

# U.S. Customs and Border Protection



## NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING CERTAIN HARD DISK DRIVES AND SELF-ENCRYPTING DRIVES

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

**ACTION:** Notice of final determination.

**SUMMARY:** This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of certain digital storage devices known as hard disk drives (“HDDs”) and self-encrypting drives (“SEDs”). Based upon the facts presented, CBP has concluded that the programming operations performed in the United States, using U.S.-origin firmware, substantially transform non-TAA country HDDs. Therefore, the country of origin of the HDDs and SEDs is the United States for purposes of U.S. Government procurement.

**DATES:** The final determination was issued on August 14, 2013. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before September 20, 2013.

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

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on August 14, 2013, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain digital storage devices known as HDDs and SEDs, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H241362, was issued under procedures set forth at 19 CFR Part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18). In the final determination, CBP concluded that, based upon the facts presented, the programming operations performed in the United States, using U.S.-origin firmware, substantially transform non-

TAA country HDDs. Therefore, the country of origin of the HDDs and SEDs is the United States for purposes of U.S. Government procurement.

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

Dated: August 14, 2013.

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

Attachment

HQ H241362  
MAR OT:RR:CTF:VS H241362 HkP  
CATEGORY: Origin

STUART P. SEIDEL, ESQ.  
BAKER & MCKENZIE  
815 CONNECTICUT AVENUE NW  
WASHINGTON, DC 20006-4078

RE: Government Procurement; Trade Agreements Act; Country of Origin of Hard Disk Drives and Self-Encryption Drives; Substantial Transformation

DEAR MR. SEIDEL:

This is in response to your letter, dated April 24, 2013, requesting a final determination on behalf of Seagate Technology, LLC (“Seagate”), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (“CBP”) Regulations (19 C.F.R. Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (TAA), as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government. In reaching our decision, we have taken into account additional information submitted on June 3, 2013.

This final determination concerns the country of origin of three lines of Seagate’s Hard Disk Drives (“HDDs”) designated as: (1) “Mission Critical”; (2) “Business Critical”; and, (3) “Personal Storage”. We note that as a U.S. importer, Seagate is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination. Your request for confidential treatment regarding all cost and price information contained in your request is granted and such information will not be disclosed to the public.

**FACTS:**

Seagate imports fully assembled HDDs from [non-TAA country] or [non-TAA country]. An HDD is a digital storage device. The products at issue are three lines of HDDs: (1) Mission Critical, sold under the brand names “Cheetah”, “Savvio”, and “Enterprise Performance”; (2) Business Critical, sold under the brand names “Constellation”, “Enterprise Capacity”, and “Enterprise Value”; and, (3) Personal Storage, sold under the brand names “Barra-cuda” and “Desktop”.

HDDs are designed in the United States and assembled either in [non-TAA country] or [non-TAA country] from components manufactured by Seagate outside the United States or obtained by Seagate from suppliers in Asia. The assembly process in [non-TAA country] or [non-TAA country] is as follows:

The Head Disk Assembly (“HDA”), usually comprised of two magnetic recording media (“Media”) and three read/write recording heads (“Heads”), a head actuator assembly, and an airtight metal enclosure is assembled in minutes.

The HDA is mated to a printed circuit board (“PCB”) containing disk drive electronics to create an HDD. It is assembled in seconds.

The HDD is loaded into the factory testing system, and testing firmware is downloaded onto the HDD to facilitate media certifications. The HDD stays in a sequence of media certification operations for one or more days, as necessary.

Following successful media certification, the HDD testing firmware is replaced with generic, basic firmware that only allows the HDD's computer interface functions to be tested. Testing lasts between [xxx] and [xxx].

After testing, the generic firmware is removed and the drive is "forced blocked", that is, it is blocked from being able to have software loaded onto it or to be further tested. It is stated that force blocking renders the HDD unable to function as a storage drive.

The Heads in the HDA incorporate semiconductor, magnetic, mechanical, and manufacturing process design into an integrated recording reader and writer. It takes approximately [xxx] hours to design a Head, [xxx] of which are allocated to design work in the U.S., [xxx] hours to design work in [non-TAA country], and [xxx] hours to design work in [non-TAA country]. The Media in the HDA incorporates thin film magnetics, mechanical surface design and manufacturing process design. It takes approximately [xxx] hours to design Media, [xxx] of which are allocated to work done in the U.S., [xxx] hours to work done in [TAA country], and [xxx] hours to work done in [non-TAA country].

Fully assembled HDDs are shipped to the United States. According to the information submitted, in their imported condition, HDDs cannot function as storage media. The disk heads cannot move, data cannot be stored or retrieved and, were the HDDs to be installed on computers or networks, they would not be recognized or listed. They do, however, have a rudimentary serial port that enables the HDD to communicate with a computer using a proprietary Seagate protocol so that firmware may be installed and tests performed.

In the U.S., the imported HDD is unblocked and programmed with two types of firmware:

1. Servo Firmware, which controls all motor, preamp and servo functions without which the motors, Media, and Heads will not operate and the HDD will not work; and

2. Non-Security Controller Firmware, which manages all communications between the host and target drives as well as all data within the drive. It allows data files to be stored on the Media in the HDD, to be found and listed within applications, and to be saved, retrieved and overwritten.

Installation and testing of the Servo and Non-Security Controller Firmware takes between [xxx] and [xxx], depending on the capacity and model of the HDD. Both types of firmware are developed in the U.S. and [TAA country]. Approximately 80% of the work hours spent on combined firmware design is allocated to work performed in the United States at Seagate's design centers and approximately 20% to work performed in [TAA country]. Combined, the compiled firmware code is approximately 2 MB in size and contains approximately one million lines of code. The firmware loaded onto the HDD in the U.S. makes the HDD a fully functional, generic storage device.

During programming operations, approximately 25% of the generic HDDs are reformatted based on specific customer requirements, such as security features, format sizes, and format modes. Customer-specific code is developed in the United States. Security Controller Firmware, which may be added on to Non-Security Controller Firmware as a part of a customer's code, allows

the HDDs to be secured through encryption, which involves enabling an encryption program and security interface, locking the debug ports, and loading credentials and certificates. The Security Controller Firmware is written in the U.S. (85–90%) and in [TAA country] (10–15%), based on architecture totally designed in the U.S. involving thousands of hours and millions of dollars. After the HDDs are configured to customer security requirements, the HDDs are known as self-encrypting drives (SEDs). SEDs encrypt data as it is being written and decrypts data as it is being read.

After programming is complete, the HDDs and SEDs are validated or tested. A final quality assurance inspection is performed, after which the HDDs and SEDs receive new part numbers and labels, and are sold.

#### **ISSUE:**

What is the country of origin of Seagate's Hard Disk Drives and Self-Encrypting Drives for purposes of U.S. Government procurement?

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

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

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

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

*See also* 19 C.F.R. § 177.22(a).

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

[A]n article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended

on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

In *Data General v. United States*, 4 Ct. Int'l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. In programming the imported PROMs, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function, that is, its "memory" which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs were designed by a U.S. project engineer with many years of experience in "designing and building hardware." While replicating the program pattern from a "master" PROM may be a quick one-step process, the development of the pattern and the production of the "master" PROM required much time and expertise. The court noted that it was undisputed that programming altered the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no less a "substantial transformation" than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

In *Texas Instruments v. United States*, 681 F.2d 778, 782 (CCPA 1982), the court observed that the substantial transformation issue is a "mixed question of technology and customs law."

In C.S.D. 84-85, 18 Cust. B. & Dec. 1044 (Apr. 2, 1984), CBP stated:

We are of the opinion that the rationale of the court in the *Data General* case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming . . . . [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

Accordingly, the programming of a device that changes or defines its use generally constitutes substantial transformation. *See also* Headquarters Ruling Letter ("HQ") 558868, dated February 23, 1995 (programming of SecureID Card substantially transforms the card because it gives the card its character and use as part of a security system and the programming is a permanent change that cannot be undone); HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions that allow it to perform certain functions that prevent piracy of software constitute substantial trans-

formation); and, HQ 733085, dated July 13, 1990; *but see* HQ 732870, dated March 19, 1990 (formatting a blank diskette does not constitute substantial transformation because it does not add value, does not involve complex or highly technical operations and did not create a new or different product); HQ 734518, dated June 28, 1993, (motherboards are not substantially transformed by the implanting of the central processing unit on the board because, whereas in *Data General* use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imported it).

HQ H052325, dated February 14, 2006, concerned the country of origin of a switch and a switch/router. The Brocade 7800 Extension Switch was assembled to completion in China and programmed in the U.S. with U.S.-origin operating system (OS) software and customer specified firmware and software. The Brocade FX8-24 switch/ router contained a PCBA that was assembled and programmed in China and shipped to the U.S., where it was assembled with other components to make the final product. The completed unit was then programmed with U.S.-origin OS software and customer firmware and software. In both cases, the U.S.-origin OS software provided the devices with their functionality. Customs found that in both cases, the processing performed in the United States, including the downloading of the U.S.-origin OS software, resulted in a substantial transformation of the foreign origin components, and that the United States was the country of origin.

In HQ H175415, dated October 4, 2011, hardware components were assembled into complete Ethernet switches in China. The switches were then shipped to the U.S., where they were programmed with EOS software, developed in the U.S. The U.S.-origin EOS software enabled the imported switches to interact with other network switches through network switching and routing, and allowed for the management of functions such as network performance monitoring and security and access control. Without this software, the imported devices could not function as Ethernet switches. As a result of the programming performed in the U.S., with software developed in the U.S., CBP found that the imported switches were substantially transformed in the U.S.

In HQ H215555 (July 13, 2012), fully assembled SheevaPlug microcomputers were imported into the United States, where they were programmed with Pwnie Express proprietary software developed in the U.S. The custom software provided a web-based interface for configuring the microcomputers into Pwn Plugs. In addition, the U.S. software allowed Pwn Plugs to provide secure, persistent and reliable remote access over a variety of network protocols and customer environments. Without the U.S.-origin Pwnie Express software, an imported microcomputer could not function as a Pwn Plug. As a result of the programming performed in the U.S., with software developed in the U.S., we found that the imported microcomputers were substantially transformed in the U.S. and that the country of origin of Pwn Plugs was the United States.

In this case, fully assembled digital storage devices are imported into the United States. Mechanically, the HDDs consist of magnetic heads and a PBC. Their purpose is to store data. Accordingly, in their imported condition they are completely non-functional, in that, their disk heads cannot move, they cannot store or retrieve data, and they cannot be recognized or listed by a computer or network. The imported HDDs only have a basic ability to com-



municate through a serial port using a proprietary Seagate protocol that is used solely to install firmware and to test the devices. They are programmed in the U.S. with U.S.-origin Servo firmware, which causes the HDD to function mechanically by controlling the motors, preamp and servo mechanisms, which operate the recording media and disk heads in the HDA. They are also programmed in the U.S. with U.S.-origin Controller firmware, which manages all communication between the host and target drives as well as all data management within the drive. In particular, Controller firmware allows data files to be stored on the recording media in the HDA, found and listed within applications, and saved, retrieved and overwritten. Together, the U.S.-origin firmware causes the imported HDDs to function as digital storage devices. As a result of the programming performed in the U.S., with software primarily developed in the U.S., we find that the imported HDDs are substantially transformed in the U.S. See *Data General*, C.S.D. 84–85, HQ 215555, HQ 052325, HQ 558868, HQ 735027, and HQ 733085. The country of origin of the HDDs is the United States.

Counsel also argues that SEDs are different products than standard HDDs because they undergo an additional substantial transformation. Specifically, counsel states that the U.S.-origin security firmware with which HDD is programmed in the U.S. converts a standard HDD into a SED, a controlled encryption device for U.S. export control purposes. In addition, counsel states that the SED performs different functions than a standard HDD, has different labeling and part numbers, is marketed and sold in a different market than the HDD (a separate portion of the Seagate website is devoted to security devices such as SEDs), and is priced differently. We agree. To the extent that the HDDs are programmed with additional U.S.-origin security firmware, the country of origin of the SEDs will be the United States.

Nonetheless, this determination concerns whether the HDDs and SEDs are products of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government. Consequently, the question of whether additional programming performed in the U.S., using U.S.-origin firmware incorporating an encryption code, transforms the HDD into a SED subject to U.S. export control jurisdiction is outside the scope of this determination.

Please be advised that whether the HDDs may be marked “Made in the U.S.A.” or with similar words, is an issue under the authority of the Federal Trade Commission (“FTC”). We suggest that you contact the FTC, Division of Enforcement, 6th and Pennsylvania Avenue, NW, Washington, DC 20508, on the propriety of markings indicating that articles are made in the United States.

#### **HOLDING:**

Based on the facts provided, the programming operations performed in the United States impart the essential character to Seagate’s hard disk drives. As such, the HDDs are considered products of the United States for purposes of U.S. Government procurement.

Notice of this final determination will be given in the **Federal Register**, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within



30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

*Sincerely,*

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

[Published in the Federal Register, August 21, 2013 (78 FR 51737)]

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**MODIFICATION OF A RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF CHILI POWDER BLENDS**

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

**ACTION:** Notice of modification of a ruling letter and revocation of treatment relating to the tariff classification of chili powder blends.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CPB) is modifying a ruling letter concerning the tariff classification of chili powder blends. Similarly, CBP revokes any treatment previously accorded by CBP to substantially identical transactions. Notice of proposed action was published in the *Customs Bulletin*, Vol. 46, No. 36, on August 29, 2012. No comments were received in response to the notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 4, 2013.

**FOR FURTHER INFORMATION CONTACT:** Michelle Garcia, Tariff Classification and Marking Branch: (202) 325–1115.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is modifying one ruling letter pertaining to the tariff classification of chili powder blends. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N024368, dated March 20, 2008, 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 above. 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 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 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 N024368, CBP determined that Chili Powder Samples 2 and 4 were classified under heading 2103, HTSUS, as a mixed condiment and mixed seasoning. It is now CBP's position that Sample 2 is classified in subheading 0904.22.76, HTSUS, as "Fruits of the genus *Capsicum* ...crushed or ground: [o]f the genus *Capsicum* (including cayenne Pepper, paprika and red pepper): Other" and that Sample 4

is classified in subheading 0910.91.00, HTSUS, as “Ginger, saffron, tumeric (curcuma), thyme, bay leaves, curry and other spices: Mixtures referred to in note 1(b) to this chapter.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N024368, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (HQ) H053755, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. §1625(c), the attached ruling will become effective 60 days after publication.

Dated: August 9, 2013

IEVA K. O’ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H053755

August 9, 2013

CLA-2: OT:RR:CTF:TCM H053755 MG

CATEGORY: Classification

TARIFF NO.: 0904.22.76; 0910.91.00

TERRY A. GLEASON  
BAKER & MCKENZIE LLP  
815 CONNECTICUT AVENUE, NW  
WASHINGTON, DC 20006-4078

RE: Modification of NY N024368, dated March 20, 2008; tariff classification of chili powder blends

DEAR Ms. GLEASON:

This is in response to your letter, dated January 21, 2009, in which you have requested reconsideration on behalf of your client, McCormick & Company, Inc., of New York Ruling Letter (NY) N024368, dated March 20, 2009, as it pertains to the classification under the Harmonized Tariff Schedule of the United States (“HTSUS”), of two of the six different chili powder blends used in soup-style chili and other seasoning packets. On June 22, 2009, an organoleptic test of the six different chili powder blends was conducted in our office. Based on such test and in accordance with your request for reconsideration and modification of NY N024368, CBP has reviewed the classification of Samples 2 and 4 and has determined that the cited ruling is in error. For the reasons set forth in this ruling, we are modifying NY N024368. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice of proposed action was published on August 29, 2012, in the *Customs Bulletin*, Vol. 46, No. 36. No comments were received.

**FACTS:**

In NY Ruling N024368, CBP considered the classification of six different chili powder blends used in soup-style chili and other seasoning packets. Sample 1 consisted of a blend of chili pepper and sylox (*i.e.*, silicon dioxide) and was classified in subheading 0904.20.76, HTSUS (now 0904.22.76, HTSUS, 2012) as “fruits of the genus *Capsicum* ...dried or crushed or ground...other: ground: other.”

Samples 2 through 6 consist of blends of chili pepper, sylox, and a combination of either salt, garlic, onion, cumin, oregano or oleo capsicum. NY N024368 classified samples 2 through 6 as “mixed condiments and mixed seasonings...other” under subheading 2103.90.80, HTSUS.

All six of the blends are designed for use in items such as chili packets for soup-style chili and other seasoning packets. As McCormick did in its initial ruling request, we were provided with six samples of the different chili powder blends. We were able to taste all six samples consisting of the ground pepper fruits of the genus *Capsicum* blended with one or more ingredients. Similar to Sample 1, Samples 2 and 4 contain significant amounts of chili pepper powder and a small amount of silicon dioxide. In addition to chili pepper powder and silicon dioxide, Sample 2 contains small quantities of salt and garlic, and Sample 4 contains small quantities of salt, garlic, onion and

cumin. Their respective compositions are indicated below, with numerical percentages (ranges) by weight shown in parentheses following each ingredient.

Sample #1 (“Chili Powder”) consists of chili pepper (94–99) and Sylox (silicon dioxide) (1–5).

Sample #2 (“Chili Powder”) consists of chili pepper (80–90), Sylox (1–5), garlic (5–10), and salt (1–5).

Sample #4 (“Chili Powder”) consists of chili pepper (80–90), Sylox (1–5), garlic (1–5), onion (1–5), salt (1–5), and cumin (1–5).

As detailed in the chart contained in your letter, which has been afforded confidential treatment, you submit that NY Ruling N024368 warrants reconsideration with respect to the two chili powder blends identified as Samples 2 and 4. Specifically, that Sample 2 is properly classifiable under subheading 0904.20.76, HTUS, (now 0904.22.76, HTSUS), as “Fruits of the genus *Capsicum* ...crushed or ground: [o]f the genus *Capsicum* (including cayenne Pepper, paprika and red pepper): Other” and that Sample 4 is properly classifiable under subheading 0910.91.00, HTUS, as a spice mixture referred to in Note 1(b) of Chapter 9.

#### ISSUE:

1) Whether a chili powder blended with salt, garlic, pepper and a flow-agent is classified in heading 0904, HTSUS, as a chili powder or in heading 2103, HTSUS, as a mixed seasoning.

2) Whether a chili powder blended with onion and other ingredients is classified in heading 0910, HTSUS, as a spice mixture or in 2103, HTSUS, as a mixed seasoning.

#### LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

0904	Pepper of the genus <i>Piper</i> ; dried or crushed or ground fruits of the genus <i>Capsicum</i> (peppers) or of the genus <i>Pimenta</i> (e.g., allspice):
0904.22	Crushed or ground:
	Of the genus <i>Capsicum</i> (including cayenne Pepper, paprika and red pepper):
0904.22.20	Paprika
0904.22.76	Other
	*           *           *
0910	Ginger, saffron, tumeric (curcuma), thyme, bay leaves, curry and other spices:
0910.91.00	Mixtures referred to in note 1(b) to this chapter
	*           *           *

2103	Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard:
2103.90	Other:
	Mixed condiments and mixed seasonings:
2103.90.80	Other
	* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. 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 the headings. It is Customs and Border Protection (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See*, T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Note 1 to Chapter 9 of the HTSUS provides:

Mixtures of the products of headings 0904 to 0910 are to be classified as follows:

- (a) Mixtures of two or more of the products of the same heading are to be classified in that heading;
- (b) Mixtures of two or more of the products of different headings are to be classified in heading 0910.

The addition of other substances to the products of headings 0904 to 0910 (or to the mixtures referred to in paragraph (a) or (b) above) shall not affect their classification provided the resulting mixtures retain the essential character of the goods of those headings. Otherwise such mixtures are not classified in this chapter; those constituting mixed condiments or mixed seasonings are classified in heading 2103.

The General EN to Chapter 9 of the HTSUS similarly provides that the addition of other substances to the products of heading 09.04 to 09.10, or to mixtures of two or more products of the same or different headings, does not affect their classification provided the resulting mixtures retain the essential character of the goods falling in those headings. The General EN continues:

This applies, in particular, to spices and mixed spices containing added:

- (a) **Diluents** (“spreader” bases) added to facilitate measuring out of the spices and their distribution in the food preparation (cereal flour, ground rusk, dextrose, etc.).
- (b) Food **colourings** (e.g., xanthophyll).
- (c) Products added to intensify or enhance the flavour of the spices (**synergetics**), such as sodium glutamate.
- (d) Substances such as **salt** or **chemical antioxidants** added, usually in small quantity, to preserve the products and prolong their flavouring powers.

Spices (including mixed spices) containing added substances of other Chapters, but themselves having flavouring or seasoning properties, re-

main in this Chapter **provided** the added quantity does not affect the essential character of the mixture as a spice.

Therefore, for Samples 2 and 4 to be classified in Chapter 9, the addition of non-Chapter 9 ingredients must not change the essential character of the chili powder blends. As such, if the instant merchandise is classifiable in Chapter 9, it can not be described as a mixed seasoning of heading 2103, HTSUS.

#### I - Sample 2

As indicated above, Sample 2 is a blend of chili pepper, silicon dioxide, salt and garlic. Under Note 1 and the General EN, the addition of small quantities of silicon dioxide does not preclude the chili powder blend from being classified in heading 0904, HTSUS, Chapter 9 or subheading 0904.22.76, HTS. In this regard, the silicon dioxide acts as a “diluent” within the meaning of the General EN 2 (a), as it is used as a flow or anti-caking agent in many powdered foods.

Similarly, the addition of small quantities of salt and garlic to the chili pepper does not alter the essential character of the chili powder as a significant majority of Sample 2’s weight and nearly all of its value are attributable to the chili pepper ingredient. See General Explanatory Note 2 (d).

In NY B88084, dated August 18, 1997, CBP classified an Ethiopian spice mixture in subheading 0904.20.76, HTSUS. The Ethiopian spice mixture, identified as “Mitmita,” is described as an orange powder made from a base of hot red pepper with garlic and salt. Also, in NY M82914, dated May 8, 2006, CBP classified “Pepper Blend Seasoning,” which was composed of black pepper, red pepper and sugar in subheading 0904.20.76, HTSUS.

In NY Ruling C87704, dated June 9, 1998, CBP classified a black pepper blend containing 45 grams of pepper and 45 grams of salt in subheading 0904.12.00, HTSUS. In this regard, the weight and value of the chili pepper found in Sample 2 (80–90) far exceeds the 50% content of the black pepper blend in this ruling.

Consistent with our position in the previous rulings, we find that Sample 2 is properly classified under heading 0904, HTSUS, specifically, in subheading 0904.22.76, HTSUS, the provision for as “Fruits of the genus *Capsicum* ...crushed or ground: [o]f the genus *Capsicum* (including cayenne Pepper, paprika and red pepper): Other.”

#### II - Sample 4

Sample 4 is a blend of chili pepper, cumin, silicon dioxide, salt, garlic, and onion. Pursuant to Note 1(b) of Chapter 9, you submit that Sample 4 is classified under subheading 0910.91.00, HTSUS. Chili pepper and cumin are both classifiable under different Chapter 9 tariff provisions. As indicated above, chili pepper is properly classified as a spice under subheading 0904.20, HTSUS. Cumin is also classified as a spice under subheading 0909.30, HTSUS.

In NY Ruling B88084, we considered the classification of an Ethiopian spice mixture identified as “Berbere.” The Berbere is described as a reddish-orange powder made from a base of hot red pepper to which garlic, salt and ginger (also classified in Chapter 9) were added. We ruled that the Berbere was classified as a spice mixture of subheading 0910.91.00, HTSUS. In NY 837417, dated March 13, 1989, we classified a spice mixture identified as “Instant Masala” under subheading 0910.91.00, HTSUS. The Instant



Masala consisted of cumin seeds, coriander seeds, rock and table salt, red and black pepper, cloves, nutmeg, cinnamon, cardamom, black cardamom, bay leaves and ginger, all Chapter 9 ingredients, except for the salt. In these rulings, the presence of salt and garlic in the Berbere or the presence of the rock and table salt in the Instant Masala did not affect the essential character of these products as spice mixtures of subheading 0910.91.00, HTSUS.

In NY Ruling J86543, dated July 8, 2003, we classified “Ras el Hanout Powder”, which consisted of 25 percent caraway (Chapter 9), 15 percent cumin (Chapter 9), 15 percent coriander (Chapter 9), 10 percent fenugreek (Chapter 9), 10 percent salt (non-Chapter 9), 10 percent curcuma/turmeric (Chapter 9), 5 percent mace (Chapter 9), 5 percent cinnamon (Chapter 9) and 5 percent cloves (Chapter 9), in subheading 0910.91.00, HTS. See NY J86543, dated July 8, 2003. Thus, CBP did not find the salt content of 10 percent significant enough to alter the essential character of the Ras el Hanout Powder as a spice mixture of subheading 0910.91.00, HTSUS.<sup>1</sup>

In some instances, CBP has generally classified the dry mixtures as mixed condiments or mixed seasonings under subheading 2103.90.80, HTSUS. For example, in NY Ruling N003779, dated December 28, 2006, CBP classified a dry mixture identified as “Southern Comfort Jambalaya Flavored Cajun BBQ Rub” in subheading 2103.90.80, HTSUS. This mixture consisted of 42.52 percent red pepper, 30.48 percent rosemary (non-Chapter 9), 10.35 percent cinnamon, 9.15 percent onion powder (non-Chapter 9), 3.15 percent garlic powder (non-Chapter 9), 2.48 percent salt (non-Chapter 9) and 1.87 percent black pepper.

Similarly, in NY Ruling I87879, dated October 31, 2002, we classified McCormick’s dry mixture “Product No. 91888 – R0888 US Chili Seasoning” in subheading 2103.90.80, HTSUS<sup>2</sup>. And, in NY Ruling I85460, dated September 16, 2002, we classified McCormick’s dry mixture “Cajun Seasoning No. 96943” under subheading 2103.90.8000, HTSUS<sup>3</sup>.

Also, in NY I87253, dated October 21, 2002, we classified McCormick’s “Chili Limon Seasoning.” In this ruling, where at least 50 percent of the

<sup>1</sup> NY Ruling N024368 classified McCormick Samples 3 and 5, blends having salt contents of between 10 and 15 percent, as “mixed condiments and mixed seasonings...other” under subheading 2103.90.80, HTSUS. You are not arguing classification of Samples 3 and 5 in subheading 2103.90.80, HTSUS, as the salt content is more than 10 percent and alters the essential character of the blends.

<sup>2</sup> The U.S. Chili Seasoning is described as an orange-colored powder composed of 20–30 percent salt (non-Chapter 9), 10–15 percent each of chili pepper powder, paprika, maltodextrin (non-Chapter 9), sugar (non-Chapter 9), and MSG (non-Chapter 9), 5–10 percent dextrose (non-Chapter 9), 1–5 percent each of ground red pepper, caramel color powder (non-Chapter 9), black pepper and onion powder (non-Chapter 9) and one percent or less, each, of calcium silicate (non-Chapter 9), paprika oleoresin (non-Chapter 9), citric acid (non-Chapter 9), vegetable oil (non-Chapter 9), capsicum flavor (non-Chapter 9), soluble turmeric (Chapter 9), “oleo momb” flavoring (non-Chapter 9), onion flavoring (non-Chapter 9), and onion oleoresin (non-Chapter 9).

<sup>3</sup> The ingredient ranges for this product are 20–30 percent each of paprika (Chapter 9) and salt (non-Chapter 9), 10–15 percent each of onion powder (non-Chapter 9) and garlic powder (non-Chapter 9), 5–10 percent each of cayenne pepper (Chapter 9) and lemon juice powder (non-Chapter 9), 5 percent sugar (non-Chapter 9), 1–5 percent each of black pepper (Chapter 9), dextrin (non-Chapter 9), white pepper (Chapter 9), dextrose (non-Chapter 9), oregano (non-Chapter 9), and thyme (Chapter 9), and one percent or less each of coriander (Chapter 9), calcium silicate (non-Chapter 9), paprika oleoresin (non-Chapter 9), black pepper oleoresin (non-Chapter 9), soy bean oil (non-Chapter 9), oleo mombassa chili (non-Chapter 9),

ingredients were classified outside of Chapter 9, CBP classified the product as a mixed seasoning under 2103.90.8000, HTSUS.

You argue that sample 4 is a mixture of two products of different Chapter 9 headings and that the presence of small quantities of other non-Chapter 9 ingredients do not affect the essential character of Sample 4 as a spice mixture of Chapter 9. We find that (like Sample 2) the silicon dioxide in Sample 4 acts as a diluent, which does not alter the essential character of the Sample. We further find that the addition of small quantities of salt, garlic and onion (which comprise 5–10 percent of the blended product by weight and less than 1–5 percent of its value) does not alter the essential character of Sample 4 as a Chapter 9 spice mixture and that the two Chapter 9 spices comprise a substantial majority of Sample 4's weight and value. See Note 1(b) to Chapter 9 and the General EN 2(a) and (d).

The Chapter 21 seasonings referenced in the above cited rulings possess very high percentages of ingredients classified outside of Chapter 9. In this regard, the instant Samples 2 and 4 retain the essential character of a spice in heading 0904 HTSUS and 0910, HTSUS, respectively. Based on the above-cited Chapter Note, General Explanatory Note and prior CBP rulings, we find that samples 2 and 4 are classified as Chapter 9 spice mixtures, and not as mixed seasonings classifiable under heading 2103, HTSUS. Specifically, Sample 4 is classified in subheading 0910.91.00, HTSUS, as "Ginger, saffron, tumeric (curcuma), thyme, bay leaves, curry and other spices: Mixtures referred to in note 1(b) to this chapter."

#### **HOLDING:**

Accordingly, we find that Sample 2 "Chili Powder" consisting of chili pepper, Sylox, garlic and salt is classified in subheading 0904.22.76, HTSUS, as "Fruits of the genus *Capsicum* ...crushed or ground: [o]f the genus *Capsicum* (including cayenne Pepper, paprika and red pepper): Other." The general, column one rate of duty is 5 cents per kilogram, *ad valorem*. We further find that Sample 4 "Chili Powder" consisting of chili pepper, Sylox, garlic, onion, salt, and cumin is classified in subheading 0910.91.00,

HTSUS, as "Ginger, saffron, tumeric (curcuma), thyme, bay leaves, curry and other spices: Mixtures referred to in note 1(b) to this chapter." The general, column one rate of duty is 1.9%, *ad valorem*.

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

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

NY Ruling N024368, dated March 20, 2008 is hereby modified with respect to chili powder samples 2 and 4.

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phosphate tricalcium TCP (non-Chapter 9), thyme oleoresin bay oil (non-Chapter 9), basil oleoresin (non-Chapter 9), basil oil (non-Chapter 9), silicon dioxide (non-Chapter 9), and bay oleoresin (non-Chapter 9).

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

IEVA K. O'ROURKE  
*for*

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



**PROPOSED MODIFICATION OF TWO RULING LETTERS  
AND PROPOSED REVOCATION OF TREATMENT  
RELATING TO THE TARIFF CLASSIFICATION OF  
CERTAIN PUMP ASSEMBLIES**

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

**ACTION:** Notice of proposed modification of two ruling letters and proposed revocation of treatment relating to the tariff classification of certain pump assemblies.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this Notice advises interested parties that U.S. Customs and Border Protection (CBP) proposes to modify two ruling letters relating to the tariff classification of certain pump assemblies 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 October 4, 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 Jenior, Tariff Classification and Marking Branch: (202) 325–0347.

## SUPPLEMENTARY INFORMATION:

### BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this Notice advises interested parties that CBP intends to modify two ruling letters pertaining to the tariff classification of certain pump assemblies. Although in this Notice, CBP is specifically referring to the modification of Headquarters Ruling Letter (HQ) 088500, dated April 4, 1991 (Attachment A), and NY D82549, dated September 28, 1998 (Attachment B), this Notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., 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 088500 (“Piston Pump SP 30” series only) and NY D82549, CBP determined that the subject pump assemblies, consisting of a plastic dip tube, a simple piston pump and an actuator head, were classified in subheading 8424.89, HTSUS, which provides, in pertinent part, for: “Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids ...: other appliances: other ...” It is now CBP’s position that the pump assemblies are properly classified in subheading 8413.20, HTSUS, which provides, in pertinent part, for “Pumps for liquids ...: Hand pumps, other than those of subheading 8413.11 or 8413.19...,” in accordance with NY L89330, dated February 8, 2008, and NY N099836, dated April 28, 2010.

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to modify HQ 088500 with regard to the “Piston Pump SP 30” and NY D82549, and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of pump assemblies according to the analysis contained in proposed HQ H237855, set forth as Attachment C to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially similar transactions.

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

Dated: August 15, 2013

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

Attachments

## [ATTACHMENT A]

HQ 088500

April 4, 1991

CLA-2 CO:R:C:M 088500 JMH

CATEGORY: Classification

TARIFF NO.: 8424.89.00, 9616.10.00

M. SEREDINSKY  
IMPORT MANAGER  
SCAC TRANSPORT (USA), INC.  
BUILDING 75 NORTH HANGAR ROAD  
JFK INTERNATIONAL AIRPORT  
JAMAICA, NY 11430

RE: Cosmetic pumps; mounts for toilet sprays; pumps for liquids; liquid elevators; mechanical appliances for projecting, dispersing or spraying liquids or powders; machines and mechanical appliances having individual functions, not specified or included elsewhere; scent sprays and other toilet sprays liquids; gels; emulsions; project; disperse; spray

DEAR MR. SEREDINSKY:

Your November 27, 1990, request for a classification ruling, on behalf of Valois of America, for certain cosmetic pumps has been referred to this office for a reply.

**FACTS:**

The articles in question are pumps to be incorporated onto bottles and tubes to dispense cosmetic and medicinal preparations. You state that the pumps act as "liquid elevators" to bring the liquid to the top of the bottle or tube and to then dispense the liquid to the hand or body in a measured quantity.

The pumps are capable of dispensing lotion-like materials or may spray perfumes or medications.

The pumps have three main components: a long plastic feed tube, a spring-loaded piston pump, and an actuator/spray head. The long plastic feed tube extends into the reservoir, the pump sends the solution up the tube and the actuator/spray head directs the spray or dispersement. From the samples presented, it is clear that the pumps can vary in size and design despite the fact that their constructions are similar.

Two series of pumps are requested to be classified. The first, the VP series, includes crimp-on and screw-on pumps. The VP models are designed for spraying both alcohol solutions extracts, deodorants, perfumes) and aqueous solutions (pharmaceutical products). The second series is the "Piston System SP 30." The SP 30 is similar to the VP series but is used for dispensing cosmetic gels and emulsions. Because of the differences between the two types of pumps, the VP series and the SP 30 series will be discussed separately.

**ISSUE:**

Issue 1: Whether the VP series' pumps are classified under heading 8413, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), as "Pumps for liquids, whether or not fitted with a measuring device; liquid elevators...", under heading 8424, HTSUSA, as "Mechanical appliances

(whether or not hand operated) for projecting, dispersing or spraying liquids or powders...”, or under heading 9616, HTSUSA, as “Scent sprayers and similar toilet sprayers, and mounts and heads therefor...”

Issue 2: Whether the Piston System SP 30 pumps are classified under heading 8413, as “Pumps for liquids, whether or not fitted with a measuring device; liquid elevators...”, under heading 8424, HTSUSA, as “Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or

powders...”, or under heading 9616, HTSUSA, as “Scent sprayers and similar toilet sprayers, and mounts and heads therefor...”

**LAW AND ANALYSIS:**

Issue 1: Whether the VP series’ pumps are classified under heading 8413, Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”), as “Pumps for liquids, whether or not fitted with a measuring device; liquid elevators...”, under heading 8424, HTSUSA, as “Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders...”, or under heading 9616, HTSUSA, as “Scent sprayers and similar toilet sprayers, and mounts and heads therefor...”

The classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation (“GRIs”). GRI 1, HTSUSA, states in part that “for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and...according ..to the following provisions.” The three headings in contention are headings 8413, 8424, and 9616, HTSUSA. These headings describe the following:

- 8413            Pumps for liquids, whether or not fitted with a measuring device; liquid elevators...  
\* \* \* \* \*
- 8424            Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders...  
\* \* \* \* \*
- 9616            Scent sprayers and similar toilet sprayers, and mounts and heads therefor...

Since goods are first classified by the terms of the headings it is important to understand what the headings encompass. The Explanatory Notes of the HTSUSA provide an explanation of the terms of the HTSUSA. Although they are not dispositive, the Explanatory Notes are to be looked to for the proper interpretation of the HTSUSA. 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Explanatory Note 84.13, Harmonized Commodity Description and Coding System (“HCDCS”) details what heading 8413 is meant to cover. The note states the following:

This heading covers most machines and appliances for raising or otherwise continuously displacing volumes of liquid...whether they are operated by hand or by any kind of power unit, integral or otherwise... Vol. 3 HCDCS p. 1158. (emphasis added)

Heading 8413 includes reciprocating positive displacement pumps, rotary positive displacement pumps, centrifugal pumps, and liquid elevators.

Heading 8413 describes pumps that are larger and used in an industrial or similar activity. A primary characteristic of these pumps is that they are used



for continuously displacing volumes of liquid. The pumps in question are not for continually spraying or dispensing their reservoirs' contents. The cosmetic pumps in question are not of the same class or kind as the pumps for liquids described in heading 8413. Additionally, you state the pumps in question are "liquid elevators." However, the liquid elevators included in heading 8413 are those which use chains, buckets, scoops, elevating wheels or endless bands of textile metal. The subject pumps are not "liquid elevators" as the term is used within the tariff. Thus, the pumps do not meet the terms of heading 8413.

Secondly, Explanatory Note 84.24, HCDCS, indicates what was meant in heading 8424 by "[m]echanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders..." The Explanatory Note states the following:

This heading covers machines and appliances for projecting, dispersing or spraying steam, liquids or solid materials...in the form of a jet, a dispersion (whether or not in drips) or a spray. Vol. 3, HCDCS, p. 1188. (emphasis added)

This heading includes "such appliances, with or without integral reservoirs, of the type operated by hand (including simple piston pump sprays) or by foot pedal..." Explanatory Note 84.24(D), Vol. 3 HCDCS p. 1189. The appliances covered by heading 8424 either "project", "disperse", or "spray" liquids or solids. The common meaning of a term is generally afforded deference when determining its proper interpretation for tariff purposes. *Toyota Motor Sales (USA), Inc. v. United States*, 7 CIT 178, 182, 585 F. Supp. 649, 653 (1984), aff'd, 753 F.2d 1061 (Fed. Cir. 1985); see *Nippon Kogaku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Dictionaries and other lexicographic authorities may be utilized to determine a term's common meaning. *Mast Indus., Inc. v. United States*, 9 CIT 549 (1985), aff'd, 786 F.2d 1144 (Fed. Cir. 1986). "Project", "disperse" and "spray" are defined as follows:

Project: 1. To thrust outward or forward. 2. To throw forward: HURL... Webster's II New Riverside University Dictionary, pp. 940 (1984).

Disperse: 1. To break up and scatter in various directions. 2. To cause to vanish or disappear:

DISPEL. 3. To disseminate (e.g., knowledge). to move or scatter in different directions. Webster's II New Riverside University Dictionary, pp. 388 (1984).

Spray: 1. Liquid, as water, moving in a mass of dispersed droplets. 2. a. A fine jet of liquid discharged from a pressurized container...--vt. 1. To disperse (a liquid) in a mass of or jet of droplets. 2. To move in the form of a spray. Webster's II New Riverside University Dictionary, pp. 1125 (1984).

The pumps of the VP series definitely thrust the liquid contents of their reservoirs forward so to "project", and the pumps discharge a mass or a jet of droplets from the container, so to "spray". Additionally, the pumps scatter a liquid in different directions, so to "disperse". Although the different directions of the dispersion may be in one small area or radius, nevertheless, the pumps dispense liquid to different directions within this radius. The VP series pumps at least project, disperse and spray within the common meanings of the terms. Since the terms "disperse", "project" and "spray" are listed

in the alternative in heading 8424, only one must be met. In this instance, all of the terms are met. Heading 8424 describes the VP series pumps. Thus, the pumps are described in heading 8424.

Finally, the Explanatory Notes must be examined to determine what is included in heading 9616. Explanatory Note 96.16, HCDCS, states that heading 9616 covers scent, brilliantine and similar toilet sprays, the mounts for toilet sprays, and the head-pieces for toilet sprays. Explanatory Note 96.16, Vol. 4, HCDCS, p. 1612. The note defines a “mount” as “the head (with its spray-forming mechanism) and a pneumatic pressure bulb (sometimes in a textile net) or a piston device.” As stated previously, the term “spray” indicates the dispersal of a liquid in a mass or jet of droplets.

The subject articles consist of a head, which includes a spray forming mechanism, and a piston device that will disperse liquids in a spray form. The pumps are in mounts as defined by Explanatory Note 96.16. Toilet sprays are those used for personal hygiene and personal health care. Deodorants, perfumes and pharmaceutical products are used for personal hygiene and health care. The subject pumps are in actuality mounts for toilet sprays. Mounts for toilet sprays are specifically provided for within the terms of heading 9616. Thus, the VP series’ pumps are also described within heading 9616.

The VP models, which are able to dispense both alcohol and aqueous solutions, are classifiable in both headings 8424 and 9616. The VP pumps are capable of several uses. Additional U.S. Rule of Interpretation 1(a), HTSUSA, states that when a tariff classification is controlled by use, the controlling use is the principal use. Before a determination may be made regarding the classification of the models, it must be decided which use is the VP models’ principal use.

It is the opinion of this office that the dispersement of alcohol solutions is the principal use of the VP models. Perfumes, extracts, deodorants, and other cosmetic products are more commonly used in crimp-on and screw-on spray dispensers than pharmaceutical products. A walk through the aisles of any pharmacy indicates the large amount of cosmetic products marketed to consumers in crimp-on and screw-on spray dispensers of the class or kind of those in question, as compared to the amount of products in crimp-on and screw-on spray dispensers for pharmaceutical applications. Thus, the principal use of the VP models is for the dispersement of cosmetic preparations.

The subject pump’s principal use, the distribution of cosmetic solutions, is described by two headings, headings 8424 and 9616. When a good is classifiable by two or more headings GRI 3, HTSUSA, must be utilized. GRI 3(a), HTSUSA, states that the heading which most specifically describes the article is the preferred article. It is the opinion of this office that heading 9616 specifically describes the cosmetic pumps in question. Heading 9616 specifically provides for “toilet sprayers, and mounts and heads thereof...” The articles in question are mounts of toilet sprayers. Such a specific provision, an *eo nomine* provision, takes precedence over a more general provision such as “mechanical appliances for spraying liquids...” In accordance with GRI 1 and 3(a), and Additional U.S. Rule of Interpretation 1(a), the proper classification for the VP mounts is subheading 9616.10.00, HTSUSA, as “...scent sprayers and similar toilet sprayers, and mounts and heads therefor...”

It is the opinion of this office that the dispersement of alcohol solutions is the principal use of the VP models. Perfumes, extracts, deodorants, and other cosmetic products are more commonly used in crimp-on and screw-on spray

dispensers than pharmaceutical products. A walk through the aisles of any pharmacy indicates the large amount of cosmetic products marketed to consumers in crimp-on and screw-on spray dispensers of the class or kind of those in question, as compared to the amount of products in crimp-on and screw-on spray dispensers for pharmaceutical applications. Thus, the principal use of the VP models is for the dispersment of cosmetic preparations.

The subject pump's principal use, the distribution of cosmetic solutions, is described by two headings, headings 8424 and 9616. When a good is classifiable by two or more headings GRI 3, HTSUSA, must be utilized. GRI 3(a), HTSUSA, states that the heading which most specifically describes the article is the preferred article. It is the opinion of this office that heading 9616 specifically describes the cosmetic pumps in question. Heading 9616 specifically provides for "toilet sprayers, and mounts and heads thereof..." The articles in question are mounts of toilet sprayers. Such a specific provision, an *eo nomine* provision, takes precedence over a more general provision such as "mechanical appliances for spraying liquids..." In accordance with GRI 1 and 3(a), and Additional U.S. Rule of Interpretation 1(a), the proper classification for the VP mounts is subheading 9616.10.00, HTSUSA, as "...scent sprayers and similar toilet sprayers, and mounts and heads thereof..."

Issue 2: Whether the Piston System SP 30 pumps are classified under heading 8413, as "Pumps for liquids, whether or not fitted with a measuring device; liquid elevators...", under heading 8424, HTSUSA, as "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders...", or under heading 9616, HTSUSA, as "Scent sprayers and similar toilet sprayers, and mounts and heads thereof..."

As stated in the above analysis, classification is determined first by the terms of the headings and the chapter and section notes, and then by the remaining GRIs taken in sequential order. The headings in contention for the classification of the SP 30 pumps are heading 8413, heading 8424, and heading 9616. These headings describe the following:

8413	Pumps for liquids, whether or not fitted with a measuring device; liquid elevators...
* * * *	* * * * * * * * * * * *
8424	Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders...
* * * *	* * * * * * * * * * * *
9616	Scent sprayers and similar toilet sprayers, and mounts and heads thereof...

The SP 30 was designed to distribute gels and emulsions. The literature for the SP 30 system states that "the system was developed in order to fill and dispense new cosmetic products..." Thus, the SP 30 mounts are designed solely for use in the dispensing of cosmetic preparations.

As stated in the above analysis, heading 8413 does not describe the VP series pumps, nor does it describe the SP 30 pumps. The SP 30 pumps are not of the same class or kind of pumps as the industrial and similar pumps which continuously displace volumes of liquids which are provided for in heading 8413.

The VP series pumps, which also distribute cosmetic preparations, were classified under heading 9616. However, heading 9616 describes "spraying"

which indicates a liquid. An emulsion is a very thick liquid, "a suspension of globules of one liquid in a second liquid with which the first will not mix."

Webster's II New Riverside University Dictionary, p. 429 (1984) A gel is a "semi-solid material." Webster's II New Riverside University Dictionary, p. 523 (1984). The distribution of a semi-solid material or a thick liquid is not the movement of a mass of dispersed droplets, nor is such a distribution the discharge of a fine jet of liquid. The pumping of a gel or emulsion is not similar to the "spraying" of an alcohol or aqueous solution as described previously. It is the opinion of this office that a gel or emulsion dispenser is not a scent spray or similar toilet spray as described by heading 9616.

The other alternative for the VP Series, heading 8424, must also be examined. Explanatory Note 84.24 establishes that heading 8424 covers mechanical appliances which "project", "disperse" or "spray" steam, liquids and solids -- all forms of substances. This would include solids, liquids and those substances between the two. A gel or emulsion would seem to be between a solid, such as a powder, and a liquid, such as an aqueous or alcohol solution. Whether such an in-between substance may be projected, dispensed or sprayed becomes the focus of this analysis. It has been determined in the discussion of heading 9616 that a gel or emulsion cannot be "sprayed." Consequently, the definitions of "project" and "disperse" must be revisited.

Project: 1. To thrust outward or forward. 2. To throw forward: HURL... Webster's II New Riverside University Dictionary, pp. 940 (1984).

Disperse: 1. To break up and scatter in various directions. 2. To cause to vanish or disappear:

DISPEL. 3. To disseminate (e.g., knowledge). to move or scatter in different directions. Webster's II New Riverside University Dictionary, pp. 388 (1984).

The SP 30 pumps bring a gel or emulsion up and out of the inside of the container. The pumps thrust the gel or emulsion outward or forward. Thus, the SP 30 pumps project the gel or emulsion. The SP 30 pumps do not break up and scatter the gel or emulsion in various directions within the common meaning of the term "disperse." However, Explanatory Note 84.24 states that a "dispersion" may occur "whether or not in drips..." See HCDCS, Vol. 3, p. 1188. The SP 30 release a large drip of a gel or emulsion. The Explanatory Notes indicate that a drip is to be included within the meaning of the term "disperse." Thus, although the SP 30 pumps do not "disperse" the gel or emulsion within the common meaning of the term, they do "disperse" within the broader meaning supplied by the Explanatory Note.

As stated previously, all that is required to meet the terms of heading 8424 is that one of the terms "project", "disperse" or "spray" must be met. In this instance, two of the terms are met. Thus, heading 8424 describes the SP 30 pumps. The SP 30 pumps project and disperse the gel or emulsion contained the pumps' reservoirs. These pumps are described by heading 8424. In accordance with GRI 1, the proper classification for the SP 30 pumps is sub-heading 8424.89.00, HTSUSA, as "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders ...Other appliances... Other..."

**HOLDING:**

The cosmetic pumps in question incorporate an actuator/spray head, a feeder tube, and a spring-loaded piston pump. The long plastic feed tube extends into the reservoir, the pump sends the solution up the tube and the actuator/spray head directs the spray or dispersment.

The pumps of the VP series are to be used for both cosmetic and pharmaceutical purposes for the dispensing of both alcohol and aqueous solutions. The VP series mounts' principal use, in accord with Additional U.S. Rule of Interpretation 1(a), is for the dispersment of cosmetic preparations. The mounts of the VP series are similar sprays to scent sprays as described by heading 9616. In accordance with GRI 1 and GRI 3(a), the proper classification for the mounts is subheading 9616.10.00, HTSUSA, as "...scent sprayers and similar toilet sprayers, and mounts and heads therefor..."

The Piston System SP 30 mounts are solely used to dispense cosmetic products in the forms of gels and emulsions. The dispensing of a gel or emulsion by the SP 30 pumps is not a "spray" within the common meaning of the term. The SP 30 pumps are not scent sprays or similar toilet sprays described by heading 9616. The SP 30 pumps project and disperse the gel or emulsion. Such a projection or dispersion is covered by the terms of heading 8424. In accordance with GRI 1, the appropriate classification of the SP 30 mounts is subheading 8424.89.00, HTSUSA, as "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders...Other appliances... Other..."

*Sincerely,*

JOHN DURANT,  
*Director*

*Commercial Rulings Division*

## [ATTACHMENT B]

NY D82549

September 28, 1998

CLA-2-84:RR:NC:MM:106 D82549

CATEGORY: Classification

TARIFF NO.: 8424.89.7090

MR. LOUIS SHOICHET  
TOMPKINS & DAVIDSON, LLP  
ONE ASTOR PLAZA  
NEW YORK, NY 10036-8901

RE: The tariff classification and marking of a plastic lotion dispenser from France

DEAR MR. SHOICHET:

In your letter dated September 17, 1998, on behalf of Avon Products, Inc., you requested a tariff classification ruling. You included a sample with your request.

The subject merchandise is a plastic lotion dispenser said to be used for dispensing cosmetic lotions. The article, which will be imported with a dust cover, consists of a plastic dip tube, a simple piston pump and an actuator head which directs the dispersal of the lotion. After importation, the dispensers will be fitted by Avon on to containers filled with cosmetic lotions, manufactured and sold by Avon.

The applicable subheading for the plastic lotion dispenser will be 8424.89.7090, Harmonized Tariff Schedule of the United States (HTS), which provides for other appliances for projecting, dispersing or spraying liquids or powders. The rate of duty will be 2.2 percent ad valorem.

You also raised concerns about the country of origin marking of the plastic lotion dispensers. You assert that Avon is the ultimate purchaser of the subject merchandise in its imported condition and that the individual dispensers will not be marked but that their shipping containers will be marked with the country of origin.

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.41(b), Customs Regulations (19 CFR 134.41(b)), mandates that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain. Section 134.1(d), defines the ultimate purchaser as generally the last person in the U.S. who will receive the article in the form in which it was imported. In this case, the ultimate purchaser of the lotion dispensers is Avon Products.

An article is excepted from marking under 19 U.S.C. 1304 (a)(3)(H) and section 134.32(h), Customs Regulations (19 CFR 134.32(h)), when the ultimate purchaser must necessarily know the country of origin of an article by reason of the circumstances of its importation. In accordance with section 134.22 (a), Customs Regulations (19 CFR 134.22(a)), an article which is

excepted from individual marking must reach the ultimate purchaser in containers or holders marked to indicate the country of origin

Plastic lotion dispensers which are imported in containers that are marked in the manner described above are excepted from marking under 19 U.S.C. 1304 (a)(3)(H) and 19 CFR 134.32(h). Accordingly, marking the container in which the plastic lotion dispensers are imported and sold to the ultimate purchaser in lieu of marking the article itself is an acceptable country of origin marking for the imported dispensers provided the port director is satisfied that the articles will remain in the marked container until they reach the ultimate purchaser.

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 Patrick J. Wholey at 212-466-5668.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*



## [ATTACHMENT C]

HQ H237855  
 CLA-2 OT:RR:CTF:TCM H237855 EGJ  
 CATEGORY: Classification  
 TARIFF NO.: 8413.20.00

M. SEREDINSKY  
 IMPORT MANAGER  
 SCAC TRANSPORT (USA), INC.  
 BUILDING 75 NORTH HANGAR ROAD  
 JFK INTERNATIONAL AIRPORT  
 JAMAICA, NY 11430

RE: Modification of HQ 088500 and NY D82549: Classification of Hand Pumps

DEAR MR. SEREDINSKY:

This is in reference to Headquarters Ruling Letter (HQ) 088500, dated April 4, 1991, issued to you concerning the tariff classification of two different models of tops for bottles of cosmetic and medicinal preparations: the VP series and the “Piston Pump SP 30” series. The VP series has a sprayer head and the SP 30 series has an actuator head. This letter only addresses the SP 30 series.

In HQ 088500, U.S. Customs and Border Protection (CBP) classified the SP 30 series in subheading 8424.89.00, HTSUS, which provides, in pertinent part, for “Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders ...: other appliances: other ...” We have reviewed HQ 088500 and find it to be in error. For the reasons set forth below, we hereby modify HQ 088500 and one other ruling with substantially similar merchandise: New York Ruling Letter (NY) D82549, dated September 28, 1998, issued to Avon Products, Inc.<sup>1</sup>

**FACTS:**

The SP 30 series of tops dispenses cosmetic gels and emulsions. The tops have three main components: a long plastic feed tube, a spring-loaded piston pump, and an actuator head. After importation, the tops will be incorporated onto bottles and tubes. The long plastic feed tube will extend into the bottle’s reservoir, the pump will send the solution up the tube and the actuator head will dispense the liquid onto the consumer’s hand or body in a measured quantity. You state that the tops act as “liquid elevators” to bring the liquid to the top of the bottle or tube. The tops vary in size and design.

**ISSUE:**

Are the SP 30 series of tops classified as pumps for liquids under heading 8413, HTSUS, or as mechanical appliances for projecting, dispersing or spraying liquids under heading 8424, HTSUS?

<sup>1</sup> In NY D82549, CBP issued both a tariff classification and a country of origin marking determination. This letter only addresses the tariff classification determination in that ruling.

**LAW AND ANALYSIS:**

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

The HTSUS provisions at issue are as follows:

8413	Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; part thereof:
8413.20.00	Hand pumps, other than those of subheading 8413.11 or 8413.19 ...
	* * *
8424	Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof:
8424.90	Parts:
8424.90.90	Other ...
	* * *

Note 2 to Section XVI (Chapters 84–85) states that:

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

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

\* \* \*

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 84.24 states, in pertinent part:

#### PARTS

**Subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading includes parts for the appliances and machines of this heading. Parts falling in this heading thus include, *inter alia*, reservoirs for sprayers, spray nozzles, lances and turbulent sprayer heads not of a kind described in **heading 84.81**.

\* \* \*

Applying GRI 1, the first issue is whether HQ 088500 properly classified the Series 30 tops under heading 8424, HTSUS, as mechanical appliances for projecting or dispersing liquids. In *Trumpf Medical Systems, Inc. v. United States*, 753 F.Supp. 2d 1297, 1307 (CIT 2010), the U.S. Court of International Trade (CIT) defined “appliances” as follows:

These dictionary definitions indicate that an “appliance” constitutes a “device, apparatus or instrument for performing or facilitating the performance of a particular function.” *Dorland’s Illustrated Medical Dictionary* 116 (27th ed. 1988). See also *1 Oxford English Dictionary* 575 (“[A] thing applied as a means to an end” or an “apparatus”); *Academic Press Dictionary of Science and Technology* 140 (“[I]n general, any tool or machine that is used to carry out a specific task or produce a desired result.”).

CBP has classified finished hand pump soap and lotion dispensers in heading 8424, HTSUS. See, e.g. HQ H012731, dated March 27, 2008, HQ 956530, dated August 29, 1994, and HQ 956529, dated August 29, 1994. However, in their condition as imported, the tops are not finished appliances for projecting or dispersing liquids. The tops cannot perform the specific function of projecting or dispersing a liquid because they lack reservoirs to hold the liquid.

EN 84.24 lists goods which are considered parts of mechanical appliances for projecting or dispersing liquids. EN 84.24 lists examples such as reservoirs for sprayers, spray nozzles and sprayer heads. The Series 30 tops are similar to these examples of parts. As such, we find that the tops are parts of goods of heading 8424, HTSUS.

Under Note 2(a) to Section XVI, parts which are goods included in any of the headings of chapter 84 or 85 are in all cases to be classified in their respective headings. Only when a part is not a good in its own right is it classified with the machine of which it is a part. See Note 2(b) to Section XVI. Heading 8413, HTSUS, provides for pumps for liquids. In *Hancock Gross, Inc. v. United States*, 64 Cust. Ct. 97, 100–101 (1970) (*Hancock Gross*), the U.S. Customs Court (predecessor to the CIT) interpreted the scope of Tariff Schedules of the United States (TSUS) item 660.90, which provided for pumps for liquids. The U.S. Customs Court provided the following definition of “pumps”:

A pump may be defined as a mechanical device or machine designed for elevating or conveying liquids against the action of gravity \* \* \*. A pump

for liquids may be intended primarily for elevating the liquid from a source of supply below the pump up to the pump, or the principal purpose may be to force the liquid either to a much higher level or to some distant point by connecting the pump with suitable pipes. *Id. citing Engineering Encyclopedia* 1010 (2d Ed.).

Decisions by the courts interpreting nomenclature under the HTSUS' predecessor tariff code, the TSUS, are not deemed dispositive under the HTSUS. However, on a case-by-case basis, such decisions should be deemed instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, Aug. 23, 1988, 102 Stat. 1107, 1147; H.R. Rep. No. 576, 100th Cong., 2d Sess. 549-550 (1988); 1988 U.S.C.C.A.N. 1547, 1582-1583. In this instance, we find instructive the court's definition of pumps in *Hancock Gross*, 64 Cust. Ct. at 100-101.

In *Hancock Gross*, the subject merchandise was a plumbing apparatus called the "Drain or Fill." *Id.* at 99. It included a female-threaded connector designed to screw onto a male-threaded water faucet. *Id.* The apparatus raised fluid coming out of the water faucet against the action of gravity by suction. *Id.* If the water faucet was turned off, no suction was produced, and the "Drain or Fill" could not pump water. *Id.* The U.S. Customs Court found that the "Drain or Fill" was classifiable as a pump for liquids because it raised liquids against the action of gravity. *Id.* at 103-104.

Like the "Drain or Fill," the Series 30 tops are not attached to reservoirs, faucets or other sources of liquids. They consist of a long plastic feed tube, a spring-loaded piston pump and an actuator head. Once attached to a reservoir, the tops are designed to raise liquids against the action of gravity. As such, we find that the Series 30 tops are *prima facie* classifiable as pumps for liquids under heading 8413, HTSUS.

This determination is consistent with prior CBP rulings which classified similar pump assemblies under heading 8413, HTSUS. *See* NY N099836, dated April 28, 2010, and NY L89330, dated February 8, 2006. By application of Note 2(a) to Section XVI, the Series 30 tops cannot be classified as parts of mechanical appliance of heading 8424, HTSUS, because they are classifiable as pumps of heading 8413, HTSUS.

#### **HOLDING:**

By application of GRI 1 and Note 2(a) to Section XVI, the "Piston Pump SP 30" series tops in HQ 088500, dated April 4, 1991, are classified under heading 8413, HTSUS. Specifically, they are classified under subheading 8413.20.00, HTSUS, which provides, in pertinent part, for "Pumps for liquids ...: Hand pumps, other than those of subheading 8413.11 or 8413.19..." 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 088500, dated April 4, 1991, is hereby modified with regard to the “Piston Pump SP 30” series of tops.

NY D82549, dated September 28, 1998, is hereby modified with regard to the tariff classification of the plastic lotion dispensers.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

◆◆◆◆◆

**PROPOSED REVOCATION AND PROPOSED  
MODIFICATION OF THREE RULING LETTERS AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE CLASSIFICATION OF AMMONIUM NITRATE COLD  
COMPRESSES**

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

**ACTION:** Notice of proposed revocation and proposed modification of three classification ruling letters and proposed revocation of treatment relating to the classification of ammonium nitrate cold compresses.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is revoking NY L81028, dated December 22, 2004, and modifying HQ W968297, dated May 21, 2007, and NY M81919, dated April 17, 2006, relating to the classification of ammonium nitrate cold compresses. Comments are invited on the correctness of the proposed action.

This Notice was originally published in the *Customs Bulletin* Vol. 44, No. 24, on June 9, 2010. However, while the original Notice correctly described which ruling letters were to be revoked or modified, the attachments published with the Notice were incorrect. This Notice is being published again with the correct rulings attached.

**DATES:** Comments must be received on or before October 4, 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, 10th Floor, 90 K St., N.E., Washington, D.C. 20229–1177. Submitted comments may be inspected at Customs and Border Protection, 10th 90 K St. N.E., Washington, D.C. 20229–1177

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 NY L81028, dated December 22, 2004, and to modify HQ W968297, dated May 21, 2007, and NY M81919, dated April 17, 2006. Although in this notice, CBP is specifically referring to the revocation of NY L81028 (Attachment A) and the modification of HQ W968297 (Attachment B) and NY M81919 (Attachment C), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., 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 L81028, NY M81919 and HQ W968297, ammonium nitrate cold compresses were classified in heading 3102, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Mineral or chemical fertilizers, nitrogenous." Since the issuance of those rulings, CBP has reviewed the classification of these ammonium nitrate cold compresses and has determined that the cited rulings are in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY L81028, to modify NY M81919 and HQ W968297, and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject cold compresses according to the analysis contained in Headquarters Ruling Letter (HQ) H056864 (Attachment D). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: August 9, 2013

IEVA K. O'ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments



## [ATTACHMENT A]

NY L81028

December 22, 2004

CLA-2-31: RR: NC: SP: 236 L81028

CATEGORY: Classification

TARIFF NO.: 3102.30.0000

MS. ELEANORE KELLY-KOBAYASHI  
 RODE & QUALEY  
 55 WEST 39TH STREET  
 NEW YORK, NY 10018

RE: The tariff classification of Ace® Brand Instant Cold Compress from Canada

DEAR MS. KELLY-KOBAYASHI:

In your letter dated November 22, 2004, on behalf of your client, Becton Dickinson and Company, you requested a tariff classification ruling.

The sample submitted, Ace® Brand Instant Cold Compress is a plastic bag containing ammonium nitrate and water. To use the product, the pack must be squeezed to break the inner liquid bubbles in order to activate the solution. The solution makes the compress instantly cold and it can then be applied to the area requiring treatment. This product is used to help stop pain and swelling.

The applicable subheading for the Ace® Brand Instant Cold Compress will be 3102.30.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Mineral or chemical fertilizers, nitrogenous: Ammonium nitrate, whether or not in aqueous solution. The rate of duty will be Free.

You assert that the subject product is classifiable in subheading 3005.90.5090, HTS, which provides for “Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packages for retail sale: Other: Other.” We disagree. Our Headquarters office (“Headquarters”), in HQ 961089, dated April 13, 1999, stated that “[U]nder the rule of ejusdem generis, the phrase ‘similar articles’ is limited to goods which ‘possess the essential characteristics or purposes that unite the articles eo nomine.’” As a consequence of the previous statement, Headquarters determined that “[T]he characteristic which unites the exemplars of this heading (i.e., 3005, HTS) is their direct application to an open wound or to irritated skin.” *Id.* Therefore, since the package insert indicates that subject product is intended to “help(s) stop pain and swelling fast,” rather than for direct application to an open wound or to irritated skin, it is our determination that it is precluded from classification in heading 3005, HTS.

This product may be subject to the requirements of the Food, Drug and Cosmetic Act, which are administered by the U.S. Food and Drug Administration. Questions regarding FDA requirements may be addressed to the U.S. Food and Drug Administration, Office of Cosmetics and Colors, 5100 Paint Branch Parkway, College Park, MD 20740-3835, telephone number (202) 418-3412

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 Debra Wholey at 646-733-3034.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

[ATTACHMENT B]

HQ W968297

May 21, 2007

CLA-2 OT:RR:CTF:TCM W968297 TMF

CATEGORY: Classification

TARIFF NO.: 2833.21.0000

3102.30.0000

MR. STEPHEN C. LIU  
PACIFIC CENTURY CUSTOMS SERVICE  
11099 S. LA CIENEGA BLVD., SUITE 202  
LOS ANGELES, CA 90045

RE: Revocation of NY L84821, dated June 8, 2005, concerning the tariff classification of Hot and Cold Compress Packs from China

DEAR MR. LIU:

Pursuant to your request dated May 9, 2005 for a binding tariff classification ruling, Customs and Border Protection issued New York Ruling Letter (NY) L84821, dated June 8, 2005, in which certain hot and cold compress packs were classified in 3824.90.9190, Harmonized Tariff Schedule of the United States (HTS).

Upon review, the Bureau of Customs and Border Protection (CBP) has determined that the merchandise was erroneously classified. This ruling letter sets forth the correct classification determination.

Pursuant to section 625©, Tariff Act of 1930 (19 U.S.C. §1625©), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on April 11, 2007 in the CUSTOMS BULLETIN in Volume 41, Number 16. No comments were received in response to this notice.

**FACTS:**

The facts, which were taken directly from the ruling at issue, are as follows:

In your letter dated May 9, 2005, you requested a tariff classification ruling for “Instant Cold Compress” and “Instant Hot Compress” packs which you have stated are composed of ammonium nitrate and water; and magnesium sulfate and water; respectively. A sample of each product was submitted with your inquiry.

**LAW AND ANALYSIS:**

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings.

The subject cold compress pack is comprised of 40–70 percent ammonium nitrate and 30–60 percent water. The subject hot compress pack is comprised of 20–40 percent magnesium sulfate and 60–80 percent water. Both were classified in subheading 3824.90.9190, Harmonized Tariff Schedule of the United States (HTS), which provides for “prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; other...other.”

Heading 2833, HTSUS, provides for “sulfates; alums; peroxosulfates (persulfates).” Chapter Note 1(a) to Chapter 28 states: “Except where the context otherwise requires, the headings of this chapter apply only to “[s]eparate chemical elements and separate chemically defined compounds, whether or not containing impurities.” Chapter Note 1(b) to Chapter 28 states: “The products mentioned in (a) above dissolved in water.” EN 38.24(B), states, in pertinent part, that aqueous solutions of Chapter 28 remain classified therein.

The subject magnesium sulfate hot compress pack consists of magnesium sulfate dissolved in water. Based on this description, the subject hot compress pack should be classified in subheading 2833, HTSUS. Additionally, CBP has issued New York Ruling Letter (NY) E85600, dated December 6, 1999 that classified a 50 percent aqueous solution of magnesium sulfate from Canada in subheading 2833.21.0000, HTSUS.

The subject ammonium nitrate cold compress pack also contains water. Chapter 28, Note 3©, which refers to Note 2, Chapter 31, states: “Subject to the provisions of note 1 to section VI, this chapter does not cover: Products mentioned in note 2, 3, 4 or 5 to chapter 31.” Note 2(a)(ii), Chapter 31, states that heading 3102 applies to ammonium nitrate, whether or not pure. As the ammonium nitrate cold pack is excluded from Chapter 28, it is classifiable in Chapter 31. *See also* NY M81919, in which CBP classified a cold compress containing ammonium nitrate in subheading 3102.30.0000, HTSUS.

Therefore, the subject hot and cold compresses are classified in subheadings 2833.21.0000 and 3102.30.0000, HTSUS, respectively.

#### **HOLDING:**

The “Instant Hot Compress” pack is classifiable in subheading 2833.21.0000, HTSUS, which provides for “Sulfates; alums; peroxosulfates (persulfates): Other sulfates: Of magnesium.” The general column one rate of duty is 3.7 percent *ad valorem*.

The “Instant Cold Compress” pack is classifiable in subheading 3102.30.0000, HTSUS, which provides for “Mineral or chemical fertilizers, nitrogenous: Ammonium nitrate, whether or not in aqueous solution.” The general column one rate of duty is FREE.

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

New York Ruling Letter (NY) L84821, dated June 8, 2005, is hereby REVOKED. In accordance with 19 U.S.C. §1625©, 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]

NY M81919

April 17, 2006

CLA-2-42:RR:NC:2:238 M81919

CATEGORY: Classification

TARIFF NO.: 4202.92.9026; 3102.30.0000;  
3005.90.5090; 3004.90.9145

MR. TONY GUTERMUTH  
GLOBAL COMPONENTS CORPORATION  
3429 KNOBS VALLEY DRIVE  
FLOYDS KNOBS, IN 47119

RE: The tariff classification of a textile-covered case containing the following items: an instant cold compress; a reusable hot & cold compress; an emergency/survival blanket; two 5" x 9" sterile trauma pads; two 4" x 4" sterile gauze pads, three 3" x 3" sterile gauze pads; three 2" x 2" sterile gauze pads; a foil packet of burn gel; and a foil packet of first aid cream

DEAR MR. GUTERMUTH:

In your (undated) letter, received on April 5, 2006, you requested a tariff classification ruling. The sample you submitted with your ruling request will be returned as requested.

The submitted sample, marked "01E-675," which you refer to as a first aid kit, consists of a case, with a zipper closure and a rubber handle, constructed from EVA foam. The foam is covered on its exterior surface with blue, polyester, woven fabric. A rubber label bearing the words, "First Aid Only," is permanently affixed, by sewing, to the fabric. The words, "First Aid Kit," are also embossed into the fabric, on the same side as the rubber label. The interior of the case contains a built-in, rigid, plastic frame, divided into sixteen (empty) compartments, which will be filled - subsequent to importation - with various first aid articles. In addition to the built-in plastic frame, the interior of the case contains three, removable, plastic sleeves (one held in place by a hook-and-loop closure) labeled "Hot/Cold Therapy," "Trauma Center," and "Bandage Buddy™," respectively. Each sleeve, in turn, contains a paperboard card printed with the names of the various first aid items that the sleeve will contain, and (in the case of the "Hot/Cold Therapy" and "Trauma Center" sleeves) instructions for their use on the reverse side. As submitted, the "Hot/Cold Therapy" sleeve contains the reusable hot/cold compress, the instant cold compress, and the foil packet of first aid cream; the "Trauma Center" sleeve contains the trauma pads, gauze dressing pads and the emergency/survival blanket; and the "Bandage Buddy™" sleeve contains only the foil packet of burn gel.

Under the Tariff Schedules of the United States Annotated (TSUSA), the predecessor to the Harmonized Tariff Schedule of the United States (HTSUS), subheading 495.20, TSUSA, provided for "First-aid kits **put up and packaged for retail sale**" (emphasis added). We construe this to mean that, under the TSUSA, the classification of any article as a first-aid kit was predicated upon that article - **in its condition as imported** - being exclusively intended directly for sale at retail, without the performance of any re-packing operation(s) prior to its actually being put up for retail sale. Furthermore, notwithstanding that the words, "put up and packaged for

retail sale” do not appear in subheading 3006.50.0000<sup>1</sup> of the HTSUS, we are unable to find any evidence of legislative intent to include first-aid boxes and kits within subheading 3006.50.0000, HTSUS, that - in their condition as imported - are *not* put up and packaged for retail sale. It is, therefore, our determination that the submitted sample is excluded from classification within subheading 3006.50.0000, HTSUS, as a first-aid box or kit.

The applicable subheading for the case will be 4202.92.9026, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Trunks, suitcases, vanity cases, attache cases, briefcases...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: With outer surface of textile materials: Other: Of man-made fibers.” The rate of duty will be 17.6 percent ad valorem.

The applicable subheading for the instant cold compress will be 3102.30.0000, HTSUS, which provides for “Ammonium nitrate, whether or not in aqueous solution.” The rate of duty will be free.

The applicable subheading for the sterile trauma pads and gauze pads will be 3005.90.5090, HTSUS, which provides for “Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices)...put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes: Other: Other: Other.” The rate of duty will be free.

The applicable subheading for the foil packet of burn gel and the foil packet of first aid cream will be 3004.90.9145, HTSUS, which provides for “Medicaments...consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses...or in forms or packings for retail sale: Other: Other: Other: Dermatological agents and local anesthetics.” 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/>.

With respect to the reusable hot & cold compress, please be advised that we require the chemical name and percent by weight of each ingredient in order to issue a ruling on this product. When this information is available, you may wish to resubmit your request for a ruling on this product.

With respect to the emergency/survival blanket, please be advised that we require the chemical name of the polymer, onto which the aluminum is deposited, in order to issue a ruling on this product. When this information is available, you may wish to resubmit your request for a ruling on this product.

The case falls within textile category designation 670. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the “Textile Status Report for Absolute Quotas” available at our website at [www.cbp.gov](http://www.cbp.gov). In addition, you will find current information on textile import quotas, textile safeguard actions and related issues by visiting the website of the Office of Textiles and Apparel at [otexa.ita.doc.gov](http://otexa.ita.doc.gov).

<sup>1</sup> Subheading 3006.50.0000, HTSUS, provides for “First-aid boxes and kits.”

The instant cold compress may be subject to the Toxic Substances Control Act (TSCA), which is administered by the U.S. Environmental Protection Agency (EPA). Information on the TSCA can be obtained by calling the EPA at (202) 554-1404, or, by visiting their website at [www.epa.gov](http://www.epa.gov).

The burn gel and the first aid cream may be subject to the Federal Food, Drug, and Cosmetic Act and/or The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which are administered by the U.S. Food and Drug Administration (FDA). Information on the Federal Food, Drug, and Cosmetic Act, as well as The Bioterrorism Act, can be obtained by calling the FDA at 1-888-463-6332, or by visiting their website at: [www.fda.gov](http://www.fda.gov).

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Harvey Kuperstein at 646-733-3033.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*



## [ATTACHMENT D]

HQ H056864  
 CLA-2 OT:RR:CTF:TCM H056864 CKG  
 CATEGORY: Classification  
 TARIFF NO.: 3105.10

MS. ELEANORE KELLY-KOBAYASHI  
 RODE & QUALEY  
 55 WEST 39TH STREET  
 NEW YORK, NY 10018

RE: Revocation of NY L81028 and Modification of NY M81919 and HQ W968297; Ammonium Nitrate Cold Compress Pack

DEAR MS. KELLY-KOBAYASHI:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered the following rulings: New York Ruling Letter (NY) L81028, issued to you on December 22, 2004, on behalf of your client Becton Dickinson and Company, Headquarters Ruling Letter (HQ) W968297, dated May 21, 2007, and New York Ruling M81919, dated April 17, 2006, concerning the classification of ammonium nitrate cold compress packs. In NY L81028, NY M81919, and HQ W968297 CBP determined that ammonium nitrate cold compress packs were classified in heading 3102, HTSUS, which provides for: "Mineral or chemical fertilizers, nitrogenous." We have reviewed these rulings and found that the classification of the cold compresses in heading 3102, HTSUS, was in error. Therefore, this ruling revokes NY L81028 and modifies HQ W968297 and NY M81919.

**FACTS:**

The merchandise at issue was described in NY L81028, as follows:

The sample submitted, Ace® Brand Instant Cold Compress is a plastic bag containing ammonium nitrate and water. To use the product, the pack must be squeezed to break the inner liquid bubbles in order to activate the solution. The solution makes the compress instantly cold and it can then be applied to the area requiring treatment. This product is used to help stop pain and swelling.

**ISSUE:**

Whether the cold compress is classified in heading 3102, HTSUS, as mineral or chemical fertilizers or heading 3105, HTSUS, as goods classifiable in chapter 30, HTSUS, in packages of a gross weight not exceeding 10 kg.

**LAW AND ANALYSIS:**

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

The provisions at issue are as follows:

3102 Mineral or chemical fertilizers, nitrogenous

3012.30	Ammonium nitrate, whether or not in aqueous solution
3105	Mineral or chemical fertilizers containing two or three of the fertilizing elements nitrogen, phosphorus and potassium; other fertilizers; goods of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg
3105.10	Products of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg
*	* * * * *

Note 2 to Chapter 31, HTSUS, provides in relevant part:

Heading 3102 applies only to the following goods, provided that they are not put up in the forms or packages described in heading 3105:

(a) Goods which answer to one or other of the descriptions given below:

...

(ii) Ammonium nitrate, whether or not pure

\* \* \* \* \*

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation 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 the headings. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to heading 3102, HTSUS, provides, in pertinent part:

This heading applies only to the following goods, provided that they are not put up in the forms or packages described in heading 3105:

(A) Goods which answer to one or other of the descriptions given below:

...

(2) Ammonium nitrate, whether or not pure

...

"It should be noted that the mineral or chemical products described in the limitative list above are classified in this heading **even when they are clearly not to be used as fertilizers.**"

The EN to heading 3105, HTSUS, provides in relevant part:

**The heading also covers the goods of this Chapter if put up in tablets or similar forms or in packages of a gross weight not exceeding 10 kg.**

\* \* \* \* \*

Heading 3105, HTSUS, covers goods of Chapter 31 put up in packages of less than 10 kg. Pursuant to Note 2(a)(ii) to Chapter 31 and EN 31.02, heading 3102, HTSUS, covers ammonium nitrate, even if not used as a fertilizer, provided that it is put up in packages of greater than 10kg. Hence, ammonium nitrate, even if not used as a fertilizer, is a product of Chapter 31. If it is put up in packages greater than 10kg, it falls within heading 3102, HTSUS; if in packages of less than 10kg, it falls under heading 3105, HTSUS.

The instant cold compress contains ammonium nitrate which is not used as a fertilizer, and it is imported in a package weighing less than 10 kg. By

application of Note 2 to Chapter 31, HTSUS, EN 31.02, and heading 3105, HTSUS, the instant cold compress is excluded from heading 3102, HTSUS, and is classified in heading 3105, HTSUS, as a good of Chapter 31 (i.e., ammonium nitrate), put up in packages of less than 10 kg.

**HOLDING:**

Pursuant to GRI 1 and Note 2 to Chapter 31, the cold compress is classified in heading 3105, HTSUS. It is specifically provided for in subheading 3105.10.00, HTSUS, which provides for “Mineral or chemical fertilizers containing two or three of the fertilizing elements nitrogen, phosphorus and potassium; other fertilizers; goods of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg: Products of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg.”

**EFFECT ON OTHER RULINGS:**

NY L81028, dated December 22, 2004 is hereby revoked; NY M81919 and HQ W968297 are hereby modified.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

cc:

Mr. Stephan C. Liu  
Pacific Century Customs Service  
11099 S. La Cienega Blvd., Suite 202  
Los Angeles, CA 90045

Mr. Tony Gutermuth  
Global Components Corporation  
3429 Knobs Valley Drive  
Floyds Knobs, IN 47199



**GENERAL NOTICE**

**19 CFR PART 177**

**REVOCAION OF TWO RULING LETTERS, MODIFICATION  
OF TWO RULING LETTERS, AND REVOCAION OF  
TREATMENT RELATING TO CLASSIFICATION OF  
CERTAIN HOT/COLD COMPRESSES**

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

**ACTION:** Notice of revocation of two ruling letters, modification of two ruling letters, and revocation of treatment relating to the classification of certain hot/cold compresses.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking two ruling letters and modifying two ruling letters concerning the certain hot/cold compresses under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 44, No. 24, on June 9, 2010. CBP received no comments in response to this notice. Since the publication of the proposed notice, CBP has identified two other rulings that should have been included in the proposed notice. These two additional rulings are included in this final revocation.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 4, 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), notice proposing to modify New York Ruling Letter (NY) A87539, dated September 30, 1996 and revoke NY 892007, dated November 24, 1993, was published on June 9, 2010, in Volume 44, Number 24, of the Customs Bulletin. CBP received no comments in response to this notice.

Although the proposed notice specifically referred to NY A87539 and NY 892007, it covered any rulings on this merchandise which may exist but have not been specifically identified. Since the publication of the proposed notice, CBP has identified two other rulings that should have been included in the notice: NY 804966, dated December 19, 1994, and NY 816853, dated December 13, 1995. As such, this final revocation applies to NY 804966 and NY 816853. 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 covers 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 have advised CBP during the notice period.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY A87539 and NY 804966, and revoking NY 892007 and NY 816853 in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) H055380, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 8, 2013

IEVA K. O'ROURKE

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H055380

August 8, 2013

CLA-2 OT:RR:CTF:TCM H055380 TNA

CATEGORY: Classification

TARIFF NO.: Unknown

Ms. HELEN I. SUGAR

THE BUFFALO CUSTOMHOUSE BROKERAGE CO., INC.

PEACE BRIDGE PLAZA WAREHOUSE

SUITE 211

BUFFALO, NY 14213

RE: Revocation of NY 892007, dated November 24, 1993, and NY 816853, dated December 13, 1995; Modification of NY A87539, dated September 30, 1996 and NY 804966, dated December 19, 1994; Classification of Hot & Cold Compresses

DEAR Ms. SUGAR:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) 892007, issued to you on November 24, 1993, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of three hot and cold compresses. The compresses were classified under heading 3005, HTSUS, which provides for “Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental, or veterinary purposes.”

In addition, this letter pertains to NY 804966, dated December 19, 1994, and NY 816853, dated December 13, 1995, and NY A87539, dated September 30, 1996. We have reviewed these rulings and found them to be in error. Therefore, this ruling revokes NY 892007 and NY 816853, and modifies NY A87539 and NY 804966.

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 892007, modify NY A87539 was published on June 9, 2010, in Volume 44, Number 24, of the Customs Bulletin. CBP received no comments in response to this notice. Since the publication of the proposed notice, CBP has identified two other rulings that should have been included in the proposed notice. These two additional rulings are included in this final revocation. Specifically, NY 816853 will be revoked and NY A87539 will be modified.

**FACTS:**

The products at issue were described as follows in NY 892007:<sup>1</sup>

<sup>1</sup> In NY 804966, CBP classified Item #2 in heading 3005, and this modification only applies to this item. Item #2 is a refreezable cold wrap made of nylon netting inside and 100% tricot on the outside for insulation. Inside are two individual pockets for the ice packs. In NY 816853, CBP classified a re-usable heat pad imported in a variety of shapes and sizes to fit various parts of the body. It is comprised of a flexible plastic container containing a supercooled, aqueous solution of sodium acetate and a “trigger” button that initiates exothermic crystallization of the salt in the solution, resulting in the generation of heat. In NY A87539, CBP classified Item N-IP-01, a hot/cold compress constructed of neoprene rubber laminated on the outer side with knit nylon fabric and the inner side with nylon



The subject merchandise consists of reusable compresses for the application of heat or cold to an injured area of the body. The “Rapid Relief” Reusable Cold & Hot Compress, a sample of which was submitted with your inquiry, consists of a gel-filled plastic pouch that can be used as a cold or hot compress. For use as a cold compress, the pouch, after freezing, is placed on a dry towel and applied to the injured area. For use as a hot compress, the pouch, after placing it in water that has been boiled, is wrapped in a towel and applied to the injured area. According to the descriptive literature, the “Instant Hot” compress generates heat, based on the formation of a calcium chloride solution, and the “Instant Cold” compress generates cold, based on the formation of an ammonium nitrate solution.

These items are also called “gel packs” in the rulings at issue here. *See, e.g., NY A87539.* As a result, we acknowledge that this term can also be used to describe the subject merchandise.

#### **ISSUE:**

Whether the compresses are classified in headings 3005, HTSUS, as wadding, gauze, bandages and similar articles or according to the inner heating/cooling material.

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

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

The goods are potentially classifiable under more than one heading because they consist of separate components and no one heading in the tariff provides for the goods as entered. Because the compresses are composite goods, consisting of an exterior shell and a chemical filler, for tariff purposes, they constitute goods consisting of two or more materials and substances. Thus, they may not be classified solely on the basis of GRI 1. The compresses are described in GRI 2(b) which covers mixtures or combinations of materials and substances and goods consisting of two or more materials and substances. According to GRI 2(b), “The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.” Under GRI 3(b), classification of an article is to be determined on the basis of the component which gives the article its essential character.

The Explanatory Notes (ENs) to GRI 3(b)<sup>2</sup> provide that, if this rule applies, goods shall be classified as if they consisted of the material or component which gives them their essential character. EN Rule 3(b)(VIII) lists as factors woven fabric. The interior side features a pocket that houses a gel pack, which is held closed with a strip of hook and loop fastener. This modification applies to this item only.

<sup>2</sup> The Harmonized Commodity Description and Coding System ENs, constitute the official interpretation 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 the headings. It is Customs and Border Protection (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

to help determine the essential character of such goods: the nature of the materials or components, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods.

As stated by the Court of International Trade in *Structural industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), “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.” See also *Conair Corporation v. United States*, 29 Ct. Int’l Trade, 888, 895 (citations omitted) (2005), (discussing “the concept of ‘essential character’ found in GRI 3(b)”).

Prior rulings that have classified heating and/or cooling composite goods have differentiated between goods on the basis of whether the article as a whole appears to function primarily as a means to provide heat or cold. In such instances, the heating/cooling element will impart the essential character. See Headquarters Ruling Letters (HQ) 964851, dated April 18, 2001; HQ 966262, dated May 29, 2003; HQ 957182, dated March 6, 1995; HQ 959825, dated May 19, 1999; HQ 964054, dated March 2, 2001; HQ 956845, dated December 22, 1994; and HQ 957478, dated September 7, 1995.

The composite goods are being imported to provide heat or cold therapy. While the articles do provide some compression to the affected area, the indispensable function of the articles is the ability to provide heat or cold. The cover is merely a means to contain the inner chemicals. This criterion indicates that the essential character of the good is provided by the chemicals. We therefore conclude that the essential character of the products is provided by the material that provides the heating or cooling. Under GRI 3(b), the compresses are classifiable by the chemical solution or gel providing the heat or cold to the affected area.

**HOLDING:**

By application of GRI 3(b), the compresses are classified in the heading in which the chemical solution or gel providing the heat or cold is classified.

**EFFECT ON OTHER RULINGS:**

NY 892007, dated November 24, 2003, and NY 816853, dated December 13, 1995 are REVOKED. NY A87539, dated September 30, 1996, and NY 804966, dated December 19, 1994, are MODIFIED.

*Sincerely,*

IEVA K. O’ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED REVOCATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF A FILE ORGANIZER**

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

**ACTION:** Notice of proposed revocation of a ruling letter relating to the tariff classification of an expanding file organizer.

**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 a ruling letter relating to the tariff classification of an expanding file organizer 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 October 4, 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 Jenior, Tariff Classification and Marking Branch: (202) 325–0347.

#### **SUPPLEMENTARY INFORMATION:**

##### **BACKGROUND**

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

record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of an expanding file organizer. Although in this notice, CBP is specifically referring to the revocation of NY N073247, dated September 10, 2009 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(2)), CBP 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 N073247, CBP determined that an expanding file organizer was classified in subheading 4819.60.00, HTSUS, which provides, in pertinent part, for "Box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like: Box files...." It is now CBP's position that the subject file organizer is properly classified under subheading 4202.19.00, HTSUS, which provides, in pertinent part, for "Trunks, suitcases, vanity cases, attaché cases, brief cases ... and similar containers...: Trunks, suitcases, vanity cases, attaché cases, briefcases... and similar containers..."

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY N073247, and to revoke or to modify any other ruling not specifically identified, in order to reflect the proper classification of file organizers according to the analysis contained in proposed HQ H235455, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 31, 2013

IEVA K. O'ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N073247

September 10, 2009

CLA-2-48:OT:RR:NC:2:234

CATEGORY: Classification

TARIFF NO.: 4819.60.0000

MS. DENISE YOUNG-SANG  
OFFICE DEPOT  
6600 NORTH MILITARY TRAIL  
MAIL CODE: N516E  
BOCA RATON, FL 33496

RE: The tariff classification of an expanding file organizer from China

DEAR MS. YOUNG-SANG:

In your letter dated August 21, 2009, you requested a tariff classification ruling.

You submitted a sample designated as a "19 Pocket Expanding File Organizer" for our review which will be returned to you as requested. The "19 Pocket Expanding File Organizer" has a design-printed and surface-colored exterior constructed of a rigid, paperboard. The container is designed with a fold-over lid that has a metal carry handle and twist lock. The box top unlocks and opens up to display nineteen permanently mounted, accordion style pocket files with an expanding side gusset. The inner pockets have indented thumb tabs and are constructed of a thin cardboard material. The rectangular expanding file organizer measures approximately 15" (w) x 4 1/2" (d) x 10" (h). The 19 pocket expanding file organizer is designed for use in the home or office.

The applicable subheading for the expanding file organizer will be 4819.60.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Box files, letter trays, storage boxes and similar articles, of a kind used in offices, shops or the like. 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 Patricia Wilson at (646) 733-3037.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H235455  
CLA-2 OT:RR:CTF:TCM H235455 EGJ  
CATEGORY: Classification  
TARIFF NO.: 4202.19.00

Ms. DENISE YOUNG-SANG  
OFFICE DEPOT  
6600 NORTH MILITARY TRAIL  
MAIL CODE: N516E  
BOCA RATON, FL 33496

RE: Revocation of NY N073247: Classification of an Expanding File Organizer

DEAR Ms. YOUNG-SANG:

This is in reference to New York Ruling Letter (NY) N073247, dated September 10, 2009, issued to you concerning the tariff classification of an expanding file organizer under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) classified the subject article in heading 4819, HTSUS, which provides for box files and similar articles of paperboard. We have reviewed NY N073247 and find it to be in error. For the reasons set forth below, we hereby revoke NY N073247.

**FACTS:**

In NY N073247, CBP identified the subject merchandise as the “19 Pocket Expanding File Organizer,” which has a design-printed and surface-colored exterior constructed of a rigid, paperboard. The container is designed with a fold-over lid that has a metal carry handle and twist lock. The box top unlocks and opens up to display nineteen permanently mounted, accordion style pocket files with an expanding side gusset. The inner pockets have indented thumb tabs and are constructed of a thin cardboard material. The rectangular expanding file organizer measures approximately 15” (w) x 4 ½” (d) x 10” (h). The 19 pocket expanding file organizer is designed for use in the home or office.

**ISSUE:**

Is the file organizer classified under heading 4819, HTSUS, as a box file or similar article of paperboard, or under heading 4202, HTSUS, as a container similar to briefcases and attaché cases?

**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. 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.



The relevant HTSUS provisions are:

- |      |   |
|------|---|
| 4202 | Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper ...<br>*           *           * |
| 4819 | Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like ...<br>*           *           *   |

Note 2(h) to Chapter 48 states that:

2. This chapter does not cover:

(h) Articles of heading 4202 (for example, travel goods) ...

\*           \*           \*

According to GRI 1, we must first examine section notes, chapter notes and the text of the headings. Note 2(h) to Chapter 48 states that articles of heading 4202, HTSUS, are excluded from classification in Chapter 48. Thus, if the file organizer is classifiable under heading 4202, HTSUS, it cannot be classified in heading 4819, HTSUS.

Heading 4202, HTSUS, sets forth two lists of containers which are classifiable under that heading. One list is before the semicolon and the other list is after the semicolon. Each list includes the phrase “and similar containers.” Heading 4202, HTSUS, does not specifically name file organizers. Therefore, we must look to the meaning of the phrase “and similar containers.”

The term “container” is not defined in the HTSUS.<sup>1</sup> In *Webster’s New World Dictionary of American English*, 300 (3d. College Ed. 1988), a container is “a thing that contains or can contain something.” To contain means “to hold; 1. to have in it; hold, enclose, or include.” *Id.* In *Merriam-Webster’s Collegiate Dictionary*, 249 (10th ed. 2001), to contain means “to hold together, hold in, contain; 1. to keep within limits.” The file organizer holds or encloses documents and files. As such, the file organizer is a type of container.

In addition to being a container, the file organizer must be “similar” to the other containers listed in heading 4202, HTSUS. The term “and similar containers” requires that we apply the rule of *ejusdem generis* to determine

<sup>1</sup> When, as in this case, a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

the scope of heading 4202, HTSUS. Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to classification analysis, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms. See *Sports Graphics, Inc. v. United States*, 24 F.3d 1390, 1392 (Fed. Cir. 1994).

In *Totes, Inc. v. United States*, (*Totes I*) 18 C.I.T. 919, 924 (1994), the Court of International Trade (CIT) held that the essential characteristics which unite the containers of heading 4202, HTSUS, are that the containers “organize, store, protect and carry various items.” *Id. aff’d by Totes, Inc. v. United States*, (*Totes II*) 69 F.3d 495 (Fed. Cir. 1995). In *Firststrax v. United States*, 45 Cust. B. & Dec. 46 (Ct. Int’l Trade 2011), the CIT elaborated upon the meaning of the terms “organize” and “store”. The CIT stated that “[i]n the context of heading 4202, organization implies multiple items placed together in a single container.” *Id.* at 68. The CIT stated that “to ‘store’ is to keep or set aside for future use.” *Id.* at 69 citing *Webster’s Third New International Dictionary, Unabridged*, p.2252 (1981).

The courts have not yet addressed definitions of “protect” or “carry.” In *Webster’s New World Dictionary*, 215 (3d. College Ed. 1988), “carry” is defined as “to hold or support while moving.” The same dictionary defines “protect” as “to shield from injury, danger or loss.” *Id.* at 1081.

We must apply the principle of *ejusdem generis* to determine if the file organizer has the same essential characteristics as the named containers of heading 4202, HTSUS. Namely, we must determine if the primary purpose of the file organizer is to organize, store, protect or carry. The file organizer has nineteen pocket files, which enable it to organize documents under nineteen different categories. As such, the file organizer is designed for organization. Next, the file organizer has a fold over lid and twist lock. As such, the documents inside of it can be set aside and out of sight for future use. Therefore, the file organizer is designed for storage.

The file organizer is comprised of paperboard. As such, it would not provide the best protection against rain or other inclement weather. However, the file organizer would protect documents from every day wear and tear. As such, the file organizer has a limited protective quality. Finally, the file organizer has a metal carry handle. This enables the file organizer to carry documents from one location to another. As such, the file organizer does organize, store, protect and carry filed documents.

As the file organizer shares the same essential characteristics as the named containers of heading 4202, HTSUS, we find that the file organizer is classified under heading 4202, HTSUS. Note 2(h) to Chapter 48 states that articles of heading 4202, HTSUS, are excluded from classification in Chapter 48. As such, the file organizer cannot be classified under heading 4819, HTSUS. CBP has classified similar document carrying cases under heading 4202, HTSUS. See, e.g. HQ 968068, dated July 25, 2006, NY N007787, dated April 3, 2007, and NY N042888, dated November 21, 2008.

**HOLDING:**

By application of GRI 1 (Note 2(h) to Chapter 48), the file organizer is classified in heading 4202, HTSUS. It is specifically classified under sub-heading 4202.19.00, HTSUS, which provides, in pertinent part, for “Trunks, suitcases, vanity cases, attaché cases, briefcases ....: Trunks, suitcases, vanity cases, attaché cases ...: Other ...” The 2013 column one, general rate of duty is twenty percent *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

NY N073247, dated September 10, 2009, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

◆◆◆◆◆

**PROPOSED MODIFICATION OF RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF BRUSSELS SPROUTS  
WITH BUTTER SAUCE**

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

**ACTION:** Notice of proposed modification of ruling letter and proposed revocation of treatment relating to tariff classification of Brussels sprouts with butter sauce.

**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 a ruling letter relating to the tariff classification of Brussels sprouts with butter sauce 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 October 4, 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,

799 9th Street, N.W. - 5th Floor, Washington, D.C. 20229-1179. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20001 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Karen Greene, Valuation & 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)), this notice advises interested parties that CBP proposes to modify a ruling letter pertaining to the tariff classification of Brussels sprouts with butter sauce. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N202500, dated March 1, 2012, 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 intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action. In NY N202500, set forth respectively as Attachment A to this document, CBP determined that the subject merchandise was classified under heading 0710, HTSUS, which provides for: "vegetables (uncooked or cooked by steaming or boiling in water), frozen". It is now CBP's position that the subject Brussels sprouts is properly classified under subheading 2004.90, HTSUS, which provides for: "Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006: Other vegetables and mixtures of vegetables".

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N202500 and revoke or modify any other ruling not specifically identified, in order to reflect the proper tariff classification of the subject Brussels sprouts according to the classification analysis contained in proposed HQ H2122866, 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: July 31, 2013

IEVA K. O'ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

March 01, 2012

N202500

CLA-2-07:OT:RR:NC:N2:228

TARIFF NO.:

MS. MARIA E. CELIS  
NEVILLE PETERSON LLP  
17 STATE STREET, 19TH FLOOR  
NEW YORK, NY 10004

RE: The status under the North American Free Trade Agreement (NAFTA) of a Brussels sprout product from Mexico; Article 509

DEAR Ms. CELIS:

In your letter dated February 1, 2012, on behalf of General Mills, Inc, Minneapolis, MN, you requested a ruling on the status of a Brussels sprout product from Mexico under the NAFTA.

A description of the merchandise, image of the packaging for a similar product, sample, processing information, and ingredients breakdowns were submitted with your letter. The sample was examined and disposed of. Green Giant brand “Baby Brussels Sprouts & Butter Sauce” is said to consist of frozen Brussels sprouts and frozen butter sauce chips, packed in a microwave bag. Examination of the sample found the product contains frozen, whole, Brussels sprouts packed with chunks of butter sauce in a retail bag holding 538 grams (1 lb 3 oz), net weight.

The frozen Brussels sprouts are products of Belgium. The frozen butter sauce “chips” are products of the United States. In Mexico, frozen Brussels sprouts and frozen butter sauce “chips” are stored separately. Then, the sprouts and butter sauce “chips” are inspected, and put up together in proper proportions in a microwave bag. The “Baby Brussels Sprouts & Butter Sauce” will be imported in frozen condition. The consumer is instructed to microwave the product in the bag or a dish, or cook it in a saucepan on the stove-top to create a ready-to-eat vegetable dish.

You suggested the “Baby Brussels Sprouts & Butter Sauce” may be classified under subheading 2004.90.85, Harmonized Tariff Schedule of the United States (HTSUS), the provision for other frozen prepared or preserved vegetables, and the product would be qualified as NAFTA originating. We cannot agree. The frozen Brussels sprouts have not been “prepared or preserved”, but have simply been packed with frozen butter sauce “chips.” The frozen Brussels sprouts and frozen butter sauce “chips” maintain their original identity. Each commodity remains complete and recognizable. At the time of importation, the product will be classified as a set put up for retail sale, whose essential character is imparted by the frozen Brussels sprouts. The “Baby Brussels Sprouts & Butter Sauce” is classifiable in heading 0710, and the product will not be considered an originating good under the NAFTA.

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

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

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

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

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

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

Based on the facts provided, the “Baby Brussels Sprouts & Butter Sauce” will not qualify for preferential treatment under the NAFTA because the frozen Brussels sprouts will not undergo the change in tariff classification required by General Note 12(t)/7.1, HTSUS.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides, in general, that all articles of foreign origin imported into the United States must be legibly, indelibly, conspicuously, and permanently marked to indicate the English name of the country of origin to an ultimate purchaser in the United States. The implementing regulations to 19 U.S.C. 1304 are set forth in Part 134, Customs Regulations (CFR Part 134). The sample you have submitted does not appear to be properly marked with the country of origin. You may wish to discuss the matter of country of origin marking with the Customs Import Specialist at the proposed port of entry.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site [www.fda.gov/oc/bioterrorism/bioact.html](http://www.fda.gov/oc/bioterrorism/bioact.html).

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Bruce N. Hadley, Jr. at (646) 733-3029.

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, Headquarters, U.S. Customs and Border Protection, Regulations & Rulings, 799 9th Street N.W. - 7th floor, Washington, DC 20229-1177.

*Sincerely,*

THOMAS J. RUSSO

*Director*

*National Commodity Specialist Division*



## [ATTACHMENT B]

HQ H212286

CLA-2 OT:RR:CTF:VS H212286 KSG

CATEGORY: Classification; NAFTA; Marking

MARIA E. CELIS  
 NEVILLE PETERSON LLP  
 17 STATE STREET, 19TH FLOOR  
 NEW YORK, NY 10004

Re: Modification of NY N202500; classification, NAFTA eligibility, and country of origin marking requirements of frozen Brussels sprouts

DEAR Ms. CELIS:

This letter is in response to your request dated March 22, 2012, on behalf of General Mills, Inc., for reconsideration of New York Ruling Letter (“NY”) N202500, dated March 1, 2012, which classified frozen Brussels sprouts in butter sauce in heading 0710 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Upon review of NY N202500, CBP has determined that the portion of the ruling related to the tariff classification of the Brussels sprouts is incorrect as set forth below. Accordingly, for the reasons set forth below, we intend to modify that ruling.

**FACTS:**

This case involves imported frozen Brussels sprouts and frozen butter sauce chips packaged together and sold as Green Giant brand “baby Brussels sprouts & butter sauce.” The butter sauce chips are made from 82% water, 5% sugar, 5% modified butter, 3% salt, 2% corn starch, 1.5% gelatin and small percentages of additional ingredients. You state that the Brussels sprouts and butter sauce chips are packaged together in the weights necessary for the specified dish to be created when the product is microwaved. The Brussels sprouts are products of Belgium and the butter sauce chips are a product of the U.S. In Mexico, the Brussels sprouts and butter sauce chips are packaged together in a microwave bag. The finished product can either be microwaved or cooked in a saucepan or on a stovetop.

CBP ruled in NY N202500 that the Brussels sprouts with butter sauce were classified in heading 0710, HTSUS, and not in subheading 2004.90, HTSUS. CBP also

ruled that the imported Brussels sprouts with butter sauce were not eligible to be treated as an originating good under the NAFTA. In your request for reconsideration, you contend that NY N202500 was incorrect on both issues.

**ISSUES:**

Whether the imported Brussels sprouts and frozen butter sauce chips should be classified in heading 0710, HTSUS, as “vegetables (uncooked or cooked by steaming or boiling in water), frozen” or heading 2004, HTSUS, as “Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006”

Whether the imported Brussels sprouts are eligible for preferential tariff treatment under the NAFTA?

What are the country of origin marking requirements for the instant Brussels sprouts with butter sauce?

## LAW AND ANALYSIS:

### *Classification:*

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

The headings at issue are as follows:

0710 Vegetables (uncooked or cooked by steaming or boiling in water), frozen

2004 Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006

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 thus are useful in ascertaining the classification of merchandise under the system. CBP believes the EN’s should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The EN Heading 07.10 states, in pertinent part:

Vegetables to which salt or sugar has been added before freezing remain classified in this heading, as do vegetables which have been cooked by steaming or boiling in water before freezing. However, the heading excludes vegetables cooked by other processes (Chapter 20) or prepared with other ingredients, such as prepared meals (Section IV).

EN Heading 20.04 states, in pertinent part:

Examples of commonly traded products which fall in the heading are:

...(2) Frozen sweet corn, on the cob or in grains, carrots, peas etc. whether or not pre-cooked, put up with butter or other sauce in an airtight container (e.g., in a plastic bag).

Heading 2004, HTSUS, provides for “other vegetables, prepared or preserved.” The terms “prepared” and “preserved” are not defined in the HTSUS. In *Crawfish Processors Alliance v. United States*, 431 F. Supp. 2d 1342 (CIT 2006), the court discussed the definition of “prepared.” The court stated that “the word prepared, in a tariff sense, means, ordinarily, that a commodity has been so processed as to be advanced in condition and made more valuable for its intended use. However, the Federal Circuit has held that the term “prepared” “suggests, but does not require, the addition of incidental ingredients that do not affect the essential character of the product.” *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1440 (Fed Cir. 1998).

On this issue, we agree with you that that Headquarters Ruling Letter (HQ) 967900, dated February 27, 2006, is instructive. The case involved the classification of three flavors of microwave popcorn consisting of popcorn, partially hydrogenated vegetable oil, salt, natural flavoring (in two of the flavors), and achiote. All three products were found to fall under the scope of heading 2008, HTSUS, which provides for, in pertinent part, “...other edible

parts of plants, otherwise prepared or preserved...” In so doing, CBP distinguished the microwave popcorn from other matters involving food products packaged together and classified as “sets” per GRI 3(b) by pointing out that, in contrast to “sets” of different food products, the microwave popcorn ingredients were mixed together in the same packaging, thus constituting a preparation. This rationale was supported by the Federal Circuit’s decision in *Orlando Food*, supra, where the Federal Circuit held that the addition of salt, citric acid and a basil leaf caused canned tomato products to be classified as goods that have the character of preparations for sauces, rather than tomatoes.

In this case, the butter sauce has been added to the Brussels sprouts in the same packaging. That it is frozen in the form of chips does not result in a finding that the combination is not a “preparation” in its condition as imported. In this respect, the analogy with the microwave popcorn from HQ 967900 is particularly apt. The physical state of the popcorn would need to be altered in order for it to complete the dish and allow the vegetable oil, salt, etc. to mix with the kernels just as the physical state of the frozen butter sauce would need to be altered for it to be combined with the Brussels sprouts in the manner intended. In both cases, the subject products constitute preparations despite the fact that they were not imported ready for consumption because, in their condition as imported, they consisted of ingredients that were already mixed together in the proportions necessary for the specified dish. This is supported by exemplar (2) in EN 20.04, supra, which indicates that frozen vegetables put up with butter or other sauce in an airtight container fall under the scope of heading 2004, HTSUS. Accordingly, we find that frozen Brussels sprouts with butter sauce chips would be classified in heading 2004, HTSUS.

*Eligibility for NAFTA Tariff Preference:*

General Note 12, HTSUS, incorporates Article 401 of NAFTA into the HTSUS.

General Note 12(a)(ii) provides, in pertinent part:

- (ii) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Mexico under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “MX” in parentheses, are eligible for such duty rate, in accordance with section 201 of the NAFTA Implementation Act.

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

General Note 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.

Since the Brussels sprouts are from Belgium, the imported product is not wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States. Therefore, we would generally examine whether the non-originating material (Brussels sprouts) had undergone a change in tariff classification. However, GN 12(s), HTSUS, provides exceptions to the change in tariff classification rules.

GN 12(s)(ii) provides that fruit, nut and vegetable preparations of Chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as an originating good only if the fresh good were wholly produced or obtained entirely in the territory of one or more of the NAFTA parties.

In HQ 561749, dated November 8, 2000, CBP held that imported mushrooms grown in Chile, preserved in brine and canned in Canada and classified in subheading 2003.10, HTSUS, were not originating under the NAFTA pursuant to GN 12(s), specifically the Chapter 20 rule set forth in GN 12(s)(ii).

This case is similar to HQ 561749, in that the imported Chapter 20 good would not be considered originating based on the application of GN 12(s)(ii). In this case, the fresh good, i.e. the Brussels sprouts, are not wholly produced or obtained entirely in the territory of one or more of the NAFTA parties. Therefore, the imported Brussels sprouts with butter sauce chips are not treated as originating goods under the NAFTA.

The country of origin marking was also at issue in HRL 561749. CBP held that the imported mushrooms would be marked as a product of Chile based on the application of 19 CFR 102.11(a)(3) and the Chapter 20 Note in 19 CFR 102.20 which is applicable to the tariff shift rule for goods of Chapter 20.

*Country of Origin Marking Requirements:*

The country of origin marking of the imported Brussels sprouts with butter sauce would be decided under the NAFTA Marking Rules, which are set forth in 19 CFR Part 102. The hierarchy set forth in 19 CFR 102.11 is applicable to determine the country of origin marking of goods produced in countries that are a party to the NAFTA. Pursuant to 102.11, the country of origin for non-textile goods is determined to be the country in which:

(a)(1) The good is wholly obtained or produced;

(a)(2) The good is produced exclusively from domestic materials;

(a)(3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

The applicable tariff shift rule for heading 2004 is as follows:

2001–2007..... A change to heading 2001 through 2007 from any other chapter.

The Chapter 20 note in 19 CFR 102.20 provides: “Notwithstanding the specific Rules of this chapter, fruit, nut and vegetable preparations of Chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as a good of the country in which the fresh good was produced.”

The imported good is neither wholly obtained nor produced in countries that are a party to the NAFTA or produced exclusively from domestic materials. Therefore, we must apply the requirement set forth in 19 CFR 102.11(a)(3). In this case, the imported Brussels sprouts meet the applicable tariff shift rule set forth in 19 CFR 102.20, as they change from heading 0710 to heading 2004, but they do not meet the Chapter 20 Note. Since the fresh vegetables have been prepared merely by freezing and the fresh good was produced in Belgium, the country of origin for marking purposes under 19 CFR 102.20 is Belgium.

#### **HOLDING:**

By application of GRIs 1 and 6, the imported Brussels sprouts with butter sauce chips are classified in heading 2004, HTSUS, and specifically provided for in subheading 2004.90.85, HTSUS, as “Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006: Other....”

The imported Brussels sprouts with butter sauce are not treated as an originating good under the NAFTA. The country of origin marking under the NAFTA Marking Rules for the imported good is Belgium.

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

NY N202500 is hereby MODIFIED to classify the goods under heading 2004, HTSUS, but it is affirmed to the extent that the good is not originating under the NAFTA.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial & Trade Facilitation Division*

cc: Bruce N. Hadley, Jr.  
National Import Specialist  
U.S. Customs & Border Protection  
New York, NY

## GENERAL NOTICE

### 19 CFR PART 177

#### PROPOSED MODIFICATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF SUGAR CONFECTIONERY

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

**ACTION:** Notice of proposed modification of ruling letter and revocation of treatment relating to the classification of sugar confectionery.

**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 modify one ruling letter concerning the classification of sugar confectionery 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 October 4, 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, 90 K Street, N.E., 10th Floor Washington, D.C. 20229. Comments submitted may be inspected at 90 K Street, N.E., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to modify one ruling letter pertaining to the classification of sugar confectionary. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N232564, dated September 19, 2012 (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 N232564, CBP classified the subject sugar confectionary in subheading 1806.90.90, HTSUS. Product specifications submitted by the importer in its request for reconsideration show that the subject merchandise contains no chocolate or cocoa. As a result, we now believe that the subject merchandise is classified in subheading 1704.90.35, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N232564, and any other ruling not specifically identified, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H240495. (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: August 5, 2013

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

## [ATTACHMENT A]

N232564

September 19, 2012

CLA-2-18:OT:RR:NC:232

CATEGORY: Classification

TARIFF NO.: 1806.90.9019

Ms. DARLENE MINIACI  
CARMICHAEL INTERNATIONAL SERVICE  
20 W. LINCOLN AVE., SUITE 300  
VALLEY STREAM, NY 11580

RE: The tariff classification of Royce brand Chocolates from Japan

DEAR Ms. MINIACI:

In your letter dated August 15, 2012 you, requested a tariff classification ruling. Ingredient breakdowns and samples were submitted along with your request. Samples were examined and disposed of.

The subject merchandise consists of five Royce brand Chocolates: Champagne (Pierre Mignon) (item # 12050), "Au Lait" (item # 12054), "Maccha" (item # 12089), "Mild Cacao" (item # 12092), and "Ecuador Sweet" (item # 3060). Each product is described as a 4 inch square, scored block of chocolate, wrapped in a plastic tray and packaged in a cardboard box (net weight of 4.4 ounces). They are all products of Japan and are packaged for retail sale.

Royce brand Nama Chocolate Champagne (Pierre Mignon) (item # 12050) is said to contain 23.6 percent fresh cream, 23.3 percent cocoa butter, 21.8 percent sugar, 16.6 percent whole milk powder, 5.9 percent Champagne, Brandy, 3.3 percent chocolate liquor, 3.2 percent cocoa powder, 2 percent butter, and less than one percent of emulsifier and flavor.

Royce brand Nama Chocolate "Au Lait" (item # 12054) is said to contain 27.8 percent fresh cream, 24.9 percent sugar, 16.9 percent whole milk powder, 15.4 percent cocoa butter, 6.9 percent chocolate liquor, 3.2 percent Brandy, 2.7 percent cocoa powder, 1.9 percent butter, and less than one percent of emulsifier and flavor.

Royce brand Nama Chocolate "Maccha" (item # 12089) is said to contain 31.5 percent fresh cream, 23.4 percent cocoa butter, 19.9 percent sugar, 10.1 percent skim milk powder, 7.7 whole milk powder, 2.9 percent powdered green tea, 2.6 percent lactose, 1.9 percent Brandy, and less than one percent of emulsifier and flavor.

Royce brand Nama Chocolate "Mild Cacao" (item # 12092) is said to contain 33.1 percent fresh cream, 23.6 percent sugar, 14.9 percent cocoa butter, 12.7 percent chocolate liquor, 12.1 percent whole milk powder, 2.7 percent cocoa powder, and less than one percent of emulsifier and flavor.

Royce brand Nama Chocolate "Ecuador Sweet" (item # 3060) is said to contain 33.5 percent fresh cream, 23.3 percent chocolate liquor, 21.5 percent sugar, 12.9 percent cocoa butter, 3.4 percent whole milk powder, 2.9 percent cocoa powder, 1.4 percent skim milk powder, and less than one percent of lactose, emulsifier and flavor.

The applicable subheading for the five Royce brand Nama Chocolates Champagne (Pierre Mignon) (item # 12050), "Au Lait" (item # 12054), "Maccha" (item # 12089), "Mild Cacao" (item # 12092), and "Ecuador Sweet" (item # 3060) will be 1806.90.9019, Harmonized Tariff Schedule of the United

States (HTSUS), which provides for Chocolate and other food preparations containing cocoa: Other: Other: Other. The rate of duty will be 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/>.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site [www.fda.gov/oc/bioterrorism/bioact.html](http://www.fda.gov/oc/bioterrorism/bioact.html).

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 Frank Troise at (646) 733-3031.

*Sincerely,*

THOMAS J. RUSSO

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H240495  
 CLA-2 OT:RR:CTF:TCM H240495 TNA  
 CATEGORY: Classification  
 TARIFF NO.: 1704.90.35

DARLENE MINIACI, SENIOR IMPORT SPECIALIST  
 CARMICHAEL INTERNATIONAL SERVICE  
 20 W. LINCOLN AVE., SUITE 300  
 VALLEY STREAM, NY 11580

RE: Modification of NY N232564; Classification of “Maccha” confectionary

DEAR Ms. MINIACI:

This letter is in reference to New York Ruling Letter (“NY”) N232564, dated September 19, 2012, issued to Carmichael International Service on behalf of its client, Royce Confect USA, Inc. (“Royce”), concerning the tariff classification of “Maccha” confectionary. There, U.S. Customs and Border Protection (“CBP”) classified five different Royce brand chocolates in subheading 1806.90.90, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Chocolate and other food preparations containing cocoa: Other: Other: Other: Other: Other.” We have reviewed NY N232564 and found it to be partly in error. For the reasons set forth below, we hereby modify NY N232564 with respect to the product “Maccha” (Item Number 12089).

**FACTS:**

The subject merchandise is Item Number 12089, also called “Maccha.”<sup>1</sup> It is described as a four inch square, scored block of candy. Product specifications submitted by Royce show that the subject merchandise consists of 31.5% fresh cream, 23.4% cocoa butter, 19.9% sugar, 10.1% skim milk powder, 7.7% whole milk powder, 2.6% powdered green tea, 2.6% lactose, 1.9% brandy, and less than 1% each of emulsifier and flavor. The subject merchandise is wrapped in a plastic tray and packaged in a cardboard box; the item’s net weight is 4.4 ounces. It is imported packaged for retail sale.

In NY N232564, CBP classified Item Number 12089 in subheading 1806.90.90, HTSUS, as: “Chocolate and other food preparations containing cocoa: Other: Other: Other: Other: Other.”

**ISSUE:**

Whether the subject merchandise is classified in heading 1704, HTSSU, as “sugar confectionery (including white chocolate), not containing cocoa” or in heading 1806, HTSUS, as “chocolate and other food preparations containing cocoa”?

**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

<sup>1</sup> We note that NY N232564 classified five different types of Royce’s candy. Only the classification of the “Maccha” is at issue in this reconsideration.

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:

1704	Sugar confectionery (including white chocolate), not containing cocoa:
1704.90	Other:
	Confections or sweetmeats ready for consumption:
	Other:
1704.90.35	Other
1806	Chocolate and other food preparations containing cocoa:
1806.90	Other:
	Other:
	Other:
1806.90.90	Other

Note 1 to Chapter 17, HTSUS, provides that:

This chapter does not cover:

(a) Sugar confectionery containing cocoa (heading 1806)

Note 2 to Chapter 18, HTSUS, provides that:

Heading 1806 includes sugar confectionery containing cocoa, and, subject to note 1 to this chapter, other food preparations containing cocoa.

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 1704, HTSUS, provides, in pertinent part:

This heading covers most of the sugar preparations which are marketed in a solid or semi-solid form, generally suitable for immediate consumption and collectively referred to as sweetmeats, confectionery or candies.

It includes, inter alia:...

(6) White chocolate composed of sugar, cocoa butter, milk powder and flavouring agents, but not containing more than mere traces of cocoa (cocoa butter is not regarded as cocoa)...

The heading excludes:...

(b) Sugar preparations containing cocoa (heading 18.06). (For this purpose cocoa butter is not regarded as cocoa.)

The EN to heading 1806, HTSUS, provides, in pertinent part:

Chocolate is composed essentially of cocoa paste and sugar or other sweetening matter, usually with the addition of flavouring and cocoa butter; in some cases, cocoa powder and vegetable oil may be substituted for cocoa paste. Milk, coffee, hazelnuts, almonds, orange-peel, etc., are sometimes also added....

The heading also includes all sugar confectionery containing cocoa in any proportion (including chocolate nougat), sweetened cocoa powder, chocolate powder, chocolate spreads, and, in general, all food preparations containing cocoa (other than those excluded in the General Explanatory Note to this Chapter)....

Heading 1806, HTSUS, requires that merchandise classified therein contain chocolate or cocoa. You contend that the subject merchandise contains no chocolate or cocoa and have submitted product specifications showing its ingredients.

Note 1 to Chapter 17, HTSUS, excludes sugar confectionery containing cocoa. *See* Note 1 to Chapter 17, HTSUS. Products of heading 1806, HTSUS, are sugar confectionery containing cocoa, and other food preparations containing cocoa. *See* Note 2 to Chapter 18, HTSUS; heading 1806, HTSUS; EN 18.06. Furthermore, chocolate of this heading consists of cocoa paste and sugar or other sweetening matter, usually with the addition of flavoring and cocoa butter. It may also contain items such as milk, coffee, hazelnuts, etc. *See* EN 18.06. Sugar confectionary containing cocoa is also classified in this heading, even if the percentage of cocoa contained therein is small. *See* EN 18.06.

Here, the subject merchandise contains no cocoa. Its largest ingredients, by percentage, are fresh cream, cocoa butter, sugar, and skim milk powder. Cocoa butter is not considered cocoa. *See* EN 17.04. Heading 1704, HTSUS, provides for “sugar confectionary (including white chocolate), not containing cocoa.” It includes products made of sugar that are marketed in a solid or semi-solid form, are suitable for immediate consumption and are called sweetmeats, confectionery or candies. *See* EN 17.04. This heading also includes such products as white chocolate that are composed of sugar, cocoa butter, milk powder and flavoring agents, but do not contain more than mere traces of cocoa. *See* EN 17.04. Products can contain cocoa butter and remain classified in this heading, as cocoa butter is not considered cocoa. *See* EN 17.04.

In the present case, sugar is one of the largest ingredients of the subject merchandise. It also contains many of the same ingredients as white chocolate, such as sugar, cocoa butter, milk powder and flavoring agents. It is imported as an edible sweet, and is sold at retail as imported. As such, we find that the subject merchandise is described by the terms of heading 1704, HTSUS, and will be classified there.

#### **HOLDING:**

Under the authority of GRI 1, Item Number 12089, also called “Maccha,” is classified in heading 1704, HTSUS. It is specifically classified in subheading 1704.90.35, HTSUS, which provides for “Sugar confectionery (including white chocolate), not containing cocoa: Other: Other: Other.” The column one general rate of duty is 5.6% *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

NY N232564, dated September 19, 2012, is MODIFIED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



**PROPOSED REVOCATION OF RULING LETTERS AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF CERAMIC TRAVEL  
COFFEE CUPS**

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

**ACTION:** Notice of proposed revocation of two ruling letters and treatment relating to the tariff classification of certain ceramic travel coffee cups.

**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 two ruling letters relating to the tariff classification of ceramic travel coffee cups 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 October 4, 2013.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Office of International Trade, Attention: Trade and Commercial Regulations Branch, 90 K Street, 10th Floor, N.E., 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 customs and related laws. In addition, both the trade community 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 two ruling letters pertaining to the tariff classification of ceramic travel coffee cups. Although in this notice, CBP is specifically referring to the revocations of New York Ruling Letters (NY) N153980, dated April 7, 2011 (Attachment A), and NY N172535, dated July 19, 2011 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., 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 N153980 and NY N172535, CBP determined that the subject ceramic travel coffee cups were classified in subheading 6912.00.48, HTSUS, which provides for, in pertinent part: “Ceramic tableware, kitchenware ... other than of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other...” It is now CBP’s position that the ceramic travel coffee cups are properly classified in subheading 6912.00.41, HTSUS, which provides for, in pertinent part: “Ceramic tableware, kitchenware ... other than of porcelain or china: Tableware and kitchenware: Other: Other: Other: ... tumblers...”

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY N153980 and NY N172535 and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the ceramic travel coffee cups according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H195957, set forth as Attachment C to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 8, 2013

IEVA K. O’ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N 153980

April 7, 2011

CLA-2-69:OT:RR:NC:4:428

CATEGORY: Classification

TARIFF NO.: 6912.00.4810

MR. BRIAN G. PEARCE  
BARTHCO INTERNATIONAL, DIVISION OF OHL  
2200 BROENING HWY, SUITE 200  
BALTIMORE, MD 21224

RE: The tariff classification of a ceramic travel cup from China.

DEAR MR. PEARCE:

In your letter dated March 11, 2011, you requested a tariff classification ruling on behalf of your client, CVS Pharmacy.

The merchandise under consideration is a ceramic travel cup, item number 847944. A sample of the cup was submitted with your ruling request and will be returned to you. It is designed to contain up to 14 ounces of liquid and features a double-walled construction in order to insulate the beverage. The cup measures approximately 6 inches high by 3.75 inches in diameter at its lip, tapering to a base 2.25 inches in diameter. This cup resembles a traditional paper coffee cup in design, and does not have a handle. It is also fitted with a removable, reusable silicone lid.

In your ruling request you suggest classification of the ceramic travel cup in heading 6912.00.4500, Harmonized Tariff Schedule of the United States (HTSUS), as ceramic tableware or kitchenware cups valued over \$5.25 per dozen. However, this cup is not a traditional cup with a handle of a type used with a saucer. Therefore, classification in heading 6912.00.4500, HTSUS, does not apply. The applicable subheading for the ceramic travel cup, item number 847944, will be 6912.00.4810, HTSUS, which provides for "Ceramic tableware, kitchenware...other than of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other: Suitable for food or drink contact." The general rate of duty will be 9.8 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/>.

Ceramic table/kitchenware may be subject to certain requirements under the regulations administered by the Food and Drug Administration (FDA). If you have any questions regarding these requirements, you may contact the FDA at: Food and Drug Administration, Division of Import Operations and Policy, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: 1-888-463-6332. Certain ceramic table and kitchen articles may be subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the FDA. Information on the Bioterrorism Act can be obtained by calling the FDA at telephone number (301) 575-0156, or at the Web site [www.fda.gov/oc/bioterrorism/bioact.html](http://www.fda.gov/oc/bioterrorism/bioact.html).

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 Nicole Sullivan at (646) 733-3028.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

N172535

July 19, 2011

CLA-2-69:OT:RR:NC:4:428

CATEGORY: Classification

TARIFF NO.: 6912.00.4810

MR. MICHAEL SKIDMORE  
 DYNASTY CHB, INC.  
 365 CHELSEA STREET  
 EAST BOSTON, MA 02128

RE: The tariff classification of a ceramic travel cup from China.

DEAR MR. SKIDMORE:

In your letter dated June 17, 2011, you requested a tariff classification ruling on behalf of your client, Life is Good Wholesale, Inc.

The merchandise under consideration is part number 17070, described as the Ceramic Tumbler. A sample was submitted with your ruling request and will be returned to you. The Ceramic Tumbler is a travel cup made of stoneware ceramic resembling a traditional paper coffee cup in design, and does not have a handle. It measures approximately 5.5 inches high by 3.5 inches in diameter at its lip, tapering to a base 2.25 inches in diameter. This cup is capable of containing up to 9 ounces of liquid, and features a double-walled construction in order to insulate the beverage. It is also fitted with a removable, reusable silicone lid.

In your ruling request you suggest classification of the Ceramic Tumbler in 6912.00.4100 Harmonized Tariff Schedule of the United States (HTSUS), which includes ceramic steins with permanently attached pewter lids, ceramic candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, bonbon dishes, egg cups, spoons and spoon rests, oil and vinegar sets, tumblers and salt and pepper shaker sets. However, this is a travel cup that is not of the class or kind of merchandise included in this heading. Alternately, you suggest classification in 6912.00.5000, HTSUS, as ceramic articles other than tableware or kitchenware. However, this item is of the class or kind used at or around the table or kitchen.

The applicable subheading for the Ceramic Tumbler, part number 17070, will be 6912.00.4810, HTSUS, which provides for "Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other: Suitable for food or drink contact." The general rate of duty will be 9.8 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/>.

Ceramic table/kitchenware may be subject to certain requirements under the regulations administered by the Food and Drug Administration (FDA). If you have any questions regarding these requirements, you may contact the FDA at: Food and Drug Administration, Division of Import Operations and Policy, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: 1-888-463-6332.

Certain ceramic table and kitchen articles may be subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002

(The Bioterrorism Act), which is regulated by the FDA. Information on the Bioterrorism Act can be obtained by calling the FDA at telephone number (301) 575-0156, or at the Web site [www.fda.gov/oc/bioterrorism/bioact.html](http://www.fda.gov/oc/bioterrorism/bioact.html).

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 Nicole Sullivan at (646) 733-3028.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT C]

HQ H195957  
 CLA-2 OT:RR:CTF:TCM H195957 EGJ  
 CATEGORY: Classification  
 TARIFF NO.: 6912.00.41

BRIAN G. PEARCE  
 BARTHCO INTERNATIONAL  
 DIVISION OF OHL  
 2200 BROENING HWY, SUITE 200  
 BALTIMORE, MD 21224

RE: Revocation of NY N153980 and NY N172535; Classification of Ceramic Travel Coffee Cups

DEAR MR. PEARCE:

This is in reference to New York Ruling Letter (NY) N153980, dated April 7, 2011, issued to you for your client, CVS Pharmacy, concerning the tariff classification of a ceramic travel coffee cup under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) classified the subject article in subheading 6912.00.48, HTSUS, which provides for other tableware and kitchenware. We have reviewed NY N153980 and find it to be in error. For the reasons set forth below, we hereby revoke NY N153980 and one other ruling with substantially similar merchandise: NY N172535, dated July 19, 2011, which was issued to Life is Good Wholesale, Inc.

**FACTS:**

The ceramic travel coffee cup was described in NY N153980 as designed to contain up to 14 ounces of liquid. It also features a double-walled construction in order to insulate the beverage. The cup measures approximately 6 inches high by 3.75 inches in diameter at its lip, tapering to a base 2.25 inches in diameter.<sup>1</sup> This cup resembles a traditional paper coffee cup in design, and does not have a handle. It is also fitted with a removable, reusable silicone lid.

**ISSUE:**

Is the subject merchandise classified in subheading 6912.00.48, HTSUS, which provides for, in pertinent part, “Ceramic tableware, kitchenware ... other than of porcelain or china: tableware and kitchenware: other: other: other: other...”, or in subheading 6912.00.41, HTSUS, which provides for, in pertinent part, “Ceramic tableware, kitchenware ... other than of porcelain or china: tableware and kitchenware: other: other: other: ... tumblers...”

**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

<sup>1</sup> Similarly, the ceramic cup at issue in NY 172535 measures 5.5 inches high by 3.5 inches in diameter at its lip, tapering to a base of 2.25 inches in diameter. The ceramic cup is capable of containing 9 ounces of liquid. It is identical to the merchandise in NY 153980 in all other material aspects.



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

GRI 6 provides as follows:

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

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

6912	Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:
6912.00	Tableware and kitchenware:
	Other...
	Other ...
	Other ...
6912.00.41	Steins with permanently attached pewter lids, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, bonbon dishes, egg cups, spoons and spoon rests, oil and vinegar sets, tumblers and salt and pepper shaker sets ...
	* * *
6912.00.48	Other . . .
	* * *

Additional U.S. Note 7 to Chapter 69 provides as follows:

For the purposes of headings 6911, 6912 and 6913, those provisions which classify merchandise according to the value of each “article,” an article is a single tariff entity which may consist of more than one piece. For example, a vegetable dish and its cover, or a beverage pot and its lid, imported in the same shipment, constitute an article.

\* \* \*

As only the subheadings are in dispute, we turn first to GRI 6. Subheading 6912.00.41, HTSUS, provides, *inter alia*, for tumblers. The *Oxford English Dictionary* defines a “tumbler” as “a tapering cylindrical or barrel-shaped, glass cup without a handle or foot, having a heavy flat bottom.”<sup>2</sup> *Id.* (Oxford

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

University Press 2012) *available at www.oed.com*. Based upon this definition, the ceramic travel coffee cup is a tumbler because the cup has a tapering cylindrical shape. Therefore, the ceramic travel coffee cup is properly classified under subheading 6912.00.41, HTSUS, which provides for ceramic tumblers.

Additional U.S. Note (7) to Chapter 69 states that, for the purpose of heading 6912, HTSUS, “an article is a single tariff entity which may consist of more than one piece. For example, a vegetable dish and its cover, or a beverage pot and its lid, imported in the same shipment, constitute an article.” Thus, the silicone lid forms part of the article classified under subheading 6912.00.41, HTSUS, and is not classified separately.

This classification analysis is in accord with Headquarters Ruling Letter (HQ) H111922, classifying similar merchandise of porcelain in subheading 6911.10.41, HTSUS, as porcelain tumblers. The analysis remains the same for ceramic tumblers as set forth above.

**HOLDING:**

By application of GRI 6, the subject ceramic travel coffee cups are classified in subheading 6912.00.41, HTSUS, which provides for, in pertinent part: “Ceramic tableware, kitchenware ... other than of porcelain or china: tableware and kitchenware: other: other: other: ... tumblers...” The 2012 column one, general rate of duty is 3.9 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 N153980, dated April 7, 2011, and NY N172535, dated July 19, 2011, are hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**GENERAL NOTICE**

**19 CFR PART 177**

**PROPOSED REVOCATION OF TWO RULING LETTERS  
AND PROPOSED REVOCATION OF TREATMENT  
RELATING TO THE CLASSIFICATION OF MP3 PLAYER  
DOCKING STATIONS AND A SPEAKER SYSTEM**

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

**ACTION:** Notice of proposed revocation of two ruling letters and proposed revocation of treatment relating to the classification of MP3 player docking stations and a speaker system.

**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 two ruling letters concerning the classification of MP3 player docking stations and a speaker system 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 October 4, 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, 90 K Street, N.E.—10th Floor, Washington, DC 20229–1179. Comments submitted may be inspected at 90 K Street, N.E. 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 two ruling letters pertaining to the classification of MP3 player docking stations and a speaker system. Although in this notice CBP is specifically referring to Headquarters Ruling Letter (HQ) H213705, dated August 31, 2012 (Attachment A) and New York Ruling Letter (“NY”) NY R01884, dated May 24, 2005 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing 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 HQ H213705, CBP classified two types of MP3 docking stations in subheading 8518.22.00, HTSUS, which provides for “Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof: Loudspeakers, whether or not mounted in their enclosures: Multiple loudspeakers, mounted in the same enclosure.” In NY R01884, CBP classified a speaker system in

subheading 8518.40.20, HTSUS, which provides for “Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof: Audio-frequency electric amplifiers: Other.” The merchandise in both rulings can reproduce sound from removable solid state non-volatile media. Therefore, it is classified in heading 8519, HTSUS, as sound reproducing apparatus.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke HQ H213705, NY R01884, and any other ruling not specifically identified, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H234950 (see Attachment “C” 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: August 5, 2013

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

## [ATTACHMENT A]

HQ H213705

August 31, 2012

CLA-2 OT:RR:CTF:TCM H213705 TNA

CATEGORY: Classification

TARIFF NO.: 8518.22.00

STEPHANIE PARK

U.S. CUSTOMS COMPLIANCE ASSISTANT MANAGER/ LOGISTICS

*L.G. ELECTRONICS U.S.A., INC.**1000 SYLVAN AVENUE**ENGLEWOOD CLIFFS, NJ 07632*

Re: Tariff Classification of docking stations for the iPhone, iPad, and iPod

DEAR Ms. PARK:

This is in response to your request on behalf of LG Electronics U.S.A., Inc. (“LG Electronics”), dated March 9, 2012 to U.S. Customs and Border Protection (“CBP”), National Commodity Specialist Division, for a binding ruling on the tariff classification of two models of docking stations with speakers for the iPod, iPad, and iPhone under the Harmonized Tariff Schedule of the United States (HTSUS). Your ruling request was forwarded to this office for a response.

**FACTS:**

The subject merchandise consists of two types of docking stations with speakers intended for exclusive use with the iPod, iPad, and iPhone. Each docking station is a single unit that contains both loudspeakers and a base for the iPod, iPad or iPhone. The electronic device is inserted into this base, and the docking stations serve both to charge the device, and to play the music files on it through the loudspeakers.

The two models at issue are the ND3520 and the ND4520, neither of which contain radios. Both the ND3520 and the ND4520 contain loudspeakers and a built-in dock for the iPod, iPad, and iPhone. The dock allows users to charge the device, while the loudspeakers allow the user to play the music that is saved on the iPod, iPad or iPhone. The ND3520 and the ND4520 contain audio input that allows connection to MP3 players, laptops, etc. The ND3520 and the ND4520 contain Bluetooth<sup>1</sup>, which allows them to play music directly from a laptop or mobile phone. The ND3520 and the ND4520 also contain a USB port, which allows the speakers to broadcast music from USB devices.

**ISSUE:**

Where are the subject docking stations classified?

**LAW AND ANALYSIS:**

As an initial matter, we are unable to rule on the ND1520, the docking station with a built-in radio. Section 177.7, Customs and Border Protection Regulations (19 CFR 177.7), provides that rulings will not be issued in

<sup>1</sup> Bluetooth is a proprietary wireless technology that allows wireless connections between electrical devices. The connection allows wireless transfer of data between these devices. See, e.g., <http://www.bluetooth.com/Pages/about-technology.aspx>.

certain circumstances. Section 177.7(a) states, in relevant part, that “no rulings will be issued in any instance in which it appears contrary to the sound administration of the Customs and related laws to do so.” After reviewing your request, it has come to our attention that certain published rulings need to be reconsidered so that we do not have rulings in force that may be inconsistent with our current views. Accordingly, we are unable to issue a ruling at this time.

We intend to initiate a notice and comment procedure pursuant to 19 U.S.C. §1625(c) to reconsider one or more rulings. In this manner, we believe we can best meet our obligations regarding the sound administration of the HTSUS and other Customs and related laws. We invite you to comment on the relevant proposed reconsideration, which we will publish soon in an issue of the *Customs Bulletin*, available at [www.cbp.gov](http://www.cbp.gov). On publication of the final ruling, if you still wish, you may resubmit your request for a prospective ruling to Customs and Border Protection, National Commodity Specialist Division, One Penn Plaza, 10th Floor, New York, NY 10119.

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:

- |      |   |
|------|---|
| 8504 | Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof:  |
| 8518 | Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof |
| 8527 | Reception apparatus for radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:  |

Note 3 to Section XVI, HTSUS, of which Chapters 84 and 85 are a part, states, in pertinent part, the following:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

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

The EN for heading 8504 states, in pertinent part, the following:



## (II) ELECTRICAL STATIC CONVERTERS

The apparatus of this group are used to convert electrical energy in order to adapt it for further use. They incorporate converting elements (e.g., valves) of different types. They may also incorporate various auxiliary devices (e.g., transformers, induction coils, resistors, command regulators, etc.). Their operation is based on the principle that the converting elements act alternately as conductors and non-conductors.

The fact that these apparatus often incorporate auxiliary circuits to regulate the voltage of the emerging current does not affect their classification in this group, nor does the fact that they are sometimes referred to as voltage or current regulators.

The EN for heading 8518 states, in pertinent part, the following:

This heading covers microphones, loudspeakers, headphones, earphones and audio-frequency electric amplifiers of all kinds presented separately, regardless of the particular purpose for which such apparatus may be designed (e.g., telephone microphones, headphones and earphones, and radio receiver loudspeakers).

The heading also covers electric sound amplifier sets....

### (B) LOUDSPEAKERS, WHETHER OR NOT MOUNTED IN THEIR ENCLOSURES

The function of loudspeakers is the converse of that of microphones: they reproduce sound by converting electrical variations or oscillations from an amplifier into mechanical vibrations which are communicated to the air. They include the following types:

- (1) **Moving iron or moving coil loudspeakers.** In the moving iron loudspeaker an armature or reed of soft iron is placed in the field of a permanent magnet and under the influence of the coils in which the current passes. The field varies in accordance with this current, and a diaphragm fixed to the armature or reed sets up corresponding vibrations in the air. Moving coil loudspeakers consist essentially of a coil which is placed in the field of a permanent or electro-magnet and which is energised by the varying current. The coil is rigidly connected to a diaphragm.
- (2) **Piezo-electric loudspeakers,** based on the principle that certain natural or artificial crystals are subject to mechanical distortion when an electric current is applied to them. Such loudspeakers are usually known as "crystal loudspeakers".
- (3) **Electrostatic loudspeakers** (also known as **condenser-type loudspeakers**). These depend on the electrostatic reactions between two plates (or electrodes), one plate serving as a diaphragm.

Matching transformers and amplifiers are sometimes mounted together with loudspeakers. Generally the electrical input signal received by loudspeakers is in analogue form, however in some cases the input signal is in digital format. Such loudspeakers incorporate digital to analogue converters and amplifiers from which the mechanical vibrations are communicated to the air.

Loudspeakers may be mounted on frames, chassis or in cabinets of different types (often acoustically designed), or even in articles of furniture. They remain classified in this heading **provided** the main function of the whole is to act as a loudspeaker. Separately presented frames, chassis, cabinets, etc., also fall in this heading **provided** they are identifiable as being mainly designed for mounting loudspeakers; articles of furniture of Chapter 94 designed to receive loudspeakers in addition to their normal function remain classified in **Chapter 94**.

The heading includes loudspeakers designed for connection to an automatic data processing machine, when presented separately.

The EN for heading 8527 states, in pertinent part, the following:

The sound radio-broadcasting apparatus falling in this heading must be for the reception of signals by means of electro-magnetic waves transmitted through the ether without any line connection.

This group includes:

(1) Domestic radio receivers of all kinds (table models, consoles, receivers for mounting in furniture, walls, etc., portable models, receivers, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock)....

(5) Stereo systems (hi-fi systems) containing a radio receiver, put up in sets for retail sale, consisting of modular units in their own separate housing, e.g., in combination with a CD player, a cassette recorder, an amplifier with equaliser, loudspeakers, etc. The radio receiver gives the system its essential character.

In beginning our analysis, we note that similar merchandise- i.e., docking stations without FM radios that are designed for use solely with iPods- have been classified in heading 8522, HTSUS, which provides for “Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 or 8521.” *See, e.g.*, NY L88357, dated October 28, 2005; NY M80063, dated February 9, 2006; NY L87329, dated October 6, 2005; NY R03181, dated February 10, 2006; NY M80417, dated March 2, 2006. In these cases, we reasoned that the iPods are apparatus of either heading 8519 or heading 8521, HTSUS, a conclusion that was supported by prior CBP rulings. *See, e.g.*, HQ H012561, dated April 28, 2009. Thus, we found that heading 8522, HTSUS, fully described the docking stations at GRI 1, and was therefore preferable to headings such as 8504 and 8518, HTSUS, which only described the charging function and the speaker function, respectively.

In the present case, however, the subject merchandise is not designed solely or principally for use with the iPod. To the contrary, it is designed for use with the iPod of heading 8519, HTSUS, the iPad of heading 8471, HTSUS, and the iPhone of heading 8517, HTSUS. *See, e.g.*, HQ H122342, dated April 12, 2011. As a result, the terms of heading 8522, HTSUS, do not fully describe the subject merchandise.<sup>2</sup>

<sup>2</sup> Similarly, we note that if the subject merchandise could be described as a “part or accessory” of the devices it docks, these provisions are limited to one device. *See* headings 8473 and 8517, HTSUS.

The ND3520 and the ND4520 meet the definition of a composite machine of Note 3 to Section XVI. Thus, we look to determine their principal function. Both models serve to charge the device that is docked therein, but also to convey the music on them through their loudspeakers. The loudspeakers allow users to relay their music to a wider audience in a larger space, making the subject merchandise suitable for use throughout a whole house or at a party.

Furthermore, the Bluetooth audio relay feature on both these models allows the consumer to use the docking station to play music that is stored on a computer or smart phone. The input jack allows another source of music to be broadcast over the loudspeakers because it makes the ND3520 and the ND4520 compatible with music on MP3 players and other devices. In each of these uses, the loudspeakers allow a greater volume and range of sound. Lastly, both models are advertised as “docking speakers” that deliver quality sound, emphasizing the function of the speakers. *See, e.g.*, [http://www.lg.com/uk/tv-audio-video/home-audio/LG\\_ND4520.jsp](http://www.lg.com/uk/tv-audio-video/home-audio/LG_ND4520.jsp).

By contrast, there are simple docking stations on the market that do not contain loudspeakers, and whose sole function is to charge such electronic devices as the iPod, iPad and iPhone. *See, e.g.*, <http://www.walmart.com/ip/Premiertek-Cradle-Dock-Station-for-iPod-iPhone-iPad-and-iPad-2/20551737>. Thus, a consumer who simply wanted to charge one of these devices could purchase one of these docking stations or a power cord. A consumer is not likely to buy a docking station with loudspeakers, such as the subject merchandise, simply for its charging capacity. It is more likely that a consumer will buy the ND3520 or the ND4520 for the loudspeakers or for the combination of the two features. Furthermore, the subject docking stations can only charge the device when it is connected to electrical power. The ND4520 is imported with a battery pack that allows it to broadcast music without an electrical connection. As a result, we find that the loudspeakers function is the principal function of the ND3520 and the ND4520. As such, the ND3520 or the ND4520 are classified in heading 8518, HTSUS, as “loudspeakers, whether or not mounted in their enclosures.”

#### **HOLDING:**

By operation of GRI 1, LG’s Model ND 3520 iPod Docking Station and Model ND 4520 iPod Docking Station are classified in heading 8518, HTSUS. They are specifically provided for in subheading 8518.22.00, HTSUS, which provides for “Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof: Loudspeakers, whether or not mounted in their enclosures: Multiple loudspeakers, mounted in the same enclosure.” The 2012 column one, general rate of duty is 4.9% *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).

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

*Sincerely,*

IEVA O'ROURKE,

*Chief*

*Tariff Classification and Marking Branch*

[ATTACHMENT B]

NY R01884

May 24, 2005

CLA-2-85:RR:NC:MM:109 R01884

CATEGORY: Classification

TARIFF NO.: 8518.40.2000

MR. GREGORY MATUSZAK  
SENIOR PROGRAM MANAGER  
KLIPSCH AUDIO TECHNOLOGIES  
3502 WOODVIEW TRACE  
INDIANAPOLIS, IN 46268

RE: The tariff classification of an iFi Multimedia System from an unspecified country

DEAR MR. MATUSZAK:

In your letter dated May 2, 2005, you requested a tariff classification ruling.

The merchandise subject to this ruling is an iFi Multimedia System. The iFi Multimedia System reproduces sound from an attached hard disc drive unit (MP3 Player, iPOD, etc) or a similar Flash Memory device. The system consists of 2 speakers, 1 subwoofer with amplifier, 1 radio frequency remote control, 2 speaker wires, 1 AC power cord, 5 plastic spacers, 1 control dock. All the components of this system, along with an owner's manual and warranty card, will be imported in one box, put up as a set, ready for retail sale.

You had suggested classification of the iFi Multimedia System under Harmonized Tariff Schedule of the United States (HTSUS) 8519.99.00, which provides for "Other sound reproducing apparatus: Other." However, this is a multimedia system for home use, much like a home theatre system, whose main components are the speakers and subwoofer with amplifier. Speakers and amplifiers are provided for in heading 8518 of the HTSUS. Single speakers are classifiable under subheading 8518.21 and 8518.22 for multiple speakers. The subwoofer with amplifier is classifiable under subheading 8518.40.

Neither 8518.40 nor the speaker provisions provide a more specific description of the goods, and neither gives the set its essential character. Both the speakers and the subwoofer with amplifier merit equal consideration in the essential character determination. General Rule of Interpretation (GRI) 3(c) provides that under such circumstances, a set shall be classified under the heading, which occurs last in numerical order among those, which equally merit consideration. Therefore, in accordance with GRI 3(c) the iFi Multimedia System is classifiable within subheading 8518.40, as an audio-frequency electric amplifier.

The applicable subheading for the iFi Multimedia System will be 8518.40.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Audio-frequency electric amplifiers." The rate of duty will be 4.9 percent ad valorem.

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

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

imported. If you have any questions regarding the ruling, contact National Import Specialist Linda M. Hackett at 646-733-3015.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT C]

HQ H234950  
 CLA-2 OT:RR:CTF:TCM HQ H234950 TNA  
 CATEGORY: Classification  
 TARIFF NO.: 8519.89.30

MR. ANDY SHIM, PRODUCT MANAGER  
 LG ELECTRONICS U.S.A. INC.  
 1000 SYLVAN AVENUE  
 ENGLEWOOD CLIFFS, NJ 07632

RE: Revocation of HQ H213705 and NY R01884; Classification of the LG ND3520 and ND4520 Docking Stations and the iFi speaker system

DEAR MR. SHIM:

This letter is in reference to your request for reconsideration of Headquarters Ruling Letter (“HQ”) H213705, issued to LG Electronics on August 31, 2012, concerning the tariff classification of the “LG ND3520 Docking Speaker” (“ND3520”). There, U.S. Customs and Border Protection (“CBP”) classified two models of “docking speakers” under subheading 8518.22.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof: Loudspeakers, whether or not mounted in their enclosures: Multiple loudspeakers, mounted in the same enclosure.”

This letter also concerns NY Ruling Letter (NY) R01884, dated May 24, 2005, which classified the iFi speaker system made by Klipsch Audio Technologies in subheading 8518.40.20, HTSUS, which provides for “Audio-frequency electric amplifiers.” We have reviewed HQ H213705 and NY R01884 and found them to be incorrect. For the reasons set forth below, we hereby revoke HQ H213705 and NY R01884.

**FACTS:**

In HQ H213705, CBP classified the LG ND3520 and the LG ND4520, docking stations with speakers intended for exclusive use with the iPod, iPad, and iPhone. They are both single units that contain both loudspeakers and a base for the iPod, iPad or iPhone. The electronic device is inserted into this base, and the docking stations serve both to charge the device, and to play the music files on it through the loudspeakers.

The docking stations allow users to charge the device, while the loudspeakers allow the user to play the music that is saved on the iPod, iPad or iPhone. They also have audio input that allows connection to MP3 players, laptops, etc., and Bluetooth<sup>1</sup>, which allows them to play music directly from a laptop or mobile phone. They also contains a USB port, which allows a user to insert a thumb drive with music on it; once such a drive is inserted, the ND3520 and the ND4520 can read the music from the thumb drive and play it through its speakers. Neither the ND3520 nor the ND4520 contain a radio.

<sup>1</sup> Bluetooth is a proprietary wireless technology that allows wireless connections between electrical devices. The connection allows wireless transfer of data between these devices. See, e.g., <http://www.bluetooth.com/Pages/about-technology.aspx>.

In NY R01884, CBP classified the iFi Multimedia System. This is essentially a speaker system that can play music from an attached hard disc drive unit such as an MP3 Player, iPod, or a similar Flash Memory device. The system consists of 2 speakers, 1 subwoofer with amplifier, 1 radio frequency remote control, 2 speaker wires, 1 AC power cord, 5 plastic spacers, 1 control dock. These components are imported together along with an owner's manual and warranty card.

**ISSUE:**

Whether the subject docking stations and speaker system are classified as loudspeakers of heading 8518, HTSUS, or as sound recording or reproducing devices of heading 8519, 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.

The HTSUS provisions under consideration are as follows:

- |      |  |
|------|--|
| 8518 | Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof: |
| 8519 | Sound recording or reproducing apparatus:  |

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 Harmonized System 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 85.18 provides, in pertinent part, the following:

This heading covers microphones, loudspeakers, headphones, earphones and audio frequency electric amplifiers of all kinds presented separately, regardless of the particular purpose for which such apparatus may be designed (e.g., telephone microphones, headphones and earphones, and radio receiver loudspeakers).

The heading also covers electric sound amplifier sets....

**(B) LOUDSPEAKERS, WHETHER OR NOT MOUNTED IN THEIR ENCLOSURES**

The function of loudspeakers is the converse of that of microphones: they reproduce sound by converting electrical variations or oscillations from an amplifier into mechanical vibrations which are communicated to the air.

Matching transformers and amplifiers are sometimes mounted together with loudspeakers. Generally the electrical input signal received by loud-



speakers is in analogue form, however in some cases the input signal is in digital format. Such loudspeakers incorporate digital to analogue converters and amplifiers from which the mechanical vibrations are communicated to the air.

Loudspeakers may be mounted on frames, chassis or in cabinets of different types (often acoustically designed), or even in articles of furniture. They remain classified in this heading provided the main function of the whole is to act as a loudspeaker. Separately presented frames, chassis, cabinets, etc., also fall in this heading provided they are identifiable as being mainly designed for mounting loudspeakers; articles of furniture of Chapter 94 designed to receive loudspeakers in addition to their normal function remain classified in Chapter 94.

The heading includes loudspeakers designed for connection to an automatic data processing machine, when presented separately.

The EN to heading 85.19 provides, in pertinent part, the following:

This heading covers apparatus for recording sound, apparatus for reproducing sound and apparatus that is capable of both recording and reproducing sound. Generally, sound is recorded onto or reproduced from an internal storage device or media (e.g., magnetic tape, optical media, semiconductor media or other media of heading 85.23)....

#### (IV) OTHER APPARATUS USING MAGNETIC, OPTICAL OR SEMICONDUCTOR MEDIA

The apparatus of this group may be portable. They may also be equipped with, or designed to be attached to acoustic devices (loudspeakers, ear-phones, headphones) and an amplifier.

In requesting reconsideration, you submitted evidence emphasizing that the ND3520 contains a USB port that can read files from a USB device. You also emphasized that it can play back music when physically connected to such devices as the iPod, iPad and iPhone. As such, in requesting reconsideration of HQ H213705, you argue that the LD3520 is classified in heading 8519, HTSUS, as a sound recording or reproducing device. In support of this argument, you cite NY N133779, dated December 17, 2010, which classified a device that is designed to play and control audio files that it receives over a wireless computer network in heading 8519, HTSUS.

In response, we note that although you only requested reconsideration of model ND3520 in HQ H213705, the ND3520 and the ND4520 contain the same product specifications, including the USB port that you now argue makes the ND3520 a product of heading 8519, HTSUS. As a result, we reconsider our position with respect to both the ND3520 and the ND4520, so as to avoid inconsistent results.

Next, we note that the ENs define a "sound-recording or reproducing device" as one that functions by way of semiconductor media. Sound that is recorded onto such a medium is done so as digital code converted from analogue signal on the recording medium, and sound that is reproduced is done so by reading such medium. The fact that the ENs allow for semiconductor media to be either permanently installed in the apparatus or in the form of removable solid-state non-volatile storage media means that sound can be recorded onto an internal file or a removable solid state non-volatile

media, such as a USB flash memory apparatus. In order for a device to be a sound-reproducing device, it must be able to read the recorded file, either from an internal memory or from a removable solid state non-volatile media, such as a USB flash memory apparatus. *See* EN 85.19.

This definition is in accordance with definitions of dictionaries and other lexicographic sources. For example, the Oxford English Dictionary defines “record” as “of a machine, instrument or device: to set down (a message, reading, etc.) in some permanent form.” *See* www.oed.com. The Oxford English Dictionary defines “reproduce” as “To relay (sound originating elsewhere) or replay (sound recorded on another occasion) by electrical or mechanical means.... To produce again in the form of a copy.” *See* www.oed.com. In addition, the McGraw-Hill Encyclopedia of Science and Technology defines “sound recording” as “the technique of entering sound, especially music, on a storage medium for playback at a subsequent time.” *See* McGraw-Hill Concise Encyclopedia of Science and Technology, 6th Ed., 2009 at 2197. This encyclopedia defines “sound-reproducing systems,” in pertinent part, as:

Systems that attempt to reconstruct some or all of the audible dimensions of an acoustic event that occurred elsewhere. A sound-reproducing system includes the functions of capturing sounds with microphones, manipulating those sounds using elaborate electronic mixing consoles and signal processors, and then storing the sounds for reproduction at later times and different places.

*Id.* at 2197.

A machine with a USB port allows a flash drive or other memory device to be plugged directly into the machine. The information submitted states that the instant dock could read information or music stored in an MP3 format directly from the device. The USB device is a semiconductor media device onto which sound is recorded, because it converts the music files on it from an analogue signal to a digital one on the drive itself. The ND3520 and the ND4520, because they can read these files from the USB device, are sound-reproducing devices. Furthermore, sound reproducing devices of 8519, HTSUS, can be equipped with, or designed to be attached to, acoustic devices such as speakers. *See* EN 85.19. The ND3520 and the ND4520 are fully described by the terms of heading 8519, HTSUS, and should be classified there. This conclusion is consistent with prior CBP rulings, including NY N133779, to which you cited in support of this reconsideration. *See* NY N133779; *see also* NY N182121, dated September 16, 2011 and NY N129141, dated November 16, 2010.

NY R01884 classified the iFi speaker system made by Klipsch Audio Technologies in 8518, HTSUS, according to its speaker function. However, this ruling also noted both that the system reproduced sound from an attached hard disc drive unit, whether it was an MP3 Player, an iPod, or a similar flash memory device. Thus, the iFi system meets the definition of “sound recording or reproducing device” for the same reasons as the ND3520 and ND4520 do.

**HOLDING:**

Under the authority of GRI 1, the ND3520, the ND4520 and the iFi speaker system are classified in heading 8519, HTSUS. Specifically, they are provided for in subheading 8519.89.30, HTSUS, which provides for “Sound

recording or reproducing apparatus: Other apparatus: Other: Other.” The column one general rate of duty is Free.

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

**EFFECT ON OTHER RULINGS:**

HQ H213705, dated August 31, 2012, and NY R01884, dated May 24, 2005, are REVOKED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



**General Notice**

**DATES AND DRAFT AGENDA OF THE FIFTY-SECOND  
SESSION OF THE HARMONIZED SYSTEM COMMITTEE OF  
THE WORLD CUSTOMS**

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

**ACTION:** Publication of the dates and draft agenda for the fifty-second session of the Harmonized System Committee of the World Customs Organization.

**SUMMARY:** This notice sets forth the dates and draft agenda for the next session of the Harmonized System Committee of the World Customs Organization.

**DATES:** Aug 05, 2013

**FOR FURTHER INFORMATION CONTACT:** Joan A. Jackson, Staff Assistant, Tariff Classification and Marking Branch, U.S. Customs and Border Protection (202–325–0010), or Dan Shepherdson, Attorney Advisor, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202–205–2598).

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System (“Harmonized System Convention”). The Harmonized Commodity Description and Coding System (“Harmonized System”), an international nomenclature system, forms the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States. The Harmo-

nized System Convention is under the jurisdiction of the World Customs Organization (established as the Customs Cooperation Council).

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee (“HSC”). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC’s responsibilities include issuing classification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium. The next session of the HSC will be the fifty-second and it will be held from September 18, 2013 to September 27, 2013.

In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of Homeland Security, represented by U.S. Customs and Border Protection, the Department of Commerce, represented by the Census Bureau, and the U.S. International Trade Commission (“ITC”), jointly represent the U.S. government at the sessions of the HSC. The Customs and Border Protection representative serves as the head of the delegation at the sessions of the HSC.

Set forth below is the draft agenda for the next session of the HSC. Copies of available agenda-item documents may be obtained from either Customs and Border Protection or the ITC. Comments on agenda items may be directed to the above-listed individuals.

IEVA K. O’ROURKE,  
*Chief*

*Tariff Classification and Marking Branch*

Attachment



WORLD CUSTOMS ORGANIZATION  
 ORGANISATION MONDIALE DES DOUANES  
 Established in 1952 as the Customs Co-operation Council  
 Créée en 1952 sous le nom de Conseil de coopération douanière

HARMONIZED SYSTEM  
 COMMITTEE

NC1876E1b

-  
 52<sup>nd</sup> Session

O. Eng.

Brussels, 9 August 2013.

## DRAFT AGENDA FOR THE 52<sup>nd</sup> SESSION OF THE HARMONIZED SYSTEM COMMITTEE

From : Wednesday, 18 September 2013 (11.00 a.m.)

To : Friday, 27 September 2013

**N.B.** : Monday, 16 September 2013 (9.30 a.m.) to Tuesday 17 September 2013: Presessional Working Party (to examine the questions under Agenda Item V)

Wednesday, 18 September 2013 (10:00 a.m. -10:55 a.m.): Adoption of the Report of the 45<sup>th</sup> Session of the Review Sub-Committee

### I. ADOPTION OF THE AGENDA

- |                    |           |
|--------------------|-----------|
| 1. Draft Agenda    | NC1876E1b |
| 2. Draft Timetable | NC1877B1a |

### II. REPORT BY THE SECRETARIAT

- |  |   |
|--|---|
| 1. Position regarding Contracting Parties to the HS Convention and related matters and progress report on the implementation of HS 2012            | NC1878E1a   |
| 2. Report on the last meetings of the Policy Commission (69 <sup>th</sup> Session) and the Council (121 <sup>st</sup> /122 <sup>nd</sup> Sessions) | NC1879E1a   |
| 3. Approval of decisions taken by the Harmonized System Committee at its 51 <sup>st</sup> Session  | NG0193E1_<br>Approval_<br>of_<br>decisions<br>NC1875E1a |
| 4. Capacity building activities of the Nomenclature and Classification Sub-Directorate   | NC1880E1a   |
| 5. Co-operation with other international organizations   | NC1881E1a   |
| 6. New information provided on the WCO Web site  | NC1882E1a   |
| 7. Annual survey to determine the percentage of national revenue represented by Customs duties   | NC1883E1a   |
| 8. Other   |   |

III. GENERAL QUESTIONS

- |   |                               |
|---|-------------------------------|
| 1. Future of the Harmonized System  | NC1884E1a<br><b>SP0445E1a</b> |
| 2. Classification Advice provided by the Secretariat (Request by Switzerland) | NC1885E1a                     |
| 3. Procedure for the adoption of the Reports of the Committee                 | NC1886E1a                     |

IV. REPORT OF THE REVIEW SUB-COMMITTEE

- |  |           |
|--|-----------|
| 1. Report of the 45 <sup>th</sup> Session of the Review Sub-Committee                | NR0955E1b |
| 2. Matters for decision  | NC1887E1a |
| 3. Classification of “teff”  | NC1888E1a |
| 4. Possible overlapping between provisionally adopted amendments to the Nomenclature | NC1889E1a |

V. REPORT OF THE PRESESSIONAL WORKING PARTY

- |  |                                    |
|--|------------------------------------|
| 1. Possible amendments to the Compendium of Classification Opinions to reflect the decision to classify the product called “Vita hjertego’ Gul” in heading 19.01 (subheading 1901.90)  | NC1890E1a,<br>Annex A              |
| 2. Possible amendments to the Compendium of Classification Opinions to reflect the decision to classify a jar with instant coffee (put up for retail sale in a paperboard box with a cup and a saucer) in heading 21.01 (subheading 2101.11) | NC1890E1a,<br>Annex 8              |
| 3. Possible amendments to the Compendium of Classification Opinions to reflect the decision to classify a cup and a saucer (put up for retail sale in a paperboard box with a jar with instant coffee) in heading 69.12                      | NC1890E1a,<br>Annex C              |
| 4. Possible amendment to the Explanatory Note to the GIR 3 to clarify the classification of a jar of coffee, a cup and a saucer put up for retail sale in a paperboard box   | NC1890E1a,<br>NC1876E1b<br>Annex D |
| 5. Possible amendments to the Compendium of Classification Opinions to reflect the decision to classify the product named “Xenical” in heading 30.04 (subheading 3004.90)  | NC1890E1a,<br>Annex E              |
| 6. Possible amendment to the Explanatory Note to heading 69.07 to clarify the classification of terracotta cladding elements   | NC1890E1a,<br>Annex F              |
| 7. Possible amendments to the Compendium of Classification Opinions to reflect the decision to classify portable floor air conditioning units (Products 1 and 2) in heading 84.15 (subheading 8415.82).                                      | NC1890E1a,<br>Annex G              |
| 8. Possible amendments to the Compendium of Classification Opinions to reflect the decision to classify a steam turbine and an electric generator presented together 85.02 (subheading 8502.39)  | NC1890E1a,<br>Annex H              |
| 9. Possible amendments to the Compendium of Classification Opinions to reflect the decision to classify the certain amplifiers combined in a single housing with loudspeakers in heading 85.18 (subheading 8518.22)                          | NC1890E1a,<br>Annex IJ             |

VI. REQUESTS FOR RE-EXAMINATION (RESERVATIONS)

1. Re-examination of the “Classification of products containing more than 99.2% sodium sulphate and more than 98.5% sodium sulphate, respectively” (Request by the Russian Federation) NC1891E1a
2. Re-examination of the “Classification of certain light-emitting diode (LED) lamps” (Request by the United States)” NC1892E1a
3. Re-examination of the “HP w2338h Monitor fitted with VGA and HDMI connectors (Product 3)” (Requests by Japan and Korea) NC1893E1a
4. Re-examination of the “Classification of the product called “Dabur Hajmola” candy/tablets” (Request by India) NC1894E1a
5. Re-examination of the “Classification of certain light emitting diode (LED) assemblies” (Requests by Colombia and Japan) NC1895E1a

VII. FURTHER STUDIES

1. Possible amendments to the HS in respect of new chemicals listed in Annex III to the Rotterdam Convention (Request by the Rotterdam Convention Secretariat) NC1896E1a
2. Possible amendments to the Explanatory Notes in respect of the term “roes” NC1897E1a
3. Classification of “Xanthan Gum” (Request by India) NC1898E1a  
**NC1925E1a**
4. Classification of garments known as “Shalwar-Kameez” (Request by Sri Lanka) NC1899E1a  
NC1871E1b  
(HSC/51)
5. **Deleted** (Request by South Africa)
6. Classification of light emitting diode (LED) backlights for liquid crystal displays (Request by Korea) NC1900E1a
7. Classification of peach pulp concentrate (Request by South Africa) NC1853E1a  
(HSC/51)
8. Classification of certain cabinets in unassembled form with or without apparatus to be housed therein (Request by the Secretariat) NC1901E1a  
**NC1858E1a**  
**(HSC/51)**
9. Classification of two types of touch-sensitive screens (Request by Korea) NC1902E1a
10. Classification of an AMOLED touch assembly for a mobile phone (Request by Korea) NC1903E1a
11. Classification of “Shisha-Steam-Stones” (Request by Jordan) NC1904E1a
12. Possible amendments to the Explanatory Notes in respect of Insulated Gate Bipolar Transistors (IGBT) (Proposal by Japan). NC1905E1a
13. Possible amendments to the Nomenclature in respect of biological dual-use items (Proposal by the Biological Weapons Convention Implementation Support Unit) NC1906E1a

14. Classification of a cheese substitute (Request by Argentina) NC1907E1a

VIII. NEW QUESTIONS

1. Possible alignment of the English and French versions of the Explanatory Note to heading 94.03 (Proposal by the Secretariat) NC1908E1a
2. Possible modification or deletion of certain Notes to Chapters 5, 78, 79 and 80 (Proposal by the Secretariat) NC1909E1a
3. Possible misalignment between the English and French versions of the Explanatory Note to heading 74.03 (Request by the Secretariat) NC1910E1a
4. Possible amendment of the French text of headings 73.04 and 73.06 (Proposal by the Secretariat) NC1911E1a
5. Classification of equipment for harvesting olives, almonds and pistachios and for pruning fruit and nut trees (Request by Tunisia) NC1912E1a
6. Classification of radiators for motorcycles (Request by Thailand) NC1913E1a
7. Classification of silvered hollow glass microspheres (Request by China) NC1914E1a
8. Classification of a prepared meal containing 22.9% meatballs (Request by Norway) NC1916E1a
9. Possible correction of the Classification Opinion 6907.90/1 (Request by the Secretariat) NC1917E1a
10. Possible amendment to the Explanatory Note to Chapter 29 in respect of “phlegmatized organic peroxides” (Request by the EU) NC1918E1a
11. Classification of a drum housing for a combine harvester-thresher-Dispute between the EU and Russian Federation (Request by the EU) NC1919E1a
12. Classification of certain textile articles (Request from Colombia) NC1920E1a
13. Classification of polyester yarns, with high tenacity, textured (Request from Switzerland) NC1921E1a
14. Possible amendments to the Nomenclature to specifically provide for “Multi-Component Integrated Circuits (MCOs)” (Proposal by the US) NC1922E1a
15. Possible amendment to the Explanatory Note to heading 28.18 (Request by the Russian Federation) NC1923E1a
16. Classification of certain articles called “Hunting Trophies” (Request by Norway) NC1924E1a

IX. ADDITIONAL LIST

- 1.

X. OTHER BUSINESS

1. List of questions which might be examined at a future session NC1915E1a

XI. DATES OF NEXT SESSIONS