beams. Therefore, it meets the definition of “optical element” contained in EN 90.01(D). Furthermore, EN 90.02 states that the heading covers “the articles referred to in Items (B), (C) and (D) of the Explanatory Note to heading 90.01 when in a permanent mounting (viz., fitted in a support or frame, etc.) suitable for fitting to an apparatus or instrument.” The copper/gold mounting is permanently attached to the synthetic diamond, and is suitable to fit a laser spike anneal device. Therefore, the CO₂ Beam Splitter is properly classified under heading 9002, HTSUS, specifically under subheading 9002.90.95, HTSUS, which provides for: “Lenses, prisms, mirrors and other optical elements, of any material,

mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked; parts and accessories thereof: Other: Other: Other”.

Because the CO2 Beam Splitter may be properly classified under heading 9002, HTSUS, is excluded from heading 8486, HTSUS, by Note 1(m) to Section XVI, HTSUS, and is excluded from heading 7116, HTSUS, by Note 3(l) to Chapter 71, HTSUS.

II. IR Prism Accessory

In NY N097693, CBP classified the IR Prism Accessory under heading 9001, HTSUS, which provides for “...; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked”. In the Request for Reconsideration of Binding Ruling for Classification – N097693, the importer argued for classification under heading 9027, HTSUS, which provides for “Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); ...; parts and accessories thereof”.

The IR Prism Accessory is made entirely of synthetic diamond, imported in an unmounted state. It is used as an attenuated total reflection crystal in an infrared spectrometer. When an infrared beam is directed into it at a certain angle, the internal reflection creates an evanescent wave that extends beyond the IR Prism Accessory surface and into the sample of material to be identified. Because the instant merchandise alters a beam of light by converting the infrared beam into an evanescent wave, it meets the definition of “optical element” contained in EN 90.01(D). Therefore, the IR Prism Accessory is properly classified under heading 9001, HTSUS, specifically under subheading 9001.90.50, HTSUS, which provides for: “...; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked: Other: Prisms”.

The importer argues that the IR Prism Accessory is a “part” of an infrared spectrometer, and should therefore be classified under heading 9027, HTSUS, by virtue of Note 2(b) to Chapter 90, HTSUS. However, as discussed above, the IR Prism Accessory is a good included in a heading of Chapter 90, HTSUS, namely heading 9001, HTSUS. Therefore, Note 2(a) to Chapter 90, HTSUS, directs that the IR Prism Accessory should be classified under heading 9001, HTSUS, notwithstanding whether it is a “part” of an infrared spectrometer.

III. Cryostat Window

In NY N097693, CBP classified the Cryostat Window under subheading 7116.20.40, HTSUS, which provides for: “Articles of ... precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Other”. In the Request for Reconsideration of Binding Ruling for Classification – N097693, the importer argued that the Cryostat Window should be classified under subheading 7116.20.50, HTSUS, which provides for: “Articles of ... precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Other”.

CBP does not dispute that the Cryostat Windows are “Articles of ... precious or semiprecious stones (natural, synthetic or reconstructed)” under heading 7116, HTSUS. Rather, the dispute is the proper 8-digit national tariff rate. As a result, GRI 6 applies.

GRI 6 states:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

The issue then becomes whether synthetic diamond is a semiprecious stone or a precious stone. CBP has consistently classified articles comprised solely of synthetic diamond under subheading 7116.20.50, HTSUS, as precious stones. See NY C83488, dated January 29, 1998; Headquarters Ruling Letter (HQ) 958293, dated April 23, 1996; NY 883022, dated February 26, 1993; and HQ 952587, dated January 26, 1993. Therefore, the Cryostat Window should also be classified as a precious stone, rather than a semiprecious stone. The Cryostat Window is properly classified under subheading 7116.20.50, HTSUS, which provides for “Articles of ... precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Other.”

IV. Laser Window

In NY N097693, CBP classified the Laser Window under heading 9013, HTSUS, which provides for: “...; lasers, other than laser diodes; ...; parts and accessories thereof”. In the Request for Reconsideration of Binding Ruling for Classification – N097693, the importer argued that the Laser Window should be classified under heading 7116, HTSUS, which provides for “Articles of ... precious or semiprecious stones (natural, synthetic or reconstructed)”.

In *Bauerhin Techs. Ltd. P'ship. v. United States*, 110 F. 3d 774 (Fed. Cir. 1997), the court identified two distinct lines of cases defining the word “part.” Consistent with *United States v. Willoughby Camera Stores, Inc.*, 21 C.C.P.A. 322, 324 (1933), one line of cases holds that a part of an article is an “integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” The other line of cases evolved from *United States v. Pompeo*, 43 C.C.P.A. 9, 14 (1955), which held that a device may be a part of an article even though its use is optional and the article will function without it, if the device is dedicated for use upon the article, and, once installed, the article will not operate without it. Under either line of cases, an imported item is not a part if it is “a separate and distinct commercial entity.” *ABB, Inc. v. United States*, 28 Ct. Int'l Trade 1444, 1452–53 (2004). *Bauerhin*, 100 F. 3d at 1452–32.

The Laser Window is used in a Trumpf CO2 industrial laser, which is used to cut, weld, and surface treat a variety of materials. It is located in the laser cavity itself. These lasers generate a large amount of heat. Materials traditionally used for laser windows are not capable of handling this heat, as they are vulnerable to an effect known as “thermal lensing”, which deteriorates the quality of the beam. The physical properties of the synthetic

diamond prevent “thermal lensing”. The Laser Window allows light to pass through it, but does not perform any optical or lensing effect. The Laser Window meets the *Willoughby* definition of a “part”, in that it is a component part without which the CO2 industrial laser could not function. If the Laser Window was not in place, the gas inside would escape, rendering the laser inoperable. Therefore, the Laser Window is properly classified as a “part” of a laser under heading 9013, HTSUS, specifically under subheading 9013.90.90, which provides for: “...; lasers, other than laser diodes; ...; parts and accessories thereof: Parts and accessories: Other”.

Because the Laser Window may be properly classified under heading 9013, HTSUS, in accordance with Note 2(b) to Chapter 90, HTSUS, it is excluded from heading 7116, HTSUS, by Note 3(l) to Chapter 71, HTSUS.

HOLDING:

By application of GRI 1, the CO2 Beam Splitter, Part Number 155-104-0084, is classified in heading 9002, HTSUS, specifically under subheading 9002.90.95, which provides for “Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked; parts and accessories thereof: Other: Other: Other”. The general column one rate of duty is 3% *ad valorem*.

By application of GRI 1, the IR Prism Accessory, Part Number 155-104-0560, is classified in heading 9001, HTSUS, specifically under subheading 9001.90.50, which provides for “Optical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked: Other: Prisms”. The general column one rate of duty is 2.8% *ad valorem*.

By application of GRI 6, the Cryostat Window, Part Number 155-104-0934, is classified in heading 7116, HTSUS, specifically under subheading 7116.20.50, which provides for “Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Other”. The general column one rate of duty is free.

By application of GRI 1, the Laser Window, Part Number 155-104-0964, is classified in heading 9013, HTSUS, specifically under subheading 9013.90.90, which provides for “Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this chapter; parts and accessories thereof: Parts and accessories: Other”. The general column one rate of duty is 4.5% *ad valorem*.

Duty rates are provided for your convenience and are subject to change.

EFFECT ON OTHER RULINGS:

New York Ruling Letter N097693, dated April 13, 2010, which classified the Cryostat Window under subheading 7116.20.40, HTSUS, is hereby MODIFIED in accordance with the above holding.

Sincerely,
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

CLA-2 OT:RR:CTF:TCM**HQ H075936 ASM****HQ H097735 ASM****HQ H097736 ASM****HQ H097737 ASM****HQ H097738 ASM****HQ H097739 ASM****HQ H097740 ASM**
**REVOCATION OF SEVEN RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF INFLATABLE PLAY
STRUCTURES**

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

ACTION: Notice of revocation of classification ruling letters and revocation of treatment relating to the classification of certain inflatable play structures.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking ruling letters relating to the classification of certain inflatable play structures. CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published in Vol. 44, No. 24, of the *Customs Bulletin* on June 9, 2010. No comments were received in response to the notice.

DATES: This action is effective July 11, 2011.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Tariff Classification and Marking Branch: (202) 325-0031.

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 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. Section 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 Vol. 44, No. 24, of the *Customs Bulletin* on June 9, 2010, proposing to revoke ruling letters pertaining to the classification of certain inflatable play structures. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter (HQ) W967654, dated May 3, 2007; New York Ruling Letter (NY) N021595, dated January 16, 2008; NY N027455, dated June 3, 2008; NY M87766, dated October 31, 2006; NY R01333, dated January 26, 2005; NY M87765, dated October 31, 2006; and NY K82586, dated January 29, 2004, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

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

In HQ W967654, CBP determined that the "Jump n' Slide" was an article for general physical exercise. Thus, the merchandise was

classified in subheading 9506.99.60, HTSUS. However, CBP has reviewed the classification of the “Jump ‘n Slide” and determined that the cited ruling is in error.

In NY N021595, CBP determined that the “Banzai Splash Slide” was an article for general physical exercise. Thus, the merchandise was classified in subheading 9506.99.60, HTSUS. However, CBP has reviewed the classification of the “Banzai Splash Slide” and determined that the cited ruling is in error.

In NY N027455, CBP determined that the “Crashing Waves Water Park” was an article for general physical exercise. Thus, the merchandise was classified in subheading 9506.99.60, HTSUS. However, CBP has reviewed the classification of the “Crashing Waves Water Park” and determined that the cited ruling is in error.

In NY M87766, CBP determined that the “Jumbo Water Slide” was an article for general physical exercise. Thus, the merchandise was classified in subheading 9506.99.60, HTSUS. However, CBP has reviewed the classification of the “Jumbo Water Slide” and determined that the cited ruling is in error.

In NY M87765, CBP determined that the “Bounce House” was an article for general physical exercise. Thus, the merchandise was classified in subheading 9506.99.60, HTSUS. However, CBP has reviewed the classification of the “Bounce House” and determined that the cited ruling is in error.

In NY R01333, CBP determined that the “Mega Bounce Trampoline” was an article for general physical exercise. Thus, the merchandise was classified in subheading 9506.99.60, HTSUS. However, CBP has reviewed the classification of the “Mega Bounce Trampoline” and determined that the cited ruling is in error.

In NY K82586, CBP determined that the “Banzai Falls Water Slide” and “Slam ‘N Hoops Bouncer” was an article for general physical exercise. Thus, the merchandise was classified in subheading 9506.99.60, HTSUS. However, CBP has reviewed the classification of the “Banzai Falls Water Slide” and “Slam ‘N Hoops Bouncer” and determined that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking the following rulings which erroneously classified certain inflatable play structures in subheading 9506.99.60, HTSUS: HQ W967654; NY N021595; NY N027455; NY M87766; NY R01333; NY M87765; and NY K82586. In addition, CBP is modifying or revoking any other ruling not specifically identified, to reflect the classification of substantially identical merchandise according to the analysis contained in HQ H075936, HQ H097735, HQ H097736, HQ H097737, HQ H097738, HQ H097739, and HQ H097740, which are set forth as Attachments A-G to this

document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 29, 2011

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director,

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ H075936

March 29, 2011

CLA-2 OT:RR:CTF:TCM H075936 ASM

CATEGORY: Classification

TARIFF NO.: 9503.00.00

WILLIAM J. MALONEY, Esq.
RODE & QUALEY
ATTORNEYS AT LAW
55 WEST 39th STREET
NEW YORK, NY 10018

RE: Revocation of HQ W967654; Tariff Classification of the “Jump ‘n Slide”

DEAR MR. MALONEY:

This is in reference to Headquarters Ruling Letter (HQ) W967654, dated May 3, 2007, which was issued to you on behalf of your client, Little Tikes® company (hereinafter “Little Tikes”), concerning the tariff classification of an inflatable slide, identified as the “Jump ‘n Slide”, under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise as an article for “general physical exercise” under subheading 9506.99.60, HTSUS. We have reviewed HQ W967654 and found it to be in error. For the reasons set forth below, we hereby revoke HQ W967654.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. Section 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of HQ W967654, as described below was published in Vol. 44, No. 24, of the *Customs Bulletin* on June 9, 2010. No comments were received in response to the notice.

FACTS:

The subject article, which is identified as the “Jump ‘n Slide”, is an inflatable play structure surrounded on three sides by plastic mesh walls which are attached to red inflatable columns and yellow inflatable supports. There is an attached inflatable slide. The entire structure measures 9 x 12 x 6 feet. The inside dimensions measure 7 x 6 feet. The “Little Tikes”® catalog describes the “Jump ‘n Slide” as having tall protective walls which “surround a large jumping area, including a big slide with side rails.” The catalog goes on to say that “a heavy-duty air blower provides continuous inflation of the inflatable structure . . . that is intended for outdoor domestic family use only and not for use in public areas or for use as a rental.” The promotional material further indicates that there is a weight limit of 250 lbs. and that it is for use with no more than 3 children at a time. Additional information provides “Must use on a soft play surface” and that it is for outdoor use only. The age range is from 3 to 8 years.

ISSUE:

Whether the “Jump’n Slide” is classified in subheading 9503.00.00, HTSUS, as a “toy” or in heading 9506.99.60, HTSUS, as an article for “general physical exercise”.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes.

The following headings of the HTSUS are under consideration in classifying the subject article:

9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ('scale') models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

* * *

9506 Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:

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

The EN's to heading 9503 provide, in relevant part, as follows:

This heading covers:

* * *

(D) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults). . . . This group includes:

* * *

(ix) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).

* * *

(xxiii) Play tents for use by children indoors or outdoors.

The EN to heading 9506, states, in pertinent part, the following:

This heading covers:

* * *

(B) Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03), e.g.:

* * *

(12) Equipment of a kind used in children's playgrounds (e.g., swings, slides, see-saws and giant strides).

* * *

The EN to heading 9503 specifically indicates that "This group covers toys intended essentially for the amusement of persons (children or adults)". In order to be classified as a "toy" of Chapter 95, HTSUS, the toy must be designed and used principally for amusement and should not serve a utilitarian purpose. See HQ 086330, dated May 14, 1990; HQ 952186, dated April 29, 1993; HQ 954132, dated February 15, 1994; HQ 956779, dated September 29, 1994; and HQ 961530, dated October 21, 1998.

In *Minnetonka Brands, Inc. v. United States*, 110 F. Supp. 2d 1020 (CIT 2000), the court classified full-figured, three-dimensional, plastic objects in the form of well-recognized children's characters as ". . . [t]oys representing animals or non-human creatures . . . Other" under subheading 9503.49.00, HTSUS. *Id.* at 1029. The court found that because the evidence showed that "... the subject merchandise belongs to the class or kind of merchandise whose principal use is amusement, diversion or play", the merchandise is properly classified as "toys" of heading 9503, HTSUS. *Id.* at 1028. In *Minnetonka*, the CIT further noted that because heading 9503, HTSUS, is, in relevant part, a principal use provision, classification under this provision is controlled by the principal use "of goods of that class or kind to which the imported goods belong" in the United States at or immediately prior to the date of importation. See Additional U.S. Rule of Interpretation 1(a), HTSUS.¹

The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import. (citations omitted). "Principal use" is defined as the use "which exceeds any other single use." (citations omitted). As a result, "the fact that the merchandise may have numerous significant uses does not prevent the Court from classifying the merchandise according to the principal use of the class or kind to which the merchandise belongs. (citations omitted). See *E.M. Chems. v. United States*, 20 C.I.T. 382, 387-388 (Ct. Int'l Trade 1996).

As stated in *United States v. The Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), certain factors must be looked at to determine whether imported merchandise is of a certain "class or kind" as that expression is used in Additional U.S. Rule of Interpretation 1(a). These factors include: (1) the physical characteristics of the merchandise, (2) the expectation of the ultimate purchases, (3) the channels of trade of the merchandise, (4) the environment of the sale (accompanying accessories, manner of advertisement and display) (5) use in the same manner as merchandise which defines the class, (6) the economic practicality of so using the import, and (7) recognition in the trade of this use.

¹ Additional U.S. Rules of Interpretation 1(a), HTSUS, provides:

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

* * *

In the instant case, we apply the *Carborundum* factors as follows:

(1) The general physical characteristics of the merchandise: The subject merchandise consists of a 9 foot by 12 foot inflated plastic surface surrounded by mesh walls, with an attached slide, in bright primary colors. The weight limit is 250 lbs and the surface is large enough for only 3 children. The use of bright primary colors is especially attractive and amusing to young children. The plastic walled structure is akin to a play tent and the bouncy surface is akin to toy sports equipment listed as exemplars of the heading in EN 95.03. The slide is akin to playground equipment listed in EN 95.06. In HQ 966135, dated March 28, 2003, CBP classified a plastic sandbox as playground equipment of heading 9506 because it was sturdy enough "... to be stored in all kinds of weather". However, even though the slide component and entire article is designed for outdoor use, it is not intended to be stored outdoors in all kinds of weather. Accordingly, these features weigh in favor of classification as toys.

(2) The expectation of the ultimate purchasers: The ultimate purchasers expect that the product will be used in accordance with the instructions "for outdoor domestic family use only and not for use in public areas or for use as a rental." Such limited use is more representative of a toy rather than an article of outdoor play equipment.

(3 & 4) The channels of trade in which the merchandise moves and environment of sale: The instant merchandise is distributed by Little Tikes®, a toy company that specializes in indoor and outdoor play toys for children. The merchandise is sold in toy stores and the toy section of department stores, drug stores and supermarkets. This factor weighs in favor of classification as toys.

(5) The usage of the merchandise: The merchandise is used as an active play area for no more than three young children to jump, bounce and slide. Compared to the durable rental units that can be used/stored outdoors in all kinds of weather and for accommodation of many children at one time, including children older than 8 years old, the subject article is for personal backyard use and amusement of no more than three young children between the ages of 3 to 8 years old. The website for this product includes testimonials from parents of 2–4 year old children, with such comments as "great toy", and "hours of fun". See "<http://www.littletikes.com/toys/jump-slide-bouncer.aspx>". This factor weighs in favor of toys.

(6) The economic practicality of so using the import: The merchandise is moderately priced at \$229.99 per unit compared to the inflatable structures used for carnivals which may be retail priced from \$1000.00 to \$2300.00 per unit. See New York Ruling (NY) N021533, dated January 31, 2008.

(7) The recognition in the trade of use: The subject merchandise is recognized in the trade as an inflatable play area designed to amuse young children by bouncing and sliding in a backyard environment. This factor weighs in favor of toys.

On the balance, we find that the merchandise belongs to the class or kind of goods known as toys which are classified in heading 9503, HTSUS.

It is the conclusion of CBP, based on the above discussion, that the subject “Jump ‘n Slide” is primarily used for amusement. As such, the merchandise is classified as a “toy” in heading 9503, HTSUS, and is excluded from classification in heading 9506, HTSUS. *See* EN 95.06(B).

HOLDING:

The subject merchandise, identified as the “Jump ‘n Slide”, is correctly classified in subheading, 9503.00.00, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof, Other”. This provision is duty free at the general column one rate of duty.

EFFECT ON OTHER RULINGS:

HQ 967654, dated May 3, 2007, is hereby revoked consistent with the foregoing. In accordance with 19 U.S.C. Section 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 H097735

March 29, 2011

CLA-2 OT:RR:CTF:TCM H097735 ASM

CATEGORY: Classification

TARIFF NO.: 9503.00.00

MS. LORIANNE ALDINGER
RITE AID CORPORATION
P.O. BOX 3165
HARRISBURG, PA 17105

RE: Revocation of NY N021595; Tariff Classification of the “Banzai Splash Slide”

DEAR MS. ALDINGER:

This is in reference to New York Ruling Letter (NY) N021595, dated January 16, 2008, which was issued to you on behalf of the Rite Aid Corporation, concerning the tariff classification of an inflatable slide, identified as the “Banzai Splash Slide”, under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise as an article for “general physical exercise” under subheading 9506.99.60, HTSUS. We have reviewed NY N021595 and found it to be in error. For the reasons set forth below, we hereby revoke NY N021595.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. Section 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY N021595, as described below was published in Vol. 44, No. 24, of the *Customs Bulletin* on June 9, 2010. No comments were received in response to the notice.

FACTS:

The subject article, identified as the “Banzai Splash Slide” (item number 9001597), is an inflatable play structure. The article is a toddler-sized slide with an attached splash landing area that is specifically designed for outdoor recreational play. The splash landing area is wholly constructed of inflatable plastic.

ISSUE:

Whether the “Banzai Splash Slide” is classified in subheading 9503.00.00, HTSUS, as a “toy” or in heading 9506.99.60, HTSUS, as an article for “general physical exercise”.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes.

The following headings of the HTSUS are under consideration in classifying the subject article:

9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ('scale') models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

* * *

9507 Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:

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

The EN's to heading 9503 provide, in relevant part, as follows:

This heading covers:

* * *

(E) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults). . . . This group includes:

* * *

(x) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).

* * *

(xxiii) Play tents for use by children indoors or outdoors.

The EN to heading 9506, states, in pertinent part, the following:

This heading covers:

* * *

(C) Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03), e.g.:

* * *

(13) Equipment of a kind used in children's playgrounds (e.g., swings, slides, see-saws and giant strides).

* * *

(C) Swimming pools and paddling pools.

The EN to heading 9503 specifically indicates that "This group covers toys intended essentially for the amusement of persons (children or adults)". In order to be classified as a "toy" of Chapter 95, HTSUS, the toy must be designed and used principally for amusement and should not serve a utili-

tarian purpose. See Headquarters Ruling Letter (HQ) 086330, dated May 14, 1990; HQ 952186, dated April 29, 1993; HQ 954132, dated February 15, 1994; HQ 956779, dated September 29, 1994; and HQ 961530, dated October 21, 1998.

In *Minnetonka Brands, Inc. v. United States*, 110 F. Supp. 2d 1020 (CIT 2000), the court classified full-figured, three-dimensional, plastic objects in the form of well-recognized children's characters as ". . . [t]oys representing animals or non-human creatures . . . Other" under subheading 9503.49.00, HTSUS. *Id.* at 1029. The court found that because the evidence showed that "... the subject merchandise belongs to the class or kind of merchandise whose principal use is amusement, diversion or play", the merchandise is properly classified as "toys" of heading 9503, HTSUS. *Id.* at 1028. In *Minnetonka*, the CIT further noted that because heading 9503, HTSUS, is, in relevant part, a principal use provision, classification under this provision is controlled by the principal use "of goods of that class or kind to which the imported goods belong" in the United States at or immediately prior to the date of importation. See Additional U.S. Rule of Interpretation 1(a), HTSUS.¹

The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import. (citations omitted). "Principal use" is defined as the use "which exceeds any other single use." (citations omitted). As a result, "the fact that the merchandise may have numerous significant uses does not prevent the Court from classifying the merchandise according to the principal use of the class or kind to which the merchandise belongs. (citations omitted). See *E.M. Chems. v. United States*, 20 C.I.T. 382, 387-388 (Ct. Int'l Trade 1996).

As stated in *United States v. The Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), certain factors must be looked at to determine whether imported merchandise is of a certain "class or kind" as that expression is used in Additional U.S. Rule of Interpretation 1(a). These factors include: (1) the physical characteristics of the merchandise, (2) the expectation of the ultimate purchases, (3) the channels of trade of the merchandise, (4) the environment of the sale (accompanying accessories, manner of advertisement and display) (5) use in the same manner as merchandise which defines the class, (6) the economic practicality of so using the import, and (7) recognition in the trade of this use.

In the instant case, we apply the *Carborundum* factors as follows:

(1) The general physical characteristics of the merchandise : The subject merchandise consists of a toddler sized slide and splash landing area. The slide and splash area are akin to playground equipment listed in EN 95.06. However, in HQ 966135, dated March 28, 2003, CBP classified a plastic sandbox as playground equipment of heading 9506 because it was sturdy enough "... to be stored in all kinds of weather".

¹ Additional U.S. Rules of Interpretation 1(a), HTSUS, provides:

1. In the absence of special language or context which otherwise requires—
 - (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use; ...

Here, even though the slide and splash landing area are designed for outdoor use, the article is not intended to be stored outdoors in all kinds of weather. Furthermore, the splash landing area provides a place for the child to have a cushioned water landing upon exiting the slide. This feature is not unlike that found in NY R01128, dated December 10, 2004, which classified an inflatable water slide as a “toy” in heading 9503, HTSUS. There a slide was designed to rest at the edge of a swimming pool. At the tip of the water slide was a raft-like protuberance that hung into the water and cushioned the sliding child before hitting the water. In addition, a water hose was hooked to a sprayer that was attached to the slide. This provided a steady stream of water and slippery surface for sliding into the pool. Accordingly, these features weigh in favor of classification as toys.

(2) The expectation of the ultimate purchasers: The ultimate purchasers expect that the product will be used in accordance with the instructions for outdoor domestic family use. Such limited use is more representative of a toy rather than an article of outdoor play equipment.

(3 & 4) The channels of trade in which the merchandise moves and environment of sale: The instant merchandise is sold in toy stores and the toy section of department stores, drug stores and supermarkets. This factor weighs in favor of classification as toys.

(5) The usage of the merchandise: The merchandise is used as an active play area for young children to splash and slide. Compared to the durable rental units that can be used/stored outdoors in all kinds of weather and for accommodation of many children at one time, the subject article is just for personal backyard use. This factor weighs in favor of classification as toys.

(6) The economic practicality of so using the import: The merchandise is moderately priced compared to the inflatable structures used for carnivals which may be retail priced from \$1000.00 to \$2300.00 per unit. *See* New York Ruling (NY) N021533, dated January 31, 2008. This factor weighs in favor of classification as toys.

(7) The recognition in the trade of use: The subject merchandise is recognized in the trade as an inflatable play area designed to amuse young children by splashing and sliding in a backyard environment. This factor weighs in favor of toys.

On the balance, we find that the merchandise belongs to the class or kind of goods known as toys which are classified in heading 9503, HTSUS.

It is the conclusion of CBP, based on the above discussion, that the subject “Banzai Splash Slide” is primarily used for amusement. As such, the merchandise is classified as a “toy” in heading 9503, HTSUS, and is excluded from classification in heading 9506, HTSUS. *See* EN 95.06(B).

HOLDING:

The subject merchandise, identified as the “Banzai Splash Slide”, is correctly classified in subheading, 9503.00.00, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models,

working or not; puzzles of all kinds; parts and accessories thereof, Other". This provision is duty free at the general column one rate of duty.

EFFECT ON OTHER RULINGS:

NY N021595, dated January 16, 2008, is hereby revoked consistent with the foregoing. In accordance with 19 U.S.C. Section 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 C]

HQ H097736

March 29, 2011

CLA-2 OT:RR:CTF:TCM H097736 ASM

CATEGORY: Classification

TARIFF NO.: 9503.00.00

MS. KAREN COOPER-MARTIN
MGA ENTERTAINMENT
16300 ROSCOE BLVD., #150
VAN NUYS, CA 91406

RE: Revocation of NY N027455; Tariff Classification of the “Crashing Waves Water Park”

DEAR MS. COOPER-MARTIN:

This is in reference to New York Ruling Letter (NY) N027455, dated June 3, 2008, which was issued to you on behalf of the MGA Entertainment company, concerning the tariff classification of the “Crashing Waves Water Park”, under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise as an article for “general physical exercise” under subheading 9506.99.60, HTSUS. We have reviewed NY N027455 and found it to be in error. For the reasons set forth below, we hereby revoke NY N027455.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. Section 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY N027455, as described below was published in Vol. 44, No. 24, of the *Customs Bulletin* on June 9, 2010. No comments were received in response to the notice.

FACTS:

The subject article, “Crashing Waves Water Park”, is an inflatable play area that is designed for outdoor water play. The dimensions are 15 feet in width x 17 feet in length x 10 feet in height. The article has a stair climber on one side leading to a center area that resembles a lighthouse. The light house contains a water cannon. On the other side is a curved water slide that empties into a shallow splash landing area. There is also a crawl-through tunnel under the lighthouse that leads to the splash landing area. A lawn hose connects to the item’s tubing to provide the water to the spray cannons and create a slippery surface for sliding. An electric power blower must be kept on continuously for inflation of the structure. The product is designed for children between the ages of 5 and 10 years.

ISSUE:

Whether the “Crashing Waves Water Park” is classified in subheading 9503.00.00, HTSUS, as a “toy” or in heading 9506.99.60, HTSUS, as an article for “general physical exercise”.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be

determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes.

The following headings of the HTSUS are under consideration in classifying the subject article:

9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ('scale') models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

* * *

9508 Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:

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

The EN's to heading 9503 provide, in relevant part, as follows:

This heading covers:

* * *

(F) **Other toys.**

This group covers toys intended essentially for the amusement of persons (children or adults). . . . This group includes:

* * *

(xi) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).

* * *

(xxiii) Play tents for use by children indoors or outdoors.

The EN to heading 9506, states, in pertinent part, the following:

This heading covers:

* * *

(D) **Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03)**, e.g.:

* * *

(14) Equipment of a kind used in children's playgrounds (e.g., swings, slides, see-saws and giant strides).

* * *

The EN to heading 9503 specifically indicates that "This group covers toys intended essentially for the amusement of persons (children or adults)". In

order to be classified as a “toy” of Chapter 95, HTSUS, the toy must be designed and used principally for amusement and should not serve a utilitarian purpose. See HQ 086330, dated May 14, 1990; HQ 952186, dated April 29, 1993; HQ 954132, dated February 15, 1994; HQ 956779, dated September 29, 1994; and HQ 961530, dated October 21, 1998.

In *Minnetonka Brands, Inc. v. United States*, 110 F. Supp. 2d 1020 (CIT 2000), the court classified full-figured, three-dimensional, plastic objects in the form of well-recognized children’s characters as “. . . [t]oys representing animals or non-human creatures . . . Other” under subheading 9503.49.00, HTSUS. *Id.* at 1029. The court found that because the evidence showed that “... the subject merchandise belongs to the class or kind of merchandise whose principal use is amusement, diversion or play”, the merchandise is properly classified as “toys” of heading 9503, HTSUS. *Id.* at 1028. In *Minnetonka*, the CIT further noted that because heading 9503, HTSUS, is, in relevant part, a principal use provision, classification under this provision is controlled by the principal use “of goods of that class or kind to which the imported goods belong” in the United States at or immediately prior to the date of importation. See Additional U.S. Rule of Interpretation 1(a), HTSUS.¹

The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import. (citations omitted). “Principal use” is defined as the use “which exceeds any other single use.” (citations omitted). As a result, “the fact that the merchandise may have numerous significant uses does not prevent the Court from classifying the merchandise according to the principal use of the class or kind to which the merchandise belongs. (citations omitted). See *E.M. Chems. v. United States*, 20 C.I.T. 382, 387–388 (Ct. Int’l Trade 1996).

As stated in *United States v. The Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), certain factors must be looked at to determine whether imported merchandise is of a certain “class or kind” as that expression is used in Additional U.S. Rule of Interpretation 1(a). These factors include: (1) the physical characteristics of the merchandise, (2) the expectation of the ultimate purchasers, (3) the channels of trade of the merchandise, (4) the environment of the sale (accompanying accessories, manner of advertisement and display) (5) use in the same manner as merchandise which defines the class, (6) the economic practicality of so using the import, and (7) recognition in the trade of this use.

In the instant case, we apply the *Carborundum* factors as follows:

(1) The general physical characteristics of the merchandise: The use of bright primary colors is especially attractive and amusing to young children. We recognize that the slide and splash landing component is akin to playground equipment listed in EN 95.06. However, in HQ 966135, dated March 28, 2003, CBP classified a plastic sandbox as play-

¹ Additional U.S. Rules of Interpretation 1(a), HTSUS, provides:

1. In the absence of special language or context which otherwise requires—
 - (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use;

ground equipment of heading 9506 because it was sturdy enough "... to be stored in all kinds of weather". Even though the article is designed for outdoor use, it is not sturdy enough to be stored outdoors in all kinds of weather. Therefore, it is not "of a kind used in children's playgrounds". Accordingly, this feature weighs in favor of classification as toys.

* * *

(2) The expectation of the ultimate purchasers: The ultimate purchasers expect that the product will be used for outdoor domestic family use. Such limited use is more representative of a toy rather than an article of outdoor play equipment.

(3 & 4) The channels of trade in which the merchandise moves and environment of sale: The instant merchandise is sold in toy stores and the toy section of department stores, drug stores and supermarkets. This factor weighs in favor of classification as toys.

(5) The usage of the merchandise: Compared to the durable rental units that can be used/stored outdoors in all kinds of weather and for accommodation of many children at one time, the subject article is for personal backyard use. This factor weighs in favor of classification as toys.

(6) The economic practicality of so using the import: The merchandise is moderately priced compared to the inflatable structures used for carnivals which may be retail priced from \$1000.00 to \$2300.00 per unit. See New York Ruling (NY) N021533, dated January 31, 2008. This factor weighs in favor of toys.

(7) The recognition in the trade of use: The subject merchandise is recognized in the trade as an inflatable play area designed to amuse young children by splashing and sliding in a backyard environment. This factor weighs in favor of toys.

On the balance, we find that the merchandise belongs to the class or kind of goods known as toys which are classified in heading 9503, HTSUS.

It is the conclusion of CBP, based on the above discussion, that the subject "Crashing Waves Water Park" is primarily used for amusement. As such, the merchandise is classified as a "toy" in heading 9503, HTSUS, and is excluded from classification in heading 9506, HTSUS. See EN 95.06(B).

HOLDING:

The subject merchandise, identified as the "Crashing Waves Water Park", is correctly classified in subheading, 9503.00.00, HTSUS, which provides for "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof, Other". This provision is duty free at the general column one rate of duty.

EFFECT ON OTHER RULINGS:

NY N027455, dated June 3, 2008, is hereby revoked consistent with the foregoing. In accordance with 19 U.S.C. Section 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 D]

HQ H097737

March 29, 2011

CLA-2 OT:RR:CTF:TCM H097737 ASM

CATEGORY: Classification

TARIFF NO.: 9503.00.00

MS. LORIANNE ALDINGER
RITE AID CORPORATION
P.O. BOX 3165
HARRISBURG, PA 17105

RE: Revocation of NY M87766; Tariff Classification of the “Jumbo Water Slide”

DEAR MS. ALDINGER:

This is in reference to New York Ruling Letter (NY) M87766, dated October 31, 2006, which was issued to you on behalf of your client, Rite Aid corporation, concerning the tariff classification of an inflatable slide, identified as the “Jumbo Water Slide”, under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise as an article for “general physical exercise” under subheading 9506.99.60, HTSUS. We have reviewed NY M87766 and found it to be in error. For the reasons set forth below, we hereby revoke NY M87766.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. Section 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY M87766, as described below was published in Vol. 44, No. 24, of the *Customs Bulletin* on June 9, 2010. No comments were received in response to the notice.

FACTS:

The subject article, identified as the “Jumbo Water Slide”, is an inflatable play structure that is inflated by means of a blower, which is connected to the slide. The product is intended for outdoor play and designed for use by children.

ISSUE:

Whether the “Jumbo Water Slide” is classified in subheading 9503.00.00, HTSUS, as a “toy” or in heading 9506.99.60, HTSUS, as an article for “general physical exercise”.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes.

The following headings of the HTSUS are under consideration in classifying the subject article:

9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ('scale') models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

* * *

9509 Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:

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

The EN's to heading 9503 provide, in relevant part, as follows:
This heading covers:

* * *

(G) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults). . . . This group includes:

* * *

(xii) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).

* * *

(xxiii) Play tents for use by children indoors or outdoors.

The EN to heading 9506, states, in pertinent part, the following:
This heading covers:

* * *

(E) Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03), e.g.:

* * *

(15) Equipment of a kind used in children's playgrounds (e.g., swings, slides, see-saws and giant strides).

* * *

The EN to heading 9503 specifically indicates that "This group covers toys intended essentially for the amusement of persons (children or adults)". In order to be classified as a "toy" of Chapter 95, HTSUS, the toy must be designed and used principally for amusement and should not serve a utilitarian purpose. See HQ 086330, dated May 14, 1990; HQ 952186, dated April 29, 1993; HQ 954132, dated February 15, 1994; HQ 956779, dated September 29, 1994; and HQ 961530, dated October 21, 1998.

In *Minnetonka Brands, Inc. v. United States*, 110 F. Supp. 2d 1020 (CIT 2000), the court classified full-figured, three-dimensional, plastic objects in the form of well-recognized children's characters as ". . . [t]oys representing animals or non-human creatures . . . Other" under subheading 9503.49.00, HTSUS. *Id.* at 1029. The court found that because the evidence showed that "... the subject merchandise belongs to the class or kind of merchandise whose principal use is amusement, diversion or play", the merchandise is properly classified as "toys" of heading 9503, HTSUS. *Id.* at 1028. In *Minnetonka*, the CIT further noted that because heading 9503, HTSUS, is, in relevant part, a principal use provision, classification under this provision is controlled by the principal use "of goods of that class or kind to which the imported goods belong" in the United States at or immediately prior to the date of importation. See Additional U.S. Rule of Interpretation 1(a), HTSUS.¹

The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import. (citations omitted). "Principal use" is defined as the use "which exceeds any other single use." (citations omitted). As a result, "the fact that the merchandise may have numerous significant uses does not prevent the Court from classifying the merchandise according to the principal use of the class or kind to which the merchandise belongs. (citations omitted). See *E.M. Chems. v. United States*, 20 C.I.T. 382, 387–388 (Ct. Int'l Trade 1996).

As stated in *United States v. The Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), certain factors must be looked at to determine whether imported merchandise is of a certain "class or kind" as that expression is used in Additional U.S. Rule of Interpretation 1(a). These factors include: (1) the physical characteristics of the merchandise, (2) the expectation of the ultimate purchases, (3) the channels of trade of the merchandise, (4) the environment of the sale (accompanying accessories, manner of advertisement and display) (5) use in the same manner as merchandise which defines the class, (6) the economic practicality of so using the import, and (7) recognition in the trade of this use.

In the instant case, we apply the *Carborundum* factors as follows:

(1) The general physical characteristics of the merchandise: The slide is akin to playground equipment listed in EN 95.06. However, in HQ 966135, dated March 28, 2003, CBP classified a plastic sandbox as playground equipment of heading 9506 because it was sturdy enough "... to be stored in all kinds of weather". However, even though the slide component and entire article is designed for outdoor use, it is not intended to be stored outdoors in all kinds of weather. Accordingly, these features weigh in favor of classification as toys.

* * *

¹ Additional U.S. Rules of Interpretation 1(a), HTSUS, provides:

1. In the absence of special language or context which otherwise requires—
 - (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use;

(2) The expectation of the ultimate purchasers: The ultimate purchasers expect that the product will be used for outdoor domestic family use. Such limited use is more representative of a toy rather than an article of outdoor play equipment.

(3 & 4) The channels of trade in which the merchandise moves and environment of sale: The instant merchandise is sold in toy stores and the toy section of department stores, drug stores and supermarkets. This factor weighs in favor of classification as toys.

(5) The usage of the merchandise: The merchandise is used as an active play area for young children to splash and slide. Compared to the durable rental units that can be used/stored outdoors in all kinds of weather, the subject article is not intended to be used outdoors year round. This factor weighs in favor of classification as toys.

(6) The economic practicality of so using the import: The merchandise is moderately priced compared to the inflatable structures used for carnivals which may be retail priced from \$1000.00 to \$2300.00 per unit. *See* New York Ruling (NY) N021533, dated January 31, 2008. This factor weighs in favor of classification as toys.

(7) The recognition in the trade of use: The subject merchandise is recognized in the trade as an inflatable play area designed to amuse young children through water play and sliding in a backyard environment. This factor weighs in favor of toys.

On the balance, we find that the merchandise belongs to the class or kind of goods known as toys which are classified in heading 9503, HTSUS.

It is the conclusion of CBP, based on the above discussion, that the subject “Jumbo Water Slide” is primarily used for amusement. As such, the merchandise is classified as a “toy” in heading 9503, HTSUS, and is excluded from classification in heading 9506, HTSUS. *See* EN 95.06(B).

HOLDING:

The subject merchandise, identified as the “Jumbo Water Slide”, is correctly classified in subheading, 9503.00.00, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof, Other”. This provision is duty free at the general column one rate of duty.

EFFECT ON OTHER RULINGS:

NY M87766, dated October 31, 2006, is hereby revoked consistent with the foregoing. In accordance with 19 U.S.C. Section 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 E]

HQ H097738

March 29, 2011

CLA-2 OT:RR:CTF:TCM H097738 ASM

CATEGORY: Classification

TARIFF NO.: 9503.00.00

MS. LORIANNE ALDINGER
RITE AID CORPORATION
P.O. BOX 3165
HARRISBURG, PA 17105

RE: Revocation of NY M87765; Tariff Classification of a “Bounce House”

DEAR MS. ALDINGER:

This is in reference to New York Ruling Letter (NY) M87765, dated October 31, 2006, which was issued to you on behalf of the Rite Aid Corporation, concerning the tariff classification of an inflatable play structure, identified as a “Bounce House”, under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise as an article for “general physical exercise” under subheading 9506.99.60, HTSUS. We have reviewed NY M87765 and found it to be in error. For the reasons set forth below, we hereby revoke NY M87765.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. Section 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY M87766, as described below was published in Vol. 44, No. 24, of the *Customs Bulletin* on June 9, 2010. No comments were received in response to the notice.

FACTS:

The “Bounce House”, identified as item #948429, is a 7 ft. x 7 ft. inflatable play structure. The article is inflated by means of a blower that is connected to the “house”. The child must enter the “house” in order to bounce. The article is suitable for use outside.

ISSUE:

Whether the “Bounce House” is classified in subheading 9503.00.00, HTSUS, as a “toy” or in heading 9506.99.60, HTSUS, as an article for “general physical exercise”.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes.

The following headings of the HTSUS are under consideration in classifying the subject article:

9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ('scale') models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

* * *

9510 Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:

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

The EN's to heading 9503 provide, in relevant part, as follows:

This heading covers:

* * *

(H) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults). . . . This group includes:

* * *

(xiii) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).

* * *

(xxiii) Play tents for use by children indoors or outdoors.

The EN to heading 9506, states, in pertinent part, the following:

This heading covers:

* * *

(F) Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03), e.g.:

* * *

(16) Equipment of a kind used in children's playgrounds (e.g., swings, slides, see-saws and giant strides).

* * *

The EN to heading 9503 specifically indicates that "This group covers toys intended essentially for the amusement of persons (children or adults)". In order to be classified as a "toy" of Chapter 95, HTSUS, the toy must be designed and used principally for amusement and should not serve a utilitarian purpose. *See* HQ 086330, dated May 14, 1990; HQ 952186, dated April 29, 1993; HQ 954132, dated February 15, 1994; HQ 956779, dated September 29, 1994; and HQ 961530, dated October 21, 1998.

In *Minnetonka Brands, Inc. v. United States*, 110 F. Supp. 2d 1020 (CIT 2000), the court classified full-figured, three-dimensional, plastic objects in the form of well-recognized children's characters as ". . . [t]oys representing animals or non-human creatures . . . Other" under subheading 9503.49.00, HTSUS. *Id.* at 1029. The court found that because the evidence showed that "... the subject merchandise belongs to the class or kind of merchandise whose principal use is amusement, diversion or play", the merchandise is properly classified as "toys" of heading 9503, HTSUS. *Id.* at 1028. In *Minnetonka*, the CIT further noted that because heading 9503, HTSUS, is, in relevant part, a principal use provision, classification under this provision is controlled by the principal use "of goods of that class or kind to which the imported goods belong" in the United States at or immediately prior to the date of importation. See Additional U.S. Rule of Interpretation 1(a), HTSUS.¹

The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import. (citations omitted). "Principal use" is defined as the use "which exceeds any other single use." (citations omitted). As a result, "the fact that the merchandise may have numerous significant uses does not prevent the Court from classifying the merchandise according to the principal use of the class or kind to which the merchandise belongs. (citations omitted). See *E.M. Chems. v. United States*, 20 C.I.T. 382, 387–388 (Ct. Int'l Trade 1996).

As stated in *United States v. The Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), certain factors must be looked at to determine whether imported merchandise is of a certain "class or kind" as that expression is used in Additional U.S. Rule of Interpretation 1(a). These factors include: (1) the physical characteristics of the merchandise, (2) the expectation of the ultimate purchases, (3) the channels of trade of the merchandise, (4) the environment of the sale (accompanying accessories, manner of advertisement and display) (5) use in the same manner as merchandise which defines the class, (6) the economic practicality of so using the import, and (7) recognition in the trade of this use.

In the instant case, we apply the *Carborundum* factors as follows:

- (1) **The general physical characteristics of the merchandise** : The subject merchandise consists of a 7 foot x 7 foot inflated plastic surface. Given the relatively small interior surface, we assume that there would only be sufficient space for 1–2 children to use the bouncer simultaneously. The plastic inflatable structure is akin to a play tent and the bouncy surface is akin to toy sports equipment listed as exemplars of the heading in EN 95.03. In HQ 966135, dated

* * *

¹ Additional U.S. Rules of Interpretation 1(a), HTSUS, provides:

1. In the absence of special language or context which otherwise requires—
 - (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use;

March 28, 2003, CBP classified a plastic sandbox as playground equipment of heading 9506 because it was sturdy enough "... to be stored in all kinds of weather". However, the subject article is not intended to be stored outdoors in all kinds of weather. Accordingly, these features weigh in favor of classification as toys.

- (2) **The expectation of the ultimate purchasers:** The ultimate purchasers expect that the product will be used in accordance with the instructions for indoor/outdoor personal domestic use. Such limited use is more representative of a toy rather than an article of outdoor play equipment.
- (3 & 4) **The channels of trade in which the merchandise moves and environment of sale:** The instant merchandise is sold in toy stores and the toy section of department stores, drug stores and supermarkets. This factor weighs in favor of classification as toys.
- (5) **The usage of the merchandise:** The merchandise is used as an active play area for no more than three young children to jump and bounce. Compared to the durable rental units that can be used/stored outdoors in all kinds of weather and for accommodation of many children at one time, the subject article is for personal indoor or outdoor backyard use and the amusement of no more than three young children.
- (6) **The economic practicality of so using the import:** The merchandise is moderately priced at \$259.99 per unit compared to the inflatable structures used for carnivals which may be retail priced from \$1000.00 to \$2300.00 per unit. *See* New York Ruling (NY) N021533, dated January 31, 2008.
- (7) **The recognition in the trade of use:** The subject merchandise is recognized in the trade as an inflatable play area designed to amuse young children by bouncing in a personal domestic indoor or outdoor backyard environment. This factor weighs in favor of toys.

Finally, we note that the following CBP rulings classified substantially similar inflatable play structures as "toys" of heading 9503, HTSUS: NY N021006, dated January 10, 2008 (inflatable bounce house); NY N015704, dated September 12, 2007 ("Jump 'N Jam Sports Center"); NY N016735, dated September 21, 2007 ("Victorian Inflatable Playhouse Toy"); NY N019323, dated November 20, 2007 ("Workout Ring Inflatable Toy"); and NY N013608, dated July 12, 2007 ("Inflatable Air-Cade Wall Court").

On the balance, we find that the merchandise belongs to the class or kind of goods known as toys which are classified in heading 9503, HTSUS.

It is the conclusion of CBP, based on the above discussion, that the subject "Bounce House" is primarily used for amusement. As such, the merchandise is classified as a "toy" in heading 9503, HTSUS, and is excluded from classification in heading 9506, HTSUS. *See* EN 95.06(B).

HOLDING:

The subject merchandise, identified as the "Bounce House", is correctly classified in subheading, 9503.00.00, HTSUS, which provides for "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working

or not; puzzles of all kinds; parts and accessories thereof, Other". This provision is duty free at the general column one rate of duty.

EFFECT ON OTHER RULINGS:

NY M87765, dated October 31, 2006, is hereby revoked consistent with the foregoing. In accordance with 19 U.S.C. Section 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 F]

HQ H097739

March 29, 2011

CLA-2 OT:RR:CTF:TCM H097739 ASM

CATEGORY: Classification

TARIFF NO.: 9503.00.00

MS. PATTI CORDO
AMERICAN CARGO EXPRESS, INC.
435 DIVISION STREET
ELIZABETH, NJ 07201

RE: Revocation of NY K82586; Tariff Classification of the “Banzai Falls Water Slide” and “Slam ‘N Hoops Bouncer”

DEAR Ms. CORDO:

This is in reference to New York Ruling Letter (NY) K82586, dated January 29, 2004, which was issued to you on behalf of the American Cargo Express company, concerning the tariff classification of the “Banzai Falls Water Slide” and “Slam ‘N Hoops Bouncer”, under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the subject merchandise as articles for “general physical exercise” under subheading 9506.99.60, HTSUS. We have reviewed NY K82586 and found it to be in error. For the reasons set forth below, we hereby revoke NY K82586.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. Section 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY K82586, as described below was published in Vol. 44, No. 24, of the *Customs Bulletin* on June 9, 2010. No comments were received in response to the notice.

FACTS:

The “Banzai Falls Water Slide” is an inflatable play structure measuring 10 feet high by 18 feet long by 5 feet wide. The original water slide is advertised with a weight limit of 200 pounds. There is a splash landing area at the base of the structure and a water spray at the top. The top of the slide has an arch top with wall and rails that are constructed of poly vinyl chloride (PVC)-coated terylene material. A climbing wall is also made of PVC-coated terylene. Water bags are attached at various points around the slide to ensure stability of the structure. The article includes an electric blower motor that must run continuously to keep the structure inflated. Ground stake loops are included at two points to provide greater strength and durability.

The “Slam ‘N Hoops Bouncer” is an inflatable play structure measuring 13.8 feet in length by 8 feet in width. The “Slam ‘N Hoops Bouncer” is inflated by means of an electric blower motor which provides a constant air supply to keep the unit inflated. There is an enclosed area for children to bounce with 36 inch high mesh doors and heavy duty zippers, a 7 foot tall climbing wall, and 8 foot tall basketball wall with a net hoop. The front of the unit has an inflated ledge with a raised inflated wall containing holes for

children to crawl through for play in the enclosed area. The product description indicates that it is for use by up to 3 children with a maximum weight capacity not to exceed 200 pounds.

ISSUE:

Whether the “Banzai Falls Water Slide” and “Slam ‘N Hoops Bouncer” are classified in subheading 9503.00.00, HTSUS, as a “toy” or in heading 9506.99.60, HTSUS, as articles for “general physical exercise”.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes.

The following headings of the HTSUS are under consideration in classifying the subject article:

9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (‘scale’) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

* * *

9511 Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:

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

The EN’s to heading 9503 provide, in relevant part, as follows:

This heading covers:

* * *

(I) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults). . . . This group includes:

* * *

(xiv) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).

* * *

(xxiii) Play tents for use by children indoors or outdoors.

The EN to heading 9506, states, in pertinent part, the following:

This heading covers:

* * *

(G) **Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03), e.g.:**

* * *

- (17) Equipment of a kind used in children's playgrounds (e.g., swings, slides, see-saws and giant strides).

* * *

The EN to heading 9503 specifically indicates that "This group covers toys intended essentially for the amusement of persons (children or adults)". In order to be classified as a "toy" of Chapter 95, HTSUS, the toy must be designed and used principally for amusement and should not serve a utilitarian purpose. See HQ 086330, dated May 14, 1990; HQ 952186, dated April 29, 1993; HQ 954132, dated February 15, 1994; HQ 956779, dated September 29, 1994; and HQ 961530, dated October 21, 1998.

In *Minnetonka Brands, Inc. v. United States*, 110 F. Supp. 2d 1020 (CIT 2000), the court classified full-figured, three-dimensional, plastic objects in the form of well-recognized children's characters as ". . . [t]oys representing animals or non-human creatures . . . Other" under subheading 9503.49.00, HTSUS. *Id.* at 1029. The court found that because the evidence showed that "... the subject merchandise belongs to the class or kind of merchandise whose principal use is amusement, diversion or play", the merchandise is properly classified as "toys" of heading 9503, HTSUS. *Id.* at 1028. In *Minnetonka*, the CIT further noted that because heading 9503, HTSUS, is, in relevant part, a principal use provision, classification under this provision is controlled by the principal use "of goods of that class or kind to which the imported goods belong" in the United States at or immediately prior to the date of importation. See Additional U.S. Rule of Interpretation 1(a), HTSUS.¹

The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import. (citations omitted). "Principal use" is defined as the use "which exceeds any other single use." (citations omitted). As a result, "the fact that the merchandise may have numerous significant uses does not prevent the Court from classifying the merchandise according to the principal use of the class or kind to which the merchandise belongs. (citations omitted). See *E.M. Chems. v. United States*, 20 C.I.T. 382, 387-388 (Ct. Int'l Trade 1996).

As stated in *United States v. The Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), certain factors must be looked at to determine whether imported merchandise is of a certain "class or kind" as that expression is used in Additional U.S. Rule of Interpretation 1(a). These

¹ Additional U.S. Rules of Interpretation 1(a), HTSUS, provides:

1. In the absence of special language or context which otherwise requires—
 - (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use;

factors include: (1) the physical characteristics of the merchandise, (2) the expectation of the ultimate purchasers, (3) the channels of trade of the merchandise, (4) the environment of the sale (accompanying accessories, manner of advertisement and display) (5) use in the same manner as merchandise which defines the class, (6) the economic practicality of so using the import, and (7) recognition in the trade of this use.

In the instant case, we apply the *Carborundum* factors as follows:

(1) The general physical characteristics of the merchandise:

The “Banzai Falls Water Slide” is constructed with a slide and attached splash area at the base of the slide which are akin to playground equipment listed in EN 95.06. However, in HQ 966135, dated March 28, 2003, CBP classified a plastic sandbox as playground equipment of heading 9506 because it was sturdy enough “... to be stored in all kinds of weather”. Here, even though the slide and attached splash area are designed for outdoor use, the article is not intended to be stored outdoors in all kinds of weather. Furthermore, the water area at the base of the slide is designed for a splash landing and provides a place for the child to have a cushioned water landing upon exiting the slide. This feature is not unlike that found in NY R01128, dated December 10, 2004, which classified an inflatable water slide as a “toy” in heading 9503, HTSUS. There a slide was designed to rest at the edge of a swimming pool. At the tip of the water slide was a raft-like protuberance that hung into the water and cushioned the sliding child before hitting the water. In addition, a water hose was hooked to a sprayer that was attached to the slide. This provided a steady stream of water and slippery surface for sliding into the pool. Accordingly, these features weigh in favor of classification as toys.

The “Slam ‘N Hoops Bouncer” consists of an inflated plastic surfaces surrounded by mesh walls and constructed of plastic in bright primary colors. The weight limit is 200 lbs and the surface is large enough for only 3 young children. The use of bright primary colors is especially attractive and amusing to young children. The plastic walled structure is akin to a play tent and the bouncy surface is akin to toy sports equipment listed as exemplars of the heading in EN 95.03. As we have already noted, HQ 966135, dated March 28, 2003, classified a plastic sandbox as playground equipment of heading 9506 because it was sturdy enough “... to be stored in all kinds of weather”. However, the “Slam ‘N Hoops Bouncer” is not intended to be stored outdoors in all kinds of weather. Accordingly, these features weigh in favor of classification as toys.

(2) The expectation of the ultimate purchasers: The ultimate purchasers expect that the “Banzai Falls Water Slide” and “Slam ‘N Hoops Bouncer” will be used for personal domestic family use. Such limited use is more representative of a toy rather than an article of outdoor play equipment.

(3 & 4) The channels of trade in which the merchandise moves and environment of sale: The “Banzai Falls Water Slide” and “Slam ‘N Hoops Bouncer” is sold in toy stores and the toy section of department stores, drug stores and supermarkets. This factor weighs in favor of classification as toys.

(5) The usage of the merchandise:

The “Banzai Falls Water Slide” is used as an active water slide play area for young children to splash and slide. Compared to the durable rental units that can be used/stored outdoors in all kinds of weather and for accommodation of many children at one time, the subject article is just for personal backyard use. This factor weighs in favor of classification as toys.

The “Slam ‘N Hoops Bouncer” is used as an active play area for no more than three young children to jump and bounce. Compared to the durable rental units that can be used/stored outdoors in all kinds of weather and for accommodation of many children at one time, the subject article is for personal domestic family use and the relatively small size (8 feet x 68 inches) would limit use of the article to no more than 2 young children at a time. This factor weighs in favor of toys.

(6) The economic practicality of so using the import: The “Banzai Falls Water Slide” is priced at \$379.00 per unit and the “Slam ‘N Hoops Bouncer” is priced at \$249.99 per unit. Both of these articles are moderately priced compared to the inflatable structures used for carnivals which may be retail priced from \$1000.00 to \$2300.00 per unit. *See* New York Ruling (NY) N021533, dated January 31, 2008.

(7) The recognition in the trade of use: The subject merchandise is recognized in the trade as an inflatable play area designed to amuse young children by sliding, splashing, and climbing and/or bouncing and playing in a domestic family environment. This factor weighs in favor of toys.

Finally, we note that the following CBP rulings classified substantially similar inflatable play structures as “toys” of heading 9503, HTSUS: NY N021006, dated January 10, 2008 (inflatable bounce house); NY N015704, dated September 12, 2007 (“Jump ‘N Jam Sports Center”); NY N016735, dated September 21, 2007 (“Victorian Inflatable Playhouse Toy”); NY N019323, dated November 20, 2007 (“Workout Ring Inflatable Toy”); and NY N013608, dated July 12, 2007 (“Inflatable Air-Cade Wall Court”).

On the balance, we find that the merchandise belongs to the class or kind of goods known as toys which are classified in heading 9503, HTSUS.

It is the conclusion of CBP, based on the above discussion, that the subject “Banzai Falls Water Slide” and “Slam ‘N Hoops Bouncer” is primarily used for amusement. As such, the merchandise is classified as a “toy” in heading 9503, HTSUS, and is excluded from classification in heading 9506, HTSUS. *See* EN 95.06(B).

HOLDING:

The subject merchandise, identified as the “Banzai Falls Water Slide” and “Slam ‘N Hoops Bouncer”, is correctly classified in subheading, 9503.00.00, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof, Other”. This provision is duty free at the general column one rate of duty.

EFFECT ON OTHER RULINGS:

NY K82586, dated January 29, 2004, is hereby revoked consistent with the foregoing. In accordance with 19 U.S.C. Section 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 G]

HQ H097740

March 29, 2011

CLA-2 OT:RR:CTF:TCM H097740 ASM

CATEGORY: Classification

TARIFF NO.: 9503.00.00

TERRI URSERY

GARDEN RIDGE, LP

19411 ATRIUM PLACE – SUITE 170

HOUSTON TX 77084-6099

RE: Revocation of NY R01333; Tariff Classification of the “Mega Bounce Trampoline”

DEAR Ms. USERY:

This is in reference to New York Ruling Letter (NY) R01333, dated January 26, 2005, which was issued to you on behalf of you concerning the tariff classification of an inflatable play structure, identified as the “Mega Bounce Trampoline”, under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise as an article for “general physical exercise” under subheading 9506.99.60, HTSUS. We have reviewed NY R01333 and found it to be in error. For the reasons set forth below, we hereby revoke NY R01333.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. Section 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY R01333, as described below was published in Vol. 44, No. 24, of the Customs Bulletin on June 9, 2010. No comments were received in response to the notice.

FACTS:

The subject article, “Mega Bounce Trampoline” (item number 15219), is an inflatable play structure that measures 96 inches long by 96 inches wide by 68 inches high. The inflatable product is made of 100 percent rubberized polyvinyl chloride (PVC). An electric air pump and repair kit are included with the product.

ISSUE:

Whether the “Mega Bounce Trampoline” is classified in subheading 9503.00.00, HTSUS, as a “toy” or in heading 9506.99.60, HTSUS, as an article for “general physical exercise”.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes.

The following headings of the HTSUS are under consideration in classifying the subject article:

9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ('scale') models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

* * *

9512 Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:

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

The EN's to heading 9503 provide, in relevant part, as follows:

This heading covers:

* * *

(J) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults). . . . This group includes:

* * *

(xv) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).

* * *

(xxiii) Play tents for use by children indoors or outdoors.

The EN to heading 9506, states, in pertinent part, the following:

This heading covers:

* * *

(H) Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03), e.g.:

* * *

(18) Equipment of a kind used in children's playgrounds (e.g., swings, slides, see-saws and giant strides).

* * *

The EN to heading 9503 specifically indicates that "This group covers toys intended essentially for the amusement of persons (children or adults)". In order to be classified as a "toy" of Chapter 95, HTSUS, the toy must be designed and used principally for amusement and should not serve a utilitarian purpose. *See* HQ 086330, dated May 14, 1990; HQ 952186, dated April 29, 1993; HQ 954132, dated February 15, 1994; HQ 956779, dated September 29, 1994; and HQ 961530, dated October 21, 1998.

In *Minnetonka Brands, Inc. v. United States*, 110 F. Supp. 2d 1020 (CIT 2000), the court classified full-figured, three-dimensional, plastic objects in the form of well-recognized children's characters as "... [t]oys representing animals or non-human creatures . . . Other" under subheading 9503.49.00, HTSUS. *Id.* at 1029. The court found that because the evidence showed that "... the subject merchandise belongs to the class or kind of merchandise whose principal use is amusement, diversion or play", the merchandise is properly classified as "toys" of heading 9503, HTSUS. *Id.* at 1028. In *Minnetonka*, the CIT further noted that because heading 9503, HTSUS, is, in relevant part, a principal use provision, classification under this provision is controlled by the principal use "of goods of that class or kind to which the imported goods belong" in the United States at or immediately prior to the date of importation. See Additional U.S. Rule of Interpretation 1(a), HTSUS.¹

The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import. (citations omitted). "Principal use" is defined as the use "which exceeds any other single use." (citations omitted). As a result, "the fact that the merchandise may have numerous significant uses does not prevent the Court from classifying the merchandise according to the principal use of the class or kind to which the merchandise belongs. (citations omitted). See *E.M. Chems. v. United States*, 20 C.I.T. 382, 387–388 (Ct. Int'l Trade 1996).

As stated in *United States v. The Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), certain factors must be looked at to determine whether imported merchandise is of a certain "class or kind" as that expression is used in Additional U.S. Rule of Interpretation 1(a). These factors include: (1) the physical characteristics of the merchandise, (2) the expectation of the ultimate purchases, (3) the channels of trade of the merchandise, (4) the environment of the sale (accompanying accessories, manner of advertisement and display) (5) use in the same manner as merchandise which defines the class, (6) the economic practicality of so using the import, and (7) recognition in the trade of this use.

In the instant case, we apply the Carborundum factors as follows:

(1) The general physical characteristics of the merchandise: The subject merchandise consists of a surface that measures 96 inches long by 96 inches wide by 68 inches high. This inflatable structure is akin to a play tent and the bouncy surface is akin to toy sports equipment listed as exemplars of the heading in EN 95.03. In HQ 966135, dated March 28, 2003, CBP classified a plastic sandbox as playground equipment of heading 9506 because it was sturdy enough "... to be stored in all kinds of weather". However, even though the article can be used outdoors, it is not intended to be stored outdoors in all kinds of weather. Accordingly, these features weigh in favor of classification as toys.

¹ Additional U.S. Rules of Interpretation 1(a), HTSUS, provides:

1. In the absence of special language or context which otherwise requires—
 - (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use;

(2) The expectation of the ultimate purchasers: The ultimate purchasers expect that the product will be used for domestic family use. Such limited use is more representative of a toy rather than an article of outdoor play equipment.

(3 & 4) The channels of trade in which the merchandise moves and environment of sale: The instant merchandise is sold in toy stores and the toy section of department stores, drug stores and supermarkets. This factor weighs in favor of classification as toys.

(5) The usage of the merchandise: The merchandise is used as an active play area for no more than three young children to jump and bounce. Compared to the durable rental units that can be used/stored outdoors in all kinds of weather and for accommodation of many children at one time, the subject article is for personal domestic family use. This factor weighs in favor of toys.

(6) The economic practicality of so using the import: The merchandise is moderately priced compared to the inflatable structures used for carnivals which may be retail priced from \$1000.00 to \$2300.00 per unit. *See* New York Ruling (NY) N021533, dated January 31, 2008.

(7) The recognition in the trade of use : The subject merchandise is recognized in the trade as an inflatable play area designed to amuse young children by jumping and bouncing in a domestic family environment. This factor weighs in favor of toys.

On the balance, we find that the merchandise belongs to the class or kind of goods known as toys which are classified in heading 9503, HTSUS.

It is the conclusion of CBP, based on the above discussion, that the subject “Mega Bounce Trampoline” is primarily used for amusement. As such, the merchandise is classified as a “toy” in heading 9503, HTSUS, and is excluded from classification in heading 9506, HTSUS. *See* EN 95.06(B).

HOLDING:

The subject merchandise, identified as the “Mega Bounce Trampoline”, is correctly classified in subheading, 9503.00.00, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof, Other”. This provision is duty free at the general column one rate of duty.

EFFECT ON OTHER RULINGS:

NY R01333, dated January 26, 2005, is hereby revoked consistent with the foregoing. In accordance with 19 U.S.C. Section 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

GENERAL NOTICE**19 CFR PART 177****Proposed Revocation of a Ruling Letter and Proposed
Revocation of Treatment Relating to the Tariff
Classification of a Woman's Upper Body Garment**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of a woman's upper body garment.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection ("CBP") is proposing to revoke a ruling letter pertaining to the tariff classification of a woman's pink upper body garment 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 June 10, 2011.

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., 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 is proposing to revoke a ruling letter pertaining to the classification of a woman’s upper body garment. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) N052662, dated March 3, 2009 (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 is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY N052662, CBP classified a woman’s upper body garment in heading 6206, HTSUS, specifically in subheading

6206.30.3041, HTSUSA, as a “[w]omen’s or girls’ blouses, shirts and shirt-blouses: [o]f cotton: [o]ther: [o]ther [o]ther: [o]ther: [w]omen’s (341)”. It is now CBP’s position that the woman’s upper body garment is classified in heading 6211, HTSUS, specifically in subheading 6211.42.00, HTSUS, as “[t]rack suits, ski-suits and swimwear; other garments: [o]ther garments, women’s or girls’: [o]f cotton”.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY N052665 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 Letter (HQ) H055795 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, we will give consideration to any written comments timely received.

Dated: April 1, 2011

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N052662

March 3, 2009

CLA-2-62:RR:NC:TA:360

CATEGORY: Classification

TARIFF NO.: 6206.30.3041

MS. ANITA K. LEE
MARUBENI AMERICA CORPORATION
375 LEXINGTON AVENUE
NEW YORK, NY 10017-5644

RE: The tariff classification of a woman's garment from Vietnam

DEAR MS. LEE:

In your letter dated February 20, 2009, you requested a classification ruling. Your sample will be returned as requested.

Submitted sample, style #17330, is a woman's blouse constructed from 97% cotton and 3% spandex woven fabric. The blouse is collarless and features a round neckline, $\frac{3}{4}$ length sleeves, a full front opening secured by four buttons, two chest pockets with buttoned flaps and a hemmed bottom. This garment will be imported in misses' sizes under style #17130 and in women's size under style #17230.

The applicable subheading for the style 17330 will be 6206.30.3041, Harmonized Tariff Schedule of the United States (HTSUS), which provides for women's or girls' blouses, shirts and shirt-blouses: of cotton: other: other: other: other: women's. The duty rate will be 15.4 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Brenda Wade at 646-733-3051.

Sincerely, Robert B. Swierupski
Director National Commodity Specialist
Division

[ATTACHMENT B]

HQ H055795

CLA-2 OT:RR:CTF:TCM H055795 JRB

CATEGORY: Classification

TARIFF NO.: 6211.42.00

MS. ANITA LEE
TRADE COMPLIANCE SUPERVISOR
MARUBENI AMERICA CORPORATION
375 LEXINGTON AVENUE
NEW YORK, NEW YORK 10017-5644

RE: Revocation of NY N052662, dated March 3, 2009; Classification of a women's upper-body garment

DEAR MS. LEE:

This letter is in response to your request for reconsideration of New York Ruling Letter ("NY") N052662, issued to Marubeni America Corporation on March 3, 2009, concerning the tariff classification of a woman's upper-body garment. In that ruling, U.S. Customs and Border Protection ("CBP") classified the merchandise under subheading 6206.30.3041 of the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), as a woman's cotton blouse. We have reviewed NY N052662 and found it to be in error. For the reasons set forth below, we hereby revoke NY N052662.

FACTS:

In NY N052662 we described the subject garment as follows:

Submitted sample, style #17330, is a woman's blouse constructed from 97% cotton and 3% spandex woven fabric. The blouse is collarless and features a round neckline, $\frac{3}{4}$ length sleeves, a full front opening secured by four buttons, two chest pockets with buttoned flaps and a hemmed bottom. This garment will be imported in misses' sizes under style #17130 and in women's size under style #17230.

In addition to the above description, you also submitted a sample of this article to this office. After examining the sample, we note that the sample consists of at least three or more separate panels, that do not extend below the waist, and has white decorative stitching that encircles the collar. The back of the garment has darts sewn into it to help the garment contour to the wearer's body. Shell buttons that are approximately $\frac{3}{4}$ of an inch in diameter provide the front closure for the garment. In addition, the sample is tapered just above the waist to maintain the shape of the wearer's body. The bottom of the garment's frontal opening is rounded. Finally, the sleeves have no button closures and are open.

ISSUE:

Whether the woman's upper body garment is classified in heading 6206, HTSUS, as a woman's blouse or in heading 6211, HTSUS, as an other garment?

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:

- 6202 Women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets), other than those of heading 6204:
- 6206 Women's or girls' blouses, shirts and shirt-blouses
- 6211 Track suits, ski-suits and swimwear; other garments:

The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN's provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system. CBP believes the EN's should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The General EN for Chapter 62 provides:

Shirts and shirt-blouses are garments designed to cover the upper part of the body, having long or short sleeves and a full or partial opening starting at the neckline. Blouses are also designed to cover the upper part of the body but may be sleeveless and without an opening at the neckline.

The EN's for heading 6202, HTSUS, provide that the EN's to heading 6102, HTSUS, apply *mutatis mutandis* to heading 6202, HTSUS. The EN's to heading 6102, HTSUS, then provide that the EN's to heading 6101, HTSUS, apply *mutatis mutandis* to that heading. The EN's for heading 6101, HTSUS, note that "[t]his heading covers a category of knitted or crocheted garments for men or boys, characterized by the fact that they are generally worn over all other clothing for protection against the weather." Therefore, a garment of heading 6202, HTSUS, must be characterized by the fact that it is worn over all other clothing for protection against the weather. See Headquarters Ruling Letter (HQ) 964244, dated November 21, 2000.

The EN to heading 6211, HTSUS, provides that the EN to heading 6114, HTSUS, applies, *mutatis mutandis*, to this heading. The EN for heading 6114, HTSUS, provides that the heading includes garments which are not included more specifically in the proceeding headings of this Chapter. Making the necessary changes to this EN so that it is applicable to heading 6211, HTSUS, we find that the EN's for heading 6211, HTSUS, instruct us to rule out all other applicable headings of Chapter 62, HTSUS, before classification in heading 6211, HTSUS, is appropriate.

In both your request for reconsideration and in your initial ruling request you asserted that the proper classification for this garment is in heading 6211, HTSUS.

As noted above the EN's to heading 6202, HTSUS, indicate that this heading is limited to garments that are designed to be worn over all other garments to protect the wearer against the weather. The subject garment is not designed to be worn over all other garments. It is tailored to provide a very contoured fit and the weight of the garment would be insufficient to protect the wearer from the weather. As a result, this garment cannot be classified in heading 6202, HTSUS.

Turning to heading 6206, HTSUS, we note several definitions of the term "blouse". *The Fashion Dictionary*, by Mary Brooks Picken, 1957, at 23, defines "blouse" as having a "loose waist or bodice of various types extending from neckline to waistline or below. Worn inside or outside separate skirt." *The Essential Terms of Fashion*, by Charlotte Mankey Calasibetta, 1986, at 9, defines "blouse" as "clothing for the upper part of the body usually softer and less tailored than a shirt, worn with matching or contrasting skirt, pants, suit or jumper. Formerly called a waist." See also HQ 959416, dated July 5, 1996. Therefore, a blouse should be designed to cover the upper part of the body, can be sleeveless with or without an opening at the neckline, and can be worn either with other outer garments such as a suit type jacket or other less formal jackets. In addition, a blouse with pockets below the waist or a ribbed waistband or other means of tightening at the bottom of the garment would be excluded from heading 6206, HTSUS, and classified in heading 6211, HTSUS.

This particular garment covers the upper part of the body. It has sleeves and it does not have an opening at the neckline. However, the material of the garment does not have the soft hand typical of a shirt or blouse. In addition, heavy internal seams indicate that the garment would not be worn as a blouse due to the discomfort that these seams would cause from direct contact with the wearer's skin. The garment also has large shell buttons which are not typical buttons for a blouse. The bottom rounded frontal opening of the garment also is not indicative of a typical blouse. Finally, we would also note marketing information that is found on your website for similar items that you are marketing as jackets.¹ Thus, we agree with you that this particular garment would not be used as a blouse based on the garment's design, manufacturing, marketing, and likely use.

Since this garment is not described by any other heading in Chapter 62, HTSUS, it is classifiable in heading 6211, HTSUS.

HOLDING:

By application of GRI 1, the subject garment is classifiable in heading 6211, HTSUS, and in particular it is classified in subheading 6211.42.00, HTSUS, which provides for "[t]rack suits, ski-suits and swimwear; other garments: [o]ther garments, women's or girls': [o]f cotton". The general column one duty rate is 8.1% *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/tata/hts/.

¹ See <http://www.rubyrd.com/>

EFFECT ON OTHER RULINGS:

NY N052662, dated March 3, 2009 is hereby revoked.

Sincerely,

MYLES B. HARMON

Director,

Commercial and Trade Facilitation Division

CUSTOMS AND BORDER PROTECTION

GENERAL NOTICE

19 CFR PART 177

Revocation of Ruling Letter and Revocation of Treatment Relating to Classification of Steel Winches from China

AGENCY: U.S. Customs and Border Protection (“CBP”), Department of Homeland Security.

ACTION: Revocation of a classification ruling letter and treatment relating to the classification of steel winches from China.

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 CPB is revoking a ruling concerning the classification of steel winches under the Harmonized Tariff Schedule of the United States (HTSUS). CPB is also revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 44, No. 24, on June 9, 2010. CBP received one comment in support of this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 11, 2011.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke one ruling letter pertaining to the classification of steel winches was published in the *Customs Bulletin*, Vol. 44, No. 24, on June 9, 2010. CBP received one comment in support of this notice.

As stated in the proposed notice, this revocation covers any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during this notice period.

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

In HQ 950334, steel winches were classified in heading 8479, HTSUS, which provides for: "[o]ther machines and mechanical appliances having individual functions not specified or included elsewhere in [chapter 84]." Since the issuance of that ruling, CBP has reviewed the classification of the steel winches and has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 950334, and any other ruling not specifically identified, to reflect the proper classification of the steel winches pursuant to the analysis set forth in Headquarters Ruling Letter H031587, set forth as an attachment to

this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 1, 2011

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H031587

April 1, 2011

OT:RR:CTF:TCM H031587 TNA**CATEGORY:** Classification**TARIFF NO.:** 8425.39.01

ANDREW P. VANCE, Esq.
BARNES, RICHARDSON & COLBURN
475 PARK AVENUE SOUTH, 25TH FLOOR
NEW YORK, NY 10016

RE: Revocation of HQ 950334; Classification of steel winches from China

DEAR MR. VANCE:

This letter is in reference to Headquarters Ruling Letter (“HQ”) 950334, issued to you on behalf of your client, Omni USA, Inc., Del Mar California (“Omni”) on January 24, 1992, concerning the tariff classification of flatbed trailer winches. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 8479.89.90, Harmonized Tariff Schedule of the United States (“HTSUS”), as parts of machines and mechanical appliances having individual functions, not specified or included elsewhere in Chapter 84. We have reviewed HQ 950334 and found it to be in error. For the reasons set forth below, we hereby revoke HQ 950334.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke HQ 950334 was published on June 9, 2010, in Volume 44, Number 24, of the *Customs Bulletin*. CBP received one comment in support of this notice.

FACTS:

The merchandise at issue is described as a winch, constructed from medium carbon steel plate with precision cast steel pawls and gears. This winch in particular is specifically designed to be mounted under the rim of a flatbed truck trailer for safe securing of cargo. Several of these devices are used together to manually pull tight nylon webbing straps or cable that secure the trailer load. They are manufactured to accommodate webbing straps up to four inches in width and may be used with webbing straps, cable, or a combination of the two. The winches themselves consist of hand-operated horizontal ratchet drums around which webbing and/or cable is wound.

ISSUE:

Whether the winches are classified as winches under heading 8425, HTSUS, or under heading 8479, HTSUS, as other machines and appliances not specified elsewhere in Chapter 84?

LAW AND ANALYSIS:

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

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

The HTSUS provisions under consideration are as follows:

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

 Other machines and mechanical appliances:

8479.89

Other:

 Electromechanical appliances with self-contained electric motor:

8479.89.90

Other

* * * * * * * * * * * * *

8425 Pulley tackle and hoists other than skip hoists; winches and capstans; jacks:

 Pulley tackle and hoists other than skip hoists or hoists of a kind used for raising vehicles:

 Winches; capstans:

8425.39.01

Other

The EN to Heading 8425, HTSUS, reads, in pertinent part:

 This heading covers simple lifting or handling equipment.

* * * * * * * *

This heading covers:

Winches consist of hand-operated or power-driven horizontal ratchet drums around which the cable is wound. Capstans are similar, but the drum is vertical.

This group includes:

- (1) Marine winches and capstans for operating cargo lifting gear, raising anchor, manoeuvring the steering gear, hauling in tow lines, fishing nets, dredging cables, etc. The power unit is often built into those machines as an integral whole.
- (2) Winches for tractors, etc....

In HQ 950334, CBP found that heading 8425, HTSUS, listed winches, *eo nomine*, in its heading, but determined that as evidenced by heading 8425, HTSUS, and the ENs, winches of that heading must lift, haul, or tow. In particular, CBP stated, “the articles in issue here are cargo securing devices that perform a mere tightening or restraining function. They do not lift, haul or tow, nor are they material handling devices of any type. They act on nothing outside themselves.” As a result, CBP classified the merchandise under heading 8479, HTSUS, a basket provision encompassing machines, and parts thereof, that are not specified elsewhere in Chapter 84.

An *eo nomine* provision is one that describes a commodity by a specific name, usually one well known to commerce. *The Pomeroy Collection v. United States*, 559 F. Supp. 2d 1374; 30 Int'l Trade Rep. (BNA) 1712; 2008 Ct. Intl. Trade LEXIS 60; SLIP OP. 2008-57; *Clarendon Marketing, Inc. v. United States*, 21 C.I.T. 59; 955 F. Supp. 1501; 19 Int'l Trade Rep. (BNA) 1142; 1997 Ct. Intl. Trade LEXIS 22. In addition, "an *eo nomine* designation, with no terms of limitation, will ordinarily include all forms of the named article." *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375 (Fed. Cir. 1999); *Pomeroy*, 559 F. Supp. 2d 1374; *Clarendon Marketing*, 21 C.I.T. 59. Because the term "winches" is not defined in the tariff schedule, CBP turns to other sources to determine its meaning. See *Lonza, Inc. v. United States*, 46 F.3d 1098, 1106-07 (Fed. Cir. 1995).

The Oxford English Dictionary defines "winch" as "a hoisting or hauling apparatus consisting essentially of a horizontal drum round which a rope passes and a crank by which it is turned." *Webster's College Dictionary* defines a "winch" as "1. a crank with a handle for transmitting motion, as to a grindstone. 2. a machine for hoisting, lowering, or hauling, consisting of a drum or cylinder turned by a crank or motor; a rope or cable tied to the load is wound on the drum or cylinder." The Web Sling & Tie Down Association, a trade group, defines a winch as "a tensioning device, which is mounted directly to a vehicle for tensioning synthetic web tie downs to secure cargo." See http://www.wstda.com/products/wstda_winches_t-3.pdf.

The subject merchandise meets these definitions. Specifically, the winches consist of a horizontal drum around which a cable or webbing can be attached, and a crank by which it can be turned.

Furthermore, CBP does not agree that the ENs limit the scope of winches insofar as no limiting language is used. It is illustrative but not exhaustive. *Airflow Technology v. United States*, 524 F.3d 1287; 2008 U.S. App. LEXIS 9165; 30 Int'l Trade Rep. (BNA) 1065; *Archer Daniels Midland Co. v. United States*, 561 F.3d 1308; 2009 U.S. App. LEXIS 6390; 30 Int'l Trade Rep. (BNA) 2345; *ENI Techn. V. United States*, 641 F. Supp. 2d 1337; 2009 Ct. Intl. Trade LEXIS 101; SLIP OP. 2009-93. See also EN 84.25 (II).

Lastly, CBP notes that heading 8479, HTSUS, is a catch-all provision, encompassing merchandise "not specified elsewhere" in Chapter 84, HTSUS. Because winches are classifiable *eo nomine* in heading 8425, HTSUS, classification in heading 8479, HTSUS, would be inappropriate. As a result, the winch is classified under heading 8425, HTSUS, as "winches."

HOLDING:

Under the authority of GRI 1, Omni's winches are provided for in heading 8425, HTSUS. More specifically, they are classified under subheading 8425.39.01, HTSUS, as "Pulley tackle and hoists other than skip hoists; winches and capstans; jacks; Pulley tackle and hoists other than skip hoists or hoists of a kind used for raising vehicles: Winches; capstans: other." The applicable duty rate is 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 the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

HQ 950334, dated January 24, 1992, is REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE**19 CFR PART 177****Proposed Revocation of Ruling Letter and Proposed
Revocation of Treatment Relating to the Definition of the
Term “Cut But Not Set” in Chapter 71, HTSUS**

AGENCY: U.S. Customs and Border Protection (“CPB”), Department of Homeland Security.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the definition of the term “cut but not set” in Chapter 71, HTSUS.

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 CPB proposes to modify a ruling concerning the definition of the term “cut but not set” as it is used in Chapter 71 under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before June 10, 2011.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation 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 799 9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

SUPPLEMENTARY INFORMATION:**Background**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to modify a ruling pertaining to the definition “cut but not set” as it appears in Chapter 71, HTSUS. Although in this notice CBP is specifically referring to Headquarters Ruling Letter (HQ) H012548, dated February 12, 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 data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not iden-

tified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In HQ H012548, CBP defined the term “cutting” as a process in gem manufacturing that creates new facets, angled surfaces, on the gemstone. Furthermore, it distinguished between the terms “cutting” and “polishing,” and excluded “polishing” from the process of “cutting.” We now believe that this definition is overly narrow and should be expanded to include one or more of the following processes: carving, cleaving, sawing, girdling, bruting, grinding, faceting, polishing, cabbing, and tumbling. As such, this definition includes cabochons, which are cut but not faceted.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify HQ H012548, and any other ruling not specifically identified, to reflect the proper definition of the term “cut but not set” pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H140915. (see 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: April 4, 2011

RICHARD MOJICA
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT A]

HQ H012548

February 12, 2008

CLA-2 OT:RR:CTF:TCM H012548 ADK

CATEGORY: Classification

TARIFF NO.: N/A

CHRISTOPHER BOWMAN

UNITED STATES CUSTOMS AND BORDER PROTECTION

605 W. 4TH AVE, STE 230

ANCHORAGE, AK 99501

RE: Definition of the term “cut but not set” in chapter 71

DEAR MR. BOWMAN:

This is in response to your internal advice request, dated May 3, 2007, which is in accordance with Customs and Border Protection (CBP) Regulations Part 177 (19 CFR 177). This regulation allows requests for “advice or guidance to the interpretation or proper application of the Customs and related laws with respect to a specific Customs transaction . . . from the Headquarters Office at any time, whether the transaction is prospective, current, or completed.” 19 CFR §177.11(a). Specifically, the request for internal advice was made pursuant to 19 CFR §177.11(b)(2), which provides:

When no ruling has been issued. Internal advice will be sought by a Customs Service field office with respect to a current transaction for which no ruling was requested or issued under the provisions of this part whenever a difference of opinion exists as to the interpretation or proper application of the Customs and related laws to the transaction, and the field office is requested to seek such advice by an importer or other person who would have been entitled, under § 177.1(c), to request a ruling with respect to the transaction, while prospective. The request must be submitted to the field office in writing and in accordance with the provisions of paragraph (b)(3) of this section.

According to the request, you are seeking internal advice as to the definition of the term “cut but not set” as used in chapter 71 of the Harmonized Tariff Schedule of the United States (HTSUS).

ISSUE:

What is the definition of the term “cut but not set” as used in chapter 71 of the HTSUS?

LAW AND ANALYSIS:

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

7103	Precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport:
7103.10	Unworked or simply sawn or roughly shaped
7103.10.20	Unworked
7103.10.40	Other
* * *	
	Otherwise worked:
* * *	
7103.99	Other:
7103.99.1000	Cut but not set, and suitable for use in the manufacture of jewelry
7103.99.5000	Other
* * *	

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. 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. The relevant ENs are as follows:

The EN to heading 71.03 provides, in pertinent part: “The provisions of the second paragraph of the Explanatory Note to heading 71.02 apply, *mutatis mutandis*, to this heading.” The second paragraph of the EN to heading 71.02 provides, in pertinent part: The heading covers unworked stones, and stones worked, e.g., by cleaving, sawing, bruting, tumbling, faceting, grinding, polishing, drilling, engraving (including cameos and intaglios), preparing as doublets, provided they are neither set nor mounted.

(Emphasis in original) * * *

The EN to heading 71.16 provides, in pertinent part:

EN 71.16 thus includes: (A) Articles of personal adornment and other decorated articles (e.g. clasps and frames for handbags, etc; combs, brushes; ear-rings; cuff-links, dress-studs and the like) containing natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed), set or mounted on base metal (whether or not plated with precious metal), ivory, wood, plastics, etc.

* * *

The Subheading EN to 7103.10 provides:

This subheading includes stones roughly worked by sawing (e.g. into thin strips), cleaving (splitting along the natural plane of the layers) or bruting, i.e., stones which have only a provisional shape and clearly have to be further worked. The strips may also be cut into discs, rectangles, hexagons or octagons, provided all the surfaces and ridges are rough, matt and unpolished.

* * *

The Subheading EN to subheadings 7103.91 and 7103.99 provides:

Subheadings 7103.91 and 7103.99 cover polished or drilled stones, engraved stones (including cameos and intaglios) and stones prepared as doublets or triplets.

* * *

Your request for internal advice asks for clarification as to the meaning of the phrase “cut but not set,” as used in subheading 7103.99.1000, HTSUSA. Prior to reaching this 10-digit subheading level, it is necessary to satisfy the terms of the related heading and subheading. We assume that you have determined that the stones at issue are “precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded[1] but not strung, mounted or set” according to the terms of heading 7103, HTSUS. Furthermore, we assume that these stones have been “otherwise worked,” as required by the terms of subheading 7103.99, HTSUS.

At the 6-digit level, heading 7103, HTSUS, provides for both worked and un-worked stones. Semi-precious stones of subheading 7103.10, HTSUS, may be subjected to minor cutting or shaping operations, such as sawing, cleaving, or bruting, but the surfaces and ridges must remain “rough, matt and unpolished,” i.e., they must be in essentially the same condition as when they were mined from the earth. *See* EN 7103.10. HQ 951866, dated August 21, 1992. The “otherwise worked” stones of subheading 7103.99, HTSUS, must have been manufactured such that the surfaces are no longer rough, matt or unpolished. Such “otherwise worked” stones are then further divided between those that have been “cut but not set, and suitable for use in the manufacture of jewelry” and “Other.”

We will first consider the meaning of the term “cut.” The term “cut” is not defined in the HTSUS or its corresponding ENs. When a tariff term is not defined in either the HTSUSA or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary. *See Rohm & Haas Co. v. United States*, 727 F.2d 1095 (CAFC 1984). The term “cut” is used interchangeably with the terms “fashioning,” “girdling” and “bruting[1].” These key terms, and their respective common meanings, are:

Cutting:

The process of the cutting or sawing, grinding...faceting of precious stones or other materials to improve its brilliancy on revolving diamond charged grinding wheels. After cutting, it normally has a symmetrical shape which is sometimes in cabochon[1]. Also called fashioning. (Dictionary of Gems and Gemology. 2nd ed. Germany: Springer, 2005. ISBN: 3-540-23970-7);

See Fashioning (The GIA Diamond Dictionary. 3rd ed. Santa Monica, CA: Gemological Institute of America, 1993. ISBN: 0-87311-026-9);

See Girdling (Jewelers’ Dictionary. 3rd ed. Radnor, PA: Jewelers’ Circular-Keystone, 1976. ISBN: 0-931744-01-6);

Fashioning:

(1) General term used to describe the entire process of manufacturing a polished diamond from the rough, including design, cleaving, sawing, bruting, and polishing; also called cutting. (2) industry term for bruting (The GIA Diamond Dictionary. 3rd ed. Santa Monica, CA: Gemological Institute of America, 1993. ISBN: 0-87311-026-9);

General name for sawing, cleaving, rounding up, faceting...of manufacturing of diamonds and other gemstones (Dictionary of Gems and Gemology. 2nd ed. Germany: Springer, 2005. ISBN: 3-540-23970-7);

Girdling:

The process by which round diamonds are given their circular or fancy shape, also known as cutting, bruting or rounding (Jewelers' Dictionary. 3rd ed. Radnor, PA: Jewelers' Circular-Keystone, 1976. ISBN: 0-931744-01-6).

Also relevant to his analysis is the definition of the term "polishing." Again, the term is not defined in the HTSUS or its corresponding ENs. Its common meaning is as follows:

Polishing:

The final process after placing the facets on the gemstone, which has been rubbed with various abrasives to smooth and brighten the surface. The final polishing by machine is used to achieve a lustrous surface. (Dictionary of Gems and Gemology. 2nd ed. Germany: Springer, 2005. ISBN: 3-540-23970-7);

As shown by the above definitions, the terms "cutting" and "polishing" are not interchangeable. They refer to two different processes in gem manufacturing. The process of "cutting" creates new facets, angled surfaces, on the gemstone. The cutting process is time-consuming, requires specialized tools, and demands expert training and craftsman skill levels[1]. The process of polishing, however, simply smoothes and brightens the surface of a gemstone[1]. We note that there are two different methods of polishing gems. Tumbling, also known as chemical polishing, is different from traditional abrasive polishing in that the gemstones are not mounted individually and polished on a polishing wheel but are loaded, in bulk, into a chemical reactor. NY N018792, dated November 8, 2007. A gemstone that has been tumbled is rendered glossy and shiny by chemical treatment.

CBP has previously considered the classification of jewels under heading 7103, HTSUS. In Headquarters Ruling Letter (HQ) 951571, dated May 22, 1992, we classified Aroma Rocks which were coated with fragrant essential oils. These rocks were used as a combination of aromatherapy and crystal therapy. We noted:

The aroma rocks are polished (tumbled) ...and are not set or mounted. Therefore, pursuant to EN 71.02 they are considered worked[1] and are classifiable under heading 7103, HTSUS. As the aroma rocks are unset and polished semi-precious stones which are of jewellery [sic.] quality, they...are classified in subheading 7103.99.50, which provides for other worked semi precious stones.

Subheading 7103.99.10, HTSUS, provides for gemstones which have been "cut but not set." As required by the terms of this subheading, the aroma

rocks were “not set.” Nonetheless, they were excluded from the subheading because they were not “cut,” i.e., the manufacturing process did not create new facets, angled surfaces, on the gemstone. Instead, they were chemically polished. *See also* HQ 952813, dated November 20, 1992 (Identifying cutting and polishing as two different operations).

We note that the determination in ruling HQ 951571 is inconsistent with our conclusion in HQ 951866, dated August 21, 1992. In 951866, the term “tumbled” was used interchangeably with the term “cut.”

As a result of [the tumbling] process, the gemstones are cut into different shapes and are suitable for use in the manufacture of jewelry...It is our position that gemstones that are shaped by tumbling are more than “roughly shaped” and would be considered “otherwise worked” for HTSUS purposes. As the subject semi precious gemstones are tumbled, not set and suitable for use in the manufacture of jewelry, they would be classified in subheading 7103.99.10, HTSUS.

The above-mentioned ruling correctly identifies the gemstones as articles of subheading 7103.99, HTSUS. The rocks were shaped by tumbling, and were therefore “otherwise worked.” However, this office disagrees with the assessment that the gemstones were classifiable in subheading 7103.99.10, HTSUS. The stones were chemically polished but were not cut. Nonetheless, they were identified as “cut but not set.” This determination is inconsistent with CBP’s position on the definition of the term “cut” as set forth in this ruling and in HQ 951571. As such, the ruling is potentially subject to revocation or modification.

We next consider the meaning of the term “set” as used in subheading 7103.99.10, HTSUS. Again, the term is not defined in the HTSUS or its corresponding ENs.

Setting:

The part of a piece of jewelry into which a stone or other gem is directly set, with claws, bezel, or other means of clamping over the edge or girdle of the stone to hold it in place. *Jewelers’ Dictionary*

Any kind of gemstones set in a mount. *Dictionary of Gems and Gemology*
Mount:

A metal framework made of gold, silver, etc., into which a gemstone, glass, or pottery is set in various forms and techniques to improve the beauty of the stone. Also called mounting. *Dictionary of Gems and Gemology* As demonstrated by the above definitions, a setting provides a mount or base which holds a stone in place and is part of the jewelry itself. A setting may be either permanent or temporary. *See* HQ 959831 and 959687, both dated April 1, 1997. We note that the terms “setting” or “mounting” are not synonymous with the term “temporarily strung for convenience of transport.” Stones that have been “temporarily strung for convenience of transport” are not firmly held in place by a firm setting. Instead, they are strung together merely for convenience and to “prevent mutual rubbing and chipping.” *See* *Dictionary of Gems and Gemology*.

HOLDING:

Gemstones classifiable under subheading 7103.99.10, HTSUS, must be cut, i.e. they must undergo a procedure in which new facets are created on the surface, and they must not be set, i.e. they cannot be held in place by a mount or a base.

No later than 60 days after the date of this letter, the Office of International Trade will take steps to make the decision available to CBP personnel, and to the public on the CBP Home Page on the World Wide Web at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H140915

CLA-2 OT:RR:CTF:TCM H140915 TNA**CATEGORY:** Classification**TARIFF NO.:** N/A

CHRISTOPHER BOWMAN, IMPORT SPECIALIST
ANCHORAGE SERVICE PORT
U.S. CUSTOMS AND BORDER PROTECTION
605 W. 4th AVE., SUITE 230
ANCHORAGE, AK 99501

RE: Modification of HQ H012548; Definition of the term “cut but not set” in Subheading 7103.99.10, HTSUS

DEAR MR. BOWMAN:

This letter is in reference to Headquarters Ruling Letter (“HQ”) H012548, an Internal Advice issued to the Port of Anchorage on February 12, 2008, concerning the definition of the term “cut but not set” in Chapter 71, HTSUS. We have reviewed HQ H012548 and found it to be partly in error. For the reasons set forth below, we hereby modify HQ H012548.

FACTS:

On May 3, 2007, the Port of Anchorage requested internal advice on the definition of the term “cut but not set” as used in Chapter 71 of the Harmonized Tariff Schedule of the United States (“HTSUS”) and specifically, in subheading 7103.99.10, HTSUS, which provides for:

Precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport: Otherwise worked: Other: **Cut but not set**, and suitable for use in the manufacture of jewelry.

[Emphasis supplied].

In the resulting ruling, HQ H012548, CBP defined the term “cut” to mean “a process that creates new facets, or angled surfaces, on the gemstone.” We distinguished “cutting” from the process of “polishing,” which we said “simply smoothes and brightens the surface of the gemstone.” Furthermore, we defined the term “set” to mean “a mount or a base, either permanent or temporary, that holds a stone in place and is a part of the jewelry itself.”

On February 8, 2011, CBP met with representatives of the Gemological Institute of America to obtain guidance regarding the industry definition of “cut” gemstones.

ISSUE:

What is the definition the term “cut but not set” as used in subheading 7103.99.10, HTSUS?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative

Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

Heading 7103, HTSUS, provides, in pertinent part:

7103	Precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport:
7103.10	Unworked or simply sawn or roughly shaped:
7103.10.20	Unworked
7103.10.40	Other
	* * * *
	Otherwise worked:
7103.99	Other:
7103.99.10	Cut but not set, and suitable for use in the manufacture of jewelry
7103.99.50	Other

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. 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 (Aug. 23, 1989).

The EN to heading 7103, HTSUS, provides, in pertinent part:

The provisions of the second paragraph of the Explanatory Note to heading 71.02 apply, *mutatis mutandis*, to this heading.

The EN to heading 7102, HTSUS, provides, in pertinent part:

The heading covers unworked stones, and stones worked, e.g., by cleaving, sawing, bruting, tumbling, faceting, grinding, polishing, drilling, engraving (including cameos and intaglios), preparing as doublets, **provided** they are neither set nor mounted. [Emphasis in the original.]

The EN to subheading 7103.10, HTSUS, provides, in pertinent part:

This subheading includes stones roughly worked by sawing (e.g., into thin strips), cleaving (splitting along the natural plane of the layers) or bruting, i.e., stones which have only a provisional shape and clearly have to be further worked. The strips may also be cut into discs, rectangles, hexagons or octagons, provided all the surfaces and ridges are rough, matt and unpolished.

The EN to subheadings 7103.91, HTSUS, and 7103.99, HTSUS, provides, in pertinent part:

Subheadings 7103.91 and 7103.99 cover polished or drilled stones, engraved stones (including cameos and intaglios) and stones prepared as doublets or triplets.

As in HQ H012548, we begin our analysis by noting that the term “cut but not set,” as it is used in subheading 7103.99.10, HTSUS, is not defined by any

of the relevant tariff headings, legal notes or ENs. As a result, CBP is permitted to consult dictionaries and other lexicographic materials to determine the term's common meaning. See, e.g., *Lonza, Inc. v. United States*, 46 F.3d 1098 (Fed. Cir. 1995). The term in question is then construed in accordance with its common and commercial meanings, which are presumed to be the same. See, e.g., *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982); *Toyota Motor Sales, Inc. v. United States*, 7 C.I.T. 178 (Ct. Int'l Trade 1984); *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375 (Fed. Cir. 1999); *Lonza*, 46 F.3d 1098.

I. The Definition of “Cut”

In HQ H012548, noting that the term “cut” is used interchangeably with the terms “fashioning,” “girdling,” and “bruting,” CBP defined the term “cut” as “a process that creates new facets, or angled surfaces, on the gemstone.”¹ In coming to this definition, we relied on numerous lexicographic sources. See HQ H012548, citing to Mohsen Manutchehr-Danai, *Dictionary of Gems and Gemology* (2nd ed. 2005); Gemological Institute of America, *The GIA Diamond Dictionary* (3rd ed. 1993); Jewelers' Circular-Keystone, *Jewelers' Dictionary* (3rd ed. 1976).

Further research into the definition of the term “cut” shows that in both lexicographic sources and within the gemstone industry, the term is interpreted more broadly than as defined in HQ H012548. *The Dictionary of Gems and Gemology*, 6th ed., by Robert M. Shipley, defines “cutting” as:

a term in general use to mean fashioning and therefore to include the operations not only of sawing (which technically is only the cutting operation in fashioning), but of grinding, polishing and faceting.

It also defines “cut stone” as “a stone which has been fashioned as a gem, as distinguished from an uncut or rough stone.” See Robert M. Shipley, *The Dictionary of Gems and Gemology*, (6th ed. 2008).

Similarly, *The Dictionary of Gems and Gemology*, (3rd ed. 2009) edited by Mohsen Manutchehr-Danai, defines “cutting” as:

the process of cutting or sawing, grinding, polishing, faceting of precious stone, or other materials to improve its brilliancy, on revolving diamond-

¹ In HQ H012548, CBP cited the following definitions of the terms “fashioning” and “girdling”:

Fashioning: (1) a general term used to describe the entire process of manufacturing a polished diamond from the rough, including design, cleaving, sawing, bruting, and polishing; also called cutting. (2) industry term for bruting (the GIA Diamond Dictionary. 3rd ed. Santa Monica, CA; Gemological Institute of America, 1993. ISBN: 0-87311-026-9.

Girdling: The process by which round diamonds are given their circular or fancy shape, also known as cutting, bruting or rounding (Jewelers' Dictionary. 3rded. Radnor, PA: Jewelers' Circular-Keystone, 1976. ISBN: 0-931744-01-6).

“Bruting” is “a method of roughly cutting diamonds by rubbing one against another.” It is “another term for shaping and grinding rough diamond or other transparent gemstones.” See *The Dictionary of Gems and Gemology*, 3rd ed., edited by Mohsen Manutchehr-Danai, Germany: Springer, 2009.

charged grinding wheels. After cutting normally, it has symmetrical shape, either in cabochon.² Also called fashioning.

It defines “fashioning,” in turn, as “a general name for sawing, cleaving, rounding up, faceting, polishing, and other operations of manufacturing of diamonds and other gemstones.” *Id.*

Based on the foregoing, we find that the definition of “cut” as espoused in HQ H012548 is too narrow. Therefore, we now expand it to conform to its common and commercial meaning and find that the term “cutting,” also called “fashioning,” is a process whose application distinguishes the resulting gemstones from rough stones (i.e., stones which are unworked or simply sawn or roughly shaped). See subheading 7103.10, HTSUS. It can involve one or more of the following processes: carving³, cleaving⁴, sawing⁵, girdling, bruting, grinding⁶, faceting, polishing, capping, and tumbling⁷.

In HQ H012548, CBP stated that cutting and polishing gemstones are two different processes. There, we noted that Mohsen Manutchehr-Danai’s *Dictionary of Gems and Gemology* (2nd ed. 2005) defines “polishing” as “the final process after placing the facets on the gemstone, which has been rubbed with various abrasives to smooth and brighten the surface. The final polishing by machine is used to achieve a lustrous surface.” See HQ H012548, citing Mohsen Manutchehr-Danai, *Dictionary of Gems and Gemology* (2nd ed. 2005). We therefore defined the term “polishing” as a process that “simply smoothes and brightens the surface of a gemstone” and concluded that the definition of “cut” did not include polishing.

Upon reconsideration, we note that some definitions of the term “cutting,” as it pertains to gemstones, includes the operation of polishing. See, e.g.,

² A “cabochon” is “an uncut, highly polished, cut gemstone, in which the top of the gem forms a dome-shaped or curved, convex surface.” See *The Dictionary of Gems and Gemology*, 3rd ed., edited by Mohsen Manutchehr-Danai, Germany: Springer, 2009.

³ “Carving” is defined as the decoration of gemstone, metal, or a figure or design, produced by carving.” See *The Dictionary of Gems and Gemology*, 3rd ed., edited by Mohsen Manutchehr-Danai, Germany: Springer, 2009.

⁴ “Cleaving” is defined as “the technique of splitting or parting of a rough diamond crystal into two or more portions along the cleavage plane (four cleavage planes parallel to the octahedral faces), used in fashioning of diamond but rarely in other gemstones.” See *The Dictionary of Gems and Gemology*, 3rd ed., edited by Mohsen Manutchehr-Danai, Germany: Springer, 2009.

⁵ “Sawing” is defined as a process used to cut a diamond or other gemstones into two or more parts in directions other than the cleavage directions. See *The Dictionary of Gems and Gemology*, 3rd ed., edited by Mohsen Manutchehr-Danai, Germany: Springer, 2009.

⁶ “Grinding” is defined as “the technique girdling of round diamonds.” See *The Dictionary of Gems and Gemology*, 3rd ed., edited by Mohsen Manutchehr-Danai, Germany: Springer, 2009.

⁷ “Tumbling” is defined as “the process of polishing gemstones without having been pre-shaped into irregular, rounded, baroque-shaped pebbles. Large quantities of cheaper stones are tumbled in a rotating or vibrating drum known as a ‘tumbler,’ first with abrasive powder and then with a polishing agent.” See *The Dictionary of Gems and Gemology*, 3rd ed., edited by Mohsen Manutchehr-Danai, Germany: Springer, 2009.

Robert M. Shipley, *The Dictionary of Gems and Gemology*, (6th ed. 2008) (defining “cutting” as a term in general use to mean fashioning and therefore to include the operations not only of sawing, (which technically is only the cutting operation of fashioning) but of grinding..., *polishing*, and faceting.”); and Mohsen Manutchehr-Danai, *The Dictionary of Gems and Gemology* (3rd ed. 2009) (defining “cutting” as “the process of cutting or sawing, grinding, *polishing*, faceting of previous stone or other materials to improve its brilliancy.”). [Emphasis supplied.] As a result, we find that the process of cutting may include polishing.

II. The Definition of “Set”

In HQ H012548, we also defined the term “set” as it is used in Chapter 71, HTSUS. There, we stated that a “setting” was a “the part of a piece of jewelry into which a stone or other gem is directly set, with claws, bezel, or other means of clamping over the edge or girdle of the stone to hold it in place.” We further stated that a “setting” was “any kind of gemstones set in a mount.” See HQ H012548, *citing to Jewelers’ Dictionary* 3rd ed. Radnor, PA: Jewelers’ Circular-Keystone, 1976.; *Dictionary of Gems and Gemology*, 2nd ed. Germany: Springer, 2005.. We also concluded that a setting could be either permanent or temporary, and was not synonymous with the term “temporarily strung together for convenience of transport,” which meant not being held firmly in place by a definite setting. See HQ 959831 and HQ 959687, both dated April 1, 1997; *Dictionary of Gems and Gemology*, 2nd ed. Germany: Springer, 2005. Further research shows that this definition remains consistent with the common and commercial meaning of the term “set.” As a result, we continue to adhere to this definition.

HOLDING:

Gemstones classifiable under subheading 7103.99.10, HTSUS, must be “cut” i.e., a process which involves one or more of the following processes: carving, cleaving, sawing, girdling, bruting, grinding, faceting, polishing, capping, and tumbling. Furthermore, they cannot be “set” i.e., held in place by a mount or a base that forms a part of the jewelry itself.

EFFECT ON OTHER RULINGS:

HQ H012548, dated February 12, 2008 is MODIFIED.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF CERTAIN STYLES OF
BAGS**

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

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to tariff classification of three styles of Coach bags.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) proposes to modify one ruling letter relating to the tariff classification of the following three styles of Coach bags: Style No. 11229 (Gallery Leather Laced Tote); Style No. 11230 (Gallery Leather Laced N/S Tote) and Style No. 11409 (Holiday Patchwork Book Tote) 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 June 10, 2011.

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. (Mint Annex), Fifth Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the above address 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: Beth Green, Tariff Classification and Marking Branch: (202) 325–0347.

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 intends to modify a ruling letter pertaining to the tariff classification of three styles of Coach bags. Although in this notice, CBP is specifically referring to the modification of Headquarters Ruling Letter (HQ) H061115, dated October 1, 2010 (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 HQ H061115, CBP determined that the three subject bags were classified in subheading 4202.21.9000, HTSUS, which provides for, in pertinent part: “handbags ...; with outer surface of leather ...; other:

valued over \$20 each ...” Now CBP’s position is that the three bags are classified under subheading 4202.91.0030, HTSUS, which provides in pertinent part for “other [bags]; with outer surface of leather ...; travel, sports and similar bags ...”

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to modify HQ H061115 and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the three bags according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H133616, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 4, 2011

RICHARD MOJICA

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

October 1, 2010

HQ H061115

CLA-2 RR:CTF:TCM H061115 MG

CATEGORY: Classification

TARIFF NO.: 4202.21.9000

PORT DIRECTOR
U.S. CUSTOMS AND BORDER PROTECTION
1624 EAST 7th AVENUE
SUITE 301
TAMPA, FL 33605-3706

RE: Request for Internal Advice; Classification of ladies bags

DEAR PORT DIRECTOR:

RE: Internal Advice; Classification of Various Handbags from China

This is in reply to your correspondence, dated April 24, 2009, forwarding a request for internal advice filed by McGuire Woods, on behalf of Coach Services, Inc., regarding the classification of five ladies bags, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Product samples and specifications were submitted for our review. In reaching our decision, additional consideration was given to the substance of a telephone conference with a member of my staff on September 29, 2010.

FACTS:

The merchandise at issue consists of the following ladies bags:

Style No. 11229

Style No. 11229 measures 12.5" in length, 9" in height and 4" in width. It features an inside zip pocket, cellphone/multifunction pockets, a ring to clip an accessory or keyfob, two side pockets with turnlock closures, feet to prevent bottom from scruffing, a partial zippered closure, interior lining, and handles.

Style No. 11230

Style No. 11230 measures 12" in length, 12" in height and 5" in width. It features an inside zip pocket, cellphone/multifunction pockets, a ring to clip an accessory or keyfob, two side pockets with turnlock closures, feet to prevent bottom from scruffing, a partial zippered closure, interior lining, and handles.

Style No. 11373

Style No. 11373 measures 14" in length, 11" in height and 5" in width. It features 2 inside multifunction pockets, an inside zip pocket, a front exterior pocket with magnetic snap closure, back exterior zip pocket, ring to clip an accessory or keyfob, full zippered top closure, interior lining, and handles.

Style No. 11409

Style No. 11409 measures 12.6" in length, 12.25" in height and 4.1" in width. It features an inside zip pocket, cellphone/multifunction pockets, a ring to clip an accessory or keyfob, two side pockets with turnlock closures, a partial zippered closure, interior lining, and handles.

Style No. 11625

Style No. 11625 measures 12" in length, 9" in height and 6" in width. It features an inside zip pocket, cellphone/multifunction pockets, a ring to clip an accessory or keyfob, two outside pockets with turnlock closures, outside back pocket with zip closure, full zippered closure, interior lining, and handles.

ISSUE:

Whether the ladies bags are classified in subheading 4202.21.9000, HTSUSA, as handbags or in subheading 4202.91.0030, HTSUSA, as travel sports or similar bags.

LAW AND ANALYSIS:

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

The 2010 HTSUSA provisions under consideration are as follows:

4202	Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:
	Handbags, whether or not with shoulder strap, including those without handle:
4202.21	With outer surface of leather, of composition leather or of patent leather:
	Other:
4202.21.9000	Valued over \$20 each
4202.91	With outer surface of leather, of composition leather or of patent leather
4202.91.0030	Travel, sports and similar bags
	* * *

Subheading 4202.91, HTSUSA, provides in part for travel, sports and similar bags. Additional U.S. Note 1 to chapter 42, HTSUSA, states:

For the purposes of heading 4202, the expression "travel, sports and similar bags" means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases, bottle cases and similar containers.

There is no dispute that the ladies bags are classified in heading 4202, HTSUS. At issue is the applicable six-digit subheading. As such GRI 6 is implicated. It states:

For legal purposes, the classification of goods in the subheading of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

Subheadings 4202.21 through 4202.29, HTSUSA, provide for handbags. CBP and the courts have recognized several lexicographic sources as providing definitions for the term “handbag,” and have cited to these definitions in numerous rulings. *See, e.g.*, HQ H005625 (November 28, 2007); HQ 960899 (September 24, 1999); and HQ 959062 (January 28, 1997). Some of these definitions include:

Essential Terms of Fashion: A Collection of Definitions, Charlotte M. Calasibetta, Fairchild Publications, 1986: Accessory carried primarily by women and girls to hold such items as money, credit cards, and cosmetics.

The Fashion Dictionary, Mary Brooks Picken, Funk and Wagnalls, 1973: Soft or rigid bag carried in hand or on arm. Size, shape, handle, etc., depend on fashion. Used by women as container for money and pocket-sized accessories.

Webster’s New Collegiate Dictionary, G & C Merriam Co., 1977: 1. [T]raveling bag; 2. [A] woman’s bag held in the hand or hung from a shoulder strap and used for carrying small personal articles and money.

Webster’s New World Dictionary, Third College Edition, Simon & Schuster, Inc., 1988: A bag, usually of leather or cloth, held in the hand or hung by a strap from the arm or shoulder and used, by women, to carry money, keys, and personal effects.

Merriam-Webster’s Online Dictionary : [A] bag held in the hand or hung from a shoulder strap and used for carrying small personal articles and money.

www.Dictionary.com: a bag or box of leather, fabric, plastic, or the like, held in the hand or carried by means of a handle or strap, commonly used by women for holding money, toilet articles, small purchases, etc.

A review of the above-cited definitions of “handbag” reveals that each lexicographic source describes a bag used by women that is designed to carry money, credit cards, keys, and small or pocket-sized personal effects (*e.g.*, a hairbrush, cosmetics, etc.).

CBP has classified bags referred to as “totes” under subheading 4202.22, HTSUS, as handbags. The term “handbags” includes pocket books, purses, shoulder bags, clutch bags, and similar articles customarily carried by women or girls, but does not include luggage, flat goods or shopping bags. Tote bags are those bags that are larger than handbags. They are substantially constructed and designed to contain various items including clothing

and personal effects while traveling, and usually have at least one side which exceeds 12 inches in length. See *HQ 082271*, dated December 1, 1988.¹

In *HQ 950708*, dated December 24, 1991, we observed judicial guidance as to the attributes of tote bags and women's handbags. We noted that certain tote bags which had no linings or reinforcements, no pockets, no closures (or only single snap closures), provided little protection for their contents and were unlikely to be used in a manner similar to a woman's handbag. We stated that such tote bags were used as multipurpose bags to carry any number of sundry articles, such as food, books, and/or clothing. Since the bags did not fit the terms of subheadings 4202.11 through 4202.39, HTSUS, but were a type of bag used to carry clothing and other personal effects during travel, they were considered to be travel, sports and similar bags within the meaning of Additional U.S. Note 1 to chapter 42, HTSUSA. See also, *HQ H004184*, dated July 2, 2007, affirming *HQ 951113*, dated May 19, 1992.

In *HQ 955552*, dated August 15, 1994, CBP classified a pink lady's shoulder bag as a handbag under subheading 4202.22, HTSUSA. The bag measured approximately 14 inches by 9½ inches with a tapered gusset two inches wide at the top and four inches wide at the bottom. The bag had two shoulder straps approximately 26 inches in length and was divided into two separate compartments, each with a zipper. The interior of the bag was lined and the bottom and corners were reinforced. We held that the bag was not a multi-purpose bag used to carry a number of articles such as food, books, or clothing, and that it was not suitable for travel or shopping. While the bag could conceivably have been employed for some limited use as a sports bag, we stated that the primary purpose of the bag was as a traditional woman's handbag. Its design and construction, notably the shoulder straps, reinforcement, linings, inside zipper pocket, style of compartmentalization and zipper closure were all strongly indicative of a bag which is used normally by women and girls to carry personal items on a daily basis.

In *HQ 961849*, dated June 5, 1998, CBP classified a women's "tote" bag under subheading 4202.22, as a handbag. That bag measured approximately 11½ inches by 10 inches by 3 inches. It had an outer surface of 100 percent nylon woven fabric and was lined with woven fabric of man-made fibers. It also had two leather carrying straps. The interior featured a large zippered central compartment which divided the bag's interior and created three separate, full-sized compartments, two of which were open at the top and without closures.

It also had a smaller zippered pocket within one of the interior sides. In that ruling, we found that the bag was designed, constructed and intended to be used as a woman's handbag, not as a tote or shopping bag. Again, its dimensions, lining, zippered pockets, and manner of compartmentalization indicated its purpose to contain certain items normally carried in a woman's handbag, such as money, keys, glasses, etc. Moreover, the bag had insuffi-

¹ With regard to size, however, we noted in *HQ H005625*, dated November 28, 2007, that none of the definitions set forth include a dimensional requirement. Rather, "rulings in which classification of a handbag [have] been at issue have been determined on a case by case basis and often may cite to dimensions of similar bags as a guideline but certainly not a rule by which classification is to be determined."

cient additional capacity for use as a multipurpose carrier of any number of sundry articles (such as food, books, and/or clothing).

In HQ 961358, dated January 20, 1999, CBP classified two styles of bags as handbags, although they did not have individual compartments because they were lined, had individual compartments, zippered pockets within the interior, a pocket on the exterior without a closure and a snap closure. In this instance, it was determined that the bags were sufficient to carry keys, a wallet, sunglasses and similar articles generally carried in a woman's handbag.

Counsel cites to HQ H004184, dated July 2, 2007, in support of the position that the instant ladies bags are not handbags. In this regard, we note that the bags in that ruling had open tops and none had a full opening with a partial closure. As such, we find that the instant merchandise is distinguishable.

With regard style Nos. 11229, 11230, 11373, 11409, and 11625, we find that the instant ladies bags feature a lined interior with various compartments including a zip pocket, cell phone/multifunction pocket, and key hook. Though Style No.s 11229, 11230 and 11409 do not have a full zippered closure they are nevertheless capable of securing the contents contained therein and do not preclude classification as a handbag. We further find that these styles are not substantially constructed to hold larger items, such as clothing and personal effects, while traveling. Instead, these bags will be used by a woman to carry small personal items on a daily basis. Accordingly, the ladies bags are classified in subheading 4202.21.9000, HTSUSA.

HOLDING:

Pursuant to GRI 1 through application of GRI 6, Style No.s 11229, 11230, 11373 and 11625 are classified in subheading 4202.21.9000, HTSUSA, which provides for "Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Handbags, whether or not with shoulder strap, including those without handle: With outer surface of leather, of composition leather or of patent leather: Valued over \$20 each." The rate of duty is 9% ad valorem.

You are directed to mail this decision to the internal advice applicant, no later than 60 days from the date of this letter. On that date the Office of Regulations and Rulings will make the decision available to CBP personnel, and to the public on the CBP Home Page on the World Wide Web at ww-w.CBP.gov, by means of the Freedom of Information Act, and other public methods of distribution

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H133616

CLA-2 OT:RR:CTF:TCM H133616 EG**CATEGORY:** Classification**TARIFF NO.:** 4202.91.0030

JOHN B. PELLEGRINI, ESQ.
MCGUIRE WOODS, LLP
1345 AVENUE OF THE AMERICAS
SEVENTH FLOOR
NEW YORK, NY 10105-0106

RE: Modification of HQ H061115, dated October 1, 2010; Classification of Three Coach Bags

DEAR MR. PELLEGRINI:

This is in response to your correspondence dated November 17, 2010, in which you request reconsideration of Headquarters Ruling Letter (HQ) H061115, dated October 1, 2010. In HQ H061115, U.S. Customs and Border Protection (CBP) responded to a request for internal advice filed by you on behalf of Coach Services, Inc. (Coach) concerning the tariff classification of five Coach bags under the Harmonized Tariff Schedule of the United States (HTSUS). In HQ H061115, CBP classified the subject merchandise in sub-heading 4202.21.90, HTSUS, which provides for leather handbags.

In your request for reconsideration, you ask CBP to review the tariff classification of three of the five Coach bags in the original ruling. The three bags at issue are Style No. 11229 (Gallery Leather Laced Tote); Style No. 11230 (Gallery Leather Laced N/S Tote); and Style No. 11409 (Holiday Patchwork Book Tote). You do not dispute the tariff classification of the remaining two Coach bags in HQ H061115. Per your request, we have reviewed HQ H061115 with regard to the three subject bags and find the ruling to be in error. For the reasons set forth below, we hereby modify HQ H061115.

FACTS:

In HQ H061115, CBP describes the subject merchandise as follows:

Style No. 11229 (Gallery Leather Laced Tote)

Style No. 11229 has an outer surface of leather and measures 12.5" in length, 9" in height and 4" in width. It features an inside zip pocket, cellular phone/multifunction pockets, a ring to clip an accessory or key fob, two side pockets with turn lock closures, feet to prevent bottom from scuffing, a partial zippered closure, interior lining and handles.

Style No. 11230 (Gallery Leather Laced N/S Tote)

Style No. 11230 has an outer surface of leather and measures 12" in length, 12" in height and 5" in width. It features an inside zip pocket, cellular phone/multifunction pockets, a ring to clip an accessory or key fob, two side pockets with turn lock closures, feet to prevent the bottom from scuffing, a partial zippered closure, interior lining and handles.

Style No. 11409 (Holiday Patchwork Book Tote)

Style No. 11409 has an outer surface of leather and measures 12.6" in length, 12.25" in height and 4.1" in width. It features an inside zip pocket,

cellular phone/multifunction pockets, a ring to clip an accessory or key fob, two side pockets with turn lock closures, a partial zippered closure, interior lining and handles.

ISSUE:

Are the Coach bags classified in subheading 4202.21.90, HTSUS, as handbags or in subheading 4202.91.00, HTSUS, as travel, sports or similar bags?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs 1 through 5.

The 2011 HTSUS provisions at issue are as follows:

4202	Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:
	Handbags, whether or not with shoulder strap, including those without handle:
4202.22	With outer surface of leather, of composition leather or of patent leather:
	Other:
4202.21.9000	Valued over \$20 each...
	* * *
	Other:
4202.91.00	With outer surface of leather, of composition leather or of patent leather:
4202.91.0030	Travel, sports and similar bags...
	* * *

Subheading 4202.91, HTSUS, provides in pertinent part for travel, sports and similar bags of leather. Additional U.S. Note (AUSN) 1 to Chapter 42 states:

For the purposes of heading 4202, [HTSUS,] the expression “*travel, sports and similar bags*” means goods, other than those falling in subheadings 4202.11 through 4202.39, [HTSUS,] of a kind designed for carrying clothing and other personal effects during travel, including backpacks and

shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases, bottle cases and similar containers.

* * *

Coach does not dispute that the bags are classified in heading 4202, HTSUS. At issue is the applicable six-digit subheading. Therefore, we must apply GRI 6 to determine the correct classification of the bags.

Subheading 4202.21, HTSUS, provides for “handbags” – a term which is not defined in the HTSUS. A tariff term that is not defined in the HTSUS is construed in accordance with its common and commercial meaning. *Nippon Kogaku (USA) Inc. v. United States*, 69 C.C.P.A. 89, 92 (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 C.C.P.A. 128, 134, 673 F.2d 1268, 1271 (1982). In HQ H004184, dated July 2, 2007, CBP set forth several dictionary definitions of handbags, such as “[an] accessory carried primarily by women and girls to hold such items as money, credit cards, and cosmetics” and “a woman’s bag held in the hand or hung from a shoulder strap and used for carrying small personal articles and money.”¹ Thus the common meaning of a handbag is a bag carried by women to hold small personal items such as money, credit cards and cosmetics.

CBP has developed a practice of referring to certain bags in subheading 4202.91, HTSUS, as “tote bags”. See, e.g. *J.E. Mamiye & Sons, Inc. v. United States*, 85 Cust. Ct. 92, 102 (1980), HQ 082271, dated December 1, 1988 and HQ H004184. In *J.E. Mamiye & Sons*, the U.S. Customs Court (predecessor to the U.S. Court of International Trade) stated that “tote bags are utilized by women as second handbags to carry items which do not ordinarily fit within a handbag.” *Id.* at 102. This definition of tote bags is not binding because the U.S. Customs Court was referring to a provision in the Tariff Schedule of the United States (predecessor to the HTSUS). However, the U.S. Customs Court’s definition closely mirrors AUSN 1 to Chapter 42, which states that “travel, sports and similar bags’ means goods, other than those falling in subheadings 4202.11 through 4202.39, [HTSUS,] of a kind designed for carrying clothing and other personal effects during travel.”

CBP has established several factors to distinguish handbags of subheading 4202.21, HTSUS, from tote bags of subheading 4202.91, HTSUS. With regard to handbags, CBP has stated that they typically: are smaller than tote bags, are designed to carry small personal items, include an inner lining, are reinforced along the bottom and corners, incorporate a substantial closure such as a zipper closure and include compartments to organize small personal items. See HQ 959062, dated January 28, 1997, HQ 960899, dated September 24, 1999 and HQ H005625, dated November 28, 2007. Regarding tote bags, CBP has stated that a tote bag generally has at least one side which exceeds 12 inches in length and can carry many different sundry items such

¹ *Id.* citing Charlotte M. Calasibetta, *Essential Terms of Fashion: A Collection of Definitions* (Fairchild Publications 1986) and *Webster’s New Collegiate Dictionary* (G & C Merriam Co. 1977) respectively.

as food, books or clothing. *See* HQ 082271, dated December 1, 1988 and HQ 950708, dated December 24, 1991.

On January 18, 2011, counsel for Coach brought samples of the three subject Coach bags to CBP. The two larger bags (style nos. 11229 and 11409) each had at least one side which exceeded 12 inches in length, while the third and smallest bag (style no. 11230) had a side which measured exactly 12 inches. Coach's counsel demonstrated how even the smallest of the three bags could hold a variety of sundry items, such as shoes, an umbrella, a book, a water bottle and other items. While the three bags had several similarities with handbags, such as an inner pocket, lining, reinforcements and a secure top closure, the bags also had a large carrying capacity.

A handbag is a bag carried by women to hold small personal items such as money, credit cards and cosmetics. The two bigger Coach bags (style nos. 11229 and 11409) are larger than a typical handbag because they each have one side which exceeds 12 inches in length. These two bags can also hold a variety of large items, such as shoes, an umbrella, a book, a water bottle and other items. As such, we find that these two Coach bags are classifiable as tote bags under subheading 4202.91, HTSUS.

The third bag (style no. 11230) does not have a side which exceeds 12 inches (it measures 12 inches in height, 12 inches in length and 5 inches in width). However, it holds the same variety of sundry items as the two bigger bags (e.g., clothing, bottled water, shoes, books, umbrellas and other larger items for longer trips). Having one side which exceeds 12 inches is just one factor in distinguishing a handbag from a tote bag. Therefore, we find that the smallest Coach bag (style no. 11230) is also classifiable as a tote bag under subheading 4202.91, HTSUS.

HOLDING:

By application of GRI 1 (AUSN 1 to Chapter 42) and GRI 6, Coach bag Style No. 11229 (Gallery Leather Laced Tote), Style No. 11230 (Gallery Leather Laced N/S Tote) and Style No. 11409 (Holiday Patchwork Book Tote) are classifiable under subheading 4202.91.0030, HTSUS, which provides for "Trunks, suitcases ... traveling bags ... sports bags ... and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: other: with outer surface of leather, of composition leather or of patent leather: travel, sports and similar bags." The column one, general rate of duty is 4.5% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

HQ H061115, dated October 1, 2010, is hereby modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF RULING LETTERS AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF THE ANTIBIOTIC
DRUG TELITHROMYCIN**

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

ACTION: Notice of proposed revocation of ruling letters and treatment relating to tariff classification of the antibiotic drug Telithromycin.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to modify and/or revoke ruling letters relating to the tariff classification of the antibiotic drug Telithromycin 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 June 10, 2011

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. (Mint Annex), Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20001 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: Aaron Marx, Tariff Classification and Marking Branch: (202) 325–0195.

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 intends to modify ruling letters pertaining to the tariff classification of the antibiotic drug Telithromycin. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) J80608, dated February 7, 2003, (Attachment A), and NY M84902, dated July 17, 2006 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should 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 J80608 and NY M84902, CBP determined that the drug Telithromycin was classified in subheading 2941.50.00, HTSUS, as an Erythromycin derivative. It is now CBP’s position that the drug Telithromycin is properly classified in subheading 2941.90.30, HTSUS, as an other antibiotic.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY J80608 and NY M84902, and to revoke or modify any other ruling not specifically identified, to reflect the proper classification of Telithromycin according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H128138, set forth as Attachment C to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: April 4, 2011

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY J80608

February 7, 2003
CLA-2-29:RR:NC:2:238 J80608
CATEGORY: Classification
TARIFF NO.: 2941.50.0000

KIMBERLY A. CARLSON, ESQ.
KATTEN MUCHIN ZAVIS ROSENMAN
525 WEST MONROE STREET, SUITE 1600
CHICAGO, IL 60661-3693

RE: The tariff classification of Telithromycin (CAS-191114-48-4), imported in bulk form, from France

DEAR Ms. CARLSON:

In your letter dated January 22, 2003, on behalf of your client, Aventis Pharmaceuticals, Inc., you requested a tariff classification ruling.

According to The Merck Index (thirteenth edition), Telithromycin is a “[S]emisynthetic macrolide antibiotic of the ketolide class, a group of erythromycin derivatives in which the L-cladinose residue has been replaced by a 3-keto group.” A press release, dated January 27, 2003, found on your client’s website, states, in part, that “Aventis ... announced today that it received an approvable letter from the U.S. Food and Drug Administration (FDA) for KETEK (telithromycin) tablets for the treatment of acute exacerbations of chronic bronchitis, acute bacterial sinusitis and community-acquired pneumonia.”

Pursuant to the Explanatory Notes to heading 2941, HTS, which indicate, inter alia, that heading 2941, HTS, “[i]ncludes chemically modified antibiotics used as such,” the applicable subheading for Telithromycin, imported in bulk form, will be 2941.50.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for “Antibiotics: Erythromycin and its derivatives; salts thereof.” The rate of duty will be free.

This merchandise may be subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number 301-443-1544.

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 Harvey Kuperstein at 646-733-3033.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT B]

NY M84902

July 17, 2006

CLA-2-29:RR:NC:2:238 M84902

CATEGORY: Classification

TARIFF NO.: 2941.50.0000

MR. JOSEPH J. CHIVINI
AUSTIN CHEMICAL COMPANY, INC.
1565 BARCLAY BOULEVARD
BUFFALO GROVE, IL 60089

RE: The tariff classification of **Telithromycin** (CAS-191114-48-4), imported in bulk form, from China

DEAR MR. CHIVINI:

In your letter dated June 21, 2006, you requested a tariff classification ruling.

The subject product, Telithromycin, is a semi-synthetic derivative of erythromycin. It is indicated for use as an antibacterial drug.

The applicable subheading for Telithromycin, imported in bulk form, will be 2941.50.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Antibiotics: Erythromycin and its derivatives; salts thereof." 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 merchandise may be subject to the Federal Food, Drug, and Cosmetic Act and/or The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which are administered by the U.S. Food and Drug Administration (FDA). Information on the Federal Food, Drug, and Cosmetic Act, as well as The Bioterrorism Act, can be obtained by calling the FDA at 1-888-463-6332, or by visiting their website at: www.fda.gov.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Harvey Kuperstein at 646-733-3033.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

HQ H128138

CLA-2 OT:RR:CTF:TCM H128138 AMM**CATEGORY: Classification****TARIFF NO.: 2941.90.30**

MS. KIMBERLY A. CARLSON, ESQ.
KATTEN MUCHIN ZAVIS ROSENMAN
525 WEST MONROE ST, SUITE 1600
CHICAGO, ILL 60661-3693
MR JOSEPH CHIVINI
AUSTIN CHEMICAL COMPANY, INC.
1565 BARCLAY BLVD
BUFFALO GROVE, IL 60089

RE: Modification of New York Ruling Letters J80608 and M84902; classification of antibiotic drug Telithromycin

DEAR MS. CARLSON AND MR. CHIVINI,

This is in regard to New York Ruling Letter (NY) J80608, issued to Ms. Carlson on February 7, 2003, and NY M84902, issued to Mr. Chivini on July 17, 2006, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of the antibiotic drug Telithromycin. In both NY J80608 and NY M84902, Customs and Border Protection (CBP) classified Telithromycin under subheading 2941.50.00, HTSUS, as an Erythromycin derivative. We have reconsidered these rulings and have determined that Telithromycin is provided for in subheading 2941.90.30, HTSUS, as an other antibiotic.

FACTS:

Telithromycin (CAS-191114-48-4) is described in the technical literature as a semisynthetic derivative of Erythromycin (CAS-114-07-8), a naturally occurring macrolide antibiotic. In structure, the central skeleton of Erythromycin consists of a 14-membered lactone ring (13-ethyl-13-tridecanolide) with ten asymmetric centers, and two linked sugars. The first sugar can be either L-Cladinose or L-Mycarose. The second sugar is D-Desosamine. Telithromycin differs chemically from Erythromycin in two ways. First, there is no L-Cladinose or L-Mycarose attached to the lactone ring. It is replaced with a ketogroup. Second, there is a carbamate ring attached to the side of the lactone ring. The nitrogen molecule of this carbamate ring is attached to a propyl alkyl, which is in turn attached to an imidazole ring, and finally to a pyridine ring.

ISSUE:

Is the antibiotic drug Telithromycin properly classified under subheading 2941.50.00, HTSUS, which provides for: "Antibiotics: Erythromycin and its derivatives; salts thereof", or under subheading 2941.90.30, HTSUS, as "Antibiotics: Other: Other: Aromatic or modified"?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any

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

The 2011 HTSUS provisions at issue are as follows:

2941 Antibiotics:
2941.50.00 Erythromycin and its derivatives; salts thereof

2941 Antibiotics:

2941.90 Other:

Other:

2941.90.30 Aromatic or modified aromatic

Additional U.S. Note 2(b) to Section VI (which covers Chapter 29), HTSUS, states:

For the purposes of the tariff schedule:

* * *

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

* * *

Note 1(a) to Chapter 29, HTSUS, states, in pertinent part: “Except where the context otherwise requires, the headings of this chapter apply only to: (a) Separate chemically defined organic compounds, whether or not containing impurities ...”.

Subheading Note 1 to Chapter 29, HTSUS, states:

Within any one heading of this chapter, derivatives of a chemical compound (or group of chemical compounds) are to be classified in the same subheading as that compound (or group of compounds) provided that they are not more specifically covered by any other subheading and that there is no residual subheading named ‘Other’ in the series of subheadings concerned.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP’s practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to Heading 29.41 states, in pertinent part, the following: “In this heading, the term ‘derivatives’ refers to active antibiotic compounds which could be obtained from a compound of this heading and which retain the essential characteristics of the parent compound, including its basic chemical structure.”

The EN to Subheading 2941.50 states, in pertinent part:

Erythromycin derivatives are active antibiotics whose molecules contain the following constituents of the erythromycin skeleton: 13-ethyl-13-tridecanolide with linked desosamine and mycarose (or cladinose). Esters are also considered as derivatives. This subheading includes, *inter alia*, clarithromycin (INN) and dirithromycin (INN). However, azithromycin (INN) which contains a 15-atom central ring and picromycin which contains no cladinose or mycarose, are not regarded as erythromycin derivatives.

There is no dispute that Telithromycin is classified in heading 2941, HTSUS. Rather, the issue is the proper 8-digit national tariff rate that is applicable. As a result, GRI 6 applies.

GRI 6 states:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires., to the above rules on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

Telithromycin is an antibiotic, and the technical literature describes it as a semi-synthetic derivative of Erythromycin. Classification of derivatives proceeds under Subheading Note 1 of Chapter 29, HTSUS. Here, derivatives are specifically covered by subheading 2941.50, so the definition of the word “derivative” is at issue.

The word “derivative” is not specifically defined in Chapter 29 of the HTSUS. “Derivative” is “a term used in organic chemistry to express the relation between certain known or hypothetical substances and the compound formed from them by simple chemical processes in which the nucleus or skeleton of the parent substance exists.” *Van Nostrand’s Scientific Encyclopedia, 5th Edition, 2005, p. 475.* Under the EN for Heading 29.41, a derivative must “retain the essential characteristics of the parent compound, including its basic chemical structure.”

Erythromycin’s basic chemical structure contains a 14-member lactone ring and two linked sugars. The first sugar is either mycarose or cladinose. The second sugar is desosamine. See EN to Subheading 2941.50. Telithromycin’s chemical structure is similar, but it contains only one of the linked sugars. The mycarose/cladinose sugar has been removed, and replaced with a single oxygen atom. Telithromycin no longer contains the nucleus or skeleton of the parent substance, as specified in *Van Nostrand’s Encyclopedia*, nor the parent compound’s basic chemical structure, in accordance with EN 29.41, because the mycarose/cladinose group has been removed.

The EN to Subheading 2941.50 does not specifically exclude Telithromycin from classification as an Erythromycin derivative. However, EN 2941.50

states that Picromycin is not a derivative of Erythromycin for tariff purposes, because it contains no cladinose or mycarose. Telithromycin and Picromycin are the same in that respect. Therefore, Telithromycin is likewise not a derivative of Erythromycin for tariff purposes.

Telithromycin contains a pyridine ring, which is a six member cyclic compound similar to benzene. Where benzene contains six carbon atoms and 6 hydrogen atoms, pyridine contains five carbon atoms, five hydrogen atoms, and one nitrogen atom. Thus, Telithromycin meets the definition of “modified aromatic” contained in Additional U.S. Note 2(b) to Section VI, HTSUS, in that it contains a six-membered heterocyclic ring which contains at least four carbon atoms and having an arrangement of molecular bonds as in the benzene ring. Telithromycin is properly classified under heading 2941, HTSUS, specifically under subheading 2941.90.30, HTSUS, which provides for: “Antibiotics: Other: Other: Aromatic or modified aromatic”. It should be noted that pyridine and pyrimidine (which is excluded from the definition of modified aromatic compounds) are two different molecules.

HOLDING:

By application of GRI 6, the antibiotic drug product Telithromycin is classified in subheading 2941.90.30, HTSUS, which provides for: “Antibiotics: Other: Other: Aromatic or modified aromatic”. The rate of duty is free. Duty rates are provided for your convenience and are subject to change.

EFFECT ON OTHER RULINGS:

New York Ruling Letter J80608, dated February 7, 2003, and NY M84902, dated July 17, 2006, are hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division