


# U.S. Customs and Border Protection



## **PROPOSED REVOCATION OF A RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF *CHENOPODIUM QUINOA* SEEDS**

**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 *Chenopodium quinoa* seeds.

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

**DATES:** Comments must be received on or before August 2, 2013.

**ADDRESSES:** Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, N.E., 10<sup>th</sup> Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Laurance W. Frierson, Tariff Classification and Marking Branch: (202) 325–0371.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the classification of *Chenopodium quinoa* seeds. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 087765, dated November 27, 1990 (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 those identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

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

In HQ 087765, CBP determined that *Chenopodium quinoa* seeds were classified in heading 1212, Harmonized Tariff Schedule of the United States (HTSUS). Specifically, CBP classified the seeds in subheading 1212.99.00, HTSUS (1990). It is now CBP's position that *Chenopodium quinoa* seeds are properly classified in subheading 1008.50.00, HTSUS, which provides for "Buckwheat, millet and canary seeds; other cereals (including wild rice): Quinoa (*Chenopodium quinoa*)."

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke HQ 087765, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H223701, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 12, 2013

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

Attachments

## [ATTACHMENT A]

HQ 087765

November 27, 1990

CLA-2 CO:R:C:G 087765 RFC

CATEGORY: Classification

TARIFF NO.: 1212.99.0000

MR. TODD R. CRAUN

PRESIDENT

SOUTH AMERICAN ORGANICS

1416 WOODFORD ROAD, SUITE 100

WAYNE, PA 19087

RE: Quinoa; seeds

DEAR MR. CRAUN:

This ruling letter is in response to your request of July 25, 1990, on behalf of South American Organics, concerning the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of the seeds of the quinoa plant.

**FACTS:**

The product is stated to be the seeds of the quinoa plant (*Chenopodium quinoa*). The seeds are edible and are washed, dried and packaged in Bolivia. As part of the washing process, a natural outer coating known as "saponin" is physically removed from the quinoa seeds. As imported, the seeds are incapable of germination and cannot be used for sowing. The quinoa seeds are imported into the United States for use as a rice-like food product.

The seed of the quinoa plant is sometimes described as a cereal grain. This description, however, is inaccurate. Cereal grains are seeds from the grass family (Gramineae) whereas the quinoa plant is an annual herb which is a member of the goosefoot family (Chenopodiaceae). See 3 McGraw-Hill Encyclopedia of Science & Technology 415 (6th ed. 1987); 8 Id. at 181; 14 Id. at 599; 6 The Encyclopedia Americana International Edition 198 (1980); 13 Id. at 149; 23 Id. at 102.

**ISSUE:**

What is the proper classification under the HTSUSA of the seeds of the quinoa plant that are washed to remove a natural outer coating and that are imported for use as a rice-like food product?

**LAW AND ANALYSIS:**

Classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation (GRIs). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff and any relative section or chapter notes and, unless otherwise required, then according to the remaining GRIs, taken in order.

A review of the chapters in the HTSUSA reveals that the instant product may be potentially classified in chapter 12. This chapter covers, among other things, oil seeds and miscellaneous grains, seeds and fruits. A review of the headings in chapter 12 shows that the product may be potentially classified under three headings: 1207, 1209, and 1212. Heading 1207 provides for,

among other things, oil seeds. Guidance concerning what constitutes an “oil seed” for purposes of classification under heading 1207 can be found in the Explanatory Notes to this heading: “[Heading 1207]...covers seeds...of a kind used for the extraction of edible or industrial oils and fats....” This definition is consistent with other definitions of an “oil seed.” See Webster’s Ninth New Collegiate Dictionary 821 (1989) (oil seed is that which is grown mainly for oil). Although this product is high in oil and fats, it is neither grown for nor imported for its oil or fat contents. Thus, the product is not properly classified under heading 1207.

The second heading in chapter 12 under which the instant product may be potentially classified is heading 1209. This heading provides for seeds, fruits and spores of a kind used for sowing. Guidance concerning what constitutes “seeds” for purposes of classification under heading 1209 can be found in the Explanatory Notes to this heading: “[Heading 1209]...covers all seeds, fruit and spores of a kind used for sowing. it includes such products even if they are no longer capable of germination. However, it does not include products such as those mentioned at the end of this Explanatory Note, which, although intended for sowing, are classified elsewhere in the Nomenclature because they are normally used other than for sowing” (emphasis in original). Those products mentioned at the end of this Explanatory Note include, among others, leguminous vegetables and sweet corn, fruit of chapter 8, cereal grains, oil seeds and oleaginous fruits of headings 1201 to 1207. On the other hand, products specified under heading 1209 include sugar beet seed, seeds of forage plants, seeds of herbaceous plants cultivated principally for their flowers, and vegetable seeds. In view thereof, it is clear that the type of seed envisioned and encompassed by the terms of heading 1209 is not sought as a food in and of itself, but rather one that is to be sown for yield of plants used either for food (e.g., vegetables) or for non-food (e.g., flowers) purposes. As discussed above, the instant product is an edible seed that is imported for use as a rice-like food product. Accordingly, it is not properly classified under heading 1209.

The final heading in chapter 12 in which the instant product may be potentially classified is heading 1212. This heading provides for, among other things, fruit stones and kernels and other vegetable products of a kind used primarily for human consumption, not elsewhere specified or included in the schedule. The Explanatory Notes to heading 1212 state that “[t]his group includes...other vegetable products of a kind mainly used, directly or indirectly, for human consumption, but not elsewhere specified or included in the...[schedule].” As the instant product is a vegetable product of a kind used primarily for human consumption and has not been found to be specified or included elsewhere in the schedule, then it is properly classified under heading 1212.

#### **HOLDING:**

The above-identified product is properly classified under subheading 1212.99.0000, HTSUSA, which provides for, among other things, other vegetable products of a kind used primarily for human consumption, not elsewhere specified or included, other, other. Goods classified under this subheading may be entered free of duty.

*Sincerely,*  
JOHN DURANT,  
*Director*  
*Commercial Rulings Division*

## [ATTACHMENT B]

HQ H223701  
**CLA-2 OT:RR:CTF:TCM H223701 LWF**  
**CATEGORY:** Classification  
**TARIFF NO.:** 1008.50.00

TODD R. CRAUN, PRESIDENT  
SOUTH AMERICAN ORGANICS  
1416 WOODFORD ROAD  
SUITE 100  
WAYNE, PA 19087

RE: Revocation of Headquarters Ruling Letter (HQ) 087765, dated November 27, 1990; Classification of *Chenopodium quinoa* seeds

DEAR MR. CRAUN:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered Headquarters Ruling Letter (HQ) 087765, dated November 17, 1990, concerning the tariff classification of *Chenopodium quinoa* seeds (“quinoa”). In HQ 087765, CBP classified quinoa in subheading 1212.99, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Locust beans, seaweeds and other algae, sugar beet and sugar cane, fresh, chilled, frozen or dried, whether or not ground; fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety *Cichorium intybus sativum*) of a kind used primarily for human consumption, not elsewhere specified or included: Other.” CBP has reviewed HQ 087765 and finds the ruling to be incorrect. Accordingly, for the reasons set forth below, we intend to revoke that ruling.

**FACTS:**

The merchandise at issue in HQ 087765 consists of *Chenopodium quinoa* seeds that are washed, dried and packaged in Bolivia for human consumption. Quinoa (*Chenopodium quinoa*) is defined by the Food and Agriculture Organization of the United Nations (FAO) as, a “minor cereal cultivated primarily in Andean countries.”<sup>1</sup> As part of the washing process, the natural outer coating of the seed, commonly referred to as the “saponin,” is physically removed from the quinoa. As imported, the seeds are incapable of germination and cannot be used for sowing. Instead, they are imported into the United State for use as a rice-like product.

**ISSUE:**

Whether the quinoa is classified under heading 1008, HTSUS, as a cereal, or under heading 1212, HTSUS, as a vegetable product of a kind used primarily for human consumption, not elsewhere specified or included?

<sup>1</sup> FAO, Definition and Classification of Commodities (Draft) Cereals and Cereal Products, <http://www.fao.org/waicent/faoinfo/economic/faodef/fdef01e.htm#1.12> (last visited Sept. 24, 2012).

**LAW AND ANALYSIS:**

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section of chapter notes and, unless other required, according to the remaining GRIs taken in their appropriate order.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HS and are thus useful in ascertaining the proper classification of merchandise. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are the following:

1008	Buckwheat, millet and canary seeds; other cereals (including wild rice):
	1008.50.00 Quinoa ( <i>Chenopodium quinoa</i> ).
*	* * * * *
1212	Locust beans, seaweeds and other algae, sugar beet and sugar cane, fresh, chilled, frozen or dried, whether or not ground; fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety <i>Cichorium intybus sativum</i> ) of a kind used primarily for human consumption, not elsewhere specified or included:
*	* * * * *
	Other:
	1212.99 Other:
	1212.99.91 Other.
*	* * * * *

EN 10.08 states, in relevant part:

**(B) OTHER CEREALS**

This group includes certain hybrid grains, e.g., triticale, a cross between wheat and rye.

\* \* \* \* \*

Subheading 1008.50.00, HTSUS, provides for “Buckwheat, millet and canary seeds; other cereals (including wild rice): Quinoa (*Chenopodium quinoa*).” However, GRI 1 states, in relevant part, that “classification shall be determined according to the terms **of the headings**” (emphasis added). Therefore, before the instant merchandise can be classified in subheading 1008.50.00, HTSUS, it must first meet the terms of heading 1008, HTSUS.



The term “other cereals” as used in heading 1008, HTSUS, is not defined in the nomenclature or the ENs. When, as in this instance, a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001) (“To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials.’” (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271 (Fed. Cir. 1982))).

The Oxford English Dictionary defines “cereal,” in relevant part, as “plants of the family *Graminaceae* or grasses which are cultivated for their seed as human food; commonly comprised under the name *corn* or *grain*. (Sometimes extended to cultivated leguminous plants).”<sup>2</sup> We note however, that the common meaning of “cereal” not only includes “true cereals,” such as crops of the *Poaceae* or *Graminaceae* family, but also describes certain “pseudocereals” that are harvested for their dry grain.<sup>3</sup> The FAO considers the term “pseudocereal” to include crops of quinoa, buckwheat, and amaranth, and similar definitions have been adopted in wide practice by the U.S. Department of Agriculture, U.S. Food and Drug Administration, AACC International, and the International Association for Cereal Science and Technology.<sup>4</sup> Consequently, we conclude that the common meaning of the term “other cereals” includes both true cereals and pseudocereals.

With respect to the instant merchandise, the FAO describes quinoa as “a minor cereal” and classifies the food with other “cereals and cereal products.”<sup>5</sup> Similarly, the U.S. Department of Agriculture (USDA) identifies dry quinoa as a “cereal grain,” and the U.S. Food and Drug Administration (FDA) has issued draft guidance for industry and FDA staff concerning whole grain label statements in which it lists quinoa as an example of a “cereal grain.”<sup>6</sup> Based on the foregoing, we find that quinoa is described by the term “other cereals,” as used in heading 1008, HTSUS. Consequently, inasmuch as the

<sup>2</sup> Oxford English Dictionary, <http://www.oed.com> (last visited June 20, 2012).

<sup>3</sup> FAO, Statistics Division, Definition and Classification of Commodities (Draft): Cereals and Cereal Products, <http://www.fao.org/waicent/faoinfo/economic/faodef/fdef01e.htm#1.101> (last visited Sept. 26, 2012).

<sup>4</sup> *Id.*; USDA, National Nutrient Database for Standard Reference, Release 24: Cereal Grains and Pasta, <http://ndb.nal.usda.gov/ndb/foods/list?format=&count=&max=25&sort=&fg=Cereal+Grains+and+Pasta&man=&lfacet=&glookup=&offset=25> (last visited Sept. 26, 2012); FDA, Draft Guidance: Whole Grain Label Statements, <http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/ucm059088.htm> (last visited Sept. 26, 2012); AACC International, 87th AACC Annual Meeting, Abstract: Technological Behavior of the Pseudocereals Buckwheat, Amaranth, and Quinoa in Wire Cut Cookiemaking, <http://www.aaccnet.org/meetings/Documents/Pre2009Abstracts/2002Abstracts/a02ma430.html> (last visited Sept. 26, 2012); and International Association for Cereal Science and Technology, Whole Grain Definition, [http://www.icc.or.at/webfm\\_send/116](http://www.icc.or.at/webfm_send/116) (last visited Sept. 26, 2012).

<sup>5</sup> FAO, *supra* note 1.

<sup>6</sup> USDA, *supra* note 4; FDA, *supra* note 4; USDA, Food Buying Guide for Child Nutrition Programs (2001), [http://www.fns.usda.gov/tn/resources/FBG\\_Section\\_3-GrainsBreads.pdf](http://www.fns.usda.gov/tn/resources/FBG_Section_3-GrainsBreads.pdf).

instant merchandise is identified by the text of the heading 1008, HTSUS, we find that the quinoa is properly classified in subheading 1008.50.00, HTSUS, which provides for “Buckwheat, millet and canary seeds; other cereals (including wild rice): Quinoa (*Chenopodium quinoa*).”

**HOLDING:**

By application of GRI 1, *Chenopodium quinoa* seeds that are washed, dried and packaged for human consumption under heading 1008, HTSUS, specifically in subheading 1008.50.00, HTSUS, which provides for “Buckwheat, millet and canary seeds; other cereals (including wild rice): Quinoa (*Chenopodium quinoa*).” The column one, general rate of duty is 1.1 percent *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

In accordance with the above analysis, HQ 087765, dated November 17, 1990, is hereby REVOKED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED REVOCATION OF FIVE RULING LETTERS  
AND PROPOSED REVOCATION OF TREATMENT  
RELATING TO THE TARIFF CLASSIFICATION OF  
AQUADOODLE PRODUCTS**

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

**ACTION:** Notice of proposed revocation of five ruling letters and revocation of treatment relating to the tariff classification of Aquadoodle products.

**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 five ruling letters relating to the tariff classification of Aquadoodle products 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 August 2, 2013.

**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, 90 K Street NE, 10th Floor, Washington, D.C. 20229–1177. 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 Junior, 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 five ruling letters pertaining to the tariff classification of Aquadoodle products. Although in this Notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) W968020, dated May 31, 2006 (Attachment A), HQ H050118, dated July 13, 2010 (Attachment B), NY N091640, dated January 26, 2010 (Attachment C), NY R03958, dated June 15, 2006 (Attachment D), and NY L88572, dated November 15, 2005 (Attachment E), 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 W968020, HQ H050118, NY N091640, NY R03958 and NY L88572, CBP determined that the subject Aquadoodle products, consisting of fabric or other material with hydrochromatic ink and water

pens that together create disappearing drawings, were classified in heading 6307, HTSUS, which provides for “Other made up articles, including dress patterns ...” It is now CBP’s position that the Aquadoodle products are properly classified in heading 9503, 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...”

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke HQ W968020, HQ H050118, NY N091640, NY R03958 and NY L88572, and to revoke or to modify any other ruling not specifically identified, in order to reflect the proper classification of Aquadoodle products according to the analysis contained in proposed HQ H236028, set forth as Attachment F 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 similar transactions.

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

Dated: June 12, 2013

IEVA K. O’ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

**HQ W968020****May 31, 2006****CLA-2 RR:CTF:TCM 968020 KBR****CATEGORY: Classification****TARIFF NO.: 6307.90.9889**

MR. DENNIS A. MORSE  
BDP INTERNATIONAL  
2929 WALKER NW  
GRAND RAPIDS, MI 49544

**RE:** Reconsideration of NY L88572; Aquadoodle Draw and Doodle Mat

DEAR MR. MORSE:

This is in reference to your letter dated December 1, 2005, on behalf of Meijer Distribution, Inc., in which you requested reconsideration of New York Ruling Letter (NY) L88572, issued to you by the Customs and Border Protection (“CBP”) National Commodity Specialist Division, New York, dated November 15, 2005, concerning the classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of Aquadoodle Draw and Doodle mat, Item number 70678. A sample of the product was submitted. NY L88572 also concerned an Aquadoodle Coloring Mat, Item number 70685, but your letter did not ask for reconsideration concerning the classification of this second article. This ruling will not discuss Item number 70685.

**FACTS:**

The Aquadoodle Draw and Doodle mat, Item number 70678 (“Aquadoodle”), is a textile fabric mat packaged with two marker pens that are intended to be filled with water before use. The Aquadoodle is intended for use by children. The mat measures 32 inches by 32 inches with a 4 inch red border. The border is printed with the name of the article and several “stick figure” designs. Just inside the border the mat is printed with the alphabet on the right and left sides, and numbers 1 through 10 along the top and bottom. The rest of the mat has no printing on it. When the water-filled pens touches the mat, the water causes the mat to change color so that a child can write or draw on the mat without making a mess. When the water dries, the marks on the mat disappear and the child can draw on a clean mat again.

In NY L88572, CBP determined that the Aquadoodle was a set for tariff classification purposes, with the essential character determined by the textile mat. NY L88572 classified the Aquadoodle in subheading 6307.90.9889, HTSUSA, as “[o]ther made up articles, including dress patterns: [o]ther: [o]ther: [o]ther: [o]ther.”

**ISSUE:**

Is the Aquadoodle classifiable as a “toy” or an “other made up article”?

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUSA in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUSA is such that virtually all 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 may then be applied.

In interpreting the headings and subheadings, CBP looks to the Harmonized Commodity Description and Coding System Explanatory Notes (ENs). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUSA. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUSA provisions under consideration are as follows:

6307	Other made up articles, including dress patterns:
6307.90	Other:
	Other:
6307.90.98	Other:
	Other:
6307.90.9889	Other.
9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.70.0000	Other toys, put up in sets or outfits, and parts and accessories thereof.

First, we note that the Aquadoodle consists of a mat and pens put up as a set for retail sale. These different articles in the set are *prima facie* classifiable in different headings in the HTSUSA. Because classification cannot be determined under GRI 1, CBP must apply the other GRIs. GRI 3(b) provides that:

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

EN (X) for GRI 3(b) states:

(X) For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which :

(a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;

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

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

The Aquadoodle meets the GRI 3(b) and attendant EN (X) definition of "goods put up in sets for retail sale." First, the Aquadoodle consists of at least two different articles which are, *prima facie*, classifiable in two different headings. Secondly, the items are put up together to carry out the specific

activity of drawing and the items will be used together or in conjunction with one another. Lastly, the articles are put up in a manner suitable for sale directly to users without repacking. We thus find that the Aquadoodle qualifies as a set of GRI 3(b); and the textile mat imparts the essential character to the set.

Chapter 95, HTSUS, covers toys of all kinds, whether designed for the amusement of children or adults. Although the term “toy” is not specifically defined in the tariff, the General ENs to Chapter 95, indicate that this chapter covers toys of all kinds whether designed for the amusement of children or adults.

In HQ 960136 (July 24, 1997), CBP cited *United States v. Topps Chewing Gum, Inc.*, 58 CCPA 157, C.A.D. 1022 (1971), to give the following definition of a toy:

it was held that articles which may lack the material features to be a manipulative plaything as such, but because of their cartoon-like, comical appearance, or scary look, would likely be used as an interesting or novelty decorative object, are considered primarily used for amusement purposes or as a source of frivolous entertainment for children or adults. In other words, if the article's appearance generates the same type of emotional reaction one derives from playing with objects commonly recognized as toys, the article's principal use is to amuse. Therefore, the article is capable of being classifiable as a toy.

The primary purpose of the item must be its amusement value to be classified as a toy. In *Ideal Toy Corp. v United States*, 78 Cust. Ct. 28 (1977), the court stated that “when amusement and utility become locked in controversy, the question becomes one of determining whether amusement is incidental to the utilitarian purpose, or whether the utility purpose is incidental to the amusement.” In HQ 085267 (May 9, 1990), CBP found that for a drawing kit including a jacket, “[a]lthough they may tend to amuse those who use them, such amusement is incidental to their primary purpose.” In HQ 961123 (December 18, 1998), CBP stated that “[i]t has been Customs position that the amusement requirement means that toys should be designed and used principally for amusement. They should be more than accessories which entertain but have little or no manipulative play value.”

In HQ 960859 (June 5, 1998), concerning a child safety seat with toy features, CBP stated that “[c]learly, elements of the [article] are designed to amuse a child. However, Customs believes those design elements ... are secondary to the article's primary purpose....”

In HQ 961912 (October 28, 1998), CBP stated:

The physical characteristics of “Elmo's 1–2–3 Sprinkler,” mainly its bright colors, “Sesame Street” motif and manipulation of water, appeal to a sense of fun and play with water. The ultimate purchaser expects to use this article as a water toy for children. It is traded in toy channels by a toy company. Its manner of advertisement and display all highlight its amusing qualities. All these characteristics indicate that [it] is designed principally to amuse.

In this instance, we do not find that the Aquadoodle is “amusing.” We do not find that this will “generate the ... emotional reaction one derives from playing” or provide a “sense of fun and play”. See HQ 964834 (May 23, 2002).



The Aquadoodle is designed to be a drawing instrument. Drawing and coloring are activities capable of providing amusement, but the ENs exclude from heading 9503, HTSUS, many articles that are used in drawing, coloring and other art activities. EN 95.03 states, in part, that heading 9503 excludes:

- (a) Paints put up for children's use (**heading 32.13**).
- (b) Modelling pastes put up for children's amusement (**heading 34.07**).
- (c) Children's picture, drawing or colouring books of **heading 49.03**.
- (d) Transfers (**heading 49.08**).
- (e) Bells, gongs or the like, of **heading 83.06**.
- (f) Card games (**heading 95.04**).
- (g) Paper hats, "blow-outs", masks, false noses and the like (**heading 95.05**).
- (h) Crayons and pastels for children's use of **heading 96.09**.
- (ij) Slates and blackboards, of **heading 96.10**.

We find that the Aquadoodle is similar to several of the excluded articles listed in the EN for heading 9503. As a drawing instrument, the Aquadoodle is similar to paints in (a); children's picture, drawing or colouring books in (b); crayons and pastels in (h); and slates and blackboards in (ij).

These exclusions provide that articles and sets comprised of articles used for drawing or coloring are not classifiable as toys or as toy sets (classified according to GRI 1 under heading 9503). The fact that the drafters of the Harmonized System upon which the US tariff schedule is based provided for the above-listed articles *eo nomine* in headings other than heading 9503, HTSUSA, evinces an intent by the drafters that they not be considered toys. To that end, CBP has long construed the scope of heading 9503, HTSUSA, to exclude such articles and sets. *See* HQ 967796 (February 28, 2006)(holding rubbing templates are not classifiable as toys in heading 9503, HTSUSA).

CBP has never considered writing, coloring, drawing or painting to have significant "manipulative play value," for purposes of classification as a toy. Further, CBP does not classify the tools for writing, coloring, drawing or painting as toys since those tools are not designed to amuse. In HQ 085267, dated May 9, 1990, CBP found that, with respect to the items listed in the ENs for 9503, "[a]lthough they may tend to amuse those who use them, such amusement is incidental to their primary purpose." That is, not all merchandise that provides amusement is properly classified in a toy provision. The listed items were further described as having primarily a drawing and craft function. *See also*, HQ 960420, dated July 25, 1997 (determining that a set consisting of washable markers and stuffed textile items printed with designs was not a toy set); HQ 962355, dated January 5, 2000 (ruling that four types of coloring sets were not classified as toy sets but rather as GRI 3(b) sets classified by the article comprising the colored or decorated craft and not the act of drawing); HQ 965195 dated August 15, 2002 (classifying "Doodle Clings" coloring sets according to GRI 3(b) and not as toy sets). *See also*, HQ 959189 dated September 25, 1996 (classifying stencil drawing sets not as toys); HQ 958063, dated February 13, 1996 (classifying a battery-operated drawing pad with pen for children as a drawing instrument of heading 9017 and not a toy because it was designed to facilitate drawing, not to amuse); HQ 953922, dated November 17, 1993 (classifying the "Video Painter" and "Design Studio Accessory Kit," which included several stencils under heading 9017 for the same reason); and HQ 962327, dated June 23, 2000, (determining

ing that an art activity set was not put up in a form indication use as toys and thus was not classifiable as a toy set at GRI 1, nor a GRI 3(b) set for retail sale); HQ 958152, dated April 2, 1996 (classifying light-up desk with designs for tracing as a drawing instrument) and HQ 958805, dated February 8, 1996 (classifying “Trace N’ Color” in heading 9017).

The amusement derived from art-related activities is secondary to utility because those articles and sets used for drawing, coloring and other art-related activities are not “essentially playthings.” HQ 966198 (July 21, 2003). CBP stated in HQ 966724 (May 24, 2004):

many articles designed for children and sold in toy stores are not toys. Many articles from which a child derives amusement are not essentially playthings. Such articles may provide amusement, but they are not designed to amuse. As such, they are not classifiable as toys. For example, children’s play may include drawing or painting; however, materials for drawing or painting are not classified in heading 9503, HTSUS. *See generally* HQ 957958 (February 8, 1996); HQ 958063 (February 13, 1996); HQ 966198 (July 21, 2003).

The Aquadoodle is a set designed to be used by a child for purposes of drawing. Therefore, pursuant to the above analysis, we find that the Aquadoodle is not classifiable as a toy in heading 9503. The Aquadoodle is classified in heading 6307, specifically in subheading

6307.90.9889, HTSUSA, as “[o]ther made up articles, including dress patterns: [o]ther: [o]ther: [o]ther: [o]ther.”

#### **HOLDING:**

In accordance with the above discussion, the Aquadoodle is classified in heading 6307. It is provided for in subheading 6307.90.9889, HTSUSA, as “[o]ther made up articles, including dress patterns: [o]ther: [o]ther: [o]ther: [o]ther: [o]ther.” The 2006 column one, general rate of duty is 7% *ad valorem*.

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

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

NY L88572 is **affirmed**.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## [ATTACHMENT B]

HQ H050118

July 13, 2010

CLA-2 OT:RR:CTF:TCM H050118 AP

CATEGORY: Classification

TARIFF NO.: 6307.90.9889

MARCUS LYNN BRUMLEY  
N.A. IMPORT MANAGER  
AMAZON.COM.KYDC  
C/O AMAZON.COM INT'L TRADE  
605 5TH AVENUE SOUTH  
SEATTLE, WA 98104

RE: Classification of an Aquadoodle Wall Mat from China; Revocation of NY N014467

DEAR MR. BRUMLEY:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (NY) N014467, issued to you on July 24, 2007. In NY N014467, we determined that an Aquadoodle Wall Mat from China was classified under subheading 9503.00.0080, Harmonized Tariff Schedule of the United States (“HTSUS”). CBP has determined that NY N014467 is incorrect. Therefore, this ruling revokes NY N014467.

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 N014467 was published on June 9, 2010, in Volume 44, Number 24, of the *Customs Bulletin*. CBP received no comments in response to this notice.

**FACTS:**

The item at issue is identified as an Aquadoodle Wall Mat, which is composed of a textile fabric mat and a marker pen intended to be filled with water before use. In NY N014467, relying on information provided by the requestor, CBP described the merchandise as follows:

The mat can be placed on any hard surface by means of adhesive stickers. Between the pad and the plastic sheeting is a water-activated ink pad. The child, using the accompanying water pen, can apply water to the pad to make ink colors appear. The child can either draw free-lance or use plastic stencils provided in the set to apply specific shapes to the mat.

When the water-filled pen touches the mat, the water causes the mat to change color and the child can write or draw on the mat without making a mess. When the water dries, the marks on the mat disappear and the child can draw on a clean mat again. The Aquadoodle Wall Mat is intended to be hung on a wall instead of being used on a floor.

In Headquarters Ruling Letter HQ W968020, dated May 31, 2006, we concluded that Aquadoodle Draw and Doodle floor mats are classified under subheading 6307.90.9889, HTSUS, as an “other textile made-up article” and not under subheading 9503.00.0080, HTSUS. The Aquadoodle Wall Mat is identical to the Aquadoodle Draw and Doodle floor mat. On the importer’s website, Spin Master states “The New Wall Mat is the same great doodling fun, but now on the wall.”

**ISSUE:**

Whether the subject Aquadoodle Wall Mat is classifiable as a textile article in heading 6307, HTSUS, or as a toy in heading 9503, HTSUS.

**LAW AND ANALYSIS:**

Classification under the HTSUS is governed by the General Rules of Interpretation (“GRIs”), which need to be applied in numerical order. 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, and, provided such headings or notes do not otherwise require, according to the remaining GRIs taken in order. In other words classification is governed first by the terms of the headings of the tariff schedule and any relative section or chapter notes.

In understanding the language of the HTSUS, the Explanatory Notes (“ENs”) may be used. The ENs, even though not dispositive or legally binding, may provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the harmonized system at the international level. CBP believes that ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Since the Aquadoodle Wall Mat consists of a mat and a pen, which are *prima facie* classifiable in different headings in the HTSUS (i.e., the marking pen in heading 9608 and the wall mat conceivably in 6307), GRI 3 is implicated. Its relevant portions read as follows:

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

The GRIs do not define the terms “retail sale” and “essential character” but the ENs suggest a list of factors to consider. EN X to GRI 3(b) defines “goods put up in sets for retail sale” as goods which consist of: (1) at least two different articles which are, *prima facie*, classifiable in different headings; (2) products or articles put up together to meet a particular need or carry out a specific activity; and (3) products put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

EN VIII to GRI 3(b) states:

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

The Aquadoodle Wall Mat qualifies as a set for retail sale under GRI 3(b). The mat and the water pen are put up together to carry out the specific activity of drawing and in a manner suitable for sale directly to users without repacking. The wall mat gives the set its essential character because it cannot function without the mat. The mat performs the primary function, which is to provide a surface that allows for coloring or drawing. The water-activated ink pad is part of the wall mat. The marker pen merely facilitates that activity and is designed to be used in conjunction with the

mat. Since the essential character is conveyed by the wall mat, the merchandise is therefore properly classified in accordance with that component.

The provisions at issue are the following:

6307	Other made up articles, including dress patterns:
6307.90	Other:
	Other:
6307.90.98	Other .....
	Other:
6307.90.9889	Other .....
*	*           *
9503.00.00	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.00.0080	Other .....

In NY N014467, CBP classified the subject merchandise in Chapter 95, HTSUS, which covers toys of all kind designed for amusement of children or adults. The tariff schedule does not define the term "toy." A tariff term that is not defined in the HTSUS is construed in accordance with its common and commercial meaning. See *Intercontinental Marble Corp. v. United States*, 27 CIT 654, 657 (2003). Common and commercial meaning may be determined by consulting dictionaries. See *Minnetonka Brands v. United States*, 24 CIT 645, 649 (2000).

The Compact Oxford English Dictionary defines "toy" as an "object for a child to play with" or as a "gadget or machine regarded as providing amusement for an adult." Courts have concluded that an object is a "toy" of heading 9503, HTSUS, if it is designed and used for amusement, diversion or play, rather than practicality. See *Minnetonka Brands, Inc.*, 24 CIT at 651 (citing to *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998)). The determinative issue is whether the principal use of the article is to amuse. See *United States v. Topps Chewing Gum, Inc.*, 58 C.C.P.A. 157, 158, C.A.D. 1022 (1971). CBP has interpreted the amusement requirement to mean that toys should be designed and used principally for amusement. See HQ H037544, dated September 3, 2009.

"Principal use" is defined as the use "which exceeds any other single use of the article." *Minnetonka Brands, Inc.*, 24 CIT at 651. Factors, which have been considered to make this determination include the general physical characteristics of the merchandise, the expectations of the ultimate purchasers, the design and marketing of the merchandise as an item of amusement, the expectations of the ultimate purchasers that the object will be used for play, and the regular use of the merchandise by children for amusement purposes. See *id.* When articles are both amusing and functional, we need to determine whether amusement is incidental to the utilitarian purpose and vice versa. See *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 32, Cust. Dec. 4688 (1977).

The Aquadoodle is designed to be a drawing instrument. Drawing and coloring are activities capable of providing amusement. However, the ENs

exclude from heading 9503, HTSUS, many articles that are used in drawing, coloring and other art activities. EN 95.03 states, in part, that heading 9503 excludes:

- (a) Paints put up for children's use (**heading 32.13**).
- (b) Modelling pastes put up for children's amusement (**heading 34.07**).
- (c) Children's picture, drawing or coloring books of **heading 49.03**.
- (d) Transfers (**heading 49.08**).
- (e) Bells, gongs or the like, of **heading 83.06**.
- (f) Card games (**heading 95.04**).
- (g) Paper hats, "blow-outs", masks, false noses and the like (**heading 95.05**).
- (h) Crayons and pastels for children's use of **heading 96.09**.
- (i) Slates and blackboards, of **heading 96.10**.

In HQ W968020, dated May 31, 2006, in applying the ENs, we found that the Aquadoodle Mat was designed to be colored with the included water markers and it was not a toy because it was designed for purposes of drawing. We concluded that the amusement from art-related activities is secondary to utility, because sets used for drawing and coloring are not "essentially playthings." *Id.* Children's play may include drawing or painting. However, materials for drawing or painting are not classified in heading 9503, HTSUS. *See* HQ 966724 dated May 24, 2004. Therefore, the Aquadoodle Mat is provided for, *eo nomine* (e.g., refers to a commodity by a specific name, usually one well-known in commerce), in headings other than heading 9503, HTSUS.

Heading 6307, HTSUS provides for classification of "other textile made-up articles." The wall mat is a textile fabric mat. We have previously determined that an Aquadoodle floor mat is classified in subheading 6307.90.9889, HTSUS. *See* HQW968020 dated May 31, 2006. The Aquadoodle Wall Mat is identical to the floor mat. The only difference is that the wall mat is intended to be hung on a wall instead of being used on a floor. Accordingly, the Aquadoodle Wall Mat is classified in heading 6307, HTSUS.

#### **HOLDING:**

Pursuant to GRIs 1 and 3(b), the subject merchandise, identified as Aquadoodle Wall Mat, is classified in heading 6307, HTSUS. Specifically, it is classified in subheading 6307.90.9889, HTSUS, which provides for "Other made up articles, including dress patterns: other: other: other: other: other. The general, column one applicable rate of duty is 7 percent *ad valorem*."

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

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

NY N014467, dated July 24, 2007, 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,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## [ATTACHMENT C]

N091640

January 26, 2010

CLA-2-63:OT:RR:NC:TA:351

CATEGORY: Classification

TARIFF NO.: 6307.90.9889

ALICIA BALDERAS  
SEARS HOLDINGS CORPORATION  
3333 BEVERLY ROAD A3-366B  
HOFFMAN ESTATES, IL 60179

RE: The tariff classification of an Aquadoodle from China

DEAR MS. BALDERAS:

In your letter dated January 14, 2010, you requested a tariff classification ruling.

The submitted sample is the "Aquadoodle Draw 'n Doodle," style #6012991, a textile fabric mat packaged with a marker pen. The Aquadoodle is intended for use by children. It measures 28 inches by 28 inches with a 4-inch blue border. The border is printed with the name of the article and the alphabet with a child-like picture corresponding to each letter. The rest of the mat has no printing on it.

The mat is composed of two separate layers: the top, as described above, is a woven textile fabric. It is sewn to a plastic sheet by a binding around the edge. At the top, a narrow ribbon allows the rolled-up mat to be tied. An elastic loop is sewn on to hold the pen.

The pen is intended to be filled with water before use. When the water-filled pen touches the mat, the water causes the mat to change color so that a child can write or draw on the mat without making a mess. When the water dries, the marks on the mat disappear and the child can draw on a clean mat again.

We have determined that the Aquadoodle is a set for tariff classification purposes, with the essential character determined by the textile mat.

The applicable subheading for the \* will be 6307.90.9889, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other made up textile articles, other. The rate of duty will be 7% ad valorem.

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

The sample will be returned as requested although the mat was damaged during our examination to determine its construction.

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 Mitchel Bayer at (646) 733-3102.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*



## [ATTACHMENT D]

NY R03958

June 15, 2006

CLA-2-39:RR:NC:SP:221 R03958

CATEGORY: Classification

TARIFF NO.: 3926.90.9880

MS. JILL STAVOS  
TARGET CUSTOMS BROKERS, INC.  
33 S. 6<sup>th</sup> STREET  
MINNEAPOLIS, MN 55402

RE: The tariff classification of a plastic foam drawing mat from China.

DEAR MS. STAVOS:

In your letter dated May 17, 2006, on behalf of Target Corporation, you requested a tariff classification ruling.

The submitted illustration depicts the Aquadoodle foam mat, no item number indicated. The foam mat can be drawn on with the included specialty pen. It is made of six foam squares with outer edges that are specially cut to interlock with each other. It has a border that also interlocks around the squares. The border is composed of ten pieces with interlocking shapes on the inner edges and straight edges on the outside. There are four rounded corner pieces with interlocking shapes on the inner edges. The border pieces have perforated shapes cut into them that a child can take out and put back like a puzzle or that the child can use to trace the shapes onto the center squares. The removable cutouts include shapes such as animals, flowers, a house, circle and triangle. An Aquadoodle pen is included with the foam mat. The pen is filled with water that causes the mat to change colors when drawn on. When the water dries, the drawings disappear and the child can draw some more.

This product is not considered to be a puzzle. For tariff purposes puzzles require only one possible answer or arrangement. These pieces are interchangeable and can be arranged in any order that suits the child.

The applicable subheading for the plastic foam mat and pen set will be 3926.90.9880, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics, other. The rate of duty will be 5.3 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/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 Joan Mazzola at 646-733-3023.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*



## [ATTACHMENT E]

NY L88572

November 15, 2005

CLA-2-63:RR:NC:N3:351 L88572

CATEGORY: Classification

TARIFF NO.: 6307.90.9889, 4911.91.2040

DENNIS MORSE

BDP INTERNATIONAL, INC.

2721 WALKER AVENUE N.W.

GRAND RAPIDS, MI 49504

RE: The tariff classification of coloring mat sets from China

DEAR MR. MORSE:

In your letter dated October 24, 2005, you requested a tariff classification ruling on behalf of your client, Meijer Distribution.

The submitted samples are identified as the Aquadoodle Basic Mat (Item # 70678) and Aquadoodle Coloring Mats (Item #70685). The Aquadoodle Basic Mat is a textile fabric mat packaged with marker pens that are to be filled with water before use. The mat measures 32" x 32" with a 4" border; except for the border, the mat has no printing. When the water-filled pen touches the mat, the water causes the mat to change colors so that a child can write or draw pictures without making a mess. When the water dries, the marks disappear and the child can start over on the clean mat.

The Aquadoodle Coloring Mats are plastic mats packaged with the same pens. The mats have pictures printed on them; the colors become visible when the water pen is applied to the surface. When the water dries, the colors disappear and the mats can be used again.

Both the Aquadoodle Basic Mat and the Aquadoodle Coloring Mats are considered sets for tariff purposes; in each case, the mats impart the essential character to the set.

The applicable subheading for the Aquadoodle Basic Mat will be 6307.90.9889, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up textile articles, other. The rate of duty will be 7 percent ad valorem.

The applicable subheading for the Aquadoodle Coloring Mats will be 4911.91.2040, HTS, which provides for other (than certain enumerated) lithographs on paper or paperboard, not over 0.51 mm in thickness. The rate of duty will be Free.

The pens are made in China and the mats are made in Japan. In order to comply with marking requirements, all of the components and their countries of origin must be listed on the external packaging of the toy set in a conspicuous manner.

The samples will be returned as requested.

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 Mitchel Bayer at 646-733-3102.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT F]

HQ H236028  
CLA-2 OT:RR:CTF:TCM H236028 EGJ  
CATEGORY: Classification  
TARIFF NO.: 9503.00.00

DENNIS A. MORSE  
BDP INTERNATIONAL  
2929 WALKER NW  
GRAND RAPIDS, MI 49544

RE: Revocation of HQ W968020, HQ H050118, NY N091640, NY R03958  
and NY L88572: Classification of Aquadoodle Products

DEAR MR. MORSE:

This is in reference to Headquarters Ruling Letter (HQ) W968020, dated May 31, 2006, issued to you concerning the tariff classification of the Aquadoodle Draw and Doodle Mat, Item number 70678. In HQ W968020, U.S. Customs and Border Protection (CBP) classified the subject merchandise in heading 6307, HTSUS, which provides for "Other made up articles, including dress patterns ..." We have reviewed HQ W968020 and find it to be in error. For the reasons set forth below, we hereby revoke HQ W968020 and four other rulings with substantially similar Aquadoodle products: HQ H050118, dated July 13, 2010, New York Ruling Letter (NY) N091640, dated January 26, 2010, NY R03958, dated June 15, 2006, and NY L88572, dated November 15, 2005.

**FACTS:**

The subject merchandise is the Aquadoodle Draw and Doodle Mat. It is a textile fabric mat packaged with two pens that are intended to be filled with water. The mat is intended for use by children. The mat measures 32 inches by 32 inches with a four inch red border. The center of the mat consists of a surface washable material incorporating a hydrochromatic ink. When the water-filled pens touch the mat, the water causes the mat to change color so that a child can write or draw on the mat. When the water dries, the marks on the mat disappear and the child can draw on a clean mat again.

All Aquadoodle products include either a mat or a different material with hydrochromatic ink. They are all sold with at least one plastic water pen. Aquadoodle products are sold in toy stores or in the toy department of stores. Aquadoodle products have also won many toy industry awards.

**ISSUE:**

Is the Aquadoodle Draw and Doodle Mat classified as a toy of heading 9503, HTSUS, or as a made-up textile article of heading 6307, 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 headings under consideration are the following:

6307 Other made up articles, including dress patterns ...

\* \* \*

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 ...

\* \* \*

Note 1(t) to Section XI, which includes Chapter 63, states that:

1. This section does not cover:

(t) Articles of chapter 95 (for example, furniture, bedding, lamps and lighting fittings) ...

\* \* \*

Note 3 to Chapter 95 states that:

3. Subject to note 1 above, parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles ...

\* \* \*

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

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.

\* \* \*

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

EN 95.03(D) states, in pertinent part:

D) Other toys.

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

\* \* \*

Note 1(t) to Section XI excludes articles of Chapter 95 from classification in Section XI. Section XI includes Chapter 63. If the Aquadoodle Mat is classifiable in Chapter 95, it cannot be classified in Chapter 63. Furthermore, under Note 3 to Chapter 95, if the water pens are parts or accessories of the Aquadoodle Mat, the entire good is classified as a toy of heading 9503, HTSUS. As such, we will first determine whether the mat can be classified in heading 9503, HTSUS, as a toy.

Heading 9503 provides, in pertinent part, for “other toys.” In *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (Ct. Int’l Trade 2000) (*Minnetonka*), the U.S. Court of International Trade (CIT) determined that a toy must be designed and used principally for amusement and should not serve a utilitarian purpose. Thus, the CIT concluded that heading 9503, HTSUS, is a “principal use” provision within the meaning of Additional U.S. Rule of Interpretation 1(a) (AUSR 1(a)), HTSUS. *Id.*

Applying AUSR 1(a), the Aquadoodle Mat must belong to the same class or kind of goods which have amusement as a principal use, i.e. toys. In *United States v. Carborundum Co.*, 536 F.2d 373, 377 (1976), the U.S. Court of Customs and Patent Appeals stated that in order to determine whether an article is included in a particular class or kind of merchandise, the court must consider a variety of factors, including: (1) the general physical characteristics of the merchandise; (2) the channels, class or kind of trade in which the merchandise moves (where the merchandise is sold); (3) the expectation of the ultimate purchasers; (4) the environment of the sale (i.e., accompanying accessories and marketing); (5) usage, if any, in the same manner as merchandise which defines the class; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *Id.* While these factors were developed under the Tariff Schedule of the United States (predecessor to the HTSUS), the courts have also applied them under the HTSUS. *See, e.g. Minnetonka*, 110 F. Supp. 2d 1020, 1027; *see also Aromont USA, Inc. v. United States*, 671 F.3d 1310 (Fed. Cir. 2012), *Essex Manufacturing, Inc. v. United States*, 30 C.I.T. 1 (2006). Accordingly, CBP has applied these factors to determine the class or kind of goods for principal use provisions under the HTSUS. *See, e.g.*, HQ H220856, dated January 30, 2013, HQ H155796, dated August 15, 2012, and HQ 082780, dated December 18, 1989.

First, we will examine the physical characteristics of the merchandise. We note that the Aquadoodle Mat is a drawing surface that produces disappearing drawings. Next, we note the environment of sale includes the product’s packaging. The Aquadoodle Mat’s packaging explains that any doodles or drawings made with the water pens will evaporate as the water dries. As such, the consumer’s expectations are that doodles or drawings on the mat are temporary. The Aquadoodle Mat does not create lasting drawings, nor does it teach the consumer how to draw. The consumer will most likely purchase the Aquadoodle Mat for its amusement value because it creates disappearing drawings.

CBP has issued rulings on products similar to the Aquadoodle Mat. In HQ 956778, dated September 29, 1994, CBP classified the “Magic Drawing Board” under heading 9503, HTSUS, as a toy. The Magic Drawing Board consisted of a plastic drawing board with a luminous surface, and a specially-shaped, plastic stylus. The stylus left an impression when it was pressed and moved upon the surface of the board. When the luminous surface flap was lifted, any writing or drawing would disappear, rendering the surface clear for repeat usage. In NY N056979, dated April 27, 2009, CBP classified the “Glow Station on the Go” as a toy under heading 9503, HTSUS. It consisted of a Glow Station tablet, light wand, stencil sheet, six stencil tracer shapes and a texture sheet. In a darkened room, children could create luminous freehand drawings or else use the stencils by pressing the battery-operated light wand on the surface of the Glow Station tablet. The drawings would

eventually disappear from the tablet to allow repetitive use of the item. *See also* NY N177438, dated August 12, 2011, NY N108366, dated June 18, 2010, NY L89724, dated January 17, 2006, and NY A86068, dated August 20, 1996.

Additionally, Aquadoodle products are sold by toy stores and in the toy department of stores. They have won several toy industry awards, which indicates that the toy industry recognizes Aquadoodle products as toys. After applying the *Carborundum* factors, we find that the Aquadoodle Mat is in the same class or kind of goods as other toys. 536 F.2d at 377. As such, the Aquadoodle Mat is classified as a toy under heading 9503, HTSUS.

Next, we must determine the tariff classification of the two water pens. Note 3 to Chapter 95 states that parts and accessories which are suitable for use solely or principally with a toy of heading 9503, HTSUS, are to be classified together with the toy. Therefore, we will first look to whether the water pens are “parts” of the Aquadoodle Mat.

The courts have considered the nature of “parts” under the HTSUS and two distinct though not inconsistent tests have resulted. *See Bauerhin Techs. Ltd. P’ship. v. United States (Bauerhin)*, 110 F. 3d 774 (Fed. Cir. 1997). The first, articulated in *United States v. Willoughby Camera Stores, Inc. (Willoughby)*, 21 C.C.P.A. 322, 324 (1933), requires a determination of whether the imported item is an “integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” *Bauerhin*, 110 F.3d at 778 (quoting *Willoughby*, 21 C.C.P.A. 322 at 324). The second, set forth in *United States v. Pompeo (Pompeo)*, 43 C.C.P.A. 9, 14 (1955), states that an “imported item dedicated solely for use with another article is a ‘part’ of that article within the meaning of the HTSUS.” *Id.* at 779 (citing *Pompeo*, 43 C.C.P.A. 9 at 13). Under either line of cases, an imported item is not a part if it is “a separate and distinct commercial entity.” *Bauerhin*, 110 F. 3d at 779.

More recently, the Court of International Trade applied the *Willoughby* and *Pompeo* tests when it addressed the issue of whether two vase-shaped glass structures were classifiable as glassware in heading 7013, HTSUS, or as parts of lamps in heading 9405, HTSUS. *Pomeroy Collection, Ltd., v. United States*, 783 F. Supp. 2d 1257, No. 11–78 (Ct. Int’l Trade 2011). In applying *Willoughby* to the first article, the court ruled that “[w]hen imported, the claimed article is dedicated solely for use in such article, and, when applied to that use, the claimed part meets the *Willoughby* test.” *Ibid*, at 1261–1262. In *Pomeroy*, the court found that first article satisfied the *Willoughby* test because the hurricane lamp “clearly could not function without the first article in question” since the lamp relied upon the glass structure to hang upon. *Id.* at 1262. The court found that the second glass structure satisfied *Pompeo* because the evidence showed that the glass structure contained the flame and enabled the candles to remain lit and to prevent open flames. Thus, the court also found that the second article at issue also satisfied the *Willoughby* precedent because “when applied to that use” the lamp could not function without the glass structures. *Id.* In other words, to satisfy the *Pompeo* test, two prongs must be satisfied: (1) the article must be solely dedicated for use with the product it claimed to be a part of and, (2) when applied to that use, the article cannot function without the article at issue.

The Aquadoodle Mat is marketed as a doodling toy. The purpose of the Aquadoodle Mat is amusement, which is achieved by drawing pictures with the water pens and watching the pictures vanish as the water evaporates. Like the stylus for the Magic Drawing Board and the glow wand for the Glow Tablet, the water pens have no use other than drawing on the Aquadoodle Mat. Moreover, the Aquadoodle Mat cannot function without the water pens; the water pens are the only instruments which can create vanishing drawings. As such, the water pens are parts dedicated solely for use with the Aquadoodle Mat. Under Note 3 to Chapter 95, the water pens are classified under heading 9503, HTSUS, together with the Aquadoodle Mat.

As the Aquadoodle Mat and water pens are classified under heading 9503, HTSUS, as toys, Note 1(t) to Section XI precludes them from classification in Chapter 63. For all of these reasons, we find that the Aquadoodle Mat and water pens are properly classified together as a toy of heading 9503, HTSUS.

**HOLDING:**

By operation of GRI 1 (Note 1(t) to Section XI and Note 3 to Chapter 95) and AUSR 1(a), the Aquadoodle Mat and its water pens are 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...” The 2013 column one, general rate of duty is free.

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

**EFFECT ON OTHER RULINGS:**

HQ W968020, dated May 31, 2006, HQ H050118, dated July 13, 2010, NY N091640, dated January 26, 2010, NY R03958, dated June 15, 2006, and NY L88572, dated November 15, 2005 are hereby revoked.

*Sincerely,*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED REVOCATION OF RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF D-LYSINE**

**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 tariff classification of d-lysine.

**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 New York Ruling Letter (NY) N056378, relating to the treatment of D-Lysine 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 action.

**DATES:** Comments must be received on or before August 2, 2013.

**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, 90 K St. N.E., 10<sup>th</sup> Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at Customs and Border Protection, 90 K St. N.E, Washington, D.C. 20229 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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



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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the duty-free treatment of D-Lysine. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter N056378, issued by the Customs and Border Protection (CBP) National Commodity Division on April 6, 2009, 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 N056378 (Attachment A), CBP determined that D-Lysine was eligible for duty-free treatment under General Note 13 of the HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N056378 and to revoke or modify any other ruling not specifically identified, in order to reflect the proper treatment of D-Lysine under the HTSUS, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H091978, set forth as Attachment B to

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

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

Dated: May 17, 2013

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

Attachment

## [ATTACHMENT A]

N056378

April 6, 2009

CLA-2-29:OT:RR:E:NC:N2:235

CATEGORY: Classification

TARIFF NO.: 2922.41.0010; 2922.41.0090

MS. DINA DONNELLY  
ACETO CORPORATION  
ONE HOLLOW LANE  
LAKE SUCCESS, NY 11042

RE: The tariff classification of D-Lysine from China

DEAR MS. DONNELLY:

In your letter dated April 1, 2009, you requested a tariff classification ruling.

The applicable subheading for D-Lysine (CAS # 923-27-3) will be 2922.41.0010, Harmonized Tariff Schedule of the United States (HTSUS), which provides "Amino-acids, other than those containing more than one kind of oxygen function, and their esters; salts thereof: Lysine and its esters; salts thereof: Meeting requirements of Food Chemical Codex, Codex Alimentarius or United States Pharmacopeia. The rate of duty will be 3.7 percent ad valorem. Pursuant to General Note 13 to the Harmonized Tariff Schedule, this product will be free of duty.

If this product does not meet the requirements above, the applicable subheading for the D-Lysine (CAS # 923-27-3) will be 2922.41.0090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Amino-acids, other than those containing more than one kind of oxygen function, and their esters; salts thereof: Lysine and its esters; salts thereof: Other." The rate of duty will be 3.7 percent ad valorem. Pursuant to General Note 13 to the Harmonized Tariff Schedule, this product will be free of duty.

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 Paul Hodgkiss at (646) 733-3046.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H091978  
CLA-2 OT:RR:CTF:TCM H091978 CkG  
CATEGORY: Classification  
TARIFF NO.: 2922.41.0010

MS. DINA DONNELLY  
ACETO CORPORATION  
ONE HOLLOW LANE  
LAKE SUCCESS, NY 11042

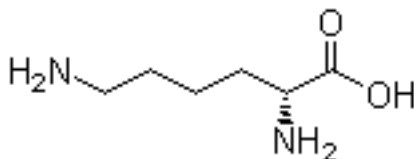
Re: Revocation of NY N056378; classification of D-Lysine; NY 815606, NY 807431, and NY 808921 revoked by operation of law

DEAR MS. DONNELLY,

This is in reference to New York Ruling Letter (NY) N056378, issued by the Customs and Border Protection (CBP) National Commodity Specialist Division on April 6, 2009, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of D-Lysine. We have reconsidered this decision, and for the reasons set forth below, have determined that the conclusion that D-Lysine is eligible for duty free treatment pursuant to General Note 13, HTSUS, is incorrect.

**FACTS:**

D-lysine (CAS 923-27-3) is an isomer of lysine, an essential amino acid which is not synthesized in animals, and hence must be ingested. D-lysine has a chemical formula of  $C_6H_{14}N_2O_2$ . A diagram of its chemical structure is included below.

**ISSUE:**

Whether d-lysine is eligible for duty free treatment pursuant to General Note 13, HTSUS.

**LAW AND ANALYSIS:**

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6. GRI 6, HTSUS, requires that the GRI's be applied at the subheading level on the understanding that only subheadings at the same level are comparable. The GRI's apply in the same manner when comparing subheadings within a heading.

The HTSUS provisions under consideration are as follows:

2922:	Oxygen-function amino-compounds: Amino-acids, other than those containing more than one kind of oxygen function, and their esters; salts thereof:
2922.41.00:	Lysine and its esters; salts thereof . . .
	*       *       *       *       *

Subheading Note 1 to Chapter 29:

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.

General Note 13, HTSUS, provides as follows:

Pharmaceutical products. Whenever a rate of duty of “Free” followed by the symbol “K” in parentheses appears in the “Special” subcolumn for a heading or subheading, any product (by whatever name known) classifiable in such provision which is the product of a country eligible for tariff treatment under column 1 shall be entered free of duty, provided that such product is included in the pharmaceutical appendix to the tariff schedule. Products in the pharmaceutical appendix include the salts, esters and hydrates of the International Non-proprietary Name (INN) products enumerated in table 1 of the appendix that contain in their names any of the prefixes or suffixes listed in table 2 of the appendix, provided that any such salt, ester or hydrate is classifiable in the same 6-digit tariff provision as the relevant product enumerated in table 1.

\*       \*       \*       \*       \*

In NY N056378, CBP classified D-lysine in subheading 2922.41.00, HTSUS, which provides for Lysine and its esters and salts thereof. This classification was correct; D-lysine is an amino acid, and as an isomer of Lysine it shares the same chemical formula. Pursuant to subheading note 1 to Chapter 29, HTSUS, d-lysine is not more specifically covered by any other subheading and there is no residual subheading named “Other” in the series of subheadings concerned.

However, NY N056378 also granted duty free treatment to D-lysine based on GN 13 to the HTSUS, which grants such treatment to products classified in a provision marked by a rate of duty of Free in the “Special” subcolumn followed by the symbol K, provided that the product is also listed in the pharmaceutical appendix to the tariff schedule. However, the symbol “K” does not appear in the “special” subcolumn for subheading 2922.41.00, HTSUS, nor is lysine listed in the pharmaceutical appendix. Lysine was deleted from the pharmaceutical appendix by the Annex to Presidential Proclamation 6982. *See* Proclamation No. 6982, 64 Fed. Reg. 16,041 (April 1, 1997). Lysine is thus no longer subject to duty free treatment pursuant to GN 13. For this reason, New York Rulings NY 815606, dated October 31, 1995, NY 807431, dated March 13, 1995, and NY 808921, dated April 17, 1995, which applied

the pre-1997 version of the HTSUS and the pharmaceutical appendix in granting duty-free treatment to lysine, are revoked by operation of law.

**HOLDING:**

D-Lysine is classified in heading 2922, HTSUS, specifically in subheading 2922.41.00, HTSUS, which provides for “Oxygen-function amino-compounds: Amino-acids, other than those containing more than one kind of oxygen function, and their esters; salts thereof: Lysine and its esters; salts thereof.” The 2012 column one, general rate of duty is 3.7% *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/tata/hts/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY N056378, dated April 6, 2009, is hereby modified. NY 815606, dated October 31, 1995, NY 807431, dated March 13, 1995, and NY 808921, dated April 17, 1995, are hereby revoked by operation of law.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED REVOCATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE COUNTRY OF ORIGIN MARKING OF AN  
UNASSEMBLED CHILD BICYCLE SEAT**

**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 country of origin marking of an unassembled child bicycle seat.

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

**DATES:** Comments must be received on or before August 2, 2013.

**ADDRESSES:** Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, N.E., 10<sup>th</sup> Floor, Washington, D.C. 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Beth Jenior, Tariff Classification and Marking Branch, at (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) (“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 U.S. Customs and Border Protection (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 public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke a ruling letter pertaining to the country of origin of an unassembled child bicycle seat. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N015337, dated August 23, 2007 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY N015337, set forth as Attachment A to this document, CBP ruled that an unassembled child bicycle seat comprised of parts manufactured in Taiwan, China and the United States should be marked "Made in the United States with additional components from China and Taiwan." It is now CBP's opinion that the unassembled seat should be marked to indicate the country of origin of each imported part.



In addition to issuing a decision on the country of origin marking, CBP also issued a tariff classification decision on the imported parts even though the requester did not ask for a tariff classification ruling. Further, CBP did not have sufficient information to issue a tariff classification ruling. As such, CBP is now revoking the portion of the ruling which sets forth the tariff classification of the imported parts.

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY N015337 and to revoke or to modify any other ruling not specifically identified, in order to reflect the country of origin marking analysis contained in the proposed Headquarters Ruling Letter (HQ) H234565, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 20, 2013

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

Attachments

## [ATTACHMENT A]

August 23, 2007

CLA-2-94:RR:NC:SP:233  
CATEGORY: Classification  
TARIFF NO.: 9401.90.3500

STEVE NOWIK  
CUSTOMS COMPLIANCE SPECIALIST  
PANALPINA, INC.  
800 DEVON AVENUE  
ELK GROVE VILLAGE, IL 60007

RE: The tariff classification of bicycle child seat parts from China and Taiwan.

DEAR MR. NOWIK:

In your letter dated July 25, 2007, on behalf of Bell Sports, you requested a tariff classification ruling.

Item number 109422, The Cocoon Child Carrier, is a car seat devised to be attached to the rear rack of an adult's bicycle. The seat is comprised of a plastic bucket with textile seat pad. A chest harness and a Velcro seat belt are provided to strap the child safely in the bucket. The child seat will be sold only partially assembled. Carrier knobs, textile pads, rack hardware and instruction manual will be imported from China. Reflector with mounting hardware will be imported from Taiwan. These foreign parts will be combined with American-made components [molded plastic seat, foot rests and safety bar] and packaged together in one box for retail sale. The consumer must complete assembly of the seat at home.

§ 134.35 Articles substantially changed by manufacture.

(a) Articles other than goods of a NAFTA country. An article used in the United States in manufacture which results in an article having a name, character, or use differing from that of the imported article, will be within the principle of the decision in the case of *United States v. Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98). Under this principle, the manufacturer or processor in the United States who converts or combines the imported article into the different article will be considered the "ultimate purchaser" of the imported article within the contemplation of section 304(a), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)), and the article shall be excepted from marking. The outermost containers of the imported articles shall be marked in accord with this part. In the case of the seat, after the foreign components have been packaged with the American-made components and before purchase by the consumer, the correct country of origin marking should state "Made in the United States with additional components from China and Taiwan."

The applicable subheading for the child's safety seat parts will be 9401.90.3500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Seats (other than those of heading 9402) whether or not convertible into beds, and parts thereof: Parts: Other: Of rubber or plastics.". The rate of duty will be free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 646-733-3036.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H234565

CLA-2 OT:RR:CTF:TCM H234565 EGJ

CATEGORY: Marking

STEVE NOWIK  
CUSTOMS COMPLIANCE SPECIALIST  
PANALPINA INC.  
800 DEVON AVE.  
ELK GROVE VILLAGE, IL 60007

RE: Revocation of NY N015337: Country of Origin Marking of an Unassembled Child Bicycle Seat

DEAR MR. NOWIK:

This is in reference to New York Ruling Letter (NY) N015337, dated August 23, 2007, issued to you concerning the country of origin marking of an unassembled child bicycle seat comprised of foreign and domestic components. You requested the ruling on behalf of the importer, Bell Sports. In that ruling, U.S. Customs and Border Protection (CBP) found that the unassembled child seat should be marked "Made in the United States with additional components from China and Taiwan." We have reviewed NY N015337 and find it to be in error. For the reasons set forth below, we hereby revoke NY N015337.

**FACTS:**

In NY N015337, CBP identified the subject merchandise as The Cocoon Child Carrier (Item No. 109422), a child seat designed to be attached to the rear rack of an adult's bicycle. The seat is comprised of a plastic bucket with textile seat pads. A chest harness and a Velcro seat belt are provided to strap the child safely into the seat.

The child seat's carrier knobs, textile seat pads, seat belts, rack hardware and instruction manual will be imported from China. Its reflector with mounting hardware will be imported from Taiwan. The child seat's molded plastic bucket seat, foot rest, grab bar, plastic rack attachment, labeling and retail box are manufactured in the United States. After importation, the foreign parts will be packaged together for retail sale with the domestically manufactured parts. The child seat will be sold unassembled. The consumer must complete assembly of the seat at home.

**ISSUE:**

1. How should each individual component imported from China be marked with its country of origin? What additional entry documentation is required for these components?
2. How should the unassembled child seat be marked for country of origin purposes at retail sale?

**LAW AND ANALYSIS:**

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. § 1304), provides that unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and

permanently as the nature of the article (or container) will permit in such a manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was that the ultimate purchaser should be able to know by an inspection of the markings on the imported goods the country of which the good is the product. “The evident purpose is to mark the goods so at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will.” *United States v. Friedlaender & Co.*, 27 C.C.P.A. 297, 302 (1940).

The ultimate purchaser is “generally the last person in the United States who will receive the article in the form in which it was imported.” 19 C.F.R. § 134.1(d). If an article will be sold “at retail in its imported form, the purchaser at retail is the ‘ultimate purchaser.’” 19 C.F.R. § 134.1(d)(3). In this case, the Chinese components will be packaged together with other foreign and domestic components prior to retail sale. However, these components will be in the same condition as at importation. Therefore, the retail purchaser is the ultimate purchaser of the imported parts.

The Chinese components must be marked at importation. In general, the regulations state that “marking requirements are best met by marking worked into the article at the time of manufacture.” 19 C.F.R. § 134.41(a). However, the regulations also provide that “any method of marking at any location insuring that country of origin will conspicuously appear on the article shall be acceptable.” 19 C.F.R. § 134.44(a). The regulations provide examples of marking imported articles with paper sticker labels or tags. 19 C.F.R. § 134.44(b)-(c). Therefore, each Chinese component must be conspicuously marked in accordance with CBP regulations. *See* 19 C.F.R. Part 134.

As the ultimate purchaser is the retail purchaser, the Chinese components must bear a conspicuous country of origin marking at retail sale. The regulations set forth the following procedures for imported articles which will be repacked or manipulated:

(a) *Certification requirements.* If an article subject to these requirements is intended to be repacked in retail containers (e.g., blister packs) after its release from Customs custody, or if the port director having custody of the article, has reason to believe such article will be repacked after its release, the importer shall certify to the port director that: (1) If the importer does the repacking, he shall not obscure or conceal the country of origin marking appearing on the article, or else the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this part; or (2) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements ... 19 C.F.R. 134.26(a).

Since the importer knows that the foreign components will be repacked after importation, the importer must submit the aforementioned certification to the port at the same time that the entry summary is filed. 19 C.F.R. § 134.26(c). The form is set forth at 19 C.F.R. § 134.26(a).

At retail sale, the country of origin marking of the foreign components must either be visible through the retail container or else the outside of the retail

container must state the country of origin of each component. *See, e.g.* Headquarters Ruling Letter (HQ) 559912 dated March 25, 1997 (an unassembled microscope comprised of foreign components had to indicate the country of origin of each component at retail sale) and HQ H025404, dated April 28, 2008 (an automotive repair kit comprised of foreign components had to be marked to indicate the country of origin of each component at retail sale).

Additionally, you mentioned that some of the child seat's components are manufactured in the United States. If the retail container is marked with "United States", or a U.S. company name, address or similar phrase, the country of origin of the foreign components must be provided in close proximity to this phrase to avoid confusion. 19 C.F.R. § 134.22(c). We note that marking the good as a product of the U.S. is a matter under the jurisdiction of the Federal Trade Commission. Therefore, should you wish to mark the articles with the phrase "Made in the USA," we recommend that you contact that agency at the following address: Federal Trade Commission Division of Enforcement 600 Pennsylvania Avenue, NW Washington, DC 20580.

In NY N015337, although not requested, CBP also ruled on the tariff classification of the subject merchandise. We find the tariff classification determination in that ruling to be incorrect. For the correct analysis of the classification of child bike seats, please *see* NY L86862, dated August 9, 2005.

#### **HOLDING:**

Based upon the information provided, it is our opinion that the components of foreign origin must be individually marked at importation. When the importer files the entry summary, the importer must also file a certificate for the country of origin marking of articles to be repacked pursuant to 19 C.F.R. § 134.26. The marking of each foreign component must be visible through the retail container, or else the retail container must be marked to indicate the country of origin of each foreign component. *Id.*

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

NY N015337, dated August 23, 2007, is hereby revoked in its entirety.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## GENERAL NOTICE

### 19 CFR PART 177

#### **Proposed Revocation of one Ruling Letter and Proposed Revocation of Treatment Relating to the Classification of a Wine Bottle Bag**

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

**ACTION:** Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to the classification of a wine bottle bag.

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

**DATES:** Comments must be received on or before August 2, 2013.

**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 revoke one ruling pertaining to the classification of a wine bottle bag. Although in this notice CBP is specifically referring to New York Ruling (“NY”) N025633, dated April 14, 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 identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY N025633, CBP classified a wine bottle bag in subheading 4202.92.30, HTSUS, as “travel, sports and similar bags, with outer



surface of textile materials, other, of man-made fibers, other.” We now believe that it is classified in subheading 4202.92.90, HTSUS, as an other type of bags.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N025633, and any other ruling not specifically identified, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H236029. (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: May 20, 2013

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

## [ATTACHMENT A]

N025633

April 14, 2008

CLA-2-42:OT:RR:NC:N3:341

CATEGORY: Classification

TARIFF NO.: 4202.92.3031

KRISTEN CLINES  
PHOENIX INTERNATIONAL FREIGHT SERVICES  
1512 INTERSTATE DRIVE  
ERLANGER, KY 41018

RE: The tariff classification of a wine tote bag from China

DEAR Ms. CLINES:

In your letter dated April 1, 2008 on behalf of Display Specialties, you requested a classification ruling. Your sample is being returned to you.

A style number has not been provided. The item is a shopping-style tote bag constructed with an outer surface of non-woven polypropylene textile material. The bag has an open top and double carrying handles. The interior is divided into six sections for individual wine bottles. The shopping bag is of durable construction and capable of repetitive use. It measures approximately 10" (W) x 11" (H) x 6.5" (D).

The applicable subheading for the shopping-style tote bag will be 4202.92.3031, Harmonized Tariff Schedule of the United States (HTSUS), which provides for travel, sports and similar bags, with outer surface of textile materials, other, of man-made fibers, other. The duty rate will be 17.6 percent ad valorem.

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

HTSUS 4202.92.3031 falls within textile category 670. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at [www.cbp.gov](http://www.cbp.gov). For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at [otexa.ita.doc.gov](http://otexa.ita.doc.gov).

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Vikki Lazaro at 646-733-3041.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H236029

CLA-2 OT:RR:CTF:TCM H236029 TNA

CATEGORY: Classification

TARIFF NO.: 4202.92.90

KRISTEN CLINES  
PHOENIX INTERNATIONAL FREIGHT SERVICES  
1512 INTERSTATE DRIVE  
ERLANGER, KY 41018

RE: Revocation of NY N025633; Classification of Non-Woven Polypropylene Bottle Bags

DEAR Ms. CLINES:

This letter is in reference to NY N025633, issued to you on April 14, 2008, on behalf of Display Specialties, concerning the tariff classification a wine tote bag from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the subject bottle bags under subheading 4202.92.30, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Trunks, suitcases, vanity cases, attache 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: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: With outer surface of textile materials: Other.” We have reviewed NY N025633 and found it to be incorrect. For the reasons set forth below, we hereby revoke NY N025633.

**FACTS:**

The subject merchandise consists of a shopping-style tote bag that is constructed with an outer surface of non-woven polypropylene textile material. The bag has an open top and double carrying handles. It measures approximately 10 inches in width by 11 inches in height by six and a half inches in depth when fully opened.

The bag’s interior is divided into six compartments that are designed to hold individual wine bottles. The bag is of durable construction and capable of repetitive use.

**ISSUE:**

Whether the subject wine bottle bags are classified as “travel, sports, and similar bags” of subheading 4202.92.30, HTSUS, or as other bags of subheading 4202.92.90, 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. 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 sub-heading notes and, *mutatis mutandis*, to GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

4202 Trunks, suitcases, vanity cases, attache 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:

Other:

4202.92 With outer surface of sheeting of plastic or of textile materials:

Travel, sports and similar bags:

4202.92.30 Other

\* \* \* \*

Other:

4202.92.90 Other

Additional U.S. Note 1 to Chapter 42, HTSUS, states, in relevant part, the following:

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.

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 to heading 4202, HTSUS, states, in pertinent part, the following:

This heading covers only the articles specifically named therein and similar containers.

We begin by noting that it is not in dispute that the subject bottle bags are classified in heading 4202, HTSUS. To the contrary, the dispute, at the 8-digit level, concerns whether the subject wine bottle bags are travel, sports, and similar bags, or other bags.

In *Totes, Inc. v. United States*, the court decided the classification of a rectangular case used to organize and store items such as motor oil, tools, and jumper cables in an automobile trunk. It had a zippered top opening, two

straps at the sides which formed handles, and reinforced bottom seams. The case's interior was divided into three discrete storage areas using dividers that snapped into place. *Totes, Inc. v. United States*, 69 F.3d 495, 1995 U.S. App. LEXIS 29841; 17 Int'l Trade Rep. (BNA) 1929. There, the court found that heading 4202, HTSUS, is an *eo nomine* provision, as is subheading 4202.92.90, HTSUS. Furthermore, the court found that the subject case's interior dividers made it more than a general carrying case that could carry any merchandise- hence its classification as "similar to" jewelry boxes and cutlery cases, whose purpose was to facilitate an organized separation, protection, storage or holding of their contents. *Id.* at 497, 500. Furthermore, the court stated that "as applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purpose that unite the articles enumerated *eo nomine* in order to be classified under the general terms." *Id.* at 498. The court found that the rule of *ejusdem generis* requires only that the subject merchandise share "the essential characteristics" of the goods listed *eo nomine* in heading 4202, HTSUS, and that these characteristics were those of "organizing, storing, protecting, and carrying various items." *Id.* at 498.

Subsequent CBP rulings have adhered to this analysis, and have classified bags and cases with fitted or divided interiors with the items in heading 4202, HTSUS, to which they are most akin. *See, e.g.*, HQ H053756, dated September 4, 2009; HQ H064875, dated January 4, 2010; HQ 956140, dated October 29, 1994; HQ 086884, dated August 13, 1990.

In the present case, NY N025633 classified the subject merchandise in subheading 4202.92.30, HTSUS, as "travel, sports or similar bags." Upon reconsideration, we note that Additional U.S. Note 1 to Chapter 42, HTSUS, defines "travel, sports or similar bags" as bags of a kind designed for carrying clothing and other personal effects during travel. The subject bags can be distinguished from those that CBP has classified as "travel, sports or similar bags." For example, HQ 964450, dated August 8, 2002, HQ 951113, dated May 19, 1992, HQ 957917, dated July 7, 1995, HQ 950708, dated December 24, 1991, and HQ 088562, dated December 5, 1991, all classified bags without any interior pockets or compartments; these open interiors could have carried any merchandise. In HQ 963575, CBP classified bags with drawstrings that were specifically designed and fitted to hold sleeping bags as "travel, sports or similar bags." These bags also contained no interior compartments, but to the extent that they were fitted for specific merchandise in the same way that the subject bags are specifically fitted, HQ 963575's bags were fitted for items- i.e., sleeping bags- that would normally be carried while travelling. The same cannot be said of the subject bottle bags. As such, we find that the subject bags are not "travel, sports, or similar bags," and we examine alternate classifications.

Additional U.S. Note 1 to Chapter 42, HTSUS, specifically excludes "bottle cases and similar containers" from this definition. The subject wine bottle bags are similar to the types of "bottle cases" that CBP has classified in subheading 4202.92, HTSUS, as other than "travel, sports and similar bags" because they are constructed from similar material and have similar features, such as interior compartments that are fitted to wine bottles, wide open tops, and carrying handles. *See, e.g.*, NY N230128, dated September 5, 2012; NY N224243, dated July 13, 2012; NY N219153, dated June 19, 2012;

NY N204304, dated March 9, 2012; NY N179138, dated August 24, 2011; NY N093287, dated March 9, 2010; NY N104559, dated May 14, 2010. Moreover, HQ 963222, dated August 19, 1999, and HQ 960403, dated August 1, 1997, classified bottle bags designed to carry single bottles in subheading 4202.92, HTSUS, as bags other than “travel, sports or similar bags.” Furthermore, as in *Totes*, the subject merchandise’s interior compartments make it more than just a general shopping bag. In *Totes*, the court classified its merchandise in subheading 4202.90.92, HTSUS. *Totes*, 69 F.3d 495.

Therefore, we find that the subject bottle bags are classified in subheading 4202.92.90, HTSUS, as “Trunks, suitcases, vanity cases, attache 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: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other.” This conclusion is consistent with *Totes* and with prior CBP rulings. See *Totes*, 69 F.3d 495; NY N230128; NY N224243; NY N219153; NY N204304; NY N179138; NY N093287; NY N104559.

#### **HOLDING:**

Under the authority of GRI 1, the subject bottle bags are classified in heading 4202, HTSUS. It is specifically provided for in subheading 4202.92.90, HTSUS, which provides for “Trunks, suitcases, vanity cases, attache 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: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other.” The applicable duty rate is 17.6%.

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/](http://www.usitc.gov/tata/hts/).

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

NY N025633, dated April 14, 2008, is REVOKED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## GENERAL NOTICE

### 19 CFR PART 177

#### **Revocation of a Ruling Letter and Revocation of Treatment Relating to Classification of a Valve Cable Support**

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

**ACTION:** Revocation of a ruling letter and of treatment relating to the classification of valve cable support.

**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 one ruling letter concerning the classification of a valve cable support under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. 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 New York Ruling Letter (“NY”) N134819, dated December 22, 2010, was published in the Customs Bulletin, Vol. 46, No. 46, on November 7, 2012. No comments were received in response to this notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 3, 2013.

**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), a notice was published in the Customs Bulletin, Volume 46, No. 26, on November 7, 2012, proposing to revoke NY N134819, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

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

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N134819 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter ("HQ") H207578, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.



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

Dated: May 13, 2013

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

*HQ H207578*

*May 13, 2013*

**CLA-2 OT:RR:CTF:TCM H207578 TNA**

**CATEGORY:** Classification

**TARIFF NO.:** 8477.90.85

MR. MARC ROMANO, CUSTOMS TEAM LEADER, US

HUSKY INJECTION MOLDING SYSTEMS, INC.

55 AMHERST VILLA ROAD

BUFFALO, NY 14225

**RE:** Revocation of NY N134819; Classification of a valve cable support

DEAR MR. ROMANO:

This letter is in reference to New York Ruling Letter (“NY”) N134819, issued to Husky Injection Molding Systems, Inc. (“Husky”) on December 22, 2010, concerning the tariff classification of a valve cable support. In NY N134819, U.S. Customs and Border Protection (“CBP”) classified the merchandise in subheading 7326.90.85, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Other articles of iron or steel: Other: Other: Other.” We have reviewed NY N134819 and found it to be in error. For the reasons set forth below, we hereby revoke NY N134819.

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 N134819 was published in the Customs Bulletin, Vol. 46, No. 46, on November 7, 2012. No comments were received in response to this notice.

**FACTS:**

The subject merchandise consists of a valve cable support, part number 4748679. It is made of non-alloy carbon steel and is designed for use in Husky’s plastic injection molding machines. The support it offers keeps the electrical cables that connect the valve assembly to the plastic injection molding machine from sagging. The subject merchandise also serves to protect the machine’s electrical cables. No samples of the subject merchandise were submitted. However, drawings were submitted showing the valve cable support itself and the physical location of the valve support cable as it is used on an injection molding machine.

Based upon the information contained in the original ruling request, NY N134819 determined that the subject vertical cable support was not a part of Husky’s plastic injection molding machine. However, in your request for reconsideration, you submit that new information is available regarding how this item functions. You state that following the issuance of NY N134819, you sought guidance from your internal engineering design group to clarify whether the subject valve cable support is an optional or necessary component. In response, your engineering team noted that it designed the subject merchandise in response to a service issue. Prior to the development of the subject merchandise, the weight of the valve cables would pull the valve connector off the valve after a short period of time in operation. If the valve connector falls off or pulls out of contact, the machine stops. You state that since discovering this issue, all of your valve assemblies are now mandated to be manufactured with the subject valve cable support, which fixes the problem and allows the machines to continue functioning.

In NY N134819, U.S. Customs and Border Protection (“CBP”) classified the subject valve cable support in subheading 7326.90.85, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Other articles of iron or steel: Other: Other: Other: Other.”

**ISSUE:**

Whether vertical cable supports are classified in heading 7326, HTSUS, as other articles of iron or steel, or in heading 8477, HTSUS, as parts of plastic molding machines?

**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.

The HTSUS provisions under consideration are as follows:

7326	Other articles of iron or steel:
8477	Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this chapter; parts thereof:

Legal Note 2 to Section XVI, HTSUS, of which heading 8477, HTSUS, is a part, provides, in pertinent part, that:

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

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

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 7326, HTSUS, provides, in pertinent part:

This heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling or perforating **other than** articles included in the preceding headings of this Chapter or covered by Note 1 to Section XV or included in **Chapter 82** or **83** or more specifically covered elsewhere in the Nomenclature.

The EN to heading 8477, HTSUS, provides, in pertinent part:

The heading covers machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this Chapter...

## PARTS

**Subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading also covers parts of the machinery of this heading.

In your request for reconsideration, you argue that the new information you submitted regarding the way the subject merchandise functions warrants reconsideration of NY N134819. You argue that the injection molding machines with which the subject valve cable support is used could not function without it, because the valve connector would be separated from the machine, forcing the machine to cease its operations. As a result, you argue that the subject valve cable support is classified in subheading 8477.90.85, HTSUS, as a part of plastic injection molding machines.

We note that CBP has consistently classified plastic injection molding machines and parts thereof in heading 8477, HTSUS. *See, e.g.*, HQ H025103, dated February 6, 2009; NY M83570, dated June 13, 2006; NY B82646, dated March 26, 1997; NY D87287, dated February 22, 1999; NY L87365, dated September 13, 2006; NY L80203, dated November 12, 2004; NY D82211, dated October 7, 1998; NY J87789, dated August 25, 2003. The subject valve cable support is used with Husky's plastic injection molding machines. As a result, we examine whether they can be classified as parts of these machines.

The courts have considered the nature of "parts" under the HTSUS and two distinct though not inconsistent tests have resulted. *See Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, ("Bauerhin") 110 F.3d 774. The first, articulated in *United States v. Willoughby Camera Stores*, ("Willoughby Camera ") 21 C.C.P.A. 322 (1933), requires a determination of whether the imported item is "an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article." *Bauerhin*, 110 F.3d at 778 (quoting *Willoughby Camera*, 21 C.C.P.A. 322 at 324). The second, set forth in *United States v. Pompeo*, ("Pompeo") 43 C.C.P.A. 9 (1955), states that "an imported item dedicated solely for use with another article is a 'part' of that article within the meaning of the HTSUS." *Id.* at 779 (citing *Pompeo*, 43 C.C.P.A. 9 at 13). Under either line of cases, an imported item is not a part if it is "a separate and distinct commercial entity." *Id.*

In the present case, prior to the development of the subject valve cable support, Husky's injection molding machines would often cease to function because the weight of their valve cables would pull their valve connector off of the valve. Husky designed the subject merchandise to solve this problem in particular; thus, it was designed for and is used solely for Husky's injection molding machines. Without the subject valve cable support, Husky's injection molding machines would continue to shut down when their connector valves became separated from the valves while the machines were in use. Therefore, we find that the subject merchandise is both dedicated solely for use with the injection molding machine and an integral component of the machine, without which the machine would not function properly.

As such, it is classified in subheading 8477.90.85, HTSUS, which provides for "Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this chapter; parts thereof: Parts: Other." This conclusion is consistent with prior CBP rulings and Note 2(a) to Section XVI, HTSUS. See, e.g., NY I85725, dated September 16, 2002 (classifying injection molding machine safety covers and doors in subheading 8477.90.85, HTSUS); HQ H025103 (affirming NY M83570's classification of parts of Husky's molding machines in subheadings 8477.90.85 and 8477.90.25, HTSUS).

Finally, we note that NY N134819 classified the subject merchandise in heading 7326, HTSUS, as "Other articles of iron or steel." While we acknowledge that the instant valve cable support is an article of iron or steel of heading 7326, HTSUS, merchandise is only classified there when it is not described elsewhere in the tariff schedule. See Note 2(a) to Section XVI, HTSUS, and EN 73.26. In the present case, because the subject merchandise is described by the terms of heading 8477, HTSUS, it is excluded from heading 7326, HTSUS.

#### **HOLDING:**

Under the authority of GRI 1, the subject valve cable support is classified in heading 8477, HTSUS. It is specifically provided for in subheading 8477.90.85, HTSUS, which provides for "Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this chapter; parts thereof: Parts: Other." The column one general rate of duty is 3.1% *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/](http://www.usitc.gov/tata/hts/).

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

NY N134819, dated December 22, 2010, is REVOKED.

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

*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 ELECTRICAL MUSCLE  
STIMULATION MACHINES**

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

**ACTION:** Notice of proposed revocation of ruling letters and proposed revocation of treatment relating to the tariff classification of electrical muscle stimulation machines.

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

**DATES:** Comments must be received on or before August 2, 2013.

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

**FOR FURTHER INFORMATION CONTACT:** Laurance W. Frierson, Tariff Classification and Marking Branch: (202) 325–0371.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke five ruling letters pertaining to the classification of electrical muscle stimulation machines. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter (“HQ”) 966973, dated May 10, 2004 (Attachment A); HQ 966716, dated May 10, 2004 (Attachment B); New York Ruling Letter (“NY”) J89141, dated October 15, 2003 (Attachment C); NY D88729, dated March 24, 1999 (Attachment D); and NY A84349, dated July 2, 1996 (Attachment E), 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 those identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In HQ 966973, CBP determined that the Product of Tomorrow Fast Abs Abdominal Training System was classified in heading 8543, Har-



monized Tariff Schedule of the United States (HTSUS). Specifically, CBP classified the product in subheading 8543.89.96, HTSUS (2004), which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other.” It is now CBP’s position that the Fast Abs Abdominal Training System is properly classified in subheading 8543.70.85, HTSUS.

In HQ 966716, CBP determined that the Complex Technologies, Inc. Slendertone FLEX Abdominal Training System was classified in heading 8543, HTSUS. Specifically, CBP classified the product in subheading 8543.89.96, HTSUS (2004), which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other.” It is now CBP’s position that the Slendertone FLEX Abdominal Training System is properly classified in subheading 8543.70.85, HTSUS.

In NY J89141, CBP determined that the Care Rehab & Orthopaedic Products, Inc. Classic NMS was classified in heading 8543, HTSUS. Specifically, CBP classified the product in subheading 8543.89.96, HTSUS (2003), which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other.” It is now CBP’s position that the Classic NMS is properly classified in subheading 8543.70.85, HTSUS.

In NY D88729, CBP determined that the “Esbeltronic” electrical muscle stimulation machine was classified in heading 8543, HTSUS. Specifically, CBP classified the product in subheading 8543.89.96, HTSUS (1999), which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other.” It is now CBP’s position that the Esbeltronic is properly classified in subheading 8543.70.85, HTSUS.

In NY A84349, CBP determined that the Seagry International, Ltd. Electro-Muscular Slimmer was classified in heading 8543, HTSUS. Specifically, CBP classified the product in subheading 8543.89.90, HTSUS (1996), which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other.” It is now CBP’s position that the Electro-Muscular Slimmer is properly classified in subheading 8543.70.85, HTSUS.

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke HQ 966973, HQ 966716, NY J89141, NY D88729, NY A84349, and any



other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed HQ H112635, set forth as Attachment F to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 20, 2013

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

Attachments

## [ATTACHMENT A]

**HQ 966973****May 10, 2004****CLA-2 RR:CR:GC 966973 RSD****CATEGORY: Classification****TARRIF NO. 8543.89.96**

Ms. MARIA DA ROCHA  
D & C CUSTOMSHOUSE BROKERAGE  
701 NEWARK AVENUE, SUITE LL1  
ELIZABETH, NEW JERSEY 07208

**RE:** Modification of NY H86520; "Fast Abs" System

DEAR Ms. DA ROCHA:

On December 26, 2001, the National Commodity Specialist Division of Customs and Border Protection issued to you, on behalf of Product of Tomorrow, a ruling, NY H86520, concerning the classification of the Fast Abs Abdominal Training system (Fast Abs). In NY H86520, Customs held that the Fast Abs system was classified in subheading 9506.91.00, Harmonized Tariff Schedule of the United States (HTSUS). In addition, NY H86520 held that the accompanying lithium batteries were classified in subheading 8506.50.00. We have reconsidered the classification of the Fast Abs system and now believe that it is incorrect. This ruling sets forth the correct classification of the Fast Abs system.

**FACTS:**

The Fast Abs was described in NY H86520 as a battery-operated muscle stimulation apparatus which is designed to deliver electronic stimulation signals that are supposed to strengthen and tone the abdominal muscles. It includes a torso adjustable comfort zone belt, a leg and arm adjustable comfort zone belt, an advanced muscle stimulator pad with adjustable tabs, an advanced muscle stimulator unit and two lithium batteries. The system also includes a firming gel that provides the conduit from the belt's impulses to the muscle. The gel must be applied to the two contact spots on the inside of the unit, and also the skin that will be touching the contact points. The electrical muscle stimulation is applied through skin contact electrodes for the purposes of improving the tone, strength, and firmness of a focused muscles group. The Fast Abs system is an electrically powered muscle stimulator that is said to stimulate the muscles and to produce beneficial therapeutic effects by assisting in the contraction and relaxation of the focused muscles and the elimination of body fat.

In NY H86520, Customs classified the Fast Abs in subheading 9506.91.00, HTSUS, which provides for articles and equipment for general physical exercise...other, articles and equipment for general physical exercise, gymnastics, or athletics; parts and accessories thereof, other.

**ISSUE:**

Whether the Fast Abs is classified in heading 9506, HTSUS, as articles and equipment for general physical exercise or in heading 8543, HTSUS as electrical machines and apparatus having individual functions, not specified or included elsewhere in Chapter 85.

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

The 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. Customs believes the EN's should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS provisions under consideration are as follows:

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

Other machines and apparatus:

8543.89

Other:

Other:

Other:

8543.89.96

Other.

\* \* \* \* \*

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:

Other:

9506.91.00

Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof.

In NY H86520, Customs held that the Fast Abs system was classified in subheading 9506.91.00, HTSUS as articles and equipment for general physical exercise. In NY I82223 dated June 18, 2002, Customs determined that a similar product called the "Slendertone FLEX System" was classified in subheading 9506.91.00, HTSUS. However, in NY D88729, dated March 29, 1999, Customs ruled that an electronic muscle stimulator was classified in subheading 8543.89.96, HTSUS. Customs also ruled in NY A84349 dated July 2, 1996, that the Electro-Muscular Slimmer, a battery operated device, which was supposed to produce beneficial therapeutic effects by supplying electrical pulses to muscles was classified in subheading 8543.89.90, HTSUS. (This provision is identical to the current subheading 8543.89.96, HTSUS.) Therefore, in classifying the Fast Abs, we must determine whether it is an article for general physical exercise classified in heading 9506, HTSUS, or in heading 8543, HTSUS as an electrical machine and apparatus having individual functions, not specified or included elsewhere in chapter 85 of the HTSUS.

EN 95.06 provides that this heading covers:

(A) **Articles and equipment for general physical exercise; gymnastics or athletics**, e.g.:

Trapeze bars and rings; horizontal and parallel bars; balance beams, vaulting horses; pommel horses; spring boards; climbing ropes and ladders; wall bars; Indian clubs; dumb-bells and barbells; medicine balls; rowing, cycling and other exercising apparatus; chest expanders; hand grips; starting blocks; hurdles; jumping stands and standards; vaulting poles; landing pit pads; javelins, discuses, throwing hammers and putting shots; punch balls (speed bags) and punch bags (punching bags); boxing or wrestling rings; assault course climbing walls.

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

- (1) Snow-skis and other snow-ski equipment, (e.g., ski-fastenings (ski-bindings), ski brakes, ski poles).
- (2) Water-skis, surfboards, sailboards and other water-sport equipment, such as diving stages (platforms), chutes, divers' flippers and respiratory masks of a kind used without oxygen or compressed air bottles, and simple underwater breathing tubes (generally known as "snorkels") for swimmers or divers.
- (3) Golf clubs and other golf equipment, such as golf balls, golf tees.
- (4) Articles and equipment for table-tennis (ping-pong), such as tables (with or without legs), bats (paddles), balls and nets.
- (5) Tennis, badminton or similar rackets (e.g., squash rackets), whether or not strung.
- (6) Balls, other than golf balls and table-tennis balls, such as tennis balls, footballs, rugby balls and similar balls (including bladders and covers for such balls); water polo, basketball and similar valve type balls; cricket balls.
- (7) Ice skates and roller skates, including skating boots with skates attached.
- (8) Sticks and bats for hockey, cricket, lacrosse, etc.; chistera (jai alai scoops); pucks for ice hockey; curling stones.
- (9) Nets for various games (tennis, badminton, volleyball, football, basketball, etc.).
- (10) Fencing equipment : fencing foils, sabres and rapiers and their parts (e.g. blades, guards, hilts and buttons or stops), etc.
- (11) Archery equipment, such as bows, arrows and targets.
- (12) Equipment of a kind used in children's playgrounds (e.g. swings, slides, see-saws and giant strides).
- (13) Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards.

- (14) Other articles and equipment, such as requisites for deck tennis, quoits or bowls; skate boards; racket presses; mallets for polo or croquet; boomerangs; ice axes; clay pigeons and clay pigeon projectors; bobsleighs (bobsleds), luges and similar non-motorised vehicles for sliding on snow or ice.  
[Emphasis in original.]

In order to be classified in heading 9506, HTSUS, the articles must qualify as equipment for “general physical exercise.” Such equipment includes machines such as rowing, cycling, treadmill, stair steppers, and other exercising apparatus, dumbbells, barbells, climbing ropes, medicine balls, chest expanders and grips. Consequently, we must determine whether applying electrical stimulus to the abdominal muscles constitutes “general physical exercise.” However, neither the legal notes nor the ENs provide a definition by what is meant by the phrase “articles and equipment for general physical exercise.”

A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meanings, which are presumed to be the same. *Nippon Kogasku (USA) Inc. v. United States*, 69 CCPA 89, 673 F. 2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F. 2d 1268 (1982).

*The American Heritage*® *Dictionary of the English Language*: (4th. ed., 2000) defines the term “exercise” in the following manner:

Activity that requires physical or mental exertion, especially when performed to develop or maintain fitness: *took an hour of vigorous daily exercise at a gym.* 4. A task, problem, or other effort performed to develop or maintain fitness.

A second dictionary, *Cambridge Advanced Learner’s Dictionary*, defines “exercise” when used as a noun as “physical activity that you do to make your body strong and healthy: Swimming is my favourite form of exercise. You really should **take** more **exercise**. I **do** stomach exercises most days.” [Emphasis in original.] It further defines “exercise” as a verb as: “to do physical activities to make your body strong and healthy: She exercises most evenings usually by running. A work-out in the gym will exercise all the major muscle groups.”

Based on these definitions, it appears that for something to be considered exercise it must involve some physical activity. EN 95.06 follows this understanding of exercise when it lists examples of the kind of items that are considered exercise equipment classified in heading 9506, HTSUS. An individual exercising with any of the items listed in EN 95.06 would have engage in some physical activity or movement. For example, exercising with Indian clubs; dumb-bells and bar-bells; medicine balls; rowing; cycling; and other exercising apparatus, etc. involves active movement on the part of an individual. Moreover, none of the items listed in EN 95.06 as articles and equipment for general physical exercise, gymnastics or athletics are electrical devices that can be used passively.

In this instance, we believe that no real physical activity is involved in using the Fast Abs. It is a self-operating electronic device. The user of the Fast Abs attaches the belt around his waist area and electrical impulses are transmitted to the abdominal muscles to stimulate them. The process of

stimulating the abdominal muscles is done entirely by the Fast Abs. Other than attaching the belt and turning it on, the user does not engage in any other active physical movement. Significantly, the Fast Abs is designed for people who want the results of exercising without having to engage in an exercise activity.

Accordingly, because the Fast Abs does not involve any active participation on the part of the user, we conclude that it is not classified in heading 9506, HTSUS, as articles and equipment for general physical exercise. The alternative proposed classification for the Fast Abs is heading 8543, HTSUS.

EN 8543 states:

The electrical appliances and apparatus of this heading must have individual functions. The introductory provisions of Explanatory Note to heading 84.79 concerning machines and mechanical appliances having individual functions apply, *mutatis mutandis*, to the appliances and apparatus of this heading.

Most of the appliances of this heading consist of an assembly of electrical goods or parts (valves, transformers, capacitors, chokes, resistors, etc.) operating wholly electrically. However, the heading also includes electrical goods incorporating mechanical features **provided** that such features are subsidiary to the electrical function of the machine or appliance. [Emphasis in original.]

The Fast Abs is a battery-powered electrical apparatus that transmits electronic signals in order to stimulate the abdominal muscles. Thus, it has an individual function (i.e., its function can be performed distinctly from and independently of any other device) of stimulating the abdominal muscles. It is also not described elsewhere in chapter 85 of the HTSUS. Accordingly, we find that the Fast Abs system fits within the language of heading 8543, HTSUS. Specifically, we conclude that the Fast Abs system is classified in subheading 8543.89.96, HTSUS.

**HOLDING:**

The Fast Abs Abdominal Training system is classified in subheading 8543.89.96, HTSUS which provides for: “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter parts thereof: Other machines and apparatus Other: Other: Other: Other.”

**EFFECT ON OTHER RULINGS:**

NY H86520 dated December 26, 2001 is modified.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial Rulings Division*

## [ATTACHMENT B]

**HQ 966716****May 10, 2004****CLA-2 RR:CR:GC 966716 RSD****CATEGORY: Classification****TARRIF NO. 8543.89.96**

MUNFORD PAGE HALL II, Esq.  
DORSEY & WHITNEY  
1001 PENNSYLVANIA AVENUE, NW.  
SUITE 400 SOUTH  
WASHINGTON, D.C. 20004-2533

**RE:** Revocation of NY I82223, Slendertone FLEX Abdominal Training System

DEAR MR. HALL:

This is in response to your letter dated September 9, 2003, on behalf of Complex Technologies, Inc. (Complex), requesting reconsideration of ruling NY I82223, dated June 18, 2002, concerning the tariff classification of the Slendertone FLEX abdominal training system under the Harmonized Tariff Schedule of the United States ("HTSUS"). A sample of the product was submitted for our consideration.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY I 82223 as described below, was published in the *Customs Bulletin* on March 10, 2004. No comments were received in response to the notice.

**FACTS:**

The Slendertone FLEX is a battery-operated muscle stimulation apparatus which is designed to deliver electronic stimulation signals that are supposed to strengthen and tone the abdominal muscles without the wearer having to be physically active. It is composed of five basic parts: (1) the main "flex" electrical unit which generates electronic stimulation signals and houses the batteries; (2) the belt, which is made of 100% nylon binding; (3) three adhesive pads which adhere to the belt and conduct the signals from the electrical unit to the abdominal muscles; (4) a nylon travel pouch; and (5) three AAA batteries. The Slendertone FLEX is generally representative of a class of products designed for use by a healthy person where electrical muscle stimulation is applied through skin contact electrodes for the purposes of improving the tone, strength, and firmness of a focused muscles group. This class of electrically powered muscle stimulator is said to stimulate the muscles and to produce beneficial therapeutic effects by assisting in the contraction and relaxation of the focused muscles and the elimination of body fat.

In NY I82223, Customs and Border Protection (Customs) classified the Slendertone FLEX system in subheading 9506.91.00, HTSUS, which provides for articles and equipment for general physical exercise...other, articles and equipment for general physical exercise, gymnastics, or athletics; parts and accessories thereof, other.

**ISSUE:**

Whether the Slendertone FLEX system is classified in heading 9506, HTSUS, as articles and equipment for general physical exercise or in heading 8543, HTSUS, as electrical machines and apparatus having individual functions, not specified or included elsewhere in Chapter 85.

**LAW AND ANALYSIS:**

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

The 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. Customs believes the EN's should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS provisions under consideration are as follows:

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

Other machines and apparatus:

8543.89

Other:

Other:

Other:

8543.89.96

Other.

\* \* \* \* \*

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:

Other:

9506.91.00

Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof.

In NY I82223 Customs determined that the Slendertone FLEX system was classified in subheading 9506.91.00, HTSUS. In NY H86520 dated December 26, 2001, Customs held that a similar product called a "Fast Abs System" was classified in subheading 9506.91.00, HTSUS. However, in NY D88729 dated March 29, 1999, Customs ruled that an electronic muscle stimulator was classified in subheading 8543.89.96, HTSUS. Customs also ruled in NY A84349 dated July 2, 1996, that the Electro-Muscular Slimmer, a battery operated device, which was supposed to produce beneficial therapeutic effects by supplying electrical pulses to muscles, was classified in subheading 8543.89.90, HTSUS. (This provision is identical to the current subheading



8543.89.96, HTSUS.) Therefore, in classifying the Slendertone FLEX, we must determine whether it is an article for general physical exercise classified in heading 9506, HTSUS, or in heading 8543, HTSUS, as an electrical machine and apparatus having individual functions, not specified or included elsewhere in chapter 85 of the HTSUS.

EN 95.06 provides that this heading covers:

(A) **Articles and equipment for general physical exercise, gymnastics or athletics, e.g.:**

Trapeze bars and rings; horizontal and parallel bars; balance beams, vaulting horses; pommel horses; spring boards; climbing ropes and ladders; wall bars; Indian clubs; dumb-bells and barbells; medicine balls; rowing, cycling and other exercising apparatus; chest expanders; hand grips; starting blocks; hurdles; jumping stands and standards; vaulting poles; landing pit pads; javelins, discuses, throwing hammers and putting shots; punch balls (speed bags) and punch bags (punching bags); boxing or wrestling rings; assault course climbing walls.

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

- (1) Snow-skis and other snow-ski equipment, (e.g., ski-fastenings (ski-bindings), ski brakes, ski poles).
- (2) Water-skis, surfboards, sailboards and other water-sport equipment, such as diving stages (platforms), chutes, divers' flippers and respiratory masks of a kind used without oxygen or compressed air bottles, and simple underwater breathing tubes (generally known as "snorkels") for swimmers or divers.
- (3) Golf clubs and other golf equipment, such as golf balls, golf tees.
- (4) Articles and equipment for table-tennis (ping-pong), such as tables (with or without legs), bats (paddles), balls and nets.
- (5) Tennis, badminton or similar rackets (e.g., squash rackets), whether or not strung.
- (6) Balls, other than golf balls and table-tennis balls, such as tennis balls, footballs, rugby balls and similar balls (including bladders and covers for such balls); water polo, basketball and similar valve type balls; cricket balls.
- (7) Ice skates and roller skates, including skating boots with skates attached.
- (8) Sticks and bats for hockey, cricket, lacrosse, etc.; chistera (jai alai scoops); pucks for ice hockey; curling stones.
- (9) Nets for various games (tennis, badminton, volleyball, football, basketball, etc.).
- (10) Fencing equipment: fencing foils, sabres and rapiers and their parts (e.g. blades, guards, hilts and buttons or stops), etc.
- (11) Archery equipment, such as bows, arrows and targets.
- (12) Equipment of a kind used in children's playgrounds (e.g. swings, slides, see-saws and giant strides).

- (13) Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards.
- (14) Other articles and equipment, such as requisites for deck tennis, quoits or bowls; skate boards; racket presses; mallets for polo or croquet; boomerangs; ice axes; clay pigeons and clay pigeon projectors; bobsleighs (bobsleds), luges and similar non-motorised vehicles for sliding on snow or ice.  
[Emphasis in original.]

In order to be classified in heading 9506, HTSUS, the articles must qualify as equipment for “general physical exercise.” Such equipment includes machines such as rowing, cycling, treadmill, stair steppers, and other exercising apparatus, dumbbells, barbells, climbing ropes, medicine balls, chest expanders and grips. Consequently, we must determine whether applying electrical stimulus to the abdominal muscles constitutes “general physical exercise.” However, neither the legal notes nor the EN’s provide a definition by what is meant by the phrase “articles and equipment for general physical exercise.”

A tariff term that is not defined in the HTSUS or in the EN’s is construed in accordance with its common and commercial meanings, which are presumed to be the same. *Nippon Kogasku (USA) Inc. v. United States*, 69 CCPA 89, 673 F. 2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F. 2d 1268 (1982).

*The American Heritage* <sup>®</sup> *Dictionary of the English Language*: (4th ed., 2000) defines the term “exercise” in the following manner:

Activity that requires physical or mental exertion, especially when performed to develop or maintain fitness: *took an hour of vigorous daily exercise at a gym.* 4. A task, problem, or other effort performed to develop or maintain fitness.

The *Cambridge Advanced Learner’s Dictionary*, defines “exercise” when used as a noun as “physical activity that you do to make your body strong and healthy: Swimming is my favourite form of exercise. You really should **take** more **exercise**. I **do** stomach exercises most days” [emphasis in original.] It further defines exercise as a *verb* as: “to do physical activities to make your body strong and healthy: She exercises most evenings usually by running. A work-out in the gym will exercise all the major muscle groups.”

Based on these definitions, it appears that for something to be considered exercise it must involve some physical activity. EN 95.06 follows this understanding of exercise when it lists examples of the kind of items that are considered exercise equipment classified in heading 9506, HTSUS. An individual exercising with any of the items listed in EN 95.06 would have to be engaged in some physical activity or movement. For example, exercising with Indian clubs; dumb-bells and bar-bells; medicine balls; rowing; cycling; and other exercising apparatus, etc. involves active movement on the part of an individual. Moreover, none of the items listed in EN 95.06 as articles and equipment for general physical exercise, gymnastics or athletics are electrical devices that can be used passively.

In this instance, we believe that no real physical activity is involved in using the Slendertone FLEX. It is a self-operating electronic device. The

user of the Slendertone FLEX attaches the belt around his waist area and electrical impulses are transmitted to the abdominal muscles to stimulate them. The process of stimulating the abdominal muscles is done entirely by the Slendertone FLEX. Other than attaching the belt and turning it on, the user does not have to engage in any other active physical movement. Significantly, the Slendertone FLEX is marketed to people who want the results of exercising without having to engage in an exercise activity. For example, it is claimed that an individual can use the Slendertone FLEX while sitting on a couch and watching television, while the electrical stimulation signals are transmitted to the abdominal muscles.

Accordingly, because the Slendertone FLEX does not involve any active participation on the part of the user, we conclude that it is not classified in heading 9506, HTSUS, as articles and equipment for general physical exercise. The alternative proposed classification for the Slendertone FLEX is in heading 8543, HTSUS.

EN 8543 states:

The electrical appliances and apparatus of this heading must have individual functions. The introductory provisions of Explanatory Note to heading 84.79 concerning machines and mechanical appliances having individual functions apply, *mutatis mutandis*, to the appliances and apparatus of this heading.

Most of the appliances of this heading consist of an assembly of electrical goods or parts (valves, transformers, capacitors, chokes, resistors, etc.) operating wholly electrically. However, the heading also includes electrical goods incorporating mechanical features **provided** that such features are subsidiary to the electrical function of the machine or appliances. [Emphasis in original.]

The Slendertone FLEX is a battery-powered electrical apparatus that transmits electronic signals in order to stimulate the abdominal muscles. Thus, it has an individual function (i.e., its function can be performed distinctly from and independently of any other device) of stimulating the abdominal muscles. It is also not described elsewhere in chapter 85 of the HTSUS. Accordingly, we find that the Slendertone FLEX fits the language of heading 8543, HTSUS. Specifically, we conclude that the Slendertone Flex is classified in subheading 8543.89.96, HTSUS.

#### **HOLDING:**

The Slendertone FLEX Abdominal Training System is classified in subheading 8543.89.9695, HTSUSA, which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter parts thereof: Other machines and apparatus; Other: Other: Other: Other.” The general rate of duty in 2004 is 2.6% ad valorem. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov)

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

NY I82223 dated June 18, 2002 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

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

## [ATTACHMENT C]

**NY J89141**

October 15, 2003

CLA-2-85:RR:NC:1:112 J89141

CATEGORY: Classification

TARIFF NO.: 8543.89.9695

MS. PATRIZIA WHORTON  
UNION TRANSPORT  
22660 EXECUTIVE DRIVE #113  
STERLING, VA 20166

RE: The tariff classification of a muscle stimulator from Hong Kong

DEAR MS. WHORTON:

In your letter dated September 12, 2003, on behalf of Care Rehab & Orthopaedic Products, Inc., you requested a tariff classification ruling.

As indicated by the submitted sample and information, the stimulator, identified as the Classic NMS, consists of a battery operated stimulator unit, electrical cables, electrodes, a carrying bag for the unit itself, and a plastic case that houses all of the components. In operation, the stimulator unit generates small pulses of stimulating electrical current that are transmitted to the user's skin through the electrodes.

The applicable subheading for the Classic NMS muscle stimulator unit will be 8543.89.9695, Harmonized Tariff Schedule of the United States (HTS), which provides for electrical machines and apparatus, ..., not specified or included elsewhere in Chapter 85, HTS. The rate of duty will be 2.6 percent ad valorem.

You express the opinion that subheading 9019.10.2090, HTS, may be applicable to this product. This subheading is not applicable to the Classic NMS muscle stimulator since it is not considered to be a mechano-therapy or message appliance for tariff classification purposes.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist David Curran at 646-733-3017.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT D]

NY D88729

March 24, 1999

CLA-2-85:RR:NC:1:112 D88729

CATEGORY: Classification

TARIFF NO.: 8543.89.9695

NEW YORK INTERNATIONAL COMPANY  
MR. RAFAEL SUAZO  
1821 UNIVERSITY AVENUE  
BRONX, NY 10457

RE: The tariff classification of an electronic muscle stimulator. The country of origin is not stated.

DEAR MR. SUAZO:

In your letter dated February 22, 1999 you requested a tariff classification ruling.

As indicated by the submitted sample, the muscle stimulator, identified as the "Esbeltronic", is a battery operated device which consists of a carrying case with built in electronic controls and electrodes for attachment to the body. It is stated that this device will exercise various body muscles through electric stimulation.

The applicable subheading for the "Esbeltronic" muscle stimulator will be 8543.89.9695, Harmonized Tariff Schedule of the United States (HTS), which provides for other electric machines or apparatus, ..., not specified or included elsewhere in Chapter 85, HTS. The general rate of duty will be 2.6 percent ad valorem.

We note that the submitted sample does not contain any country of origin marking. Please note that, in accordance with Part 134, Customs Regulations, all articles imported into the United States must be marked with the country of origin in a legible manner and in a conspicuous place.

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

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

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT E]

NY A84349

July 2, 1996

CLA-2-85:RR:NC:MA: 112 A84349

CATEGORY: Classification

TARIFF NO.: 8543.89.9090

MR. JERRY BARILE  
ALL NATIONS FORWARDING, INC.  
ONE CROSS ISLAND PLAZA  
JAMAICA, NY 11422

RE: The tariff classification of an "Electro-Muscular Slimmer" from China

DEAR MR. BARILE:

In your letter dated June 4, 1996, on behalf of Seagry International, Ltd., you requested a tariff classification ruling.

As indicated by the submitted sample and descriptive literature, the "Electro-Muscular Slimmer" is a battery operated device which, it is claimed, produces beneficial therapeutic effects by supplying electrical pulses to muscles to assist in their contraction and relaxation. In addition, the product claims to assist in the elimination of body fat and to improve muscle tone and structure. The unit consists of a control unit with four electrical wires designed to connect to electrodes. These electrodes are affixed to the legs, abdomen, etc.

The applicable subheading for the "Electro-Muscular Slimmer" will be 8543.89.9090, Harmonized Tariff Schedule of the United States (HTS), which provides for other electrical machines and apparatus, ..., not specified or included elsewhere in Chapter 85, HTS. The rate of duty will be 3.4 percent ad valorem.

Additional requirements may be imposed on this product by the Food and Drug Administration. You may contact the FDA at:

Food and Drug Administration  
Guidelines and Regulations Branch  
HFF 314, 200 C Street S.W.  
Washington, D.C. 20204

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist David Curran at 212-466-5680.

*Sincerely,*

ROGER J. SILVESTRI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT F]

HQ H112635

**CLA-2 OT:RR:CTF:TCM H112635 LWF****CATEGORY:** Classification**TARIFF NO.:** 8543.70.85

MS. DEBORAH PILLING  
 SLENDERTONE DISTRIBUTION, INC.  
 50 HARRISON STREET, SUITE 114  
 HOBOKEN, NJ 07030

**RE:** Revocation of Headquarters Ruling Letter (“HQ”) 966716, HQ 966973, New York Ruling Letter (“NY”) J89141, NY D88729; and NY A84349; Classification of Electrical Muscle Stimulation Machines

DEAR MS. PILLING:

This is in reference to the request for reconsideration of Headquarters Ruling Letter (“HQ”) 966716, dated May 20, 2004, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of an electrical muscle stimulation machine identified as the “Slendertone Flex.” In that ruling, Customs and Border Protection (CBP) classified the Slendertone Flex under subheading 8543.89.96, HTSUS (2004), which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other.” We have reviewed HQ 966716 and find it to be incorrect. Accordingly, for the reasons set forth below, we intend to revoke HQ 966716 and four other rulings containing substantially similar merchandise.<sup>1</sup>

**FACTS:**

In HQ 966716, CBP described the Slendertone Flex as follows:

The Slendertone Flex is a battery-operated muscle stimulation apparatus which is designed to deliver electronic stimulation signals that are supposed to strengthen and tone the abdominal muscles without the wearer having to be physically active. It is composed of five basic parts: (1) the main “flex” electrical unit which generates electronic stimulation signals and houses the batteries; (2) the belt, which is made of 100% nylon binding; (3) three adhesive pads which adhere to the belt and conduct the signals from the electrical unit to the abdominal muscles; (4) a nylon travel pouch; and (5) three AAA batteries. The Slendertone Flex is generally representative of a class of products designed for use by a healthy person where electrical muscle stimulation is applied through skin contact electrodes for the purposes of improving tone, strength, and firmness of a focused muscles group. This class of electrically powered muscle stimulators is said to stimulate the muscles and to produce ben-

<sup>1</sup> CBP intends to also revoke HQ 966973, dated May 10, 2004, NY J89141, dated October 15, 2003, NY D88729, dated March 24, 1999, and NY A84349, dated July 2, 1996, classifying the “Fast Abs Abdominal Training System,” the “Classic NMS” electrical muscle stimulation machine, the “Esbeletronic” electrical muscle stimulation machine, and the “Electro-Muscular Slimmer,” respectively in subheading 8543.89.96, HTSUS, which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other.”



eficial therapeutic effects by assisting in the contraction and relaxation of the focused muscles and the elimination of body fat.

Additionally, U.S. Patent No. 6,760,629 (filed Jul. 10, 2001) describes the method by which the Slendertone Flex stimulates abdominal muscles via the application of pulsed electrical signals to nerve trunks located among the lower thoracic and the first and second lumbar nerves.

#### ISSUE:

Whether the Slendertone Flex is properly classified under subheading 8543.70.85, HTSUS, as an electrical apparatus for electrical nerve stimulation, or in subheading 8543.70.96, as an electrical apparatus for other than electrical nerve stimulation?

#### LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 6 requires that the classification of goods in the subheading of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

GRI 3 provides, in relevant part:

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

...

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

\* \* \* \* \*

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTS and are thus useful in

ascertaining the proper classification of merchandise. It is CBP's practice to follow, whenever possible the terms of the ENs when interpreting the HTSUS. See T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The 2012 HTSUS subheadings under consideration are as follows:

8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
8543.70	Other machines and apparatus:
	Other:
	Other:
8543.70.85	For electrical nerve stimulation...
8543.70.96	Other...
	*        *        *        *        *

Inasmuch as the Slendertone Flex is an electrical apparatus fully described by heading 8543, HTSUS, this dispute concerns the proper tariff classification of the merchandise in the subheadings of the same heading. Consequently, GRI 6 applies.<sup>2</sup>

As an initial matter, we note that the Slendertone Flex is put up for retail sale as a set consisting of an electrical unit, nylon belt, adhesive pads, nylon travel pouch, and batteries. GRI 3(b) states that “[g]oods put up in sets for retail sale shall be classified as if they consisted of the material or component which gives them their essential character.” See EN (X) to GRI 3(b).<sup>3</sup>

The “essential character” of an article is “that which is indispensable to the structure, core or condition of the article, *i.e.*, what it is.” *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int'l Trade 2005). EN VIII to GRI 3(b) explains that “[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.” Recent court decisions on the essential character for GRI 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the goods. See *Estee Lauder, Inc. v. United States*, No. 07-00217, 2012 Ct. Int'l Trade LEXIS 23, \*17-18; *Structural Industries*, 360

<sup>2</sup> 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.

<sup>3</sup> EN (X) to GRI 3(b) provides, in relevant part:

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

- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings . . . ;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

F. Supp. 2d 1330; *Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278 (Ct. Int'l Trade 2006), aff'd 491 F.3d 1334 (Fed. Cir. 2007).

The electrical unit, nylon belt, adhesive pads, nylon travel pouch, and batteries are classifiable in different headings, are “put up together” to enable a user to stimulate the abdominal muscles, and are offered for sale directly to consumers without repacking. The user of the Slendertone Flex attaches the belt around his waist area and electrical impulses are transmitted through the skin to nerve trunks located among the lower thoracic and the first and second lumbar nerves to stimulate the abdominal muscles to contract. At all times during operation of the Slendertone Flex, the battery-powered electrical unit supplies electricity to the adhesive pads and is indispensable to the function of stimulating the abdominal muscles. Consequently, we have determined that the electrical unit imparts the Slendertone Flex with its essential character.

The electrical unit is a battery-powered electrical apparatus that generates a low-voltage electric current which passes through the skin, via electrodes, to the nerves of the abdominal muscles, causing them to contract. *See* U.S. Patent No. 6,760,629 (filed Jul. 10, 2001). The merchandise has an individual function (*i.e.*, its function can be performed distinctly from and independently of any other device) of stimulating the abdominal muscles and it is not described elsewhere in chapter 85 of the HTSUS. *See* EN 85.43. Accordingly, we affirm that the electrical unit meets the terms of heading 8543, HTSUS.

Specifically, because the electrical unit functions by electrically stimulating the motor nerves of the abdominal muscles, the electrical unit is most accurately provided for *eo nomine* by the terms of subheading 8543.70.85, HTSUS, which state “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other: Other: Other: Other: For electrical nerve stimulation.” *See* NY N173357, dated July 18, 2011; NY N044456, dated December 5, 2008; NY N016482, dated September 13, 2007; NY M87761, dated November 20, 2006.

#### **HOLDING:**

By application of GRI 3(b) and GRI 6, the Slendertone Flex is classified under heading 8543, HTSUS, specifically in subheading 8543.70.85, HTSUS, which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other: Other: Other: Other: For electrical nerve stimulation.” The column one, general rate of duty is Free.

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

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

In accordance with the above analysis, HQ 966716, dated May 10, 2004; HQ 966973, dated May 10, 2004; NY J89141, dated October 15, 2003; NY D88729, dated March 24, 1999; and NY A84349, dated July 2, 1996, are hereby REVOKED.

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

**PROPOSED MODIFICATION OF ONE RULING LETTER  
AND PROPOSED REVOCATION OF TREATMENT  
RELATING TO THE TARIFF CLASSIFICATION OF  
CERTAIN MOLDED PLASTIC WATCH BOXES**

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

**ACTION:** Notice of proposed modification of one ruling letter and proposed revocation of treatment relating to tariff classification of certain watch boxes.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to modify one ruling letter relating to the tariff classification of certain watch boxes 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 August 2, 2013.

**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, 90 K Street NE (10<sup>th</sup> Floor), Washington, D.C. 20229–1177. Submitted comments may be inspected at Customs and Border Protection, 90 K Street NE (10<sup>th</sup> Floor), Washington, D.C. 20002 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:** Greg Connor, Tariff Classification and Marking Branch: (202) 325–0025.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP proposes to modify one ruling letter pertaining to the tariff classification of two molded plastic watch boxes. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N058483, dated May 22, 2009, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., 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 N058483, set forth as Attachment A to this document, CBP determined that two of four watch boxes, identified as styles “PKAXWATCH” and “PKMARC2006”, were classified under heading 4202, HTSUS, and specifically under subheading 4202.99.90, HTSUS, which provides for, in pertinent part: “...jewelry boxes... and similar containers, of leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly cov-

ered with such materials or with paper: Other: Other: Other....” It is now CBP’s position that the aforementioned watch boxes are properly classified under heading 3923, HTSUS, and specifically provided for under subheading 3923.10.00, HTSUS, which provides for, in pertinent part: “Articles for the conveyance or packing of goods, of plastics...: Boxes, cases, crates and similar articles....”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N058483 and revoke or modify any other ruling not specifically identified, in order to reflect the proper tariff classification of the subject watch boxes according to the classification analysis contained in proposed Headquarters Ruling Letter H078796, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 20, 2013

IEVA K. O’ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N058483

May 22, 2009

CLA-2-42:RR:NC:N4:441

CATEGORY: Classification

TARIFF NO.: 4202.99.9000

CYNTHIA ULRICH  
FOSSIL RETRODOME  
10615 SANDEN DRIVE  
DALLAS, TX 75238

RE: The tariff classification of watch boxes from China

DEAR Ms. ULRICH:

In your letter dated April 17, 2009, you requested a tariff classification ruling. The samples will be returned as requested.

The style you refer to as PKAXWATCH is a watch box constructed of clear molded plastic. It has a hinged lid and is specially shaped and fitted to contain one watch. It is designed to provide storage, protection, and organization to a watch. It is suitable for long-term use. It is of the kind normally given to the purchaser of a watch at the point of purchase. The box has a center compartment with a removable metal cuff insert. It measures approximately 3" (W) x 4" (L) x 3" (D).

The style you refer to as PKMARC2006 is a circular watch box constructed of molded plastic. It is fitted to contain one watch. It is designed to provide storage, protection, and organization to a watch. It is of the kind normally given to the purchaser of a watch at the point of purchase and suitable for long-term use. The watch box is packed within a paperboard retail box. It measures approximately 4.75" in diameter and 2.5" (H).

The style you refer to as PKDSLCOMBO09 is a watch box that holds two individual watches. It is constructed of a paperboard base and entirely covered on the outer surface with paper. The lid of the box has a clear plastic window. The interior of the box is fitted with two separate polyurethane (PU) inserts. The box is designed to provide storage, protection, and organization to watches. It is of the kind normally given to the purchaser of a watch at the point of purchase and suitable for long-term use.

In your ruling request you suggested classification of PKDSLCOMBO09 under 4202.99.5000, HTSUS, which provides for other containers and cases, with outer surface of paper. However, articles constructed with a paperboard base are excluded from classification under that tariff number.

The applicable subheading for watch boxes will be 4202.99.9000, HTSUS, which provides for in part, for other containers and cases, other, other. The rate of duty will be 20% 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 Vikki Lazaro at (646) 733-3041.



*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H078796

**CLA-2 OT:RR:CTF:TCM H078796 GC**  
**CATEGORY:** Classification and Marking  
**TARIFF NO.:** 3923.10.00

CYNTHIA ULRICH  
CUSTOMS COMPLIANCE – ASST. MANAGER  
FOSSIL RETRODOME  
10615 SANDEN DRIVE  
DALLAS, TEXAS 75238

**RE:** Reconsideration of NY N058483, dated May 22, 2009; Tariff classification of watch boxes of molded plastic

DEAR Ms. ULRICH:

This letter is in reply to your August 14, 2009 correspondence in which you request reconsideration of New York Ruling Letter (NY) N058483, dated May 22, 2009. We apologize for the delay in responding.

**FACTS:**

NY N058483 addresses the classification of four different styles of watch boxes imported by Fossil. Your reconsideration request covers those identified as “PKAXWATCH” and “PKMARC2006”, which are described in the rulings as follows:

...PKAXWATCH is a watch box constructed of clear molded plastic. It has a hinged lid and is specially shaped and fitted to contain one watch. It is designed to provide storage, protection, and organization to a watch. It is suitable for long-term use. It is of the kind normally given to the purchaser of a watch at the time of purchase. The box has a center compartment with a removable metal cuff insert. It measures approximately 3” (W) x 4” (L) x 3” (D).

...PKMARC2006 is a circular watch box constructed of molded plastic. It is fitted to contain one watch. It is designed to provide storage, protection, and organization to a watch. It is of the kind normally given to the purchaser of a watch at the time of purchase and suitable for long-term use. The watch box is packed within a paperboard retail box. It measures approximately 4.75” in diameter and 2.5” (H).

In NY N058483, CBP classified the two aforementioned watch boxes under subheading 4202.99.90, HTSUS, which provides for, in pertinent part: “...jewelry boxes... and similar containers, of 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: Other: Other...”

**ISSUE:**

Whether the subject watch boxes are classified as articles for the conveyance or packing of goods, of plastics, under heading 3923, HTSUS, or as jewelry boxes or similar containers of leather, sheeting of plastics, textile materials, vulcanized fiber or paperboard, under heading 4202, HTSUS?

**LAW AND ANALYSIS:**

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

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

3923	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics:
*	*           *
4202	Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, camera cases, gun cases, holsters and similar containers; traveling 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, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper:

With respect to the instant matter, we note that the second provision of heading 4202, HTSUS, provides for jewelry boxes and similar containers that must be “of” or ‘wholly or mainly covered with’ a specified material”. In this instance, that material must be either leather, sheeting of plastics, textile materials, vulcanized fiber, paperboard, or paper. See Headquarters Ruling Letter (HQ) 963618, dated August 2, 2002 (citing HQ 087760, dated October 31, 1991).

The watch boxes at issue herein are made of molded plastic. The molded plastic of which the subject boxes are constructed is not to be confused with a covering of plastic sheeting, which would not possess the structural properties necessary to construct an entire watch box. Accordingly, the subject watch boxes are not provided for under the second provision of heading 4202, HTSUS. In light of the fact that they are the type of boxes in which watches are shipped and sold, they are provided for under heading 3923, HTSUS, as plastic articles for the conveyance or packing of goods. This conclusion is consistent with numerous rulings issued by CBP on similar merchandise. See, e.g., NY N068441, dated August 10, 2009, NY N030622, dated June 18, 2008, NY I81195, dated May 22, 2002, and NY 802585, dated October 26, 1994.

**HOLDING:**

By application of GRI 1 the “PKAXWATCH” and “PKMARC2006” watch box styles addressed in NY N058483, dated May 22, 2009, are classified under heading 3923, HTSUS. By application of GRIs 1 and 6, they are specifically provided for under subheading 3923.10.00, HTSUS, which provides for, in pertinent part: “Articles for the conveyance or packing of goods, of plastics...: Boxes, cases, crates and similar articles...” The general column one rate of duty, for merchandise classified under this subheading is 3 percent *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

NY N058483 is hereby MODIFIED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**MODIFICATION OF RULING LETTER AND  
MODIFICATION OF TREATMENT RELATING TO THE  
COUNTRY OF ORIGIN MARKING UNDER NAFTA OF  
APOMORPHINE HYDROCHLORIDE AMPOULES**

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

**ACTION:** Notice of modification of a ruling letter and modification of treatment relating to the country of origin marking of apomorphine hydrochloride ampoules under NAFTA.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying a ruling letter relating to the country of origin marking of apomorphine hydrochloride ampoules under the NAFTA Marking Rules. CBP is also modifying any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 47, on April 24, 2013. No comments were received in response to this notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 3, 2013.

**FOR FURTHER INFORMATION CONTACT:** Karen Greene, Valuation and Special Programs Branch: (202) 325–0041.

**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)), a notice was published in the *Customs Bulletin*, Vol. 47, No. 18, on April 24, 2013, proposing to modify New York Ruling Letter (NY) NY 188116, dated November 15, 2002, in which CBP determined that the country of origin for marking purposes for certain apomorphine ampoules was France.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP is modifying any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY 188116 to reflect that Canada is the proper country of origin of this merchandise under the NAFTA Marking Rules. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to modify 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: May 21, 2013

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

Attachment

HQ H200037

May 21, 2013

OT:RR:CTF:VS H200037 KSG

BRIAN KAVANAUGH  
DERINGER LOGISTICS CONSULTING GROUP  
1 LINCOLN BOULEVARD  
SUITE 225  
ROUSES POINT NY 12979

RE: Modification of NY 188116; Apomorphine hydrochloride ampoules:  
NAFTA Marking;102.19(a)

DEAR MR. KAVANAUGH:

In New York Ruling Letter (“NY”) NY 188116, dated November 15, 2002, CBP ruled that imported apomorphine hydrochloride in ampoules qualified as goods originating in the territory of a NAFTA party and that the country of origin for marking purposes was France. Upon review of NY 188166, we have determined that the portion of the ruling relating to the country of origin marking is incorrect and that the country of origin for marking purposes under the NAFTA Marking Rules is Canada.

Notice of the proposed action was published in the *Customs Bulletin*, Vol. 47, No. 18, on April 24, 2013. No comments were received.

#### **FACTS:**

Apomorphine hydrochloride is produced in France and exported to Canada. Sodium hydroxide is produced in Sweden and exported to Canada. Hydrochloric acid is produced in the U.S. and exported to Canada. In Canada, the three ingredients are mixed and put up in ampoules, packaged, labeled, and shipped to the United States. Apomorphine hydrochloride, which you state is classified in subheading 2933.99 of the Harmonized Tariff Schedule of the United States (“HTSUS”), is the active ingredient in the finished product.

In NY 188166, CBP determined that the imported ampoules were classified in subheading 3004.90, HTSUS. Further, in NY 188116, CBP held that the apomorphine hydrochloride ampoules were NAFTA originating under General Note (“GN”)12, HTSUS, and that the country of origin for marking purposes is France.

#### **ISSUE:**

What is the country of origin of the imported apomorphine hydrochloride ampoules under the NAFTA Marking Rules?

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

General Note (“GN”) 12, HTSUS, incorporates Article 401 of NAFTA into the HTSUS. General Note 12(a)(i) provides, in pertinent part:

- (i) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Canada under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), when such goods are imported into the customs territory of the United States and are entered under a subheading for

which a rate of duty appears in the “Special” subcolumn followed by the symbol “CA” in parentheses, are eligible for such duty rate, in accordance with section 201 of the NAFTA Implementation Act.

Accordingly, the imported product will be eligible for the “Special” “CA” rate of duty provided it is a NAFTA “originating” good under GN 12(b), HTSUS, and qualifies to be marked as a product of Canada under the NAFTA Marking Rules. GN 12(b), HTSUS, provides, in pertinent part:

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

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

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials **used in the production of such goods** undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials. (emphasis added)

The apomorphine hydrochloride ampoules were not produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials. Therefore, we must consider whether they satisfy the tariff-shift rule set forth in GN 12(t), HTSUS.

The GN 12 rule for subheading 3004.90, HTSUS, is as follows:

A change to subheading 3004.90 from any other subheading, except from, subheading 3006.92

In this case, the tariff shift rule is satisfied and the ampoules are considered originating goods under GN 12.

We must next consider whether the goods qualify to be marked as goods of Canada under the NAFTA Marking Rules.

Under 19 CFR 102.11(a), the country of origin of a good is the country in which:

- (1) The good is wholly obtained or produced;
- (2) The good is produced exclusively from domestic materials; or
- (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in 102.20 and satisfies any other applicable requirements of that section and all other applicable requirements of these rules are satisfied.

This product is neither wholly obtained or produced in a single NAFTA country or produced exclusively from domestic materials. The tariff shift rule for goods of subheading 3004.90 set forth in 19 CFR 102.20 is as follows:



A change to subheading 3004.90 from any other subheading, except from subheading 3003.90 or 3006.92, and provided that the domestic content of the therapeutic or prophylactic content is no less than 40 percent by weight of the total therapeutic or prophylactic content.

In this case, the 40 percent domestic content requirement is not met. Therefore, the tariff shift rule set forth in 19 CFR 102.20 is not met. Applying 102.11(b)(1), the apomorphine hydrochloride from France is the active ingredient and it imparts the essential character to the finished product.

However, 19 CFR 102.19(a) provides as follows:

...if a good which is originating within the meaning of 181.1(q) of this chapter is not determined under 102.11(a) or (b) or 102.21 to be a good of single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin (see 181.11 of this Chapter) has been completed and signed for the good.

The language of 19 CFR 102.19(a) must be examined because the good has been determined to satisfy the General Note 12 tariff shift rule. The manufacturing that occurs in Canada in this case is more than minor processing as defined in 19 CFR 102.1(m). Since the apomorphine hydrochloride ampoules underwent production other than minor processing in Canada, pursuant to 19 CFR 102.19(a), the country of origin for marking purposes under the NAFTA Marking Rules is Canada.

**HOLDING:**

The country of origin for marking purposes of the imported apomorphine hydrochloride ampoules, processed as described above, is Canada.

**EFFECT ON OTHER RULNGS:**

NY 188116 is hereby MODIFIED.

Pursuant to 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 & Trade Facilitation Division*

## **REVOCATION OF TREATMENT RELATING TO THE PROCESS OF PITTING AND HYDRATING PRUNES FOR DRAWBACK PURPOSES**

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

**ACTION:** Notice of revocation of treatment relating to the manufacture or production process of hydrating and pitting prunes for drawback purposes.

**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 any treatment previously accorded by CBP to substantially identical transactions relating to the manufacture or production process of hydrating and pitting prunes for drawback purposes. Notice of the proposed action was published in the *Customs Bulletin* on April 10, 2013. No comments were received in response to the notice.

**EFFECTIVE DATE:** This action is effective September 3, 2013.

**FOR FURTHER INFORMATION CONTACT:** Gail Kan, Entry Process and Duty Refunds Branch: (202) 325–0346.

### **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)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625 (c)(2)), a notice was published in the *Customs Bulletin* on April 10, 2013, proposing to revoke the treatment previously accorded by it to substantially identical transactions relating to the manufacture or production process of hydrating and pitting prunes for purposes of 19 U.S.C. § 1313(b) drawback. No comments were received in response to the notice.

Accordingly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any such treatment previously accorded by it to substantially identical transactions in order to reflect the proper determination that the process of hydrating and pitting prunes is not a manufacture or production for purposes of 19 U.S.C. § 1313(b) drawback. *See attached.*

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

Dated: May 28, 2013

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

Attachment

HQ H128998

May 28, 2013

DRA-4

OT:RR:CTF:ER H128998 G GK

CATEGORY: Drawback

MS. KAREN CHEUNG  
DRAWBACK CHIEF  
PORT OF SAN FRANCISCO  
U.S. CUSTOMS AND BORDER PROTECTION  
555 BATTERY STREET  
SAN FRANCISCO, CA 94111-2316

RE: Internal Advice; Unused Merchandise Substitute Drawback

DEAR MS. CHEUNG:

This is in response to your request for internal advice dated, October 6, 2010, submitted pursuant to 19 C.F.R. § 177.11. The request seeks guidance on whether pitting and hydrating prunes is considered a manufacture for purposes of unused merchandise drawback. Upon review, we have determined that the process of hydrating and pitting prunes is not a manufacture or production for purposes of 19 U.S.C. § 1313(b) drawback. Therefore, for the reasons set forth below, we are revoking the treatment previously accorded by Customs and Border Protection (“CBP”) to substantially identical transactions.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published in the *Customs Bulletin* on April 10, 2013. No comments were received in response to the notice.

**FACTS:**

Sunsweet Growers, Inc. (“Sunsweet Growers”) imports prunes. When ripe, the prunes are picked, washed, and dried to a moisture level of approximately 18 percent. They are then graded into various sizes in preparation for processing and packaging.

On January 21, 2012 we corresponded with Sunsweet Growers to inquire more into its prune operations. It provided our office with the following information regarding its process. Upon importation into the United States, Sunsweet Growers places the prunes in a steamer or cooker for thirty minutes to be hydrated and to reach a moisture level of approximately 25 percent. The prunes are then pitted and placed under a laser scanner to detect pit or pit fragments that may remain. The nutritional content of the imported prunes is the same as when the prunes are hydrated and pitted.

Sunsweet Growers argues that hydrating and pitting its prunes should qualify as unused merchandise pursuant to 19 U.S.C. § 1313(j)(2) drawback. You inquired whether this operation is a manufacture for purposes of drawback.

**ISSUE:**

Whether hydrating prunes from 18 to 25 percent moisture and pitting them is a manufacture or production per 19 C.F.R. § 191.2.

**LAW AND ANALYSIS:**

Sunsweet Growers argues that hydrating and pitting its prunes should qualify as unused merchandise pursuant to 19 U.S.C. § 1313(j)(2) drawback. To qualify as unused merchandise there cannot be a manufacture or production. We determined that Sunsweet Growers' hydrating and pitting process is not a "manufacture," because the prunes are not fitted for a particular use, nor is there a change in name, character or use.

To qualify for unused merchandise drawback per 19 U.S.C. § 1313(j)(2), the exported merchandise cannot be "used" in the United States. The unused merchandise drawback statute specifies that any operations not amounting to manufacture or production shall not be treated as a use for purposes of determining a drawback refund. *See* 19 U.S.C. § 1313(j)(3). The enumerated operations in the statute are: "testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking." *Id.* However, Sunsweet Growers is not performing any of the enumerated operations in the statute.

CBP regulation, 19 C.F.R. § 191.2(q) further defines "manufacture or production" within the drawback context as follows:

(q) Manufacture or production. Manufacture or production means: (1) A process, including, but not limited to, an assembly, by which merchandise is made into a new and different article having a distinctive "name, character or use"; or (2) A process, including, but not limited to, an assembly, by which merchandise is made fit for a particular use even though it does not meet the requirements of paragraph (q)(1) of this section.

The definition in Section 191.2(q) reflects the holding in Customs Service Decision ("C.S.D.") 82-67, dated December 22, 1981. In that decision, legacy Customs considered whether certain operations performed on imported cotton towels constituted a manufacture or production for purposes of manufacturing drawback. Those operations included the weighing, inspecting, trimming, folding, spraying, and wrapping the towels in polyethylene film for use by airline passengers. In the analysis, the decision discusses the judicial test established by the Supreme Court in *Anheuser-Busch v. U.S.*, 207 U.S. 556, 562 (1907). In that case, the Court held:

Manufacture implies change, but every change is not manufacture, and yet every change in an article is the result of treatment, labor and manipulation. But something more is necessary . . . There must be a transformation; a new and different article must emerge, having a different name, character, or use.

In addition, C.S.D. 82-67 adopts the "fit for a particular use" standard established by the former Court of Customs and Patent Appeals in *United States v. International Paint Co., Inc.*, 35 CCPA 87 (1948). C.S.D. 82-67 states that the decision in *International Paint*:

appears to support Customs more recent interpretation of “manufacture” as a process brought about by significant investment of capital and labor to produce articles or commodities which, despite the fact they are in some cases much the same as their conditions prior to processing, have been made suitable for a particular intended use. In determining what constitutes a manufacture, we have held in our administrative rulings that if an operation involves special treatment of merchandise to obtain certain properties required for a specific use by the entity performing the operation or his customers and the operation involves significant capital and labor expenditure, then that operation is a manufacture or production.

(emphasis added). Thus, in order to determine whether an article is one that is manufactured, it is necessary to compare the imported merchandise with the finished article. If the finished article has been rendered fit for a particular use, or is a new and different article having a distinctive name, character or use, vis-a-vis the imported merchandise, a manufacture or production has taken place.

In *Washington International Insurance Co. v. United States*, stainless steel scrap was imported. 395 F.3d 1258 (Fed. Cir. 2005). After importation the stainless steel scrap was tested, sorted, reduced in size, cleaned and pressed into bales or briquettes for exportation. The court concluded that between the importation of the stainless steel scrap and the exportation of the bales or briquettes no manufacture or process of manufacture within the meaning of subheading 806.30, Tariff Schedules of the United States, had taken place because such manipulation of the steel scrap did not “transform a raw material into a final product.” *Id.* at 1262. This conclusion was based on the fact that the steel scrap was not changed, i.e., despite the sorting, cleaning and changing its size and form, the stainless steel scrap was still, after the processing stainless steel scrap. The stainless steel scrap in bales or briquettes were not new and different articles and did not have a distinctive name, character or use as compared with the imported scrap.

Similarly, Sunsweet Grower’s procedure does not transform the prunes into a different product. They are imported as prunes and exported as prunes. The prunes are still named prunes after the hydration and pitting. Moreover, their character or use has not changed either. In prior Headquarters ruling, C.S.D. 86–28 (HRL 729365) (June 26, 1986), legacy Customs ruled that fresh broccoli processed by cutting to length, quartering or spearing, steam blanching for six minutes, freezing solid and packaging did not change its use. In that case, one of the many operations was steaming the broccoli and it was not held to change its use. *See* HQ 967925 (February 28, 2006).

Similarly, in this case, steaming and pitting do not make the prunes “fitted for a particular use” as the use remains for human consumption. Moreover, in HQ 563211 (April 26, 2005) we held that rehydrating carrots from 10–15 percent, pressure heating, vacu-puffing, screening and electronically sorting them, did not change their use when determining country of origin. Like the carrots, the prunes undergo hydrating that does not make them fit for a particular use. The prunes are then also pitted. This procedure is like the

ones listed in HQ 563211 or HRL 729365, which are intended to make the produce more desirable to the consumer and not to make it fit for a particular use.

Both the imported natural prunes and the hydrated pitted prunes are for human consumption and share the same nutritional content. Therefore, the hydrated pitted prunes have not been made fit for a particular use. Thus, Sunsweet Growers hydrating and pitting procedure is not a manufacture or production for purposes of drawback and 19 C.F.R § 191.2.

**HOLDING:**

Under the facts described herein, and in response to the request for internal advice, we find that Sunsweet Growers proposed procedure of rehydrating and pitting its prunes does not reach the level of manufacture or production for drawback purposes.

You are to mail this decision to counsel for the importer no later than 60 days from the date of this letter. On that date, the Office of International Trade will make the decision available to CBP personnel, and to the public on the Customs Home Page on the World Wide Web at [www.cbp.gov](http://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*

## RECEIPT OF APPLICATION FOR “LEVER-RULE” PROTECTION

**AGENCY:** Customs & Border Protection, Department of Homeland Security.

**ACTION:** Notice of receipt of application for “Lever-rule” protection.

**SUMMARY:** Pursuant to 19 C.F.R. 133.2(f), this notice advises interested parties that Customs & Border Protection (CBP) has received an application from Vilore Foods Company seeking “Lever-rule” protection for a federally registered and recorded trademark.

**FOR FURTHER INFORMATION CONTACT:** Goli Gharib, Intellectual Property Rights Branch, Regulations & Rulings, Office of International Trade, (202) 325–0126.

### SUPPLEMENTARY INFORMATION:

#### BACKGROUND

Pursuant to 19 C.F.R. § 133.2(f), this notice advises interested parties that CBP has received an application from Vilore Foods Company seeking “Lever-rule” protection. Protection is sought against the importation of certain pickled jalapeno peppers, green pickled jalapeno sliced peppers, and green pickled serrano peppers not authorized for sale in the United States that bear the “La Costeña & Design” trademark (U.S. Trademark Registration No. 1216023; CBP Recordation No. TMK 03–00521). In the event that CBP determines the aforementioned food products under consideration are physically and materially different from the Vilore Food Company’s products authorized for sale in the United States, CBP will publish a notice in the *Customs Bulletin*, pursuant to 19 C.F.R. 133.2(f), indicating that the above-referenced trademark is entitled to Lever-rule protection with respect to those physically and materially different pickled jalapeno peppers, green pickled jalapeno sliced peppers, and green pickled serrano peppers bearing the “La Costeña & Design” trademark.

Dated: June 14, 2013

CHARLES R. STEUART,  
*Chief Intellectual Property Rights Branch  
Regulations & Rulings  
Office of International Trade*



## GRANT OF “LEVER-RULE” PROTECTION

**AGENCY:** Customs & Border Protection, Department of Homeland Security.

**ACTION:** Notice of grant of “Lever-rule” protection.

**SUMMARY:** Pursuant to 19 CFR §133.2(f), this notice advises interested parties that Customs & Border Protection (CBP) has granted “Lever-rule” protection to The Proctor & Gamble Company in respect to certain fabric softener products bearing the DOWNY® trademark. Notice of the receipt of an application for “Lever-rule” protection was published in the January 25, 2012 issue of the *Customs Bulletin*.

**FOR FURTHER INFORMATION CONTACT:** Alaina van Horn, Intellectual Property Rights Branch, Regulations & Rulings, Office of International Trade (202) 325–0083.

### SUPPLEMENTARY INFORMATION:

#### BACKGROUND

In accordance with 19 CFR §133.23(a)(3), CBP has determined that certain fabric softener products bearing the DOWNY® trademark are physically and materially different from the DOWNY® articles authorized by The Proctor & Gamble Company for importation into the United States. Specifically, CBP has determined that the above-referenced gray market products differ from those authorized for importation in the United States in one or more of the following respects: the labels on the gray market goods lack usage instructions in the English language, lack certain safety warnings, such as a flammability warning, and lack a United States toll-free hotline number for consumer questions or complaints; the gray market goods are labeled with different barcodes and product codes that are not recognized in the United States and do not scan on United States retail scanners; the gray market goods do not list the entities authorized to distribute the product in the United States; and, the net volume of the contents of the gray market goods is expressed in metric units and not in ounces as required by the Fair Packaging and Labeling Act, 15 U.S.C. §1453(a)(3)(A)(i).

#### ENFORCEMENT

The Proctor & Gamble Company DOWNY® fabric softener products not authorized for importation into the United States shall be denied entry and subject to detention as provided for in 19 CFR §133.25, unless a label in compliance with 19 CFR §133.23(b) is applied to the goods.

Dated: May 21, 2013

CHARLES R. STEUART,  
*Chief Intellectual Property Rights Branch  
Regulations & Rulings  
Office of International Trade*

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Distribution of Continued Dumping and Subsidy Offset to  
Affected Domestic Producers**

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

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0086.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers (CDSOA). This request for comments is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

**DATES:** Written comments should be received on or before August 19, 2013 to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of

information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

**Title:** Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

**OMB Number:** 1651-0086

**Form Number:** CBP Form 7401

**Abstract:** This collection of information is used by CBP to make distributions of funds pursuant to the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA), 19 U.S.C. 1675c (repealed by the Deficit Reduction Act of 2005, Pub. L. 109-171, § 7601 (Feb. 8, 2006)). This Act prescribes the administrative procedures under which antidumping and countervailing duties assessed on imported products are distributed to affected domestic producers that petitioned for or supported the issuance of the order under which the duties were assessed. The amount of any distribution afforded to these domestic producers is based upon certain qualifying expenditures that they incur after the issuance of the order or finding up to the effective date of the CDSOA's repeal, October 1, 2007. This distribution is known as the continued dumping and subsidy offset. The claims process for the CDSOA program is provided for in 19 CFR 159.61 and 159.63.

A notice is published in the **Federal Register** in June of each year in order to inform claimants that they can make claims under the CDSOA. In order to make a claim under the CDSOA, CBP Form 7401 may be used. This form is accessible at <http://www.cbp.gov/xp/cgov/toolbox/forms/> and can be submitted electronically through <https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=8776895>.

**Current Actions:** This submission is being made to extend the expiration date and to revise the burden hours as a result of updated estimates of the number of CDSOA claims prepared on an annual basis. There are no changes to the information collected.

**Type of Review:** Extension with a change to the burden hours.

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 1,600.

**Estimated Number of Responses per Respondent:** 1.75.

**Estimated Total Annual Responses:** 2,800.

**Estimated Time per Response:** 60 minutes.

**Estimated Total Annual Burden Hours:** 2,800.

Dated: June 12, 2013.

TRACEY DENNING,  
*Agency Clearance Officer,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, June 18, 2013 (78 FR 36560)]