U.S. Customs Service

General Notices

DATES AND DRAFT AGENDA OF THE THIRTIETH SESSION OF THE HARMONIZED SYSTEM COMMITTEE OF THE WORLD CUSTOMS ORGANIZATION

AGENCIES: U.S. Customs Service, Department of the Treasury, and U.S. International Trade Commission.

ACTION: Publication of the dates and draft agenda for the thirtieth 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.

DATE: September 19, 2002

FOR FURTHER INFORMATION CONTACT: Myles B. Harmon, Acting Director Commercial Rulings Division, U.S. Customs Service (202–572–8860/myles.b.harmon@customs.treas.gov), or Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202–205–2592).

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, form the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States. The Harmonized 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 deci-

sions 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 thirtieth, and it will be held from November 18–29, 2002.

In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of the Treasury, represented by the U.S. Customs Service, 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 Service 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 the Customs Service or the ITC. Comments on agenda items may be directed to the above-listed individuals.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[Attachment]

Attachment

DRAFT AGENDA FOR THE THIRTIETH
SESSION OF THE HARMONIZED SYSTEM COMMITTEE

Monday, November 18 (11:30 a.m.) to Friday, November 29, 2002

N.B.: *Thursday, November 14 (10 a.m.) and Friday November 15, 2002 (9:30 a.m.):* Presessional Working Party (to examine the questions under Agenda Item VI)
Monday, November 18, 2002 (9:30 a.m. — 11:00 a.m): Adoption of the Report of the 26th Session of the Review Sub-Committee

I.

ADOPTION OF THE AGENDA

1. Draft Agenda NC0592E1
2. Draft Timetable NC0593B1

II.

REPORT BY THE SECRETARIAT

1. Position regarding Contracting Parties to the HS Convention and related matters NC0594E1
2. Progress report on the implementation of the 2002 edition of the Harmonized System NC0595E1
3. Report on the meetings of the Policy Commission (47th Session) and the Council (99th and 100th Sessions) NR0268E1
4. Approval of decisions taken by the Harmonized System Committee at its 29th Session NG0037F1 NC0596E1
5. Capacity building activities of the Nomenclature and Classification Sub-Directorate NC0597E1
6. Co-operation with other international organisations NC0598E1
7. New information provided on the WCO Web site NC0599E1 NC0592E1
8. Other

III.

GENERAL QUESTIONS

1. Use of the Spanish language for HS matters NC0600E1

IV.

RECOMMENDATION

1. Draft Recommendation of the Customs Co-operation Council on the insertion in national statistical nomenclatures of subheadings to facilitate the collection and comparison of data on the international movement of substances controlled by virtue of amendments to the Montreal Protocol on substances that deplete the ozone layer NC0601E1

V.

REPORT OF THE HS REVIEW SUB-COMMITTEE

1. Report of the 26th Session of the HS Review Sub-Committee NR0332E2
2. Matters for decision by the Harmonized System Committee NC0602E1

VI.

REPORT OF THE PRESESSIONAL WORKING PARTY

VII.

FURTHER STUDIES

FURTHER STUDIES—Continued

VIII.

NEW QUESTIONS

NEW QUESTIONS—Continued

13. Classification of an electrostatic chuck and distinction between chucks of headings 84.66 and 85.05 ..... NC0575E1 (HSC/29)

14. Classification of a "hydraulic salt/sand spreader" for clearing snow from roads NC0576E1 (HSC/29)

15. Use of the terms "hygienic", "sanitary" and "toilet" NC0579E1 (HSC/29) NC0640B1

16. Classification of an injectable intracutaneous gel referred to as "*Restylane*" NC0630E1

17. Classification of an antimycotic agent referred to as "*Natamax*" NC0631E1

18 Possible amendments to the Explanatory Note to heading 29.29 with regard to the classification of isocyanates and their related products (Proposal by the *Iranian* Administration) NC0632E1

19. Possible amendments to the Explanatory Note to heading 29.33 (Proposal by the *Mexican* Administration) NC0633E1

20. Possible amendments to the Nomenclature with regard to the Rotterdam Convention (Proposal by the *EC* and the Interim Secretariat for the Rotterdam Convention) NC0634E1

21. Possible amendment of the Explanatory Note to heading 95.05 (Proposal by the *EC*) NC0635E1

22. Classification of a *Fanta* beverage base NC0636E1

23. Classification of a product called "*Baby Walker*" NC0637E1

24. Classification of yarn put up in hanks NC0638E1

25. Classification of a cellular plastics-covered non-woven NC0639E1

26. Classification of battery packs used in cellular (mobile) telephones .. NC0642E1 NC0592E1

IX.

OTHER BUSINESS

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

X.

DATES OF NEXT SESSIONS

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING NOTEBOOK COMPUTER PRODUCTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of final determination.

SUMARY: This document provides notice that Customs has issued a final determination concerning the country of origin of certain notebook computer products which were offered to the United States Government under an undesignated government procurement contract. The final determination found that based upon the facts presented, the country of origin of notebook computer products assembled in the United States with United States and foreign components is the United States.

DATE: The final determination was issued on February 3, 1998. 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 within 30 days of September 20, 2002.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Special Classification and Marking Branch, Office of Regulations and Rulings (202–572–8836).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on February 2, 1998, pursuant to Subpart B of Part 177, Customs Regulations (19 CFR Part 177, Subpart B), Customs issued a final determination concerning the country of origin of certain notebook computer products which were offered to the United States Government under an undesignated government procurement contract. The U.S. Customs ruling number is HQ 560677. This final determination was issued at the request of Dell Computer Corporation 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). The final determination concluded that, based upon the facts presented, the assembly in the United States of foreign and United States components to create certain notebook computer products results in a substantial transformation of the foreign components. Accordingly, the country of origin of the computer products is the United States.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the Federal Register within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), states 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. Customs has recently learned that notice of the final determination issued as HQ 560677 was inadvertently not published as required by 19 CFR 177.29. Nevertheless, because publication

of notice of the final determination is a prerequisite to the initiation of judicial review of the determination by a party-in-interest under 19 CFR 177.30, this document gives notice of the final determination issued on February 3, 1998. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of September 20, 2002.

Dated: September 6, 2002.

MICHAEL T. SCHMITZ,
Assistant Commissioner,
Office of Regulations and Rulings.

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 3, 1998.
MAR–05 RR:TC:SM 560677 BLS
Category: Marking

RICHARD F. BUSCH, II
HALL & EVANS, L.L.C.
1200 Seventeenth Street
Denver, CO 80202–5817

Re: U.S. Government Procurement; Final Determination; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, Customs Regulations (19 C.F.R. 177.21 et seq.); Country of origin of Notebook computer products; substantial transformation; HRL 735608; HRL 559336.

DEAR MR. BUSCH:

This is in reference to your letters dated September 23 and September 29, 1997, on behalf of Dell Computer Corporation (Dell), requesting a final determination of origin under Subpart B of Part 177, Customs Regulations (19 C.F.R. 177.21 et seq.) in connection with the offering of two portable notebook computer products for sale to the U.S. Government. (Scenarios 1 and 2 of your submission).

In your letter of December 3, 1997, you also advised that Dell was withdrawing its ruling request at this time in connection with Scenario 3, pertaining to certain operations in the U.S., but would re-submit the request with additional information at a later date. Under the circumstances, we will address only the issues pertaining to the notebook computers.

Under Subpart B of Part 177, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 et seq.), the Customs Service issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated foreign country or instrumentality for the purpose of granting waivers of certain "Buy America" restrictions in U.S. law or practice for products offered for sale to the U.S. Government. Hall & Evans, L.L.C., as counsel to Dell, a party-at-interest within the meaning of 19 C.F.R. 177.22(d)(1), is entitled to request this final determination.

Facts:

The two notebook computer products, "Twister" and "Mojave," are designed and engineered to meet a broad range of custom configurations. Mojave is primarily designed to meet the needs of government agencies/large corporations, and Twister is primarily designed to meet the needs of sophisticated individuals and small businesses.

In general, both the Mojave and Twister notebook computers will be manufactured by Dell from parts and components sourced through multiple vendors in a variety of coun-

tries. Dell's Texas manufacturing operation consists of three phases. The first phase is the Government customer's design/order, which is the actual beginning of a customized notebook computer system. The second phase of the manufacturing operation involves the assembly of parts, subassemblies and components during a multi-station production process. Finally, Dell has developed a proprietary systems integration process (FISH/FIDA) that transforms the non-operational "chassis" for Twister and Mojave into customized computer notebook systems that will operate to the precise requirements of different Government customers.

You state that Dell employs software programmers and hardware engineers, who must not only write the appropriate software to configure each system on a build-to-order basis, but also ensure all existing software and components are fully compatible and optimized with the thousands of software and hardware component configurations which the Government may dictate. You also state that all Dell employees who work on the Mojave and Twister production lines must attend internal training to become certified to perform the delicate tasks required in a number of the manufacturing stations.

Assembly of Twister

When the chassis is received from the Taiwanese OEM (original equipment manufacturer), the LCD and the CPU are already installed on the base plastics, but the BIOS and memory modules are not so installed. The components are sourced from various countries, which include: the chassis (Taiwan); hard disk drive (Thailand); BIOS chip (U.S.); floppy disk drive (China); AC adapter (China, but in the future, Thailand); CD ROM (Japan); fax modem cards (U.S.); docking station (Taiwan); and the memory board (Korea, Japan, or Singapore). The process of assembling the product is as follows:

Station 1.	Dell receives chassis; it is checked for defects and placed on the assembly line. The chassis is matched with a specific order.
Station 2.	System service tag numbers are input; customer-specific testing regime is configured and loaded; customer-specific disk configured.
Station 3.	BIOS chip and memory modules installed.
Station 4.	Hard Disk Drive prepared for installation.
Station 5.	Hard Disk Drive installed into notebook chassis.
Station 6.	PCMCIA modem card installed.
Station 7.	AC adapter plugged in, PCMCIA insert removed and network interface card inserted. Notebook booted and Flash BIOS burned into non-volatile RAM. FISH/FIDA configures a customer-specific machine and begins running diagnostic tests.
Station 8.	Electro-Mechanical Repair. Any notebooks with technical problems are sent to this station for repair.
Station 9.	Quality Control.
Station 10–12.	Dell customized and proprietary "Pic to Light" assembly process. (A manufacturing system that identifies specific peripherals, components and subassemblies for inclusion into the manufacturing process along the assembly line.)
Station 13.	"Out of Box" Audit. Notebooks are taken randomly from the assembly line and tested.
Station 14.	Automatic processing and shipping.

Assembly of Mojave

The assembly of Mojave is similar but not identical to that of Twister. When Dell receives the notebook chassis from Taiwan, the LCD screen, floppy disc drive and the BIOS chip have been assembled onto the base plastics, but neither the keyboard nor the CPU and other primary chips are installed. The additional components which make up the Mohave are identical to the components assembled to make the Twister with the exception of the keyboard, which is not included as part of the Twister configuration. The components are sourced from various countries, which include: the chassis (Taiwan); hard disk drive (Thailand); floppy disk drive (China); AC adapter (China, but in the future, Thailand); CD ROM (Japan); fax modem cards (U.S.); docking station (Taiwan); and the memory board (Korea, Japan, or Singapore). The country of origin of the keyboard is Japan, but in the

future will be Malaysia. The CPU is of U.S.-origin. The process of assembling Mojave is as follows:

Station 1.	Dell receives chassis; it is checked for defects and placed on the assembly line. The chassis is matched with a specific order.
Station 2.	System service tag numbers are input; customer-specific testing regime is configured and loaded; customer-specific disk configured.
Station 3.	CPU processor module and hybrid cooler installed.
Station 4.	Keyboard installed.
Station 5.	Memory modules installed.
Station 6.	Hard Disk Drive prepared for installation.
Station 7.	Hard Disk Drive installed into notebook chassis.
Station 8.	PCMCIA modem card installed.
Station 9.	Notebook booted and Flash BIOS burned into non-volatile RAM. FISH/FIDA configures a customer-specific machine and begins running diagnostic tests.
Station 10.	Electro-Mechanical Repair. Any notebooks with technical problems are sent to this station for repair.

The operations performed at Stations 11 through 16 of the Mojave assembly line are identical to the operations that occur at Stations 9 through 14 of the Twister assembly line, including quality control, "Pic to Light" process, testing, and shipping.

Issue:

Whether the assembly in the U.S. of the various components into the Twister and Mojave notebook computers constitute a substantial transformation, such that the computers may be considered products of the U.S.

Law and Analysis:

As prescribed under Title III of the Trade Agreements Act, the origin of an article not wholly the growth, product, or manufacture of a single country or instrumentality is to be determined by the rule of substantial transformation. 19 U.S.C. §2518(4). Such an article is not a product of a country unless it has been substantially transformed there into a new and different article of commerce with a name, character or use different from that of the article or articles from which it was transformed. *See also* 19 C.F.R. §177.23(a). Thus, the critical issue that must be addressed in determining the country of origin of "Mojave" and "Twister" is whether the imported foreign components are substantially transformed as a result of the operations performed in the U.S. That is, does the name, character or use of the foreign components change as a result of the processing and assembly operations performed to manufacture the notebook computers. In *Belcrest Linens v. United States,* 573 F. Supp. 1149 (CIT 1983), aff'd, 741 F.2d 1368 (Fed. Cir. 1984), the issue framed by the court was whether as a result of the assembly process the parts lose their identity and become an integral part of the new article. Assembly operations which are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 85–25. However, the issue of whether a substantial transformation occurs is determined on a case-by-case basis.

Dell contends that the chassis and other components of both Mojave and Twister undergo manufacturing processes resulting in customized notebook computers distinct from the components from which they were assembled. In this regard, Dell emphasizes that as distinguished from other companies' manual load, fixed image processes, Mojave and Twister are customer specific at the time of the order, and involve the loading of operational characteristics and the specific software capability requested by the customer. Dell points to the degree of expertise required to implement its proprietary FISH/FIDA manufacturing process, represented by its skilled programmers and engineers. Dell states that the interactions between various software packages and between hardware devices are resolved by Dell's FISH/FIDA process, which is not the case during a manual installation process (involving operational software from diskettes or CD ROMs). Accordingly, Dell argues that the assembly operations coupled with the unique customer-specific manufacturing process transform the foreign components into products, notebook computer systems, with a character and use distinct from the parts from which they were made.

Customs has previously considered the issue of whether the processing and assembly of electronic components into a finished article results in a substantial transformation of the individual components.

In Headquarters Ruling Letter (HRL) 711967 (March 17, 1980), Customs held that television sets which were assembled in Mexico with printed circuit boards, power transformers, yokes and tuners from Korea and picture tubes, cabinets, and additional wiring from the U.S. were products of Mexico for country of origin marking purposes. The U.S. and Korean parts were substantially transformed by the processing performed in Mexico and all the components lost their individual identities to become integral parts of the new article.

In HRL 732170 (January 5, 1990), Customs held that a backless television cabinet containing a tuner, speaker and circuit board imported in the U.S., was substantially transformed there when assembled with a domestic color picture tube, deflection yoke, electron beam bender and degaussed coil, and a remote control into a finished television receiver. Customs stated that the imported components lost their individual identities as a result of the assembly operation in that they became integral parts of a new article—a television.

HRL 735608 (April 27, 1995) involved various scenarios pertaining to the assembly of a desktop computer in the U.S. and the Netherlands. In one of the scenarios, foreign components to be assembled in the U.S. included the case assembly (including the computer case, system power supply and floppy disc drive), partially completed motherboard, CPU (which controls the interpretation and execution of instructions and includes the arithmetic-logic unit and control unit), hard disc drive, slot board, keyboard BIOS and system BIOS (basic input and output system). Additional components manufactured in the U.S. or the Netherlands to be assembled into the finished desktop computers depending on the model included an additional floppy drive, CD ROM disk, and memory boards. In that case, Customs found that the foreign case assemblies, partially completed motherboards, hard disk drives and slot boards underwent a change in name, character and use as a result of the operations in the U.S. and lost their separate identities in becoming an integral part of a desktop computer. Customs noted that the finished article, a desktop computer, was visibly different from any of the individual foreign components, acquiring a new use, processing and displaying information. Accordingly, Customs held that the individual components underwent a substantial transformation as a result of the operations performed in the U.S.[1]

Based on the totality of the circumstances of this case and consistent with the rulings cited above, we find that the foreign components that are used in the manufacture of the notebook computers Twister and Mojave in the manner described are substantially transformed as a result of the operations performed in the U.S. The name, character, and use of the foreign chassis in each case, hard disk drive, floppy disc drive, memory boards and other foreign components change as a result of the processing and other assembly operations performed in the U.S. Like the case assemblies in HRL 735608 and HRL 559336, the chassis', hard disk drives, floppy disc drives, memory boards and other components lose their separate identities and become an integral part of a notebook computer as a result of the assembly operations and other processing. The character and use of the foreign components are changed as a result of the operations performed, in that a new article, a notebook computer, is visibly different from any of the individual foreign components, acquiring a new use, processing and displaying information.

Holding:

Based on the facts presented, foreign chassis', hard disk drives, floppy disks, memory boards and other foreign components, which are further processed and assembled into notebook computers in the U.S., in the manner described above, are substantially transformed as a result of the operations performed in the U.S. Accordingly, the country of origin of the notebook computers is the U.S.

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

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[1] *See* also HRL 559336 dated March 13, 1996, where Customs found that foreign components (i.e., clamshell base, LCD video display, hard disk drive, floppy disk drive, A/C power adapter) used in the assembly of notebook computers under four scenarios were substantially transformed as a result of the assembly operations performed in the U.S. In that case, depending on the scenario, the clamshell was either complete when received or consisted of a separate top (video display component) and base, which may or may not have included the keyboard. It is also noted that in the various scenarios presented, the CPU/daughterboard assembly, an essential component of the notebook computer, was produced in the U.S.

Any party-at-interest may, within 30 days after publication of the Federal Register notice referenced above, seek judicial review of this final determination before the Court of International Trade.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

[Published in the Federal Register, September 20, 2002 (67 FR 59332)]

ANNOUNCEMENT OF PAPERLESS DRAWBACK PROTOTYPE TEST

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs plan to conduct a prototype test to determine the feasibility of filing paperless drawback claims. The Paperless Drawback prototype will provide for a "paperless" process that allows approved participants to electronically file drawback claims using the Automated Broker Interface of Customs Automated Commercial System. The Paperless Drawback prototype is limited to drawback claims filed at the New York/Newark Drawback Center. This notice invites public comment concerning any aspect of the planned prototype, informs interested members of the public of the eligibility, procedural and documentation requirements for voluntary participation in the Paperless Drawback prototype, and outlines the evaluation methodology to be used in the test.

DATES: Drawback claimants who wish to participate in the Paperless Drawback prototype must submit applications to Customs no later than October 28, 2002. The Paperless Drawback prototype will commence no earlier than August 1, 2002, and will run for approximately one year with a final evaluation taking place at the end of the first year.

ADDRESSES: Written comments regarding this notice, and prototype applications, should be addressed to the U.S. Customs Service, Entry and Drawback Management Branch, 1300 Pennsylvania Avenue, N.W., Room 5.2–33, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Questions pertaining to any aspect of this prototype should be directed to Sherri Lee Hoffman, U.S. Customs Service, Entry and Drawback Management Branch, at (202) 927–0300 or via email at *sherri.lee.hoffman@customs.treas.gov.*

SUPPLEMENTARY INFORMATION:

BACKGROUND

Paperless Drawback: Planned Component of the National Customs Automation Program (NCAP)

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993),

contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subpart B of title VI of the Act concerns the National Customs Automation Program (NCAP), an electronic system for the processing of commercial importations.

Within subpart B, section 631 of the Act added section 411 to the Tariff Act of 1930 (19 U.S.C. 1411–1414), which defines the NCAP, provides for the establishment of and participation in the NCAP, and includes a list of existing and planned components. Section 411(a)(2)(F) identifies the electronic (*i.e.*, paperless) filing of drawback claims, records or entries as a planned NCAP component.

Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)) provides for the testing of NCAP planned components. The Paperless Drawback prototype is being tested in accordance with this provision.

Description of Paperless Drawback Prototype

The Paperless Drawback prototype provides for a "paperless" process that permits approved participants to electronically file drawback claims using the Automated Broker Interface (ABI) of Customs Automated Commercial System (ACS). Approved participants are encouraged to file drawback claims electronically at the New York/Newark Drawback Center where feasible; however, traditional "paper" drawback claims may also be filed by approved prototype participants where necessary.

The Paperless Drawback prototype will commence no earlier than August 1, 2002, and will run for approximately one year with a final evaluation taking place at the end of the first 12-months of the prototype.

At this time, the Paperless Drawback prototype is limited to drawback claims filed at the New York/Newark Drawback Center to permit Customs to assess the feasibility of filing electronic drawback claims on a nationwide basis. The Paperless Drawback prototype is also limited to the New York/Newark Drawback Center to assist Customs in processing the drawback claims that were lost on September 11, 2001, as a result of the destruction of the New York Customhouse located at 6 World Trade Center, without having to reconstruct each of those claims. It is noted that the New York/Newark Drawback Center will also continue to accept paper drawback claims.

Prototype participants are permitted to electronically file through ABI all the information that is required for traditional drawback claims pursuant to part 191 of the Customs Regulations (19 CFR part 191). In addition, participants will be required to provide Customs with specific information as to the "earliest export date" (*i.e.*, the date of the first export in a given claim). Submission of "earliest export date" data is necessary in a paperless environment to enable ACS to determine whether the drawback claim is timely (*i.e.*, whether the earliest export date falls within the prescribed regulatory time limits for filing a drawback claim).

Customs will spot check claims for valid export information as necessary and prototype participants remain subject to audit by Customs Regulatory Audit Division.

Objectives of Paperless Drawback Prototype

Customs objectives in conducting the Paperless Drawback prototype test are as follows:

(1) Reduce/eliminate need to reconstruct paper drawback claims for the drawback unit that was destroyed at 6 Word Trade Center, New York, and moved to Newark;

(2) Assess feasibility of filing electronic drawback claims on a nationwide basis; and

(3) Reduce space necessary to retain records.

Eligibility Requirements

To be eligible to participate in the Paperless Drawback prototype a candidate must be:

(1) Approved to use ABI (19 CFR 143.3);

(2) Approved to use Accelerated Payment (19 CFR 191.92);

(3) Approved for waiver of Prior Notice of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback (19 CFR 191.91); and

(4) Able to use the Export Summary Procedure (19 CFR 191.73).

Application Procedure

Written applications from drawback claimants who wish to participate in the Paperless Drawback prototype must be received by Customs no later than October 28, 2002. Customs brokers must file a separate application for each claimant that they wish to submit paperless drawback claims for under this prototype. Applications should be submitted to U.S. Customs Service, Entry and Drawback Management Branch, 1300 Pennsylvania Avenue, N.W., Room 5.2–33, Washington, D.C. 20229. Customs will issue written notification to applicants who are selected to participate in the Paperless Drawback prototype. It is noted that participation in the Paperless Drawback prototype is not confidential, and that lists of participants will be made available to the public.

Paperless Drawback prototype applications must include the following information:

(1) Company name, address, telephone number, facsimile number, email address (if applicable), and point of contact.

(2) Name of Client Representative assigned to company for ABI;

(3) Anticipated number of claims that will be processed during the one-year period of the prototype;

(4) Types of drawback claims that will be filed (*i.e.*, pursuant to 19 U.S.C. 1313(a), 1313(b), 1313(c), 1313(j)(1), 1313(j)(2) or 1313(p));

(5) A brief statement describing the nature of the drawback operation;

(6) A statement describing all records to be maintained, address of document retention site, and name of designated recordkeeping contact; and,

(7) A statement describing how the applicant's business records substantiate the subject drawback claim, as per the statute and regulations.

Recordkeeping Requirements

The following lists offer examples of business records that are used to support different types of drawback claims. The lists are not comprehensive, and are offered as general guidelines as to the types of documentation that may prove useful for purposes of substantiating a drawback claim. Prototype participants are advised to consult the Customs Drawback Informed Compliance publication for guidance as to the types of documents that are to be maintained for each type of drawback claim. This publication is available to the public on the Customs website, at *www.customs.treas.gov.* It is further noted that participants in the Paperless Drawback prototype remain subject to the applicable recordkeeping requirements set forth in the regulations.

Claimant records must identify the merchandise or event or, in the alternative, the claimant must be able to establish, to Customs satisfaction, a clear link between the record and the merchandise or event.

Records establishing importation and receipt of imported merchandise.

The following records may be used to establish importation and receipt of imported merchandise:

(1) Customs import documents such as the Customs Form (CF) 7501 (Entry Summary) or a certificate of delivery supporting the receipt of imported merchandise;

(2) Purchase orders or contract of purchase, invoices, packing lists, vendor confirmations;

(3) Accounts payable, disbursements, letters of credit, payment documents;

(4) Receipts, inventory records, perpetual or physical transaction log, stores control; and

(5) Import bills of lading, delivery records from point of import to plant.

Records establishing manufacture or production (19 U.S.C. 1313(a) and (b))

The following records may be used to establish manufacture or production:

(1) Inventories for raw materials, work in process, finished goods or, in certain large assembly operations, a comprehensive inventory control system where receipt and shipment of the product are shown by receiving and shipping documents. The inventory records should include references that are traceable to both the source of the material and the material's destination. Use is shown by a bill of materials that identifies the raw materials required, the raw materials withdrawals showing the materials that were "used in" or "appear in" the finished goods, the labor routing or travelers that show which department performed the manufacturing operation, and finished goods inventory reduction which shows that those goods were withdrawn from inventory. Due care

must be used to maintain evidence (*i.e.* the bills of material must be dated and current) and inventories must be reconciled periodically;

(2) Bills of material, formulas, scrap or waste records (to the extent that the claimant can show that the bill of materials or formula demonstrates manufacture or production of the manufactured article in question);

(3) Job or work orders, inventory picks, travelers, serial or lot number control records, particularly in the case of subsection 1313(a) direct identification manufacturing drawback;

(4) Inventory methodologies (*e.g.*, inventory turnover rates or "turns," FIFO (first-in, first-out)), or other inventory identification methods as provided in 19 CFR 191.14); and

(5) Stores requisition, work in process records showing that production occurred.

Records establishing substitution (19 U.S.C. 1313(b) and (k))

Records must be retained that establish that the imported and substituted merchandise were of the same kind and quality for purposes of subsections 1313(b) and 1313(k) (the imported and substituted merchandise were commercially interchangeable for purposes of subsection 1313(j)(2), or the qualified article and the exported article were of the same kind and quality for purposes of subsection 1313(p)).

Records for these categories of merchandise must describe the compared goods with adequate specificity to ensure that the requirements for substitution are met. Generally, these records should reflect and be related to the particular requirement for substitution. For example, for commercial interchangeability drawback under subsection 1313(j)(2), the factors to be considered include, but are not limited to, Governmental and recognized industrial standards, part numbers, tariff classification, and value. *See* 19 CFR 191.32 (c). Therefore, the records retained in conjunction with a commercial interchangeability drawback claim should reflect the aforementioned specifications for the imported and substituted merchandise. Additionally, any other records relating to commercial interchangeability should be retained, and may include such items as:

(1) Certifications regarding grade, specification, and content (*i.e.*, Government certifications for the USDA or FDA, or industry/independent certifications such as weighers or gaugers);

(2) Sales contracts, customer purchase order specifications, commercial invoices, inventories;

(3) In-house lab reports, engineering specifications;

(4) Bills of material, description of the manufacturing process, flow charts for the manufacturing process (for substitution drawback pursuant to subsection 1313(b)); and

(5) Import entry documentation (Entry and Entry Summary) and export documentation (Shipper's Export Declaration (SED)).

Records establishing use (1313(j))

Records must show that the imported merchandise or the commercially interchangeable substituted merchandise, under subsection 1313(j), has not been used in the United States before exportation or destruction. Records for this purpose may include inventories, material requisitions, travelers or labor routing sheets or other material movement documents, or other records that show that the claimed merchandise was not used prior to exportation or destruction. For example, records of receipt into a storage warehouse and withdrawal from that storage warehouse could establish evidence of non-use.

Records establishing non-conformance, shipped without consent, or defect (1313(c))

These records are used to show that the imported merchandise did not conform to sample or specifications, was shipped without the consent of the consignee, or was determined to be defective as of the time of importation. Because no substitution is provided under this subsection, merchandise must be traceable to receipts, inventory or other accounting records and exports must be correlated with imports.

Records establishing non-conformance, shipped without consent or defect may include:

(1) A signed agreement between the importer and the foreign supplier that the imported merchandise was defective at the time of importation;

(2) Purchase orders, contracts, sales confirmations, and specifications (in each case, linked to the specifications of the merchandise); and

(3) A signed statement from the consignee attesting to the fact that the merchandise had been shipped without consent.

Records establishing exportation

Records used to show exportation must include one or more items from item 1 below, and be reconcilable with some of the items listed in items 2 through 4, below. To establish that particular merchandise was exported, a paper trail is needed to trace the merchandise from the finished goods or other inventory to the vessel, air carrier, or land carrier that actually takes the merchandise out of the U.S. The trail must include a bill of lading or other document that is issued by the exporting carrier, or other third party such as foreign Customs, and include time and fact of exportation. Generally, a bill of lading will reference an invoice or other document that can be traced to withdrawal of the goods from the claimant's inventory.

(1) An originally signed bill of lading, air or freight waybill, Canadian Customs manifest, cargo manifest, notice of foreign trade zone transfer, foreign Customs document, landing certificate, delivery record from plant to export, captain's loading ticket, loading report, shipping release, or certified copies thereof. *See* 19 CFR 191.72;

(2) Sales invoice, packing list, customer purchase order/sales contracts;

(3) Receivables, cash receipts; and

(4) Warehouse withdrawals, inventory pick lists, finished goods inventories, transaction log.

Records for destruction

Records must specifically identify the merchandise or articles destroyed. As with exportation, to support the destruction of a particular item a paper trail is needed to trace the item from the finished goods or other inventory to the place of actual destruction. The trail must include documents of transfer, receipt, and transportation (including inventory withdrawals and/or financial records that can be related to the destroyed merchandise or articles), and must include the time and fact of destruction.

Records establishing destruction may include:

(1) Affidavits from disinterested third parties, such as wrecking companies and landfill operators, attesting as to what they witnessed (*e.g.*, "goods were crushed and then ground up into one inch diameter pebbles") or whatever the actual destruction process was and what happened to any residue or remainder (*e.g.*, buried or incinerated);

(2) Photographs of the destruction to accompany affidavits; and

(3) Reports from other Government agencies (*e.g.*, EPA, certifying destruction).

Denial of Application to Participate in Paperless Drawback Prototype

Customs will issue written notification to any party whose application to participate in the Paperless Drawback prototype is denied. The written notice will set forth the reasons for the denial and inform the applicant that the denial may be appealed within 30 days of the date of the notice.

The appeal should include substantiating documentation that establishes, to Customs satisfaction, that the alleged deficiencies that led to the denial did not occur or have been corrected. The appeal should be addressed to U.S. Customs, Trade Programs, Executive Director, 1300 Pennsylvania Avenue, N.W. Room 5.2–33, Washington, D.C. 20229. Customs will issue a written determination to the applicant within 30 days of receipt of the appeal.

Applicants who are denied participation in the Paperless Drawback prototype who do not appeal, or applicants who have had an appeal denied, may reapply if Customs subsequently reopens the application period. Customs will publish a notice in the Federal Register announcing any subsequent reopening of the application period.

Changes to Application Information

Throughout the prototype period, participants must provide Customs with advance notification of any changes to the information provided in the application. This notification must be provided to Customs at least seven days before the effective date of a change and will be considered an amendment to the application. By written notice to the participant, Customs may reject such an amendment or suspend the party from further participation in the prototype.

Misconduct Under Prototype

All participants in the Paperless Drawback prototype are required to abide by the terms and conditions of this notice. A participant may be suspended from the prototype, subject to penalties and other administrative sanctions, and/or prevented from participation in future prototypes if a participant fails to:

(1) Maintain a sufficient level of compliance;

(2) File accurate and timely data;

(3) Supply Customs with requested information;

(4) Cooperate fully in a Drawback Compliance Assessment, Focus Assessment or audit;

(5) Provide timely and accurate data and adequate resources in support of a Drawback Compliance Assessment, Focus Assessment or audit, or comply fully with the terms of a Compliance Improvement plan;

(6) Maintain sufficient continuous bond coverage; or

(7) Exercise reasonable care in following the Paperless Drawback prototype procedures and obligations outlined in this notice, including all other applicable laws and regulations.

Suspension from Participation in Paperless Drawback Prototype

Customs has the discretion to suspend a Paperless Drawback prototype participant based on the determination that an unacceptable compliance risk exists, or for misconduct as described in the "Misconduct Under Prototype" section of this notice. Except in the case of willfulness on the part of a prototype participant, or where public health, interest or safety is concerned, written notice of a proposed suspension will be issued by Customs to the participant on a prospective basis. The notice of pending suspension will set forth the reasons for the action. The participant may appeal such decision, in writing, within 15 days of receipt of Customs suspension notification. The appeal should include substantiating documentation that establishes, to Customs satisfaction, that the alleged deficiencies that led to the pending suspension did not occur or have been corrected. The appeal should be addressed to U.S. Customs, Trade Programs, Executive Director, 1300 Pennsylvania Avenue, N.W. Room 5.2–33, Washington, D.C. 20229. Customs will issue a written determination to the participant within 30 days of receipt of the appeal. If no appeal is timely submitted, the suspension will go into effect as of the date set forth in the notice of suspension. If an appeal is timely submitted, Customs will hold the suspension in abeyance until such time as a written determination based on the appeal has been issued.

Prototype Evaluation

Participation in the Paperless Drawback prototype is not deemed confidential information. Lists of participants and evaluation results will be made available to the public by means of the Customs Electronic Bulletin Board and the Customs Administrative Message System, and upon written request. Also, upon conclusion of the prototype, the final results

will be published in the Federal Register and the CUSTOMS BULLETIN and reported to Congress.

Dated: September 24, 2002.

JAYSON P. AHERN,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, September 27, 2002 (67 FR 61197)]

MODIFICATION AND CLARIFICATION OF PROCEDURES OF THE NATIONAL CUSTOMS AUTOMATION PROGRAM TEST REGARDING RECONCILIATION

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document announces modifications to the Customs Automated Commercial System (ACS) Reconciliation prototype test regarding NAFTA Reconciliation entries, the method for filing Reconciliation entries covering flagged entry summaries for which liquidated damages have been assessed, acceptance of compact disks for Reconciliation spreadsheets, and applicability to test particpants of previously suspended regulatory provisions of part 111, Customs Regulations. Other than these modifications, the test remains the same as set forth in previously published Federal Register notices. The document also provides clarifications and reminders to test participants regarding certain other aspects of the test and announces the new address for Reconciliation submissions for the port of NY/Newark.

DATES: Effective as of January 27, 2003, the previously suspended regulatory provisions of part 111 of the Customs Regulations will be applicable to Reconciliation test participants. Effective as of December 26, 2002, are the following three Reconciliation test modifications: (1) test participants who have flagged an entry summary for NAFTA Reconciliation must file a NAFTA Reconciliation entry to make a post-entry claim for NAFTA under 19 U.S.C. 1520(d); (2) where a test participant amends a timely filed NAFTA Reconciliation entry after it is returned by Customs for correction, the test participant cannot add entry summaries to those that were covered in the original Reconciliation entry; (3) a Reconciliation entry filed in response to a monthly liquidated damages claim for no-file violations cannot include flagged entry summaries that are not in violation. Effective September 27, 2002, test participants may submit Reconciliation spreadsheet line item data via compact disks. The two-year testing period of this Reconciliation prototype com-

menced on October 1, 1998, and was extended indefinitely starting October 1, 2000. Applications to participate in the test will be accepted throughout the duration of the test.

ADDRESSES: Written inquiries regarding participation in the Reconciliation prototype test and/or applications to participate should be addressed to Mr. John Leonard, Reconciliation Team, U.S. Customs Service, 1300 Pennsylvania Ave. NW, Room 5.2A, Washington, D.C. 20229–0001. Answers to inquiries regarding the test are also available at *Recon.Help@customs.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Leonard at (202) 927–0915 or Ms. Christine Furgason at (202) 927–2293.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Reconciliation, a planned component of the National Customs Automation Program (NCAP), as provided for in Title VI (Subtitle B) of the North American Free Trade Agreement Implementation Act (the NAFTA Implementation Act; Pub. L. 103–182, 107 State. 2057 (December 8, 1993)), is currently being tested by Customs under the Customs Automated Commercial System (ACS) Prototype Test. Customs announced and explained the test in a general notice document published in the Federal Register (63 FR 6257) on February 6, 1998. Clarifications and operational changes were announced in four subsequent Federal Register notices: 63 FR 44303 published on August 18, 1998; 64 FR 39187 published on July 21, 1999; 64 FR 73121 published on December 29, 1999; and 66 FR 14619 published on March 13, 2001. A Federal Register (65 FR 55326) notice published on September 13, 2000, extended the prototype indefinitely.

As announced in a previously published document on Reconciliation (August 18, 1998), certain regulations of part 111 of the Customs Regulations were suspended for test participants (sometimes referred to as importers). This document announces that those regulations are no longer suspended.

Also, since commencement of the test, Customs has monitored the test's operation and has observed several practices engaged in by test participants that are not consistent with the procedures Customs expects participants to follow. Consequently, this document modifies the test with respect to North American Free Trade Agreement (NAFTA) Reconciliation entries and the method for filing Reconciliation entries covering flagged entry summaries for which liquidated damages have been assessed, and provides clarifications and reminders concerning other aspects of the test regarding: reduced-data, no-change Aggregate Reconciliation entries; maintenance of bond riders covering Reconciliation entries; the right to file Reconciliation entries; and the "port" column data element of the line item spreadsheet.

The document also modifies the test regarding use of compact disks for Reconciliation spreadsheets.

Aside from the above modifications, including the removal of the suspension of the part 111 regulations, the test remains as set forth in the previously published Federal Register notices.

Finally, the document sets forth the new address for submitting Reconciliation entries for the port of NY/Newark.

For application requirements, see the Federal Register notices published on February 6, 1998, and August 18, 1998. Additional information regarding the test can be found at *http://www.customs.gov/recon*.

RECONCILIATION GENERALLY

Reconciliation is the process that allows an importer, at the time an entry summary is filed, to identify undeterminable information (other than that affecting admissibility) to Customs and to provide that outstanding information at a later date. The importer identifies the outstanding information by means of an electronic "flag" which is placed on the entry summary at the time the entry summary is filed and payment (applicable duty, taxes, and fees) is made. The issues for which an entry summary may be "flagged" (for the purpose of later reconciliation) are limited and relate to: (1) value issues; (2) classification issues, on a limited basis; (3) "9802 issues," those concerning value aspects of entries filed under heading 9802, Harmonized Tariff Schedule of the United States (HTSUS)); and (4) NAFTA issues, those concerning merchandise entered under the North American Free Trade Agreement (NAFTA).

The flagged entry summary (the underlying entry summary) is liquidated for all aspects of the entry except those issues that were flagged. The means of providing the outstanding information at a later date relative to the flagged issues is through the filing of a Reconciliation entry. The flagged issues will be liquidated at the time the Reconciliation entry is liquidated. Any adjustments in duties, taxes, and/or fees owed will be made at that time. (See the February 6, 1998, Federal Register notice for a more detailed presentation of the basic Reconciliation process.)

TEST MODIFICATIONS

Use of Reconciliation to Make Post-Entry NAFTA Claims

Ordinarily, a claim for duty-free treatment under NAFTA is made at the time of entry; however, in some circumstances, an importer is unable to make the claim at that time. In that instance, an importer may make a post-entry NAFTA claim under the authority of 19 U.S.C. 1520(d). This provision authorizes Customs to reliquidate an entry, notwithstanding that a valid protest under 19 U.S.C. 1514 was not filed, to refund excess duties paid when imported merchandise qualifies for NAFTA treatment but a claim for NAFTA was not made at the time of entry. Under § 181.33(c)(1), Customs has accepted 1520(d) NAFTA claims after entry but before liquidation; these claims do not require reliquidation.

There are two ways to make a 1520(d) NAFTA claim: One way is to file an individual 1520(d) claim in accordance with the procedures set forth in subpart D of part 181 of the Customs Regulations (hereafter referred

to as a part 181 NAFTA claim), and the other is to make a 1520(d) claim in accordance with the Reconciliation process (hereafter referred to as a NAFTA Reconciliation claim). No action is required at the time of entry when a part 181 NAFTA claim is later filed within one year of the date of importation. In contrast, a NAFTA Reconciliation claim requires following Reconciliation test procedures: the importer flags entry summaries for NAFTA and files, within one year of the date of importation, a NAFTA Reconciliation entry that resolves the NAFTA issue for those entries. (The filing of the Reconciliation entry, not the mere flagging of the entry summaries, constitutes the making of the NAFTA claim under the Reconciliation process.)

In monitoring the test, Customs observed that importers, in some instances, flagged entry summaries for a NAFTA Reconciliation and then filed a separate part 181 NAFTA claim covering those same entry summaries. In other instances, Customs observed that importers filed part 181 NAFTA claims and a NAFTA Reconciliation entry covering the same entry summaries, representing a double claim.

In fairness, Customs notes that it made allowances during the first year or more of the test relative to the filing of NAFTA Reconciliation claims while importers changed internal procedures and practices. Also, during the initial period of the test, Customs was unable to liquidate NAFTA Reconciliation entries due to ACS programming development. Consequently, some importers may have been allowed to submit separate part 181 NAFTA claims after flagging for NAFTA Reconciliation the same entry summaries covered in those part 181 NAFTA claims. Customs notes, however, that participants have had ample time to adjust their procedures and practices. Also, Customs now has full Reconciliation liquidation programming capability and has been liquidating NAFTA Reconciliation entries and processing refunds since April of 2001. Thus, Customs will no longer accept the practice by test participants of filing separate part 181 NAFTA claims covering the same entry summaries already flagged for NAFTA Reconciliation.

Beginning with the effective date of this change (see below), for entry summaries that are flagged for NAFTA issues, the filing of a Reconciliation entry will be considered the exclusive means to make a 1520(d) NAFTA claim for those entry summaries. After the flagging of entry summaries, the filing of a separate part 181 NAFTA claim covering any or all of those entry summaries will be considered duplicative and will not be accepted. If an importer wishes to make a part 181 NAFTA claim for a given entry summary, the importer should not flag that entry summary for NAFTA Reconciliation.

With this modification to the test, an importer who flags entry summaries for NAFTA Reconciliation in effect waives its ability to file a part 181 NAFTA claim covering those entry summaries and commits to making the post-entry NAFTA claim for those flagged entry summaries only through the filing of a NAFTA Reconciliation entry. This modification will ensure that Customs does not process duplicate post-entry NAFTA

claims covering the same entry summaries, one under the part 181 procedures and another under Reconciliation procedures, and will thereby protect the revenue. Another problem this modification will resolve is the clogging up of the Reconciliation process from flagged entry summaries that have been abandoned.

In summary, once entry summaries are flagged for NAFTA under the test, the importer has two options: (1) make the NAFTA Reconciliation claim for the flagged entry summaries by timely filing a Reconciliation entry under the test procedure or (2) choose not to file a Reconciliation entry and let the NAFTA claim for the flagged entry summaries lapse with the passage of the filing deadline. Customs expects that importers who flag entry summaries for NAFTA Reconciliation understand that they make a commitment to file a NAFTA Reconciliation entry to make the 1520(d) NAFTA claim and that they waive the ability to make that claim any other way.

The table below highlights the options available to importers for filing a 1520(d) NAFTA claim, as well as the options available to a Reconciliation test participant who chooses to flag an entry summary for a NAFTA issue:

OPTIONS FOR MAKING POST-ENTRY NAFTA CLAIM UNDER 1520(d)

Part 181 Procedure	*Reconciliation Procedure*
File a claim pursuant to procedures set forth in subpart D, part 181 of the Customs Regulations within one year of date of importation. No action required at the time of entry.	Flag entry summary for NAFTA Reconciliation at time of entry. After flagging the entry summary, do one of the following:
Does not apply to entry summaries that have been flagged for NAFTA Reconciliation. A part 181 claim covering entry summaries that have been flagged for Reconciliation will be rejected. For flagged entry summaries, see column 2, "Reconciliation Procedure."	1) Resolve the NAFTA claim for the flagged entry summary (ies) by timely filing a Reconciliation entry under the test procedure; or 2) Choose not to file a Reconciliation entry and let the NAFTA claim for the flagged entry summaries lapse with the passage of the filing deadline.

This test modification is effective 90 days after the date of publication of this document in the Federal Register. The Reconciliation test procedure for making post-entry NAFTA claims is explained in the February 6, 1998, and December 29, 1999, Federal Register notices.

Finally, Customs recommends the use of the Reconciliation test for making post-entry NAFTA claims because the test procedure provides the importer with several benefits. First, using the test procedure is a simpler means of filing claims; the importer is able to make potentially thousands of NAFTA claims on one Reconciliation. Second, the importer can receive one check from Customs rather than many (even up to thousands) upon Customs liquidation of a Reconciliation entry and issuance of a refund. Third, because processing NAFTA claims under Rec-

onciliation is simpler for Customs, the refund delivery system is more efficient.

Amendment of Timely Filed NAFTA Reconciliation Entries

Under the test, participants can amend timely filed NAFTA Reconciliation entries when Customs rejects a Reconciliation entry and returns the entry to the participant for correction. In monitoring the test, Customs observed that, some importers amending timely filed NAFTA Reconciliation entries added entry summaries to the corrected Reconciliation entry upon returning it to Customs for processing and eventual liquidation. The result has been that entry summaries that were time-barred from Reconciliation because they were not covered by a timely filed Reconciliation entry were liquidated in the Reconciliation process.

Up to now, Customs has accepted this practice but here announces that, effective 90 days after publication of this document in the Federal Register, the practice will no longer be accepted. Thus, when Customs rejects a NAFTA Reconciliation entry for correction, no additional underlying entry summaries (whether or not time-barred) may be added to that NAFTA Reconciliation when it is resubmitted. This modification will streamline the NAFTA Reconciliation process, improve Customs efficiency in processing claims, and better protect the revenue against double claims.

Liquidated Damages for No-file Reconciliation Entries

Provisions regarding the assessment of liquidated damages against participants in the Reconciliation test for failure to file or late filing of Reconciliation entries and/or moneys (duties, taxes, and/or fees) due with these entries were announced in the December 29, 1999, Federal Register notice and modified in the March 13, 2001, Federal Register notice. This document announces an additional modification of the test's liquidated damages and mitigation guidelines relative to no-file Reconciliation violations.

For each test participant that is identified by Customs as having committed no-file violations, i.e., entry summaries flagged but no Reconciliation entry filed and the filing deadline has passed, Customs will issue monthly Reconciliation liquidated damages claims (CF 5955a Notice of Penalty or Liquidated Damages). A separate claim will be issued for each continuous bond number under which the affected flagged entry summaries were filed. (For example, if all affected flagged entry summaries involve one continuous bond, one CF 5955a claim covering all affected flagged entry summaries will be issued to the violating participant. If three continuous bonds are involved among all the affected flagged entry summaries, three CF 5955a claims will be issued to the violating participant, each claim covering only the affected flagged entry summaries filed under a particular bond.) Mitigation is afforded for no-file Reconciliation entries once the flagged entry summaries listed in the claim are properly reconciled. In this way, a Reconciliation entry filed by a participant to resolve a no-file violation is, in effect, a petition for mitigation.

In monitoring the test, Customs observed that participants commingle, on Reconciliation entries, flagged entry summaries listed as no-file violations on a CF 5955a with other flagged entry summaries that are not in violation. Up to now, Customs has allowed this practice but now modifies the test to stop the practice.

Under the new practice, participants who receive a monthly liquidated damages claim covering flagged entry summaries that have not been reconciled (representing no-file violations), and who seek to reconcile those flagged entry summaries, must submit a Reconciliation entry (or Reconciliation entries) that contains only those flagged entry summaries listed on the CF 5955a. By limiting these Reconciliation entries to the flagged entry summaries involved in the violations, Customs separates the Reconciliation liquidated damages/mitigation process from the ordinary Reconciliation liquidation process.

This test modification is effective 90 days after publication of this document in the Federal Register.

Acceptance of Compact Disks as Approved Reconciliation Spreadsheet Media

Customs announces a modification of the test to allow importers to submit Reconciliation spreadsheet line item data via compact disks, as well as 3.5 inch diskettes. All requirements regarding the content and format of the spreadsheet remain the same as described in prior Federal Register notices, including the requirement that a hard copy be submitted to the processing port (unless this requirement is waived by the port).

This modification to the test is effective on the date this document is published in the Federal Register.

Regulations No Longer Suspended

The August 18, 1998, Federal Register notice included a section on regulatory provisions suspended and referred to part 111 of the Customs Regulations. This document announces that the provisions of part 111 are no longer suspended for Reconciliation test participants. Regulations providing for the licensing of, and the granting of permits to, customs brokers must be complied with. This includes compliance with § 111.2(b)(2)(i)(C) which requires a national permit issued under § 111.19(f) for a broker participating in the test to transact customs business within a district for which the broker does not have a district permit.

This modification to the test is effective 120 days from the date this document is published in the Federal Register. Affected customs brokers participating in the test must have a valid national permit by that date.

CLARIFICATIONS AND REMINDERS

Reduced-Data, No-Change Aggregate Reconciliation Entries

After the importer obtains the information that was undeterminable at the time underlying entry summaries were filed and flagged, the importer files a Reconciliation entry that provides that information (by the

deadline applicable to the kind of issue flagged). There are two basic types of Reconciliation entries: the Aggregate Reconciliation entry (or Aggregate Reconciliation) and the Entry-by-Entry Reconciliation entry (or Entry-by-Entry Reconciliation).

The Aggregate Reconciliation contains a list of the underlying entry summaries covered and the aggregate revenue adjustment relative to those entry summaries. Aggregate Reconciliations can be used to report an increase in duties, taxes, and fees owed or no change in the amounts already paid when the underlying entry summaries were filed; decreases may be reported in an Aggregate Reconciliation only when the importer includes a statement waiving any claim to a refund for those decreases.

The Entry-by-Entry Reconciliation can be used to report an increase, decrease, or no-change in revenue (duties, taxes, and/or fees). Unlike the Aggregate Reconciliation, these Reconciliation entries show the revenue adjustment or no change in revenue relative to each entry summary covered. In order to receive a refund, the importer must file an Entry-by-Entry Reconciliation.

The March 13, 2001, Federal Register notice announced a new kind of Aggregate Reconciliation: The reduced-data, no-change Aggregate Reconciliation. These Reconciliation entries cover only entry summaries that show no change or adjustment (no increase or decrease) at the time the Reconciliation entry is filed. The reduced-data feature of this Aggregate Reconciliation relieves importers from having to provide, in the Reconciliation entry, the aggregate total of the original duties, taxes, and fees applicable to the underlying entry summaries. Importers have been using this feature of the test program since October 23, 2001, to close out flagged entry summaries that have no change in reportable data. On that date, Customs announced availability of the feature via ABI Administrative Message number 01–1152.

In monitoring the test, Customs recognized a need to clarify that the reduced-data, no-change Aggregate Reconciliation entry is for use only when the importer chooses to close out the Reconciliation with no further action; i.e., when the importer does not anticipate making any changes/modifications whatsoever to that Reconciliation. These Reconciliation entries are not to be used for the single purpose of meeting the filing deadline with the intent to later amend the no-change Reconciliation entry, prior to its liquidation, when the still outstanding undeterminable information is obtained. If a reduced data, no-change Aggregate Reconciliation is filed, that entry will be liquidated immediately.

Test participants filing the reduced-data, no-change Aggregate Reconciliation are reminded that they must still submit the ABI header document in hard copy to the processing port to which the ABI transmission is made. This header document should state: “Spreadsheet is not provided because there are no adjustments to reportable data elements in this Reconciliation.” Participants are required to

transmit this same statement in the R15/R16 record of their ABI transmission. Failure to provide both the R15/R16 statement and the hardcopy document will constitute a failure to file violation.

Where a test participant who must file a Reconciliation entry to meet the filing deadline has yet to obtain the undeterminable information needed to resolve the flagged issue, that test participant should timely file a no-change Aggregate Reconciliation entry *(not a reduced data, no-change Aggregate Reconciliation entry)* providing the original duties, taxes, and fees data and, if possible, the best available information of changes expected, along with a letter requesting that Customs delay liquidation until the needed information is obtained.

"Port" Column on the Reconciliation Line Item Spreadsheet

The data elements and specific columns of the Reconciliation line item spreadsheet were explained in the February 6, 1998, Federal Register notice and ABI Administrative Message number 99–0506, dated July 9, 1999. Because certain information was omitted from the sample spreadsheet, Customs is clarifying its instructions on properly completing the spreadsheet.

The sample spreadsheet included in the Federal Register notice (Durant Motor Corp.) has several blank fields in the port column among the fourteen rows listed. Customs notes that per U.S. Bureau of the Census requirements, all fields in the port column must be filled in with either: (1) The specific four digit port code applicable to the port where the merchandise represented by that line item was entered or (2) the word "all" to denote that the merchandise represented by that line item entered through multiple ports. This should eliminate any confusion regarding proper execution of the port column element of the spreadsheet.

Reconciliation Bond Riders

One of the requirements for participation in the Reconciliation test program is the submission of a Reconciliation bond rider. The bond rider is an addendum to the continuous entry bond required under the Customs Regulations (19 CFR Part 113) and is designed to cover Reconciliation entries. Specific Reconciliation bond rider language can be found in the August 18, 1998, Federal Register notice.

During monitoring of the test, Customs discovered that bond riders have not always been filed properly. Thus, Customs reminds participants in the Reconciliation test program that updated Reconciliation bond riders should be submitted to the Customs port where the bond was filed, with a copy of the bond rider submitted to the Headquarters Reconciliation Team.

Updated Address and ABI Filing Information for NY/Newark Port 1001

Due to the terrorist attacks that destroyed the U.S. Customhouse at 6 World Trade Center in New York, the address for Reconciliation submissions for importers assigned to NY/Newark (port 1001) has changed. The new address is: U.S. Customs Service, 1210 Corbin Street, Eliza-

beth, NJ 07201. Filers may still transmit the ABI portion of their Reconciliations to port 1001.

Dated: September 24, 2002.

JAYSON P. AHERN,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, September 27, 2002 (67 FR 61200)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, September 25, 2002.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

MICHAEL T. SCHMITZ,
Assistant Commissioner,
Office of Regulations and Rulings.

MODIFICATION OF RULING LETTER AND TREATMENT RELATING TO THE CLASSIFICATION OF "SWIFFER"™ CLOTHS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the classification of the "Swiffer"™ Floor Sweeper package and cloths.

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 is modifying a ruling letter relating to the tariff classification of the "Swiffer"™ cloths under the Harmonized Tariff Schedule of the United States (HTSUS), and is revoking any treatment previously accorded by the Customs Service to substantially identical merchandise. Notice of the proposed action was published in the CUSTOMS BULLETIN of August 21, 2002, Volume 36, Number 34. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textile Branch, (202) 572–8822.

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 Customs 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 Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. section 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs 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 Customs is modifying a ruling letter pertaining to the tariff classification of the "Swiffer"™ cloths. Although in this notice, Customs is specifically referring to one ruling, New York Ruling (NY) D82572 dated September 29, 1998, this notice covers any rulings on this merchandise, which may exist but have not been specifically identified. Customs 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 Customs 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, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during the notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack 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 D82572, Customs ruled that the subject merchandise, identified as the "Swiffer"™ Floor Sweeper package consisting of ten chemi-

cally treated cloths, handle, and plate was classified, pursuant to GRI 3(b), in subheading 9603.90.8050, HTSUSA, which provides for other brooms, brushes * * * mops and feather dusters. The "Swiffer"™ cloths which are packaged and sold separately were classified under subheading 6307.10.2030, HTSUSA, which provides for other made up articles, including dress patterns: floorcloths, dishcloths, dusters and similar cleaning cloths: other, other. Since the issuance of this ruling, Customs reviewed the classification of these items and determined that the cited ruling was in error. On May 16, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 20, we published a proposed revocation of NY D82572, dated September 29, 1998. On August 21, 2002, we withdrew the previous notice pursuant to an internal review and issued, for a solicitation of comments, a new proposed modification of NY D82572 with a new classification for the subject merchandise which was published in the CUSTOMS BULLETIN of August 21, 2002, Volume 36, Number 34. As such, this new ruling now modifies NY D82572 by providing the correct classification for the separately packaged "Swiffer"™ cloths. Accordingly, we are modifying NY D82572, only with respect to the separately packaged cloths, to reflect proper classification of the goods within subheading 5603.92.0010, HTSUSA, pursuant to the analysis set forth in HQ 964578 (see "Attachment" to this document).

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 is modifying one ruling letter pertaining to the classification of "Swiffer"™ cloths. Although in this notice Customs is specifically referring to NY D82572, dated September 29, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs 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 have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's failure to advise Customs 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.

Dated: September 20, 2002.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 20, 2002.

CLA–2 RR:CR:TE 964578 ASM
Category: Classification
Tariff No. 9603.90.8050 and 5603.92.0010

MS. ALICIA G. CALLAHAN
PROCTER & GAMBLE
THE PROCTER & GAMBLE DISTRIBUTING COMPANY
U.S. CUSTOMER SERVICES/LOGISTICS CENTER
8500 Governor's Hill Drive
Cincinnati, OH 45249

Re: Request for reconsideration and Modification of NY D82572: Tariff classification of the "Swiffer"™ Floor Sweeper package consisting of cloths, handle, and plate; Tariff classification of the "Swiffer"™ Floor Sweeper cloths packaged and sold separately; Nonwoven cloth impregnated with mineral oil and parrafin wax.

DEAR MS. CALLAHAN:

This is in response to a letter, dated July 7, 2000, requesting reconsideration of Customs New York Ruling (NY) D82572, dated September 29, 1998, which classified the above-captioned merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). A sample was submitted to this office for examination. We have reviewed NY D82572, and have found that the ruling incorrectly classified the separately packaged "Swiffer"™ cloths. Therefore, this ruling modifies NY D82572.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY D82572 was published on August 21, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 34. No Comments were received in response to the notice.

Facts:

The subject merchandise is the "Swiffer"™ Floor Sweeper, imported unassembled as a handle and plate, and packaged with ten chemically treated cloths. The "Swiffer"™ Floor Sweeper cloths will also be imported separately in packages of 10 or 20 cloths. The "Swiffer"™ cloths are constructed of man-made nonwoven polyester fabric cut to 8 inch x 11 inch rectangles which have been impregnated with a mixture of mineral oil and paraffin wax. Individually, the cloths weigh 68g per square meter. The edges of the cloths have not been finished or hemmed.

In NY D82572, dated September 29, 1998, the merchandise identified as the "Swiffer"™ Floor Sweeper package consisting of cloth, handle, and plate was classified pursuant to GRI 3(b) in subheading 9603.90.8050, HTSUSA, which provides for other brooms, brushes * * * mops and feather dusters. The current duty rate for this provision under the general column one rate is 2.8 percent *ad valorem*. The "Swiffer"™ cloths which are packaged and sold separately were classified under subheading 6307.10.2030, HTSUSA, which

provides for other made up articles, including dress patterns: floorcloths, dishcloths, dusters and similar cleaning cloths: other, other. The current duty rate for this provision under the general column one rate is 6.3 percent *ad valorem*.

You disagree with this classification and claim that all the articles subject to NY D82572, i.e., the individually packaged cloths and the floor sweeper set with non-woven cloths, are classifiable under subheading 5603.12.0010, HTSUSA, which provides for nonwovens, whether or not impregnated, coated, covered or laminated. Currently, this provision is duty free under the general column one rate. The textile quota category is 223.

Issue:

What is the proper classification for the merchandise?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In correspondence dated October 2, 2000, you provided additional information indicating that the method of manufacture for the "Swiffer"™ cloth is described as "hydroentangled". Furthermore, you state that most of the "Swiffer"™ cloth is now made of fibers of U.S. origin and the fabric is manufactured in the U.S. The fabric is sent to Canada in rolls where it is cut to size and impregnated with a mixture of mineral oil and paraffin wax. You further note that, occasionally, the fabric is sourced from Germany and Italy.

The "Swiffer"™ Floor Sweeper package, which contains 10 cloths, handle, and plate, consists of components which are *prima facie* classifiable in separate headings. Thus, we have found that the goods cannot be classified solely on the basis of GRI 1. GRI 2(b) governs the classification of goods when there are mixtures and combinations of materials or substances, and when goods consist of two or more materials or substances. In relevant part, GRI 2(b) states that "The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." GRI 3 states:

> (a). The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
>
> (b). Mixtures, composite goods consisting of different materials or made up of different components and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

In this case, the headings 5603 and 9603, HTSUS, each refer to only part of the materials that make up this product. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b).

It is important to note, however, that in classifying the "Swiffer"™ Floor Sweeper package, the merchandise is correctly characterized as a "set". Explanatory Note (X) for GRI 3(b) states that "goods put up in sets for retail sale" are goods which "(a) consist of at least two different articles which are *prima facie*, classifiable in different headings * * *; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking (e.g. in boxes or cases or on boards) * * *". As applied to the "Swiffer"™ Floor Sweeper package, we have already determined that the articles are *prima facie* classifiable in different headings. Furthermore, the set consists of articles which are intended for the activity of cleaning and dusting. Finally, it is our understanding that the packaged product has been put up in a manner suitable for sale directly to users without repacking.

With respect to determining the essential character of the set, the EN to GRI 3(b) provides the following guidance:

> (VII). In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character,** insofar as this criterion is applicable.
>
> (VIII). The factor which determines the essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Recently, there have been several Court decisions on "essential character" for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. See, *Better Home Plastics Corp. v. United States,* 916 F. Supp. 1265 (CIT 1996), affirmed 119 F. 3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States,* 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging co., v. United States,* 19 CIT 868, 890 F. Supp. 1095 (1995). See also, *Pillowtex Corp. v. United States,* 98–1227, CAFC, 171 F.3d 1370; 1999 U.S. App. LEXIS 4371.

The essential character of the subject merchandise can be determined by comparing each component as it relates to the use of the product. Clearly the plastic handle and plate serve the important and primary function of attaching the "Swiffer"™ cloth in such a way that it can be more conveniently used to clean floors, ceilings and other hard to reach places. Moreover, when assembled, it is a floor sweeper within the scope of heading 9603, HTSUSA. Thus, it is our determination that the handle and plate impart the essential character to this retail set.

In view of the foregoing, it is our determination that NY D82572, correctly classified the "Swiffer"™ Floor Sweeper package, with handle plate and cloths, under heading 9603, HTSUSA, pursuant to a GRI 3(b) analysis.

With respect to the individually packaged "Swiffer"™ cloths, Section XI, Note 7, of the HTSUSA, governs classification of goods which are classifiable as other "made up" articles of heading 6307, and provides in pertinent part, as follows:

> 7. For the purposes of this section, the expression "*made up*" means:
>
> (a) Cut otherwise than into squares or rectangles;
>
> (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets);

The "Swiffer"™ cloths are rectangular shaped and have raw/unfinished edges. Thus, these cloths are not produced in the finished state or otherwise within the meaning of Note 7. The EN to Section Note 7(b) indicates that rectangular articles simply cut from larger pieces are not made-up. Further the EN to heading 5603, HTSUSA, explains that the heading includes "nonwovens in the piece, cut to length or simply cut to rectangular * * * shape from larger pieces without other working, whether or not presented folded or put up in packings (*e.g.*, for retail sale)." As such, they are not classifiable under subheading 6307.10.2030, HTSUSA, as other "made up" articles.

Heading 5603, HTSUSA, covers nonwovens, whether or not impregnated, coated, covered or laminated. In addition to the above, the EN to 5603 provides that "A nonwoven is a sheet or web of predominately textile fibres oriented directionally or randomly and bonded. These fibers may be of natural or man-made origin. They may be staple fibres (natural or man-made) or man-made filaments or be formed in situ. Nonwovens can be produced in various ways and production can be conveniently divided into the three stages: web formation, bonding and finishing." The EN to 5603 further states that "Nonwovens may be * * * impregnated, coated, covered or laminated" and that the heading covers "* * * nonwovens in the piece, cut to length or simply cut to rectangular * * * shape * * *".

The "Swiffer"™ cloths are "nonwovens" within the meaning of the EN to 5603 because the process of "hydroentanglement" involves a method by which a straight line of fibers are hit with high velocity water jets causing the fibers to entangle or form a web. Also, the EN to 5603 notes that the nonwovens covered by this heading may be cut to rectangular shape, as are the "Swiffer"™ cloths. Furthermore, heading 5603, HTSUSA, specifically provides for nonwovens which have been impregnated with materials "* * * other than or in addition to rubber, plastics, wood pulp or glass fibers." In this case, the "Swiffer"™

cloths have been impregnated with mineral oil and paraffin wax. Finally, the subject cloths are provided for at subheading 5603.92.00, HTSUSA, in that they are within the requisite size range of this provision because, individually, the cloths weigh 68g per square meter, which is more than 25g per square meter but not more than 70g per square meter.

Customs has previously classified nonwoven cleaning cloths in heading 5603, HTSUSA. Headquarters Ruling (HQ) 089058, dated July 25, 1991 classified a nonwoven cloth wipe of man-made fibers under subheading 5603.00.9090, HTSUSA. In this ruling, the article was precluded from classification in heading 6307, HTSUSA, because it was cut in a square or rectangular shape and did not meet the definition of a "made-up" article within the meaning of heading 6307. HQ 950786, dated January 28, 1992, classified a rectangular cleaning cloth made from a synthetic nonwoven fabric and impregnated with polyvinyl alcohol under the provision for nonwovens in 5603.00.9090, HTSUSA. In NY F84069, dated March 13, 2000, nonwoven wiping cloths of man-made fibers, unhemmed, not impregnated, coated, covered or laminated, and weighing 40 grams per square meter, were found to be classifiable as "Other" nonwovens in subheading 5603.12.0090, HTSUSA. Although the cloths in this ruling had no chemical coating, they are otherwise similar to the "Swiffer" cloths in that they are nonwoven, unhemmed wiping cloths of man-made fibers, which can be used as dust mop wipes, or replacement parts.

Headquarters Ruling (HQ) 951372, dated April 24, 1992, in applying Section Note 7 to Section XI, determined that "rectangular (including square) articles simply cut from larger pieces without other working * * * are not regarded as 'produced in the finished state' within the meaning of this Note [EN to Section Note 7, Section XI]." Recently, Customs affirmed this interpretation of "made up" per Note 7, Section XI, in HQ 962371, dated March 12, 1999, when it determined that the merchandise was precluded from classification in heading 6307, HTSUSA, because it was cut into a rectangular shape after weaving and the cut edges were merely "selvages" to prevent unraveling and not "Hemmed or with rolled edges, * * *" within the meaning of Note 7, Section XI, (c). Thus, Customs has consistently held that merchandise which is substantially similar to the subject "Swiffer"™ cloths are precluded from classification under heading 6307, HTSUSA.

In view of the foregoing, we find that NY D82572, incorrectly classified the separately packaged "Swiffer"™ cloths which are properly classifiable in accordance with GRI 1, under subheading 5603.92.00, HTSUSA, as "Other" nonwovens.

Holding:

NY D82572, dated September 29, 1998, is hereby modified.

The "Swiffer"™ Floor Sweeper package, pursuant to a GRI 3(b) analysis, is correctly classified in subheading 9603.90.8050, HTSUSA, which provides for "Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees): Other: Other, Other." This provision is dutiable under the general column one rate at 2.8 percent *ad valorem*.

The separately packaged "Swiffer"™ cloths, in accordance with GRI 1, are correctly classified in subheading 5603.92.0010, HTSUSA, which provides for "Nonwovens, whether or not impregnated, coated, covered or laminated: Other: Weighing more than 25g per square meter but not more than 70g per square meter, Impregnated, coated or covered with material other than or in addition to rubber, plastics, wood pulp or glass fibers; 'imitation suede'." This provision is duty free at the general column one rate. The textile category is 223.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

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

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF FRUCTOOLIGOSACCHARIDE MIXTURES FOS AND FOS-P

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of fructooligosaccharide mixtures FOS and FOS-P.

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 is revoking a ruling concerning the tariff classification of fructooligosaccharide mixtures FOS and FOS-P, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocations was published on August 21, 2002, in Volume 36, Number 34, of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 572–8784.

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 Customs to provide the public with improved information concerning the trade community's responsi-

bilities and rights under the Customs and related laws. In addition, both the trade and Customs 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 Customs 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 published a notice in the August 21, 2002, CUSTOMS BULLETIN, Volume 36, Number 34, proposing to revoke New York Ruling Letter (NY) 854467, dated August 1, 1990, and to revoke any treatment accorded to substantially identical merchandise. No comments were received in response to this notice.

In NY 854467, Customs ruled that fructooligosaccharide mixtures FOS and FOS-P were classified in heading 2309, HTSUS, the provision for "[P]reparations of a kind used in animal feeding," because they were described as being used in chicken feed.

It is now Customs position that these substances were not correctly classified in NY 854467 because fructooligosaccharides are also prepared for human consumption. By operation of Explanatory Note 23.09, which excludes products used both in animal feed and prepared for human consumption from heading 2309, HTSUS, and also by operation of Additional U.S. Rule 1(a), HTSUS, which dictates the administration of principal use provisions, fructooligosaccharide mixtures FOS and FOS-P are correctly classified in subheading 2106.90, HTSUS, as "[F]ood preparations not elsewhere specified or included: [O]ther." Fructooligosaccharides which can be described as a separate chemically defined organic compound are sugar ethers of subheading 2940.00.60, HTSUS, the provision for "[S]ugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose; sugar ethers, sugar acetals and sugar esters, and their salts, other than products of heading 2937, 2938, or 2939: [S]ugar ethers, sugar acetals and sugar esters, and their salts, other than products of heading 2937, 2938, or 2939: [O]ther." Not enough information is supplied in the ruling to determine classification at the 10 digit level. If needed, a ruling may be requested from the National Commodity Specialist Division, U.S. Customs Service, One Penn Plaza, 10th Floor, New York, N.Y. 10119.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment

previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Customs, pursuant to section 625(c)(1), is revoking NY 854467 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 965518 set forth as an attachment to this notice. Additionally, pursuant to section 625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

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

Dated: September 23, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 23, 2002.

CLA–2 RR:CR:GC 965518 AM
Category: Classification
Tariff No. 2106.90

MR. STUART M. PAPE
PATTON BOGGS & BLOW
2550 M Street, N.W.
Washington, DC 20037

Re: NY 854467 revoked; fructooligosaccharide mixtures FOS and FOS-P.

DEAR MR. PAPE:

This is in reference to New York Ruling Letter (NY) 854467 issued to you on behalf of Coors Bio Tech, Inc., on August 1, 1990, by the Director, Customs National Commodity Specialist Division, concerning the classification, under the Harmonized Tariff Schedule of the United States, (HTSUS), of fructooligosaccharide mixtures FOS and FOS-P. We have reviewed that ruling and determined that the classification set forth is incorrect.

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. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY 854467 was published on August 21, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 34. No comments were received in response to this notice.

Facts:

Fructooligosaccharides are saccharide polymers comprised of a single glucose molecule to which one, two, or three fructose units have been linked in an enzyme-catalyzed reaction.

The products at issue in NY 854467 were stated to be added to chicken feed to improve feed utilization. These products are said to improve the activity of benign intestinal flora and may have some fiber-like properties. They are also said to be effective in the reduction of incidence of salmonella infections in broilers when included in the feed of the animals.

According to information now available, FOS is also prepared for human consumption. FOS is a carbohydrate that is not hydrolyzed in the human intestinal tract. FOS has a chemical link (β-2-1-glycosidic linkage) between the fructose units in the chains that are not digestible by human enzymes. FOS passes unchanged into the colon, where it serves as a substrate for colonic bacteria. It is used alone as a nutritional supplement or in foods as a bulking agent, humectant, dietary fiber source and to promote the growth of bifidobacteria. It is used in products such as Ensure® Fiber with FOS, infant formula, biscuits, cereals, etc.

Issue:

What is the classification of fructooligosaccharide FOS and FOS-P under the HTSUS?

Law and Analysis:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. Additional U.S. Rule of Interpretation 1(a) states that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use."

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

The following HTSUS headings are relevant to the classification of this product:

2106	Food preparations not elsewhere specified or included:
2309	Preparations of a kind used in animal feeding:
2940	Sugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose; sugar ethers, sugar acetals and sugar esters, and their salts, other than products of heading 2937, 2938, or 2939:

Chapter note 1 to Chapter 29, HTSUS, states, in pertinent part, the following: "[E]xcept where the context otherwise requires, the headings of this Chapter apply only to: (a) [S]eparate chemically defined organic compounds, whether or not containing impurities. * * *"

EN 23.09 states, in pertinent part, the following:

> The heading excludes:
>
> (c) Preparations which, when account is taken, in particular, of the nature, purity and proportions of the ingredients, the hygiene requirements complied with during manufacture and, when appropriate, the indications given on the packag-

ing or any other information concerning their use, can be used either for feeding animals or for human consumption (headings 19.01 and 21.06, in particular).

In NY 854467 the merchandise was classified in heading 2309, HTSUS, the provision for "[P]reparations of a kind used in animal feeding," because it was described as being used in chicken feed. However, we are now aware that fructooligosaccharides are also used in products for human consumption. Fructooligosaccharides are therefore excluded from classification in heading 2309, HTSUS, by EN 23.09 exclusionary note (c), HTSUS, *supra*.

Moreover, both headings 2106 and 2309, HTSUS, are principal use provisions governed by Additional U.S. Rule 1(a), *supra*. "The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import." *Group Italglass U.S.A., Inc. v. United States*, 17 C.I.T. 1177, 1177, 839 F. Supp. 866, 867 (1993). At the time of importation, the principal use was such that the merchandise belonged to the class of "nutritional supplements for human consumption" rather than to the class of "animal feed." Therefore, under *Group Italglass U.S.A*, *supra,* the merchandise may be correctly classified under the provision for "food preperations," heading 2106, HTSUS, even though the particular shipments were stated to be used in chicken feed.

However, heading 2106, HTSUS, is not applicable if the merchandise is specified in another provision. Heading 2940, HTSUS, the provision for sugar ethers describes FOS and FOS-P that is a separate chemically defined compound. FOS and FOS-P that does not reach this level of purity is classified in heading 2106, HTSUS, as noted above. Since FOS and FOS-P are used as an ingredient in human foods, the applicable six digit subheading is 2106.90, HTSUS, the provision for other food preparations.

The sucrose contained in FOS and FOS-P is derived from sugar cane or sugar beets and, on a dry weight basis, may contain over 10 percent of such sugars. Therefore, the ten digit classification can be determined using the following principles. If containing 10 percent or less, by dry weight, of sugar derived from sugar cane or beets, it will be classified in subheading 2106.90.9997, HTSUS. If containing over 10 percent, by dry weight, of sugar derived from sugar cane or sugar beets, it will be subject to the tariff rate quota for articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, in subheadings 2106.90.9500 and 2106.90.9700, HTS. If classified in 2106.90.9700, HTS, the additional safeguard duties of subheading 9904.17.49 to 9904.17.56, HTS, will apply.

Holding:

Depending upon exact composition, Fructooligosaccharide mixtures FOS and FOS-P are classified either in subheading 2106.90, HTSUS, the provision for "[F]ood preparations not elsewhere specified or included: [O]ther," or in subheading 2940.00.60, HTSUS, the provision for "[S]ugars, chemically pure, other than sucrose, lactose, maltose, glucose and fructose; sugar ethers, sugar acetals and sugar esters, and their salts, other than products of heading 2937, 2938, or 2939: [S]ugar ethers, sugar acetals and sugar esters, and their salts, other than products of heading 2937, 2938, or 2939: [O]ther."

Not enough information is supplied in the ruling to determine classification at the 10 digit level. If needed, a new ruling may be requested from the National Commodity Specialist Division, U.S. Customs Service, One Penn Plaza, 10th Floor, New York, N.Y. 10119.

Effect on Other Rulings:

NY 854467 is revoked.

In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

WITHDRAWAL OF PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN MARKING REQUIREMENTS APPLICABLE TO SCREWDRIVER BITS

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Notice of withdrawal of the proposed modification of ruling letter and revocation of treatment relating to the country of origin of screwdriver bits for marking purposes.

SUMMARY: 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 Customs is withdrawing a proposed modification of a ruling pertaining to the country of origin marking requirements applicable to screwdriver bits. Customs is also withdrawing the proposed revocation of any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published in the CUSTOMS BULLETIN, Volume 36, Number 30, on July 24, 2002.

EFFECTIVE DATE: This action is effective October 9, 2002.

FOR FURTHER INFORMATION CONTACT: Kristen K. Ver Steeg, Special Classification and Marking Branch, (202) 572–8832.

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 Customs 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 Customs 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 Customs 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 Moderniza-

tion) 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) F80648, dated December 13, 1999, was published in the CUSTOMS BULLETIN, Volume 36, Number 30, on July 24, 2002.

In NY F80648, *supra*, Customs considered drill or screwdriver bits imported in plastic bags, each of which contained 25 identical bits. In that case, Customs held that the imported articles were exempt from individual marking pursuant to 19 CFR 134.32(e), as articles that could not be marked prior to shipment except at an expense economically prohibitive of their importation and held that marking both the plastic bag and the outermost container with the phrase "Made in Taiwan" was acceptable for purposes of 19 U.S.C. 1304.

In a document published July 24, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 30, Customs proposed to modify NY F80648 to reflect that the imported bits, imported in bulk and subsequently repackaged in the U.S., were subject to the special marking requirements set forth in Treasury Decision (T.D.) 74–122, 39 Fed. Reg. 13538 (April 15, 1974), as re-affirmed in T.D. 84–214, 49 Fed. Reg. 40802 (October 18, 1984), which require that rotary metal cutting tools measuring 3/16″ in diameter or greater be marked by means of die-stamping in a contrasting color, raised lettering, engraving, or some other method of producing a legible, conspicuous and permanent mark to clearly indicate the country of origin to the ultimate purchaser in the United States.

One comment was received in response to the notice of proposed action. The commenter believes that the bits at issue are not "rotary metal cutting tools" subject to the special marking requirements and asserts that even if the special marking requirements are applicable, the imported bits are imported in properly marked containers that are virtually certain to reach the ultimate purchaser.

However, we note that in a notice in the April 4, 2001 CUSTOMS BULLETIN, in Volume 35, Number 14, Customs proposed to modify NY F80648, dated December 13, 1999, pertaining to the tariff classification of the screwdriver bits. In the May 30, 2001, CUSTOMS BULLETIN, in Volume 35, Number 22, Customs published a notice modifying NY F80648 to reflect that screwdriver bits for handtools are correctly classifiable in subheading 8207.90.60 of the Harmonized Tariff Schedule of the United States (HTSUS).

As a result of further review, Customs is of the opinion that articles classifiable in subheading 8207.90.60, HTSUS, are not of the same class or kind encompassed by the Tariff Schedules of the United States (TSUS) provisions referenced in T.D. 74–122 and T.D. 84–214 (*i.e.*, items 649.43, 649.44 and 649.46, TSUS). Accordingly, Customs has determined that the subject screwdriver bits are outside the purview of the special marking requirements for "[r]otary metal cutting tools" mandated by T.D. 74–122 and T.D. 84–214. However, it should be noted that if the screwdriver bits will be subsequently repackaged in the U.S., a fact

omitted from the original ruling request, the required certifications of 19 CFR 134.26 must be executed at the time of importation.

Pursuant to 19 U.S.C. 1625(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 Implementation Act, Pub.L. 103–82, 107 Stat. 2057, 2186 (1983), this notice advises interested parties that Customs is withdrawing its proposed modification of NY F80648, dated December 13, 1999 and proposed revocation of any treatment previously accorded by it to substantially similar merchandise.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.1(c)(1), Customs Regulations (19 CFR 177.1(c)(1).

Dated: September 24, 2002.

CRAIG WALKER,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

WITHDRAWAL OF PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF A PAPER WEB INSPECTION SYSTEM; PROPOSED MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF MEASURING OR CHECKING INSTRUMENTS AND APPARATUS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of withdrawal of proposed modification of ruling letter and revocation of treatment relating to tariff classification of a paper web inspection system; proposed modification and revocation of ruling letters and revocation of treatment relating to tariff classification of measuring or checking instruments and apparatus.

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 intends to withdraw a proposal to modify a ruling relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of apparatus for detecting variances in the quantity and quality of light, and to revoke any treatment Customs has previously accorded to substantially identical transactions. In addition, Customs proposes to modify and revoke certain ruling letters relating to the tariff classification of measuring or checking instruments and apparatus. The merchandise is apparatus which utilizes light from an illumi-

nated sample for the purpose of measuring or checking conditions in the sample.

Notice of the proposed modification now being withdrawn was published on July 31, 2002, in the CUSTOMS BULLETIN. Customs invites comments on the correctness of the new proposed action.

DATE: Comments must be received on or before November 8, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. 20220, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 572–8779.

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), 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 based on the premise 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 Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, 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 declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other 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 Customs is withdrawing its notice proposing to modify a ruling and to revoke treatment relating to the tariff classification of a paper web inspection system which is apparatus for detecting imperfections in the paper web during the papermaking process. A copy of *HQ* 965327, advising that Customs now believes that the classification set forth in *NY* 856065, the ruling originally proposed to be modified, is correct, is set forth as Attachment A to this document. In

addition, Customs now proposes to modify and revoke ruling letters and to revoke treatment relating to tariff classification of measuring or checking instruments and apparatus which utilize light from an illuminated sample for the purpose of measuring or checking conditions in the sample. Although in this notice Customs is specifically referring to two rulings, *HQ* 955053 and *NY* G86132, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been identified. Any party who has received an interpretative 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 Customs 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, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs 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* 955053, dated October 4, 1993, an ellipsometer and combination ellipsometer/spectrophotometer were held to be instruments and apparatus for physical or chemical analysis classifiable in subheading 9027.50.40, HTSUS. In *NY* G86132, dated January 26, 2001, the ABI Prism 3100 Synthetic Analyzer was likewise held to be classifiable in subheading 9027.50.40, HTSUS. These rulings were based on Customs belief that the apparatus conformed to the description in subheading 9027.50.40, HTSUS. *HQ* 955053 and *NY* G86132 are set forth as Attachments B and C to this document, respectively.

It is now Customs position that the merchandise described in *HQ* 955053 and *NY* G86132 is classifiable in subheading 9031.49.90, HTSUS, as other measuring or checking instruments, appliances and machines. Pursuant to 19 U.S.C. 1625(c)(1)), Customs intends to modify and/or revoke the cited rulings, as appropriate, as well as any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis in *HQ* 965899 and *HQ* 965900, which are set forth as Attachments D and E to this document, respectively.

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical

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

Dated: September 23, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 965327 JAS
Category: Classification
Tariff No. 9031.49.90

JAMES L. SAWYER, ESQ.
KATTEN, MUCHIN ZAVIS ROSENMAN
525 West Monroe Street, Suite 1600
Chicago, IL 60661–3693

Re: *NY* 856065 Affirmed; Autospec System.

DEAR MR. SAWYER:

In a letter to us, dated November 21, 2001, on behalf of ABB Automation, Inc., you request reconsideration of *NY* 856065, which the Area (now Port) Director of Customs, New York, issued to a representative of the company on September 24, 1990. The merchandise in that ruling, the Autospec System, apparatus for inspecting the paper web for imperfections during the papermaking process, among other merchandise, was held to be classifiable in subheading 9031.40.00, (now 49.90) Harmonized Tariff Schedule of the United States (HTSUS), as measuring or checking instruments, appliances and machines, n.s.i.e., other optical instruments and appliances.

As you are aware, in accordance with 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), a notice was published in the CUSTOMS BULLETIN of July 31, 2002, proposing to modify *NY* 856065. We have reconsidered the classification set forth in *NY* 856065 and believe that it is correct.

In our review of *NY* 856065, consideration was given to your submission, dated November 21, 2001, a supplemental submission, dated June 14, 2002, as well as legal arguments made during a teleconference with members of my staff on September 17, 2002.

Facts:

The merchandise at issue, identified in submitted literature as the ULMA NT Web Inspection System (the System), is apparatus for detecting and locating defects such as holes, dirt, scratches and wrinkles, in the web during the papermaking process. The ULMA NT Web Inspection System and the Autospec System, are believed to be substantially identical. The System consists of the following components: (1) lamps with reflectors, (2) multiple so-called smart cameras with changed coupled device (CCD) technology, (3) one or more image processing computers, and (4) a control panel/ operator interface. As imported, these components are connected together by transmission devices and electric cables.

In operation, as the paper web moves continually over a framed conveyor, the lamps, positioned in the bottom of the frame, emit high-intensity light that reflects from or pene-

trates into the web, depending on its coated or uncoated applications (i.e., base stock, fine writing, printing, tissue, etc.). At the same time, the cameras positioned at the top of the frame detect variations in the intensity of the light, which the computers compare and analyze and, with analog to digital conversion, present as visual images of probable defects in the web. From these, the control operator can take appropriate corrective action.

In your submissions, you maintain that the components of the System constitute a functional unit within Section XVI, Note 4, HTSUS, and that subheading 9027.50.40, HTSUS, instruments and apparatus for physical and chemical analysis using optical radiations, represents the correct classification. Alternatively, you claim that the System is described in subheading 8419.90.20, HTSUS, as other parts of machinery and plant for making paper pulp, paper or paperboard. In support of the heading 9027, HTSUS, classification, you maintain that under General Rule of Interpretation 3(a), HTSUS, heading 9027 provides a more specific description for the Autospec System than does heading 9031, in that it analyzes reflected light as a form of physical analysis on the paper web. You also cite several rulings which classify apparatus incorporating both a light source and CCD camera technology in heading 9027, HTSUS.

The HTSUS provisions under consideration are as follows:

8419	Machinery, plant or laboratory equipment, whether or not electrically heated * * * for the treatment of materials by a process involving a change of temperature such as heating * * *:
8419.90.20 (now **89.10**)	For making paper pulp, paper or paperboard
* * * * * * *	
9027	Instruments and apparatus for physical or chemical analysis; * * * for measuring or checking quantities of heat, sound or light * * *:
9027.50	Other instruments and apparatus using optical radiations (ultraviolet, visible, infrared):
9027.50.40	Electrical
* * * * * * *	
9013	Measuring or checking instruments, appliances and machines, n.s.i.e * * *:
9031.40.00 (now **49.90**)	Other

Issue:

Whether the System is a good of heading 9027.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. Section XVI, Note 4, HTSUS, states, in part, that where machines interconnected by piping, by transmission devices, by electric cables or by other devices, are intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, the whole is to be classified in the heading appropriate to that function.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Initially, Section XVI, Note 1(m), HTSUS, excludes from that Section articles of Chapter 90. Therefore, if the System is described either by heading 9027 or by heading 9031, heading 8419 is eliminated from consideration. Moreover, because heading 9031 excludes measuring or checking instruments and appliances more specifically provided for elsewhere, the issue is whether, under the functional unit concept, the System performs a function appropriate to goods of heading 9027.

Relevant 9027 ENs describe, among other instruments and appliances, **photometers**, which are instruments for measuring the intensity of light. The light to be measured and the standard source of light are placed so that they illuminate a given surface with equal intensity. If instead of comparing two light intensities, comparison is made of their respective spectra, the instrument then used is known as a **spectrophotometer.** Photometers are widely used for various optical processes and analyses (for determining, for example,

degree of concentration, degree of brilliance or transparency of solid substances; degree of exposure of photographic plates or films (densitometers); depth of color of transparent or opaque solid substances or solutions). Certain photometers used in photography or cinematography are known as **exposure meters,** and are used for measuring exposure times or for determining lens apertures. On the other hand, ENs for heading 9031, (I) MEASURING OR CHECKING INSTRUMENTS, APPLIANCES AND MACHINES, list under (B)(5) **Optical surface testers,** for gauging the condition of surfaces by means of a combination of a prism and a lens.

In our opinion, the ENs indicate that the function of photometers and related instruments of heading 9027 is to ascertain or determine the quality, intensity or brilliance, or some other variable of light (i.e., to find out something about the light), whereas goods of heading 9031 function, among other things, by utilizing light as an intermediate means of measuring the quality, condition or some other variable of another good such as a paper web, chemical compounds, circuit boards, glass ampoules, etc. The System at issue consists of a combination of machines, instruments and apparatus whose function essentially is to analyze variations and intensity of light for the purpose of identifying and locating defects in the paper web, and not for the purpose of ascertaining the characteristics of the light. In a commercial sense, it follows logically that persons in the papermaking industry would not purchase the System to check the characteristics of light, but to check the condition and quality of the paper web. In our opinion, the System is more akin by function to the optical surface tester described in the 9031 ENs, which uses optical phenomena as a means to check something other than light, i.e., the condition of surfaces. In our opinion, the System does not meet the terms of heading 9027, HTSUS.

You cite two rulings, *NY* D88130, dated March 4, 1999, and *NY* G86132, dated January 26, 2002, both of which classified CCD cameras utilizing ultraviolet and visible radiations, together with computers, for performing analytic and diagnostic functions, in subheading 9027.50.40, HTSUS. However, for the stated reasons, these rulings are believed to be incorrect and the classification they express no longer represents the position of the Customs Service. Accordingly, the revocation of these rulings will be proposed in a forthcoming edition of the CUSTOMS BULLETIN.

Holding:

Under the authority of GRI 1 and Section XVI, Note 4, HTSUS, the Autospec System is provided for in heading 9031. It is classifiable in subheading 9031.49.90, HTSUS. The appropriate software, in all cases, is separately classifiable. *NY* 856065, dated September 24, 1990, is affirmed.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, October 4, 1993.

CLA–2 CO:R:C:M 955053 DWS
Category: Classification
Tariff No. 9027.50.40 and 8524.90.40

MS. MARY E. WRIGHT
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & WRIGHT
One Boston Place, Suite 1650
Boston, MA 02108

Re: Ellipsometer and Combination Ellipsometer/Spectrophotometer: Revocation of NY 853463; Chapter 90, Note 3; Section XVI, Note 4; NY's 884914 and 887144; 90.27; *Encyclopedia of Applied Physics*; *McGraw-Hill Encyclopedia of Science and Technology*; 9031.40.00.

DEAR MS. WRIGHT:

This is in response to your letter of August 23, 1993, on behalf of SOPRA, Inc., to the Area Director, New York Seaport, concerning the classification of an ellipsometer and a combination ellipsometer and spectrophotometer under the Harmonized Tariff Schedule of the United States (HTSUS). Your letter has been referred to this office for a response.

Facts:

The merchandise consists of an ellipsometer (model no. MLM), a combination ellipsometer and spectrophotometer (model no. GESP5), and corresponding computer software. Model no. MLM is a multilayer monitor which is composed of a spectroscopic ellipsometer with a spectral light range of 310nm to 1000nm, a robotic wafer handler, a pre-alignment station, a sample stage, an electronic cabinet, a computer, and software. The computer will be sourced in the U.S. Typical applications of the model no. MLM include bulk characterization, implant concentration analysis, single layer absolute thickness and refractive index measurements for films, and multi-layer thickness and composition analyses for complex structures.

Model no. GESP5 is a combination instrument which is capable of performing spectrophotometric measurements and polarization measurements. The system allows spectrophotometric measurement of light intensity to enable accurate measurements of scattering, transmittance, and reflectance as a function of wavelength, angle, and polarization. It is comprised of a spectroscopic ellipsometer with a spectral light range of 230nm to 1000nm, a goniometric bench, a source module, a photomultiplier, various electronic devices, a sample polder, and software.

The subheadings under consideration are as follows:

8524.90.40: [r]ecords, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of records, but excluding products of chapter 37: [o]ther: [o]ther.

The general, column one rate of duty for goods classifiable under this provision is 9.7 cents per meter squared of recording surface.

9027.50.40: [i]nstruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus) * * *: [o]ther instruments and apparatus using optical radiations (ultraviolet, visible, infrared): [e]lectrical.

The general, column one rate of duty for goods classifiable under this provision is 4.9 percent *ad valorem*.

9031.40.00: [m]easuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter * * *: [o]ther optical instruments and appliances.

The general, column one rate of duty for goods classifiable under this provision is 10 percent *ad valorem*.

Issue:

Whether the ellipsometer and the combination ellipsometer and spectrophotometer are classifiable under subheading 9027.50.40, HTSUS, as other electrical instruments using

optical radiations for physical analysis, or under subheading 9031.40.00, HTSUS, as other optical measuring instruments, not specified or included elsewhere in chapter 90, HTSUS.

Whether the corresponding software for both models of ellipsometers is classifiable under subheading 8524.90.40, HTSUS, as other recorded media for sound or other similarly recorded phenomena.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

Because both models of ellipsometers are comprised of several devices connected together, we must determine whether they are functional units. Chapter 90, note 3, HTSUS, states that:

> [t]he provisions of note 4 to section XVI apply also to this chapter.

Section XVI, note 4, HTSUS, states that:

> [w]here a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function.

It is our position that both models of ellipsometers, under section XVI, note 4, HTSUS, constitute functional units. We must now determine the proper classification of the articles in the heading appropriate to their function.

We first note that, in NY 884914, dated April 27, 1993, and NY 887144, dated June 29, 1993, similar models of ellipsometers were held to classifiable under subheading 9027.50.40, HTSUS.

In the *Encyclopedia of Applied Physics*, Vol. 6, p. 191, it is stated that:

> [t]he term *ellipsometer*, as broadly defined by Azzam and Bashara (1977), refers to an instrument designed to analyze the polarization state of a vector wave. This definition also applies to the term *polarimeter*.

In the *McGrawHill Encyclopedia of Science & Technology*, 6th Edition, the term "ellipsometry" is defined as:

> [a] technique for determining the properties of a material from the characteristics of light reflected from its surface. The materials studied include semiconductors, liquids, and metals * * * [t]he two chief applications of ellipsometry are the study of surface properties and the area of spectroscopic ellipsometry.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes, although not dispositive, are to be used to determine the proper interpretation of the HTSUS. 54 Fed. Reg. 35127, 35128 (August 23, 1989). In part, Explanatory Note 90.27 (pp. 1513, 1517) states that:

> [t]his heading includes:
>
> (1) **Polarimeters.** Instruments for measuring the angle through which the plane of polarisation of a ray of light is rotated in passing through an optically active substance. They consist essentially of a source of light, an optical device comprising polarising and analysing prisms, a tube holder in which the substance to be analysed is placed, an observation eyepiece and a measuring scale.
>
> In addition to the essential optical elements of a conventional polarimeter, **electronic polarimeters** are also fitted with a photoelectric cell.
>
> (2) – (28) xxx
>
> (29) **Photometers.** Instruments for measuring the intensity of light. The light to be measured and the standard source of light are placed so that they illuminate a given surface with equal intensity. If instead of comparing two light intensities, comparison is made of their respective spectra, the instrument then used is known as a **spectrophotometer.**
>
> Photometers are widely used for various optical processes and analyses (for determining, for example, degree of concentration, degree of brilliance or transparency of solid substances; degree of exposure of photographic plates

or films (densitometers); depth of colour of transparent or opaque solid substances or solutions).

It is our understanding, from the above noted definitions and descriptions of the merchandise, that ellipsometers are used in the measurement of the index and thickness of transparent layers, the index and thickness of multi-layer thin films deposited on substrates, surface and interface roughness measurements, and the determination of thicknesses and compactness of super thin films. Ellipsometers accomplish this purpose by using the technique of measuring the plane of polarization of rays of light as they are rotated in passing through an optically active substance. This process is described in Explanatory Note 90.27(1) for polarimeters. Also, concerning the combination ellipsometer and spectrophotometer, spectrophotometers are specifically described in Explanatory Note 90.27(29).

Therefore, it is our position that because both models of ellipsometers function as electrical instruments using optical radiations for physical analysis, they are classifiable under subheading 9027.50.40, HTSUS.

The corresponding software for both models of ellipsometers is separately classifiable under subheading 8524.90.40, HTSUS.

Because the merchandise is classifiable under heading 9027, HTSUS, by the terms of heading 9031, HTSUS, the ellipsometers are precluded from classification under heading 9031, HTSUS.

In NY 853463, dated July 6, 1990, issued to your firm on behalf of Kao Systems, a coating thickness meter was held to be classifiable under subheading 9031.40.00, HTSUS. The meter measures the thickness of magnetic coating applied to the plastic material of magnetic data discs, which are part of computer diskettes. Light from a series of light emitting diodes (LED's) is transmitted through the coated plastic sheets of the media discs and then through an optical filter to a detector. The amount of light transmitted through the coating is measured and then correlated to the thickness of the coating on the disc.

Based upon the reasoning in this ruling, it is now are position that the coating thickness meter in NY 853463 is more specifically provided for under subheading 9027.50.40, HTSUS. Through the use of optical radiations (LED's), the meter physically analyzes the coated plastic sheets to determine the thickness of the coating on the magnetic data disc.

Holding:

Model no. MLM ellipsometer and model no. GESP5 combination ellipsometer and spectrophotometer are classifiable under subheading 9027.50.40, HTSUS, as other electrical instruments using optical radiations for physical analysis.

The corresponding software for both models of ellipsometers is classifiable under subheading 8524.90.40, HTSUS, as other recorded media for sound or other similarly recorded phenomena.

Effect on Other Rulings:

Based upon the reasoning in this ruling, NY 853463 is revoked pursuant to section 177.9(d)(1), Customs Regulations [19 CFR 177.9(d)(1)].

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, January 26, 2001.

CLA–2–90:RR:NC:MM:114 G86132
Category: Classification
Tariff No. 9027.50.4015

MR. MATTHEW K. NAKACHI
GEORGE R. TUTTLE, LAW OFFICES
Three Embarcadero Center, Suite 1160
San Francisco, CA 94111

Re: The tariff classification of the ABI Prism 3100 Genetic Analyzer.

DEAR MR. NAKACHI:

In your letter dated January 4, 2001, on behalf of Applied Biosystems, you requested a tariff classification ruling.

The DNA sequencing machine is referred to as the ABI Prism 3100 Synthetic Analyzer (ABI). The ABI is a fluorescence-based DNA analysis system using the technologies of capillary electrophoresis and laser fluorescence with CCD recording technology to analyze genetic material. After importation, the ABI is combined with a computer workstation running proprietary analysis software that performs sequencing analysis.

The ABI contains an electrophoresis instrument, a laser system and a CCD camera. The electrophoresis instrument sorts (by size sample) DNA that has been treated with a chemical dye. The laser causes the reporter dye to fluoresce so that analysis of the separated genetic information can be measured from the light intensity of the fluorescent dye. The CCD camera digitizes the fluoresced strands of DNA so that the digitized information can be analyzed using the computer and the proprietary software.

In an earlier ruling, NY *G83165* dated November 13, 2000, we classified the ABI under the subheading for spectrometers, spectrophotometers, and spectrographs because it was stated that the ABI contained a diffraction grading which resolved frequencies or wavelengths of light. Based on further information, it has been determined that the ABI does not contain a diffraction grating. The light from the illuminated sample is recorded by the CCD camera, not separated into wavelengths to determine spectra.

The applicable subheading for the ABI Prism 310 Synthetic Analyzer will be 9027.50.4015, Harmonized Tariff Schedule of the United States (HTS), which provides for instruments and apparatus using optical radiations (ultraviolet, visible, infrared), electrical, chemical analysis instruments and apparatus. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Barbara Kiefer at 212–637–7058.

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

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 965899 JAS
Category: Classification
Tariff No. 9031.49.90

MS. MARY E. WRIGHT
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & WRIGHT
One Boston Place, Suite 1650
Boston, MA 02108

Re: Ellipsometer and Combination Ellipsometer/Spectrophotometer; *HQ* 955053 Modified.

DEAR MS. WRIGHT:

In *HQ* 955053, which we issued to you on behalf of SOPRA, Inc., on October 4, 1993, we held that an ellipsometer and a combination ellipsometer and spectrophotometer were classifiable as instruments and apparatus for physical or chemical analysis using optical radiations, in subheading 9027.50.40, Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered this classification and now believe that it is incorrect.

Facts:

As described in *HQ* 955053, the merchandise consists of an ellipsometer (model MLM), a combination ellipsometer and spectrophotometer (model GESP5), and corresponding computer software. Model MLM is a multi-layer monitor which is composed of a spectroscopic ellipsometer with a spectral light range of 310nm to 1000nm, a robotic wafer handler, a pre-alignment station, a sample stage, an electronic cabinet, a computer, and software. The computer will be sourced in the U.S. Typical applications of the model MLM include bulk characterization, implant concentration analysis, single layer absolute thickness and refractive index measurements for films, and multi-layer thickness and composition analyses for complex structures.

Model GESP5 is a combination instrument which is capable of performing spectrophotometric measurements and polarization measurements. The system allows spectrophotometric measurement of light intensity to enable accurate measurements of scattering, transmittance, and reflectance as a function of wavelength, angle,and polarization. It is comprised of a spectroscopic ellipsometer with a spectral light range of 230nm to 1000nm, a goniometric bench, a source module, a photomultiplier, various electronic devices, a sample holder, and software.

The HTSUS provisions under consideration are as follows:

8524	Records, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of records, but excluding products of chapter 37
* * * * * * *	
9027	[i]nstruments and apparatus for measuring or checking quantities of heat, sound or light * * *
9027.50	Other instruments and apparatus using optical radiations (ultraviolet, visible, infrared)
9027.50.40	Electrical
* * * * * * *	
9031	Measuring or checking instruments, appliances and machines, not specified or included elsewhere in [chapter 90]
	Other optical instruments and appliances:
9031.49	Other
9031.49.90	Other

Issue:

Whether the ellipsometer and the combination ellipsometer and spectrophotometer are goods provided for in heading 9027, HTSUS, or in heading 9031.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Note 4 to Section XVI applies to goods of Chapter 90, pursuant to Chapter 90, Note 3, HTSUS. In this regard, Section XVI, note 4, HTSUS, states, in relevant part, that machines including a combination of machines, consisting of individual components whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function. *HQ* 955053 found that as imported, both models of ellipsometers, constituted functional units under Section XVI, Note 4, HTSUS. The ruling continued by examining the common meaning of the term "elipsometer" and indicated that it applied to polarimeters as well. *HQ* 955053 then noted that popolarimeters and photometers, as well as spectrophotometers, were listed and described in the ENs to 9027.

Initially, it appears that at least the model MLM, imported without the computer, constitutes an incomplete or unfinished functional unit, with the imported components imparting to the whole the essential character of an ellipsometer. *See HQ* 965638, dated July 16, 2002, and related cases. From the above noted definitions and descriptions of the merchandise, it was noted that ellipsometers are used in the measurement of the index and thickness of transparent layers, the index and thickness of multi-layer thin films deposited on substrates, surface and interface roughness measurements, and the determination of thickness and compactness of super thin films. Ellipsometers accomplish this purpose by using the technique of measuring the plane of polarization of rays of light as they are rotated in passing through an optically active substance. This process is described in Explanatory Note 90.27(1) for polarimeters. The conclusion then followed that both models of ellipsometers functioned as electrical instruments using optical radiations for physical analysis, classifiable under subheading 9027.50.40, HTSUS. The merchandise was found to be precluded from classification in heading 9031, HTSUS. We have undertaken a complete review of the matter and now believe that this analysis may be flawed and the conclusion reached incorrect.

We note the ENs for heading 9031, (I) MEASURING OR CHECKING INSTRUMENTS, APPLIANCES AND MACHINES, list under (B)(5) **Optical surface testers,** for gauging the condition of surfaces by means of a combination of a prism and a lens.

In our opinion, the ENs indicate that the function of photometers and related instruments of heading 9027 is to ascertain or determine the quality, intensity or brilliance, or some other variable of light (i.e., to find out something about the light), whereas goods of heading 9031 function, among other things, by utilizing light as an intermediate means of measuring the quality, condition or some other variable of another good such as a paper web, chemical compounds, circuit boards, glass ampoules, etc. The ellipsometer and combination ellipsometer and spectrophometer at issue constitute a machine or combination of machines, instruments and apparatus whose function essentially is to analyze variations and intensity of light for the purpose of identifying, for example, thickness, scattering, transmittance and reflectance, and similar characteristics of films and other articles, and *not* for the purpose of ascertaining the characteristics of the light. In a commercial sense, it follows logically that persons in the involved industries would not purchase this apparatus to check the characteristics of light, but to check the condition and quality of other articles. In our opinion, the ellipsometer and combination ellipsometer and spectrophotometer are more akin by function to the optical surface tester described in the 9031 ENs, which uses optical phenomena as a means to check something other than light, i.e., the condition of surfaces. In our opinion, the merchandise at issue does not meet the terms of heading 9027, HTSUS.

Two rulings, *NY* 884914, and *NY* G887144, dated June 29, 1993, issued to you on April 27 and June 29, 1993, respectively, classified different models of ellipsometers in subhead-

ing 9027.50.40, HTSUS. However, for the stated reasons, these rulings are believed to be incorrect and the classification they express no longer represents the position of the Customs Service.

Holding:

Under the authority of GRI 1 and Section XVI, Note 4, HTSUS, where appropriate, Section XVI, Note 4, HTSUS, the model MLM ellipsometer and model GESP5 combination ellipsometer and spectrophotometer are provided for in heading 9031. They are classifiable in subheading 9031.49.90, HTSUS, as other measuring or checking instruments, appliances and machines.

The corresponding software for both models of ellipsometers remains classifiable under the appropriate subheading in heading 8524, HTSUS, as other recorded media for sound or other similarly recorded phenomena.

Effect on Other Rulings:

HQ 955053, dated October 4, 1993, as well as *NY* 884914, dated April 27, 1993, *NY* 887144, dated June 29, 1993, are revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 965900 JAS
Category: Classification
Tariff No. 9031.49.90

MATTHEW K NAKACHI
GEORGE R. TUTTLE LAW OFFICES
Three Embarcadero Center, Suite 1160
San Francisco, CA 94111

Re: ABI Prism 3100 Genetic Analyzer; *NY* G86132 Revoked.

DEAR MR. NAKACHI:

In *NY* G86132, which the Director of Customs National Commodity Specialist Division, New York, issued to you on January 26, 2001, on behalf of Applied Biosystems, the ABI Prism 3100 Genetic Analyzer (the Analyzer) was held to be classifiable in a provision of heading 9027, Harmonized Tariff Schedule of the United States (HTSUS), as electrical instruments and apparatus for measuring or checking quantities of heat, sound or light using optical radiations. We have reconsidered this classification and now believe that it is incorrect.

Facts:

The Analyzer is identified in *NY* G86132 as a DNA sequencing machine. More specifically, it is a fluorescence-based DNA analysis system using the technologies of capillary electrophoresis and laser fluorescence with CCD recording technology to analyze genetic material. After importation, the ABI is combined with a computer workstation running proprietary analysis software that performs sequencing analysis.

The Analyzer contains an electrophoresis instrument, a laser system and a so-called smart camera with changed coupled device (CCD) technology. The electrophoresis instrument sorts (by size sample) DNA that has been treated with a chemical dye. The laser causes the reporter dye to fluoresce so that analysis of the separated genetic information can be measured from the light intensity of the fluorescent dye. The CCD camera digitizes the fluoresced strands of DNA so that the digitized information can be analyzed using the computer and the proprietary software. As imported, the Analyzer lacks the computer workstation and proprietary software.

The HTSUS provisions under consideration are as follows:

9027	[i]nstruments and apparatus for measuring or checking quantities of heat, sound or light * * *
9027.50	Other instruments and apparatus using optical radiations (ultraviolet, visible, infrared)
9027.50.40	Electrical
* * * * * * *	
9031	Measuring or checking instruments, appliances and machines, not specified or included elsewhere in [chapter 90]
	Other optical instruments and appliances:
9031.49	Other
9031.49.90	Other

Issue:

Whether the Analyzer is a good provided for in heading 9027, HTSUS, or in heading 9031.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Note 4 to Section XVI applies to goods of Chapter 90, pursuant to Chapter 90, Note 3, HTSUS. In this regard, Section XVI, note 4, HTSUS, states, in relevant part, that machines including a combination of machines, consisting of individual components whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function.

Initially, it appears that the Analyzer, imported without the computer workstation and software, constitutes an incomplete or unfinished functional unit, with the imported components imparting to the whole the essential character of a good of heading 9027 or 9031. *See HQ* 965638, dated July 16, 2002, and related cases. Simply stated, the Analyzer appears to function by using a laser light medium to analyze genetic material. The classification expressed in *NY* G86132 was based, in part at least, on the ENs to heading 90.27, which list numerous instruments and apparatus that utilize light in some form for measuring or checking purposes. Goods classified in heading 9027 are precluded from classification in heading 9031, HTSUS. However, we now note that the ENs for heading 9031, (I) MEASURING OR CHECKING INSTRUMENTS, APPLIANCES AND MACHINES, list under (B)(5) **Optical surface testers,** for gauging the condition of surfaces by means of a combination of a prism and a lens (Emphasis original).

In our opinion, the ENs indicate that the function of the instruments of heading 9027 is to ascertain or determine the quality, intensity or brilliance, or some other variable of light (i.e., to find out something about the light), whereas goods of heading 9031 function, among other things, by utilizing light as an intermediate means of measuring the quality, condition or some other variable of another good such as a paper web, chemical compounds, circuit boards, glass ampoules, etc. The Analyzer functions essentially to measure variations and intensity of light in the florescent die for the purpose of analyzing the separated genetic material, and *not* for the purpose of ascertaining the characteristics of the light. In a commercial sense, it follows logically that persons in the genetic testing industry would not purchase this apparatus not to check the characteristics of light, but to check the condition and quality of DNA material. The Analyzer is more akin by function to the optical surface tester described in the 9031 ENs, which uses optical phenomena as a means to check something other than light, i.e., a surface condition. In our opinion, the Analyzer does not meet the terms of heading 9027, HTSUS.

Holding:

Under the authority of GRI 1 and Section XVI, Note 4, HTSUS, Section XVI, Note 4, HTSUS, the ABI Prism 3100 Genetic Analyzer is provided for in heading 9031. It is classifiable in subheading 9031.49.90, HTSUS, as other measuring or checking instruments, appliances and machines.

Effect on Other Rulings:

NY G86132, dated January 26, 2001, is revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF WOODEN FLOOR SCREENS

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of revocation and modification of tariff classification ruling letters and treatment relating to the classification of wooden floor screens.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is revoking or modifying nine rulings relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of wooden floor screens. Customs is also revoking any treatment previously accorded by it to substantially identical merchandise. Customs received no comments in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Shari Suzuki, Textiles Branch: (202) 572–8818.

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. According-

ly, the law imposes a greater obligation on Customs 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 Customs 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 Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke six rulings and to modify three rulings relating to the tariff classification of wooden floor screens, and to revoke any treatment accorded to substantially identical merchandise was published in the August 14, 2002 CUSTOMS BULLETIN, Volume 36, Number 33. Customs received no comments.

The six rulings which Customs now revokes are HQ 961937, dated December 8, 1998, NY 857911, dated December 7, 1990, NY 886597, dated June 15, 1993, NY C82177, dated December 16, 1997, NY C85674, dated April 16, 1998 and NY F80426, dated December 28, 1999. The three rulings which Customs is now modifying are NY 855306, dated August 22, 1990 and NY E86014 and E86030, both dated September 20, 1999. In all nine of these rulings, wooden floor screens were classified under subheading 4421.90.4000, HTSUS, which provides for "Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other."

Customs has determined that the subject articles are not classifiable under this subheading, or even under heading 4421, HTUSA, which provides for other articles of wood. Rather, such wooden screens are classified at subheading 9403.60.8080, HTSUSA, as wooden furniture.

Attached are the following Headquarters Rulings revoking and modifying the identified prior rulings: HQ 964909, revoking HQ 961937 (Attachment A), HQ 964910, revoking NY 857911 (Attachment B), HQ 964911, modifying NY 855306, (Attachment C), HQ 964912, revoking NY 886597 (Attachment D), HQ 964913, revoking NY C82177 (Attachment E), HQ 964914, revoking NY C85674 (Attachment F), HQ 964915, revoking NY F80426 (Attachment G) and HQ 964916 which modifies both NY E86014 and NY E86030 (Attachment H).

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking or modifying the subject prior rulings, as appropriate, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in the proposed Headquarters Rulings 964909 through 964916, *supra*. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

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

Dated: September 18, 2002.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 18, 2002.

CLA–2 RR:CR:TE 964909 STB
Category: Classification
Tariff No. 9403.60.8080 80

MS. PAULA M. CONNELLY, ESQUIRE
MIDDLETON & SHRULL
44 Mall Road, Suite 208
Burlington, MA 01803–4530

Re: Revocation of HQ 961937; Classification of Wooden Folding Room Screens as Other Furniture and Parts Thereof, Heading 9403, HTSUSA; Not as Other Articles of Wood: Not Heading 4421, HTSUSA.

DEAR MS. CONNELLY:

This letter is pursuant to Headquarter's reconsideration of Headquarters Ruling Letter (HQ) 961937, issued to you on behalf of your client, FETCO International, dated December 8, 1998 concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of wooden folding room screens.

This letter is to inform you that after review of that ruling, it has been determined that the classification of the wooden screens, in subheading 4421.90.4000, HTSUSA, is incorrect. As such, HQ 961937 is revoked pursuant to the analysis which follows below.

Facts:

In HQ 961937 (which was a reconsideration of New York Ruling Letter (NY) C84340), the items at issue were described, from a page of the FETCO catalog (styles 4160, 4161 and 4162) as follows:

> FOLDING ROOM SCREEN Our 5′9″ tall folding three-panel wooden room screen decorates any setting with 15 favorite images. Holds 8x10 photographs or art prints. Choose cherry or black finish.

The Folding Room Screens consist of three wooden panels connected by metal hinges. Each panel incorporates five openings which may be used to display photographs, prints, or similar objects. Each opening consists of a piece of clear glass and a removable backing. The backing is removed to insert a photograph or print and is then reattached to the room screen to hold the photograph or print in place. The Folding Room Screens measure approximately 70 inches in height and 35 inches in width when fully extended. The room screens can display a total of fifteen 8″ x 10″ photographs or prints.

A drawing was submitted with the original request for styles 415500RS, 415600RS and 415700RS which are referred to as "Floating Room Screens." The Floating Room Screens are constructed similar to the Folding Room Screens except that the backing consists of textured glass.

In NY C84340, the room screens were classified under 4421.90.4000, HTSUSA, as wood screens. The ruling determined that the merchandise was constructed, sold, bought and

known as screens. The essential character of the article was determined to be that of a screen which decorates a room setting; the frame-like openings were merely features of the screen. This classification was affirmed in HQ 961937.

Issue:

What is the proper classification of the wooden folding floor screens under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). 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 and, provided the headings or notes do not otherwise require, according to the remaining GRIs taken in order. The provisions under consideration are as follows:

4421.90.4000	Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other.
9403.60.8080	Other furniture and parts thereof: Other wooden furniture: Other, Other.

Subheading 4421.90.4000, HTSUSA, is under consideration because that subheading specifically provides for, *inter alia*, wood screens. Subheading 9403.60.8080, HTSUSA, is under consideration because the subject screens are items normally considered to be "furniture." We note the following dictionary definitions:

> furniture (1)—* * * the movable articles, as tables, chairs, bedsteads, desks, cabinets, etc., required for use or ornament in a house, office, or the like. *The Random House Dictionary of the English Language*, the Unabridged Edition;
>
> furniture (2)—* * * (The prevailing sense.) Movable articles, whether useful or ornamental, in a dwelling-house, place of business, or public building. Formerly including also the fittings. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

We find that the subject screens fit these definitions of "furniture." They are movable and are constructed for placing on the floor. Their primary purpose is utilitarian, to partition a room or screen off a corner. Such screens are also used to display photographs and are used in both private dwellings and offices. We note that the above definitions are very similar to the more detailed definition of furniture provided at General Explanatory Note (A) to Chapter 94, which states as follows:

> For the purposes of this Chapter, the term "furniture" means:
>
> (A) Any "movable" articles (**not included** under other more specific headings of the Nomenclature), which would have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafes, restaurants, laboratories, hospitals dentists' surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be "movable" furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

In fact, certain types of screens, *i.e.*, "fire screens" and "draught screens" are even listed as exemplars of furniture in the Explanatory Notes to Heading 9403, HTSUSA. Additionally, it is relevant that screens themselves are usually defined as furniture, as seen in the following:

> Screens—* * * a piece of furniture consisting usually of an upright board or frame hung with leather, canvas, cloth, tapestry, or paper, or of two or more such boards or frames hinged together. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

Finally, we note that Customs has regularly classified screens of material other than wood as furniture in heading 9403, HTSUSA. *See* NY D88618, dated March 4, 1999, in which a single panel room screen, with a black iron frame, was classified in subheading 9403.20.0010, HTSUSA, the provision for metal furniture. *See also*, NY E86030, dated September 20, 1999, in which several multi-panel screens (non-wood) are classified as fur-

niture, in various subheadings of 9403 depending on the materials of which they are constructed. The courts have also recognized that screens are types of furniture. *See Sanji Kobata v. United States*, 66 Cust. Ct. 341, C.D. 4213 (1971), in which the court stated that it considers screens to be articles of furniture.

Given the fact that screens, such as those at issue here, do constitute furniture, the decision must be made as to which of the two provisions of the HTSUSA, cited above, is the more appropriate provision of classification.

Pursuant to GRI 3(a), if a product is classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. This rule would seem to indicate classification under heading 4421 (Chapter 44) and the apparently more specific description provided in subheading 4421.90.4000, HTSUSA (wood screens). However, Explanatory Note II to GRI 3 states that:

> * * * the Rule can only take effect **provided the terms of headings or Section or Chapter Notes do not otherwise require.** For instance, Note 4(b) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to Note 4(b) to Chapter 97 and not according to this Rule.

(Emphasis from original.) In this instance, we must consider Note 1(o) to Chapter 44, which states as follows:

> 1. This Chapter does not cover:
>
> (o) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);

Therefore, Note 1(o) to Chapter 44 precludes consideration of that chapter for purposes of the classification of the subject screens because it excludes from classification in Chapter 44 all articles of Chapter 94, which would include furniture. Classification in subheading 4421.90.4000, HTSUSA, cannot even be considered; only after determining that a product is classifiable under the heading should the subheadings be examined to find the correct classification of the merchandise. *See* GRI 1,6. *See also*, *American Bayridge Corp. v. United States*, 35 F. Supp. 2d 922 (CIT 1998). Accordingly, the subject wooden folding screens should be classified in heading 9403, HTSUSA, as other furniture and parts thereof.

Holding:

The subject screens are classifiable in subheading 9403.60.8080, HTSUSA, which provides for Other furniture and parts thereof: Other wooden furniture: Other, Other. The duty rate is 1 percent ad valorem.

HQ 961937 and NY C84340, the ruling that HQ 961937 reconsidered and affirmed, are hereby revoked. In accordance with 19 U.S.C., Section 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 18, 2002.

CLA–2 RR:CR:TE 964910 STB
Category: Classification
Tariff No. 9403.60.8080

MS. CORINNE DARNELL
THE HIPAGE COMPANY, INC.
P.O. Box 19143
Charlotte, NC 28219

Re: Revocation of NY 857911; Classification of a Decorative Wood Screen from the Philippines as Other Furniture and Parts Thereof, Heading 9403, HTSUSA; Not as Other Articles of Wood: Not Heading 4421, HTSUSA

DEAR MS. DARNELL:

This letter is pursuant to Headquarter's reconsideration of New York Ruling Letter (NY) 857911, issued to you on behalf of your customer, Henredon Furniture Industries, Inc., dated December 7, 1990, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a decorative wood screen from the Philippines.

This letter is to inform you that after review of that ruling, it has been determined that the classification of the wooden screen, in subheading 4421.90.4000, HTSUSA, is incorrect. As such, NY 857911 is revoked pursuant to the analysis which follows below.

Facts:

In NY 857911, a ruling had been requested regarding a "floor standing decorative screen." The screen was described as being composed of three (3) panels which are hinged together. The dimensions of each panel were said to be eighteen (18) inches wide by eighty (80) inches high. The screen was further described as being made of wood and decoratively covered with leather.

Issue:

What is the proper classification of the subject screen under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). 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 and, provided the headings or notes do not otherwise require, according to the remaining GRIs taken in order. The provisions under consideration are as follows:

4421.90.4000	Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other.
9403.60.8080	Other furniture and parts thereof: Other wooden furniture: Other, Other.

Subheading 4421.90.4000, HTSUSA, is under consideration because it specifically provides for, *inter alia*, wood screens. Subheading 9403.60.8080, HTSUSA, is under consideration because the subject screen is an item normally considered to be "furniture." We note the following dictionary definitions:

> furniture (1)—* * * the movable articles, as tables, chairs, bedsteads, desks, cabinets, etc., required for use or ornament in a house, office, or the like. *The Random House Dictionary of the English Language*, the Unabridged Edition;
>
> furniture(2)—* * * (The prevailing sense.) Movable articles, whether useful or ornamental, in a dwelling-house, place of business, or public building. Formerly including also the fittings. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

We find that the subject screen fits these definitions of "furniture." It is movable and is constructed for placing on the floor. Its primary purpose is utilitarian, to partition a room

or screen off a corner. Such screens are also used to display photographs and are used in both private dwellings and offices. We note that the above definitions are very similar to the more detailed definition of furniture provided at General Explanatory Note (A) to Chapter 94, which states as follows:

For the purposes of this Chapter, the term "furniture" means:

> (B) Any "movable" articles (**not included** under other more specific headings of the Nomenclature), which would have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafes, restaurants, laboratories, hospitals dentists' surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be "movable" furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

In fact, certain types of screens, *i.e.*, "fire screens" and "draught screens" are even listed as exemplars of furniture in the Explanatory Notes to Heading 9403, HTSUSA. Additionally, it is relevant that screens themselves are usually defined as furniture, as seen in the following:

> Screens—* * * a piece of furniture consisting usually of an upright board or frame hung with leather, canvas, cloth, tapestry, or paper, or of two or more such boards or frames hinged together. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

Finally, we note that Customs has regularly classified screens of material other than wood as furniture in heading 9403, HTSUSA. *See* NY D88618, dated March 4, 1999, in which a single panel room screen, with a black iron frame, was classified in subheading 9403.20.0010, HTSUSA, the provision for metal furniture. *See also*, NY E86030, dated September 20, 1999, in which several multi-panel screens (non-wood) are classified as furniture, in various subheadings of 9403 depending on the materials of which they are constructed. The courts have also recognized that screens are types of furniture. *See Sanji Kobata v. United States*, 66 Cust. Ct. 341, C.D. 4213 (1971), in which the court stated that it considers screens to be articles of furniture.

Given the fact that screens, such as the one at issue here, do constitute furniture, the decision must be made as to which of the two provisions of the HTSUSA, cited above, is the more appropriate provision of classification.

Pursuant to GRI 3(a), if a product is classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. This rule would seem to indicate classification under heading 4421 (Chapter 44) and the apparently more specific description provided in subheading 4421.90.4000, HTSUSA (wood screens). However, Explanatory Note II to GRI 3 states that:

> * * * the Rule can only take effect **provided the terms of headings or Section or Chapter Notes do not otherwise require.** For instance, Note 4(b) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to Note 4(b) to Chapter 97 and not according to this Rule.

(Emphasis from original.) In this instance, we must consider Note 1(o) to Chapter 44, which states as follows:

> 1. This Chapter does not cover:
>
> (o) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);

Therefore, Note 1(o) to Chapter 44 precludes consideration of that chapter for purposes of the classification of the subject screen because it excludes from classification in Chapter 44 all articles of Chapter 94, which would include furniture. Classification in subheading 4421.90.4000, HTSUSA, cannot even be considered; only after determining that a product is classifiable under the heading should the subheadings be examined to find the correct classification of the merchandise. *See* GRI 1,6. *See also*, *American Bayridge Corp. v. United States*, 35 F. Supp. 2d 922 (CIT 1998). Accordingly, the subject screen should be classified in heading 9403, HTSUSA, as other furniture and parts thereof.

Holding:

The subject screen is classifiable in subheading 9403.60.8080, HTSUSA, which provides for Other furniture and parts thereof: Other wooden furniture: Other, Other. The duty rate is 1 percent ad valorem.

NY 857911 is hereby revoked. In accordance with 19 U.S.C., Section 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 18, 2002.
CLA–2 RR:CR:TE 964911 STB
Category: Classification
Tariff No. 9403.60.8080

MS. LENA RAINBOW
ASSOCIATED MERCHANDISING CORPORATION
1440 Broadway
New York, NY 10018

Re: Modification of NY 855306; Classification of a Wooden Screen from India as Other Furniture and Parts Thereof, Heading 9403, HTSUSA; Not as Other Articles of Wood: Not Heading 4421, HTSUSA.

DEAR MS. RAINBOW

This letter is pursuant to Headquarter's reconsideration of New York Ruling Letter (NY) 855306, dated August 22, 1990, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a wooden screen from India.

This letter is to inform you that after review of that ruling, it has been determined that the classification of the wooden screen, in subheading 4421.90.4000, HTSUSA, is incorrect. As such, NY 855306, as it concerns the wooden screen, is modified pursuant to the analysis which follows below. Note that NY 855306 also classified a table from India, in subheading 9403.60.8080 80, HTSUSA; the classification of the table is not addressed in, and not affected by, this ruling.

Facts:

In response to your original letter requesting a tariff classification ruling, we considered the proper tariff classification of a hand-made wooden screen and table. The screen was described as being style model no. 2010, and as being constructed from Sheesham wood, a type of rosewood. It was further described as having four panels, each measuring 20 inches wide and 6 feet in height. The table was also described and both screen and table were said to be for household use and designed for placing on the floor or ground.

Issue:

What is the proper classification of the subject screen under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). 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 and, provided the headings or notes do not otherwise require, according to the remaining GRIs taken in order. The provisions under consideration are as follows:

4421.90.4000	Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other.
9403.60.8080	Other furniture and parts thereof: Other wooden furniture: Other, Other.

Subheading 4421.90.4000, HTSUSA, is under consideration because it specifically provides for, *inter alia*, wood screens. Subheading 9403.60.8080, HTSUSA, is under consideration because the subject screen is an item normally considered to be "furniture." We note the following dictionary definitions:

> furniture (1)—* * * the movable articles, as tables, chairs, bedsteads, desks, cabinets, etc., required for use or ornament in a house, office, or the like. *The Random House Dictionary of the English Language*, the Unabridged Edition;
>
> furniture (2)—* * * (The prevailing sense.) Movable articles, whether useful or ornamental, in a dwelling-house, place of business, or public building. Formerly including also the fittings. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

We find that the subject screen fits these definitions of "furniture." It is movable and is constructed for placing on the floor. Its primary purpose is utilitarian, to partition a room or screen off a corner. Such screens are also used to display photographs and are used in both private dwellings and offices. We note that the above definitions are very similar to the more detailed definition of furniture provided at General Explanatory Note (A) to Chapter 94, which states as follows:

For the purposes of this Chapter, the term "furniture" means:

> (B) Any "movable" articles (**not included** under other more specific headings of the Nomenclature), which would have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafes, restaurants, laboratories, hospitals dentists' surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be "movable" furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

In fact, certain types of screens, *i.e.*, "fire screens" and "draught screens" are even listed as exemplars of furniture in the Explanatory Notes to Heading 9403, HTSUSA.

Additionally, it is relevant that screens themselves are usually defined as furniture, as seen in the following:

> Screens—* * * a piece of furniture consisting usually of an upright board or frame hung with leather, canvas, cloth, tapestry, or paper, or of two or more such boards or frames hinged together. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

Finally, we note that Customs has regularly classified screens of material other than wood as furniture in heading 9403, HTSUSA. *See* NY D88618, dated March 4, 1999, in which a single panel room screen, with a black iron frame, was classified in subheading 9403.20.0010, HTSUSA, the provision for metal furniture. *See also*, NY E86030, dated September 20, 1999, in which several multi-panel screens (non-wood) are classified as furniture, in various subheadings of 9403 depending on the materials of which they are constructed. The courts have also recognized that screens are types of furniture. *See Sanji Kobata v. United States*, 66 Cust. Ct. 341, C.D. 4213 (1971), in which the court stated that it considers screens to be articles of furniture.

Given the fact that screens, such as the one at issue here, do constitute furniture, the decision must be made as to which of the two provisions of the HTSUSA, cited above, is the more appropriate provision of classification.

Pursuant to GRI 3(a), if a product is classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. This rule would seem to indicate classification under heading 4421 (Chapter 44) and the apparently more specific description provided in subheading 4421.90.4000, HTSUSA (wood screens). However, Explanatory Note II to GRI 3 states that:

> * * * the Rule can only take effect **provided the terms of headings or Section or Chapter Notes do not otherwise require.** For instance, Note 4(b) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to Note 4(b) to Chapter 97 and not according to this Rule.

(Emphasis from original.) In this instance, we must consider Note 1(o) to Chapter 44, which states as follows:

> 1. This Chapter does not cover:
>
> (o) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);

Therefore, Note 1(o) to Chapter 44 precludes consideration of that chapter for purposes of the classification of the subject screen because it excludes from classification in Chapter 44 all articles of Chapter 94, which would include furniture. Classification in subheading 4421.90.4000, HTSUSA, cannot even be considered; only after determining that a product is classifiable under the heading should the subheadings be examined to find the correct classification of the merchandise. *See* GRI 1,6. *See also*, *American Bayridge Corp. v. United States*, 35 F. Supp. 2d 922 (CIT 1998). Accordingly, the subject screen should be classified in heading 9403, HTSUSA, as other furniture and parts thereof.

Holding:

The subject screen is classifiable in subheading 9403.60.8080, HTSUSA, which provides for Other furniture and parts thereof: Other wooden furniture: Other, Other. The duty rate is 1 percent ad valorem.

NY 855306, classifying the subject screen in heading 4421, HTSUSA, is hereby modified. In accordance with 19 U.S.C., Section 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 18, 2002.

CLA–2 RR:CR:TE 964912 STB
Category: Classification
Tariff No. 9403.60.8080

MS. PATTI VAN DE WARK
MONDAY'S WHOLESALE
1401 Martin Avenue
Santa Clara, CA 95050–2614

Re: Revocation of NY 886597; Classification of Coromandel Screens from China or Hong Kong as Other Furniture and Parts Thereof, Heading 9403, HTSUSA; Not as Other Articles of Wood: Not Heading 4421, HTSUSA.

DEAR MS. VAN DE WARK:

This letter is pursuant to Headquarter's reconsideration of New York Ruling Letter (NY) 886597, dated June 15, 1993, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of Coromandel screens from China or Hong Kong.

This letter is to inform you that after review of that ruling, it has been determined that the classification of the subject screens, in subheading 4421.90.4000, HTSUSA, is incorrect. As such, NY 886597 is revoked pursuant to the analysis which follows below.

Facts:

In your original ruling request, the subject items were described as floor-standing screens, consisting of hinged panels measuring either 72 inches high or 84 inches high (depending on the screen) with the panels present in sets of either four or six. You further stated that the panels are made of wood and are lacquered and painted on both sides. You claimed that the panels are used to decoratively divide a room or to conceal an area.

Issue:

What is the proper classification of the Coromandel screens under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). 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 and, provided the headings or notes do not otherwise require, according to the remaining GRIs taken in order. The provisions under consideration are as follows:

4421.90.4000	Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other.
9403.60.8080	Other furniture and parts thereof: Other wooden furniture: Other, Other.

Subheading 4421.90.4000, HTSUSA, is under consideration because it specifically provides for, *inter alia*, wood screens. Subheading 9403.60.8080, HTSUSA, is under consideration because the subject screens are items normally considered to be "furniture." We note the following dictionary definitions:

> furniture (1)—* * * the movable articles, as tables, chairs, bedsteads, desks, cabinets, etc., required for use or ornament in a house, office, or the like. *The Random House Dictionary of the English Language*, the Unabridged Edition;
>
> furniture (2)—* * * (The prevailing sense.) Movable articles, whether useful or ornamental, in a dwelling-house, place of business, or public building. Formerly including also the fittings. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

We find that the subject screens fit these definitions of "furniture." They are movable and are constructed for placing on the floor. Their primary purpose is utilitarian, to partition a room or screen off a corner. Such screens are also used to display photographs and are used in both private dwellings and offices. We note that the above definitions are very similar to the more detailed definition of furniture provided at General Explanatory Note (A) to Chapter 94, which states as follows:

For the purposes of this Chapter, the term "furniture" means:

> (B) Any "movable" articles (**not included** under other more specific headings of the Nomenclature), which would have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafes, restaurants, laboratories, hospitals dentists' surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be "movable" furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

In fact, certain types of screens, *i.e.*, "fire screens" and "draught screens" are even listed as exemplars of furniture in the Explanatory Notes to Heading 9403, HTSUSA. Additionally, it is relevant that screens themselves are usually defined as furniture, as seen in the following:

> Screens—* * * a piece of furniture consisting usually of an upright board or frame hung with leather, canvas, cloth, tapestry, or paper, or of two or more such boards or frames hinged together. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

Finally, we note that Customs has regularly classified screens of material other than wood as furniture in heading 9403, HTSUSA. *See* NY D88618, dated March 4, 1999, in which a single panel room screen, with a black iron frame, was classified in subheading 9403.20.0010, HTSUSA, the provision for metal furniture. *See also*, NY E86030, dated September 20, 1999, in which several multi-panel screens (non-wood) are classified as furniture, in various subheadings of 9403 depending on the materials of which they are constructed. The courts have also recognized that screens are types of furniture. *See Sanji Kobata v. United States*, 66 Cust. Ct. 341, C.D. 4213 (1971), in which the court stated that it considers screens to be articles of furniture.

Given the fact that screens, such as those at issue here, do constitute furniture, the decision must be made as to which of the two provisions of the HTSUSA, cited above, is the more appropriate provision of classification.

Pursuant to GRI 3(a), if a product is classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. This rule would seem to indicate classification under heading 4421 (Chapter 44) and the apparently more specific description provided in subheading 4421.90.4000, HTSUSA (wood screens). However, Explanatory Note II to GRI 3 states that:

> * * * the Rule can only take effect **provided the terms of headings or Section or Chapter Notes do not otherwise require.** For instance, Note 4(b) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to Note 4(b) to Chapter 97 and not according to this Rule.

(Emphasis from original.) In this instance, we must consider Note 1(o) to Chapter 44, which states as follows:

> 1. This Chapter does not cover:
>
> (o) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);

Therefore, Note 1(o) to Chapter 44 precludes consideration of that chapter for purposes of the classification of the subject screens because it excludes from classification in Chapter 44 all articles of Chapter 94, which would include furniture. Classification in subheading 4421.90.4000, HTSUSA, cannot even be considered; only after determining that a product is classifiable under the heading should the subheadings be examined to find the correct classification of the merchandise. *See* GRI 1,6. *See also*, *American Bayridge Corp. v. United States*, 35 F. Supp. 2d 922 (CIT 1998). Accordingly, the subject wooden folding screens should be classified in heading 9403, HTSUSA, as other furniture and parts thereof.

Holding:

The subject screens are classifiable in subheading 9403.60.8080, HTSUSA, which provides for Other furniture and parts thereof: Other wooden furniture: Other, Other. The duty rate is 1 percent ad valorem.

NY 886597 is hereby revoked. In accordance with 19 U.S.C., Section 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 18, 2002.

CLA–2 RR:CR:TE 964913 STB
Category: Classification
Tariff No. 9403.60.8080

MR. KARL F. KRUEGER
AEI-CARR CUSTOM BROKERAGE SERVICES
1600 West Lafayette
Detroit, MI 48216

Re: Revocation of NY C82177; Classification of a Wood Floor Screen with Picture Frames from China or Thailand as Other Furniture and Parts Thereof, Heading 9403, HTSUSA; Not as Other Articles of Wood: Not Heading 4421, HTSUSA.

DEAR MR. KRUEGER:

This letter is pursuant to Headquarter's reconsideration of New York Ruling Letter (NY) C82177, issued to you on behalf of your client, Umbra U.S.A., Inc., dated December 16, 1997, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a wood floor screen with picture frames from China or Thailand.

This letter is to inform you that after review of that ruling, it has been determined that the classification of the wood screens, in subheading 4421.90.4000, HTSUSA, is incorrect. As such, NY C82177 is revoked pursuant to the analysis which follows below.

Facts:

In NY C82177, a ruling was requested on a product named the "Sona Floor Screen Frame." Descriptive literature in a catalogue and an advertising flyer was submitted with the ruling request. The floor screen was described therein as a three-panel floor standing wood screen measuring 35 inches wide by 69 inches high. Each panel was said to have five 8 by 10 size picture frames (organized in a straight row) from the top to the bottom. You claimed that the picture frames are a unique and prominent feature of the screen.

Issue:

What is the proper classification of the subject screen under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). 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 and, provided the headings or notes do not otherwise require, according to the remaining GRIs taken in order. The provisions under consideration are as follows:

4421.90.4000	Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other.
9403.60.8080	Other furniture and parts thereof: Other wooden furniture: Other, Other.

Subheading 4421.90.4000, HTSUSA, is under consideration because it specifically provides for, *inter alia*, wood screens. Subheading 9403.60.8080, HTSUSA, is under consideration because the subject screens are items normally considered to be "furniture." We note the following dictionary definitions:

> furniture (1)—* * * the movable articles, as tables, chairs, bedsteads, desks, cabinets, etc., required for use or ornament in a house, office, or the like. *The Random House Dictionary of the English Language*, the Unabridged Edition;
>
> furniture (2)—* * * (The prevailing sense.) Movable articles, whether useful or ornamental, in a dwelling-house, place of business, or public building. Formerly including also the fittings. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

We find that the subject screen fits these definitions of "furniture." It is movable and is constructed for placing on the floor. Its primary purpose is utilitarian, to partition a room or screen off a corner. Such screens are also used to display photographs and are used in both private dwellings and offices. We note that the above definitions are very similar to the more detailed definition of furniture provided at General Explanatory Note (A) to Chapter 94, which states as follows:

For the purposes of this Chapter, the term "furniture" means:

> (B) Any "movable" articles (**not included** under other more specific headings of the Nomenclature), which would have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafes, restaurants, laboratories, hospitals dentists' surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be "movable" furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

In fact, certain types of screens, *i.e.*, "fire screens" and "draught screens" are even listed as exemplars of furniture in the Explanatory Notes to Heading 9403, HTSUSA. Additionally, it is relevant that screens themselves are usually defined as furniture, as seen in the following:

> Screens—* * * a piece of furniture consisting usually of an upright board or frame hung with leather, canvas, cloth, tapestry, or paper, or of two or more such boards or frames hinged together. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

Finally, we note that Customs has regularly classified screens of material other than wood as furniture in heading 9403, HTSUSA. *See* NY D88618, dated March 4, 1999, in which a single panel room screen, with a black iron frame, was classified in subheading 9403.20.0010, HTSUSA, the provision for metal furniture. *See also*, NY E86030, dated September 20, 1999, in which several multi-panel screens (non-wood) are classified as furniture, in various subheadings of 9403 depending on the materials of which they are constructed. The courts have also recognized that screens are types of furniture. *See Sanji Kobata v. United States*, 66 Cust. Ct. 341, C.D. 4213 (1971), in which the court stated that it considers screens to be articles of furniture.

Given the fact that screens, such as the one at issue here, do constitute furniture, the decision must be made as to which of the two provisions of the HTSUSA, cited above, is the more appropriate provision of classification.

Pursuant to GRI 3(a), if a product is classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. This rule would seem to indicate classification under heading 4421 (Chapter 44) and the apparently more specific description provided in subheading 4421.90.4000, HTSUSA (wood screens). However, Explanatory Note II to GRI 3 states that:

> * * * the Rule can only take effect **provided the terms of headings or Section or Chapter Notes do not otherwise require.** For instance, Note 4(b) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to Note 4(b) to Chapter 97 and not according to this Rule.

(Emphasis from original.) In this instance, we must consider Note 1(o) to Chapter 44, which states as follows:

> 1. This Chapter does not cover:
>
> (o) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);

Therefore, Note 1(o) to Chapter 44 precludes consideration of that chapter for purposes of the classification of the subject screen because it excludes from classification in Chapter 44 all articles of Chapter 94, which would include furniture. Classification in subheading 4421.90.4000, HTSUSA, cannot even be considered; only after determining that a product is classifiable under the heading should the subheadings be examined to find the correct classification of the merchandise. *See* GRI 1,6. *See also*, *American Bayridge Corp. v.*

United States, 35 F. Supp. 2d 922 (CIT 1998). Accordingly, the subject screen should be classified in heading 9403, HTSUSA, as other furniture and parts thereof.

Holding:

The subject screen is classifiable in subheading 9403.60.8080, HTSUSA, which provides for Other furniture and parts thereof: Other wooden furniture: Other, Other. The duty rate is 1 percent ad valorem.

NY C82177, classifying the subject screen in heading 4421, HTSUSA, is hereby revoked. In accordance with 19 U.S.C., Section 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 18, 2002.

CLA–2 RR:CR:TE 964914 STB
Category: Classification
Tariff No. 9403.60.8080

MS. SHELLY PAPPAS
VALUE CITY IMPORTS
1800 Moler Road
Columbus, OH 43207

Re: Revocation of NY C85674; Classification of a Wooden Floor Screen from Taiwan as Other Furniture and Parts Thereof, Heading 9403, HTSUSA; Not as Other Articles of Wood: Not Heading 4421, HTSUSA.

DEAR MS. PAPPAS:

This letter is pursuant to Headquarter's reconsideration of New York Ruling Letter (NY) C85674, issued to you on April 16, 1998, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a wooden floor screen from Taiwan.

This letter is to inform you that after review of that ruling, it has been determined that the classification of the wooden screen, in subheading 4421.90.4000, HTSUSA, is incorrect. As such, NY C85674 is revoked pursuant to the analysis which follows below.

Facts:

In your original letter requesting a tariff classification ruling, dated March 13, 1998, you submitted a sample identified as a "photo gallery floor screen." The item was described in NY C85674 as a decorative, floor-standing article consisting of three upright wooden panels (each with two stubby legs) attached to each other with hinges. Each panel is approximately 11½ inches wide by 69 inches high, and consists of a wood framework surrounding a vertical array of five identical rectangular openings intended to accommodate photographs (up to 8″ x 10″) for display. It is further related in NY C85674 that each of the rectangular openings is, in turn, equipped with a pane of glass, paper mat and removable fiberboard back.

Issue:

What is the proper classification of the subject screen under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). 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 and, provided the headings or notes do not otherwise require, according to the remaining GRIs taken in order. The provisions under consideration are as follows:

4421.90.4000	Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other.
9403.60.8080	Other furniture and parts thereof: Other wooden furniture: Other, Other.

Subheading 4421.90.4000, HTSUSA, is under consideration because it specifically provides for, *inter alia*, wood screens. Subheading 9403.60.8080, HTSUSA, is under consideration because the subject screens are items normally considered to be "furniture." We note the following dictionary definitions:

> furniture (1)—* * * the movable articles, as tables, chairs, bedsteads, desks, cabinets, etc., required for use or ornament in a house, office, or the like. *The Random House Dictionary of the English Language*, the Unabridged Edition;
>
> furniture (2)—* * * (The prevailing sense.) Movable articles, whether useful or ornamental, in a dwelling-house, place of business, or public building. Formerly including also the fittings. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

We find that the subject screen fits these definitions of "furniture." It is movable and is constructed for placing on the floor. Its primary purpose is utilitarian, to partition a room or screen off a corner. Such screens are also used to display photographs and are used in both private dwellings and offices. We note that the above definitions are very similar to the more detailed definition of furniture provided at General Explanatory Note (A) to Chapter 94, which states as follows:

For the purposes of this Chapter, the term "furniture" means:

> (B) Any "movable" articles (**not included** under other more specific headings of the Nomenclature), which would have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafes, restaurants, laboratories, hospitals dentists' surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be "movable" furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

In fact, certain types of screens, *i.e.*, "fire screens" and "draught screens" are even listed as exemplars of furniture in the Explanatory Notes to Heading 9403, HTSUSA. Additionally, it is relevant that screens themselves are usually defined as furniture, as seen in the following:

> Screens—* * *a piece of furniture consisting usually of an upright board or frame hung with leather, canvas, cloth, tapestry, or paper, or of two or more such boards or frames hinged together. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

Finally, we note that Customs has regularly classified screens of material other than wood as furniture in heading 9403, HTSUSA. *See* NY D88618, dated March 4, 1999, in which a single panel room screen, with a black iron frame, was classified in subheading 9403.20.0010, HTSUSA, the provision for metal furniture. *See also*, NY E86030, dated September 20, 1999, in which several multi-panel screens (non-wood) are classified as furniture, in various subheadings of 9403 depending on the materials of which they are constructed. The courts have also recognized that screens are types of furniture. *See Sanji Kobata v. United States*, 66 Cust. Ct. 341, C.D. 4213 (1971), in which the court stated that it considers screens to be articles of furniture.

Given the fact that screens, such as the one at issue here, do constitute furniture, the decision must be made as to which of the two provisions of the HTSUSA, cited above, is the more appropriate provision of classification.

Pursuant to GRI 3(a), if a product is classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. This rule would seem to indicate classification under heading

4421 (Chapter 44) and the apparently more specific description provided in subheading 4421.90.4000, HTSUSA (wood screens). However, Explanatory Note II to GRI 3 states that:

> * * * the Rule can only take effect **provided the terms of headings or Section or Chapter Notes do not otherwise require.** For instance, Note 4(b) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to Note 4(b) to Chapter 97 and not according to this Rule.

(Emphasis from original.) In this instance, we must consider Note 1(o) to Chapter 44, which states as follows:

> 1. This Chapter does not cover:
>
> (o) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);

Therefore, Note 1(o) to Chapter 44 precludes consideration of that chapter for purposes of the classification of the subject screen because it excludes from classification in Chapter 44 all articles of Chapter 94, which would include furniture. Classification in subheading 4421.90.4000, HTSUSA, cannot even be considered; only after determining that a product is classifiable under the heading should the subheadings be examined to find the correct classification of the merchandise. *See* GRI 1,6. *See also*, *American Bayridge Corp. v. United States*, 35 F. Supp. 2d 922 (CIT 1998). Accordingly, the subject screen should be classified in heading 9403, HTSUSA, as other furniture and parts thereof.

Holding:

The subject screen is classifiable in subheading 9403.60.8080, HTSUSA, which provides for Other furniture and parts thereof: Other wooden furniture: Other, Other. The duty rate is 1 percent ad valorem.

NY C85674, classifying the subject screen in heading 4421, HTSUSA, is hereby revoked. In accordance with 19 U.S.C., Section 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 18, 2002.

CLA–2 RR:CR:TE 964915 STB
Category: Classification
Tariff No. 9403.60.8080

MR. ORLANDO RODRIGUEZ
ALMACENES PITUSA
PO. 839
Hato Rey Station
San Juan, PR 00919–0839

Re: Revocation of NY F80426; Classification of Wood Folding Screens with Photo Frames from Thailand as Other Furniture and Parts Thereof, Heading 9403, HTSUSA; Not as Other Articles of Wood: Not Heading 4421, HTSUSA.

DEAR MR. RODRIGUEZ:

This letter is pursuant to Headquarter's reconsideration of New York Ruling Letter (NY) F80426, dated December 28,1999, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of wood folding screens with photo frames from Thailand.

This letter is to inform you that after review of that ruling, it has been determined that the classification of the subject screens, in subheading 4421.90.4000, HTSUSA, is incorrect. As such, NY F80426 is revoked pursuant to the analysis which follows below.

Facts:

The New York tariff classification ruling was requested with regard to three different photo frame screens all of which are made of solid rubberwood. Product information sheets with photocopied pictures were submitted with your request.

One item, No. B–35–C3035, is described in NY F80426 as a single photo frame panel with a wood stick easel. The panel measures 8 inches wide by 34 inches high and is designed to hold six photographs vertically in a row. Another item, No. B–35–C3038, is a two-panel hinged folding screen with feet. Each panel measures 8 inches wide by 56 inches high and is designed to hold six photographs. The third item, No. B–35–C3003, is a three-panel hinged folding screen with feet. Each panel measures 7 inches wide by 43 inches high and is designed to hold five photographs.

The first item described above, No. B–35–C3035 (the single photo frame panel) was not classified in NY F80426 due to a lack of sufficient information. The classification of that item is not affected by this revocation. The other two items, Nos. B–35–C3038 and B–35–C3003, were classified in subheading 4421.90.4000, HTSUSA.

Issue:

What is the proper classification of the two multi-panel screens under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). 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 and, provided the headings or notes do not otherwise require, according to the remaining GRIs taken in order. The provisions under consideration are as follows:

4421.90.4000	Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other.
9403.60.8080	Other furniture and parts thereof: Other wooden furniture: Other, Other.

Subheading 4421.90.4000, HTSUSA, is under consideration because it specifically provides for, *inter alia*, wood screens. Subheading 9403.60.8080, HTSUSA, is under consideration because the subject screens are items normally considered to be "furniture." We note the following dictionary definitions:

> furniture (1)—* * * the movable articles, as tables, chairs, bedsteads, desks, cabinets, etc., required for use or ornament in a house, office, or the like. *The Random House Dictionary of the English Language*, the Unabridged Edition;
>
> furniture (2)—* * * (The prevailing sense.) Movable articles, whether useful or ornamental, in a dwelling-house, place of business, or public building. Formerly including also the fittings. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

We find that the subject screens fit these definitions of "furniture." They are movable and are constructed for placing on the floor. Their primary purpose is utilitarian, to partition a room or screen off a corner. Such screens are also used to display photographs and are used in both private dwellings and offices. We note that the above definitions are very similar to the more detailed definition of furniture provided at General Explanatory Note (A) to Chapter 94, which states as follows:

For the purposes of this Chapter, the term "furniture" means:

> (B) Any "movable" articles (**not included** under other more specific headings of the Nomenclature), which would have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafes, restaurants, laboratories, hospitals dentists' surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be "movable" furniture even if they are designed for bolting, etc., to the

> floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

In fact, certain types of screens, *i.e.*, "fire screens" and "draught screens" are even listed as exemplars of furniture in the Explanatory Notes to Heading 9403, HTSUSA. Additionally, it is relevant that screens themselves are usually defined as furniture, as seen in the following:

> Screens—* * * a piece of furniture consisting usually of an upright board or frame hung with leather, canvas, cloth, tapestry, or paper, or of two or more such boards or frames hinged together. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

Finally, we note that Customs has regularly classified screens of material other than wood as furniture in heading 9403, HTSUSA. *See* NY D88618, dated March 4, 1999, in which a single panel room screen, with a black iron frame, was classified in subheading 9403.20.0010, HTSUSA, the provision for metal furniture. *See also*, NY E86030, dated September 20, 1999, in which several multi-panel screens (non-wood) are classified as furniture, in various subheadings of 9403 depending on the materials of which they are constructed. The courts have also recognized that screens are types of furniture. *See Sanji Kobata v. United States*, 66 Cust. Ct. 341, C.D. 4213 (1971), in which the court stated that it considers screens to be articles of furniture.

Given the fact that screens, such as those at issue here, do constitute furniture, the decision must be made as to which of the two provisions of the HTSUSA, cited above, is the more appropriate provision of classification.

Pursuant to GRI 3(a), if a product is classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. This rule would seem to indicate classification under heading 4421 (Chapter 44) and the apparently more specific description provided in subheading 4421.90.4000, HTSUSA (wood screens). However, Explanatory Note II to GRI 3 states that:

> * * * the Rule can only take effect **provided the terms of headings or Section or Chapter Notes do not otherwise require.** For instance, Note 4(b) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to Note 4(b) to Chapter 97 and not according to this Rule.

(Emphasis from original.) In this instance, we must consider Note 1(o) to Chapter 44, which states as follows:

> 1. This Chapter does not cover:
>
> (o) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);

Therefore, Note 1(o) to Chapter 44 precludes consideration of that chapter for purposes of the classification of the subject screens because it excludes from classification in Chapter 44 all articles of Chapter 94, which would include furniture. Classification in subheading 4421.90.4000, HTSUSA, cannot even be considered; only after determining that a product is classifiable under the heading should the subheadings be examined to find the correct classification of the merchandise. *See* GRI 1,6. *See also*, *American Bayridge Corp. v. United States*, 35 F. Supp. 2d 922 (CIT 1998). Accordingly, the subject wooden folding screens should be classified in heading 9403, HTSUSA, as other furniture and parts thereof.

Holding:

The subject screens are classifiable in subheading 9403.60.8080, HTSUSA, which provides for Other furniture and parts thereof: Other wooden furniture: Other, Other. The duty rate is 1 percent ad valorem.

NY F80426 is hereby revoked. In accordance with 19 U.S.C., Section 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 18, 2002.

CLA–2 RR:CR:TE 964916 STB
Category: Classification
Tariff No. 9403.60.8080

MS. BONNIE GULYAS
IMPORT CUSTOMS ANALYST,
HOME & LEISURE DIVISION
J.C. PENNY PURCHASING CORPORATION
P.O. Box 10001
Dallas, TX 75301–0001

Re: Modification of NY E86030 and NY E86014; Classification of Screens (Decorative Room Dividers) from Taiwan and China as Other Furniture and Parts Thereof, Heading 9403, HTSUSA; Not as Other Articles of Wood: Not Heading 4421, HTSUSA.

DEAR MS. GULYAS:

This letter is pursuant to Headquarter's reconsideration of New York Ruling Letter (NY) E86030 and NY E86014, both dated September 20, 1999, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of screens/decorative room dividers from Taiwan and China.

Some of the screens classified in NY E86030 and NY E86014 are constructed primarily of wood. Others are described as being constructed of plastic and other materials. This letter is to inform you that after review of those rulings, it has been determined that the classification of the wooden screens provided therein (in subheading 4421.90.4000, HTSUSA) is incorrect. As such, NY E86030 and NY E86014, as they concern the screens constructed of wood, are modified pursuant to the analysis which follows below. The classifications provided by the above rulings with respect to the screens constructed of materials other than wood are not affected by the present ruling.

Facts:

NY E86030 discusses your ruling request dated August 16, 1999, which was made with respect to five items. All of the items involved are folding, three-panel decorative screens, although you mentioned in your request that some of the models may also be offered in larger versions with four to six panels.

Lot No. 778–8003 was said to consist of continuous plywood panels, hand-painted with a seaside picture, fastened together with metal hinges. The screen is said to measure 48.75 inches in width and 69 inches in height. Lot No. 946–0577 is described in NY E86030 as featuring a pine center panel which resembles a door. The adjacent panels, attached with metal hinges, are described as exhibiting a pine framework which has numerous rectangular openings filled in with decorative ironwork. The dimensions are said to measure 71.25 inches in width and 70 inches in height.

The two lots described above were classified, in NY E86030, in subheading 4421.90.4000, HTSUSA. These screens were determined to be constructed primarily of wood.

The other items described in NY E86030 were screens considered to be constructed primarily of plastic and iron. These items were classified in that ruling in heading 9403 (furniture) in various subheadings depending on the material of which they were constructed.

NY E86014 discusses your ruling request with respect to four different items—this request was also dated August 16, 1999. All of the items involved in this ruling request are also folding, three-panel decorative screens, with some models possibly being offered in larger versions of four to six panels. It is mentioned in NY E86014 that the panels are held together with metal hinges.

Lot No. 778–2295 is described as consisting of "ramin wood panels," each of which has four rectangular openings in which pictures may be displayed. The dimensions are provided as 35.25 inches in width and 60.25 inches in height. Lot No. 946–0908 is described as having "solid pine wood panels." The dimensions are said to be 59 inches in width and 65 inches in height.

The two lots described above were classified, in NY E86014, in subheading 4421.90.4000, HTSUSA. As with the screens similarly classified in NY E86030, the screens of these lots were determined to be constructed primarily of wood.

The other items described in NY E86014 were screens considered to be constructed primarily of polyester/cotton fabric and canvas. These items were classified in that ruling in heading 9403 (furniture) in various subheadings depending on the material of which they were constructed.

Issue:

What is the proper classification of the screens constructed primarily of wood under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). 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 and, provided the headings or notes do not otherwise require, according to the remaining GRIs taken in order. The provisions under consideration are as follows:

4421.90.4000	Other articles of wood; Other; Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: Other.
9403.60.8080	Other furniture and parts thereof: Other wooden furniture: Other, Other.

Subheading 4421.90.4000, HTSUSA, is under consideration because it specifically provides for, *inter alia*, wood screens. Subheading 9403.60.8080, HTSUSA, is under consideration because the subject screens are items normally considered to be "furniture." We note the following dictionary definitions:

> furniture (1)—* * * the movable articles, as tables, chairs, bedsteads, desks, cabinets, etc., required for use or ornament in a house, office, or the like. *The Random House Dictionary of the English Language*, the Unabridged Edition;
>
> furniture (2)—* * * (The prevailing sense.) Movable articles, whether useful or ornamental, in a dwelling-house, place of business, or public building. Formerly including also the fittings. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

We find that the subject screens fit these definitions of "furniture." They are movable and are constructed for placing on the floor. Their primary purpose is utilitarian, to partition a room or screen off a corner. Such screens are also used to display photographs (some of the subject screens are specifically designed for this purpose) and are used in both private dwellings and offices. We note that the above definitions are very similar to the more detailed definition of furniture provided at General Explanatory Note (A) to Chapter 94, which states as follows:

For the purposes of this Chapter, the term "furniture" means:

> (B) Any "movable" articles (**not included** under other more specific headings of the Nomenclature), which would have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafes, restaurants, laboratories, hospitals dentists' surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be "movable" furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

In fact, certain types of screens, *i.e.*, "fire screens" and "draught screens" are even listed as exemplars of furniture in the Explanatory Notes to Heading 9403, HTSUSA.

Additionally, it is relevant that screens themselves are usually defined as furniture, as seen in the following:

> Screens—* * * a piece of furniture consisting usually of an upright board or frame hung with leather, canvas, cloth, tapestry, or paper, or of two or more such boards or frames hinged together. *The Oxford English Dictionary* (Compact Disc), Oxford University Press, 1999.

Finally, we note that Customs has regularly classified screens of material other than wood as furniture in heading 9403, HTSUSA. *See* NY D88618, dated March 4, 1999, in which a single panel room screen, with a black iron frame, was classified in subheading 9403.20.0010, HTSUSA, the provision for metal furniture. *See also*, NY E86030, dated September 20, 1999, in which several multi-panel screens (non-wood) are classified as furniture, in various subheadings of 9403 depending on the materials of which they are constructed. The courts have also recognized that screens are types of furniture. *See Sanji Kobata v. United States*, 66 Cust. Ct. 341, C.D. 4213 (1971), in which the court stated that it considers screens to be articles of furniture.

Given the fact that screens, such as those at issue here, do constitute furniture, the decision must be made as to which of the two provisions of the HTSUSA, cited above, is the more appropriate provision of classification.

Pursuant to GRI 3(a), if a product is classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. This rule would seem to indicate classification under heading 4421 (Chapter 44) and the apparently more specific description provided in subheading 4421.90.4000, HTSUSA (wood screens). However, Explanatory Note II to GRI 3 states that:

> * * * the Rule can only take effect **provided the terms of headings or Section or Chapter Notes do not otherwise require.** For instance, Note 4(b) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to Note 4(b) to Chapter 97 and not according to this Rule.

(Emphasis from original.) In this instance, we must consider Note 1(o) to Chapter 44, which states as follows:

> 1. This Chapter does not cover:
>
> (o) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);

Therefore, Note 1(o) to Chapter 44 precludes consideration of that chapter for purposes of the classification of the subject screens because it excludes from classification in Chapter 44 all articles of Chapter 94, which would include furniture. Classification in subheading 4421.90.4000, HTSUSA, cannot even be considered; only after determining that a product is classifiable under the heading should the subheadings be examined to find the correct classification of the merchandise. *See* GRI 1,6. *See also*, *American Bayridge Corp. v. United States*, 35 F. Supp. 2d 922 (CIT 1998). Accordingly, the subject screens should be classified in heading 9403, HTSUSA, as other furniture and parts thereof.

Holding:

The screens determined to be constructed primarily of wood (Lot Nos. 778–8003 and 946–0577 in NY E86030 and Lot Nos. 778–2295 and 946–0908 n NY E86014) are classifiable in subheading 9403.60.8080 , HTSUSA, which provides for Other furniture and parts thereof: Other wooden furniture: Other, Other. The duty rate is 1 percent ad valorem.

NY E86030 and NY E86014, classifying the subject wooden screens in heading 4421, HTSUSA, are hereby modified as described above. The classifications provided in those rulings with respect to the screens constructed of materials other than wood are not affected by this ruling. In accordance with 19 U.S.C., Section 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF LOUDSPEAKERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of loudspeakers.

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 is revoking a ruling letter pertaining to the tariff classification of loudspeakers under the Harmonized Tariff Schedule of the United States ("HTSUS"), and is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the CUSTOMS BULLETIN on August 21, 2002. 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 December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 572–8780.

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 Customs 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 Customs 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 Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the CUSTOMS BULLETIN on

August 21, 2002, proposing to revoke NY H87555, dated February 20, 2002, which involved the classification of loudspeakers. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which 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 Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's failure to advise Customs 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.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY H87555 and any other ruling not specifically identified in order to reflect the proper classification of the loudspeakers pursuant to the analysis set forth in HQ 965538. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

Dated: September 23, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 23, 2002.

CLA–2 RR:CR:GC 965538 GOB
Category: Classification
Tariff No. 8518.22.00

DENNIS HECK
CORPORATE IMPORT COMPLIANCE MANAGER
YAMAHA CORPORATION OF AMERICA
6600 Orangethorpe Avenue
P.O. Box 6600
Buena Park, CA 90622–6600

Re: NY H87555 Revoked; Loudspeakers.

DEAR MR. HECK:

This is in reply to your letter of March 6, 2002, to the Director, National Commodity Specialist Division, New York, requesting reconsideration of NY H87555 dated February 20, 2002. In NY H87555, certain loudspeakers were determined to be classified under subheading 8518.29.80, HTSUS, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for other loudspeakers. We have reviewed the classification determinations in that ruling and have determined that they are incorrect. This ruling sets forth the correct classification.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY H87555, as described below, was published in the CUSTOMS BULLETIN on August 21, 2002. No comments were received in response to the notice.

Facts:

The following goods were at issue in NY H87555: the NS–P60 speaker system; the NS–P220 speaker system; and the NS–P610 speaker system.

The goods were described as follows in NY H87555:

> The NS–P60 Home Theater Speaker Set—is designed to be sold as a three piece set to be added to an already existing right and left channel stereo speaker system in order to give surround sound capability. The set consists of two surround (rear) speakers containing one 4″ woofer and one 7/8″ tweeter; one center channel speaker containing two 5″ woofers and one 7/8″ tweeter.
>
> The NS–P220 Home Theater Speaker Set—is designed to be sold as a six-piece surround sound speaker system. This set consists of five identical surround speakers containing one 3″ woofer and one 1/2″ tweeter; one powered subwoofer containing one 6.5″ woofer.
>
> The NS–P610 Home Theater Speaker Set—is designed and sold as a high end cherry finished six-piece surround sound speaker system. The set consists of four identical surround speakers containing one 3″ woofer and one 1″ tweeter; one center channel speaker containing two 3″ woofers and one 1″ tweeter; one powered subwoofer containing one 8″ woofer.

In NY H87555, Customs classified all three speaker systems (NS–P60; NS–P220; and NS–P610) in subheading 8518.29.80, HTSUS, as: "Loudspeakers, whether or not mounted in their enclosures: * * * Other: * * * Other."

In your letter of March 6, 2002, you request reconsideration of the classification of the NS–P60 speaker set. You propose that it is classified in subheading 8518.22.00, HTSUS.

Issue:

What is the classification under the HTSUS of the above-described speaker systems?

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 may then be applied. GRI 2 is not applicable here.

GRI 3 provides as follows:

> When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:
>
> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
>
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
>
> (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

GRI 6 provides in pertinent part that "* * * 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."

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

EN (VIII) for GRI 3(b) provides:

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

EN (X) to GRI 3(b) provides:

> For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:
>
> (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings * * *
>
> (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
>
> (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The HTSUS provisions under consideration are as follows:

8518	* * * loudspeakers, whether or not mounted in their enclosures * * *:
	Loudspeakers, whether or not mounted in their enclosures:
8518.21.00	Single loudspeakers, mounted in their enclosures:
8518.22.00	Multiple loudspeakers, mounted in the same enclosure:
8518.29	Other:
8518.29.80	Other

NS–P60 Speaker System

Each of the speakers in the NS–P60 speaker set is a multiple loudspeaker, mounted in the same enclosure. Therefore, at GRI 1, we find that the NS–P60 speaker system is classified in subheading 8518.22.00, HTSUS, as: "Loudspeakers, whether or not mounted in their enclosures: * * * Multiple loudspeakers, mounted in the same enclosure."

NS–P220 Speaker System and NS–P610 Speaker System

It is our determination that the NS–P220 and NS–P610 speaker systems constitute "goods put up in sets for retail sale" within the meaning of GRI 3(b) and GRI 6. Each of

these systems consists of articles which are *prima facie* classifiable in two subheadings at the same level of subdivision; they are put up together to carry out a specific activity, i.e., the projection of sound; and they are put up in a manner suitable for sale directly to users without repacking.

The NS–220 and the NS–P610 speaker systems both contain one single loudspeaker and several multiple loudspeakers. If imported separately, the single loudspeakers would be classified in subheading 8518.21.00, HTSUS, and the multiple loudspeakers would be classified in subheading 8518.22.00, HTSUS.

Pursuant to GRI 3(a) and GRI 6, two subheadings each refer to part only of the items in a set put up for retail sale. Therefore, those headings are to be regarded as equally specific in relation to the items.

At GRI 3(b), it is our belief that no one item in the set gives the set its essential character. Accordingly, we are unable to classify the merchandise pursuant to GRI 3(b).

Therefore, we proceed to GRI 3(c), i.e., the goods shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Pursuant to GRI 3(c), the NS–220 and the NS–P610 speaker systems are classified in subheading 8518.22.00, HTSUS, as: "Loudspeakers, whether or not mounted in their enclosures: * * * Multiple loudspeakers, mounted in the same enclosure."

Holding:

At GRI 1, the NS–P60 speaker system is classified in subheading 8518.22.00, HTSUS, as: "Loudspeakers, whether or not mounted in their enclosures: * * * Multiple loudspeakers, mounted in the same enclosure."

At GRI 3(c), the NS–220 and the NS–P610 speaker systems are classified in subheading 8518.22.00, HTSUS, as: "Loudspeakers, whether or not mounted in their enclosures: * * * Multiple loudspeakers, mounted in the same enclosure."

Effect on Other Rulings:

NY H87555 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)