

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.

*Washington, DC, July 21, 2004,*

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,  
*Acting Assistant Commissioner,  
Office of Regulations and Rulings.*

**PROPOSED MODIFICATION OF CLASSIFICATION LETTER  
AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF CERTAIN HOSPITAL GARMENTS FOR PATIENTS**

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

**ACTION:** Notice of proposed modification of one ruling letter and revocation of treatment relating to the classification of certain hospital garments for patients.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) intends to modify one ruling letter relating to the classification of certain hospital garments for patients under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise.

**DATE:** Comments must be received on or before September 3, 2004.

**ADDRESS:** Written comments are to be addressed to Bureau of Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at

Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** Teresa Frazier, Textiles Branch, at (202) 572-8821.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify one ruling letter relating to the tariff classification of certain hospital garments for patients. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) J83809, dated May 21, 2003, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, Customs and Border Protection intends to revoke any treatment previously

accorded by CBP to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP's personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY J83809, dated May 21, 2003, CBP classified certain hospital garments, identified as style numbers 74118330 (a pajama short), 724100430 (a pajama bottom), and 72401430 (a pajama top) in subheadings 6204.62.4055, 6203.42.4015 and 6205.20.2065, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), respectively.

Upon review of this ruling, CBP has determined that the merchandise's classification within these headings was incorrect. Rather, these hospital garments are classifiable as sleepwear garments of heading 6207, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY J83809 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter HQ 967039. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: July 15, 2004

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachments

## [ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

**NY J83809**

May 21, 2003

CLA-2-62:RR:NC:3:353 J83809

CATEGORY: Classification

TARIFF NO.: 6111.30.5040, 6204.62.4055,  
6203.42.4015, 6205.20.2065

MR. JARROD MILLS  
STANDARD TEXTILE CO. INC.  
*One Knollcrest Dr.*  
*Cincinnati, OH 45237*

RE: The tariff classification of hospital apparel from Mexico and Jordan (QIZ)

DEAR MR. MILLS:

In your letter dated April 18, 2003 you requested a tariff classification ruling. As requested, the samples will be returned to you.

The submitted samples are #s 67901508 Infant Gown, 74118330 Pajama Short, 724100430 Pajama Bottom and 72401430 Pajama Top. The # 67901508 Infant Gown is made in Mexico and constructed of knit 100% polyester fabric and features three metal snaps on each sleeve and a tie back. The #s 74118330 Pajama Short, 724100430 Pajama Bottom and 72401430 Pajama Top are adult garments made in Mexico and Jordan (QIZ), and constructed of woven 55% cotton, 45% polyester fabric. The # 74118330 Pajama Short is a unisex item with a drawstring waist. The # 724100430 Pajama Bottom features a left over right front closure and drawstring waist. The # 72401430 Pajama Top is long sleeve and features a v-neckline, full front left over right four snap closure and left breast pocket.

The adult items are commercially interchangeable with garments known as hospital scrubs. As such, they are not of the class or kind of merchandise principally used as sleepwear, and cannot be so classified.

Chapter 62 Note 8 states "Garments of this chapter designed for left over right closure at the front shall be regarded as men's or boys' . . ."

The applicable subheading for the # 67901508 Infant Gown will be 6111.30.5040, Harmonized Tariff Schedule of the United States (HTS), which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of synthetic fibers: Other, Other: Other." The general rate of duty will be 16.1% ad valorem.

The applicable subheading for the # 74118330 Pajama Short will be 6204.62.4055, Harmonized Tariff Schedule of the United States (HTS), which provides for "Women's or girls' . . . dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts . . . Trousers, bib and brace overalls, breeches and shorts: Of cotton: Other: Other, Shorts: Women's." The general rate of duty will be 16.7% ad valorem.

The applicable subheading for the 724100430 Pajama Bottom will be 6203.42.4015, Harmonized Tariff Schedule of the United States (HTS), which provides for "Men's or boys' suits . . . blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Trousers, bib and

brace overalls, breeches and shorts: Of cotton: Other: Other, Trousers and breeches: Men's: Other." The general rate of duty will be 16.7% ad valorem.

The applicable subheading for the 72401430 Pajama Top will be 6205.20.2065, Harmonized Tariff Schedule of the United States (HTS), which provides for "Men's or boys' shirts: Of cotton: Other: Other: Other: Other: Men's." The general rate of duty will be 19.8% ad valorem. This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 646-733-3053.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967039  
CLA-2 RR:CR:TE 967039 TMF  
CATEGORY: Classification  
TARIFF NO.: 6207.91.3010, 6207.21.0030

EDWARD F. JULIANO, JR., ESQ.  
*360 Massachusetts Avenue*  
*Suite 200*  
*Acton, MA 01720*

RE: Modification of New York Ruling Letter (NY) J83809, dated May 21, 2003; Classification of hospital garments

DEAR MR. JULIANO:

This letter is in response to your letter of February 5, 2004, in which you request reconsideration of New York Ruling Letter (NY) J83809, dated May 21, 2003, issued to your client, Standard Textile, Co., Inc., regarding our classification of certain hospital garments, identified as style numbers 74118330 (a pajama short), 724100430 (a pajama bottom), and 72401430 (a pajama top). The merchandise was classified in subheadings 6204.62.4055, 6203.42.4015 and 6205.20.2065, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), respectively.

Upon your request, we have reviewed NY J83809 and find this ruling to be partially in error as it relates to the classification of these goods. Therefore, this ruling modifies NY J83809 as it pertains to the classification of the aforementioned garments.

**FACTS:**

You describe the merchandise as pajama tops and bottoms that are not imported as sets, but as separate units and never in the same quantities.

You also describe the goods as “hospital sleepwear.” However, the description of the three articles at issue, which is taken from NY J83809, dated May 21, 2003, reads as follows:

[Style numbers] 74118330 Pajama Short, 724100430 Pajama Bottom and 72401430 Pajama Top are adult garments that are made in Mexico and Jordan (QIZ)[.] [They are] constructed of woven 55% cotton, 45% polyester fabric. [Style number] 74118330 Pajama Short is a unisex item with a drawstring waist. [Style number] 724100430 Pajama Bottom features a left over right front closure and drawstring waist. [Style number] 72401430 Pajama Top is long sleeve and features a v-neckline, full front left over right four snap closure and left breast pocket.

You indicated in your submission that the pajama bottom, identified as style number 72400430, was incorrectly listed as style number 724100430 and the correct style number is 72400430. Your submitted advertisement describes it as having a non-gapping, overlap fly, which is bar-tacked in the middle and bottom, along with a color-coded, securely bar-tacked drawstring for easy size identification.

You stated that all three articles are designed, manufactured, marketed and sold for use as sleepwear by hospital patients.

**ISSUE:**

Whether the subject merchandise is properly classifiable as sleepwear under heading 6207, HTSUS, or as outerwear garments under headings 6203, 6204 and 6205, HTSUS?

**LAW AND ANALYSIS:**

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

You requested reconsideration of NY J83809 because you believe that the articles at issue are classifiable in heading 6207, HTSUS, which provides for, *inter alia*, men’s nightshirts, pajamas and similar articles. In NY J83809, CBP stated that the goods were interchangeable with hospital scrubs. However, this statement is incorrect. The garments of NY J83809, which are at issue, are not “scrubs” within the meaning of the word or by how they are used.

First, the term “scrubs” is defined as a “protective garment worn by surgeons during operations.” See Hyperdictionary at [www.hyperdictionary.com](http://www.hyperdictionary.com). In terms of the features that scrubs have, they are usually unisex, reversible, and the bottoms have a pocket on the rear. For examples, see Headquarters Ruling Letter (HQ) 964962 dated September 25, 2002 (classifying polyester cotton blend fabric scrub bottom and top which features a reversible style, with left side breast pockets and V-neck opening in subheading 6206.30.3040, HTSUS, which provides for women’s cotton woven blouses, shirts, and shirt-blouses and the scrub bottom in subheading 6204.62.4020,

HTSUSA, which provides for women's cotton woven trousers); and Port Decision (PD) B84280, dated April 25, 1997, classifying hospital scrubs consisting of a shirt and pants in subheading 6206.40.3030 and 6204.63.3510, HTSUSA, as a women's man-made fiber shirt and pants, respectively.)

Your client also manufactures scrubs. In terms of the use of the garments at issue, you state that your client's garments are designed, marketed and sold for patient use only, not hospital/health care personnel use, as demonstrated by the submitted advertisement which describes the goods as "patient apparel". On your submitted invoices, the merchandise is described as "PJ pants", "PJ shorts", and "PJ top" which are sold to hospital clients. Although this information is helpful, it is not controlling as this does not indicate who the ultimate wearer of the garment will be in a hospital/healthcare setting.

With regard to the pajama top, it has an open front with a snap hook closing, which, according to your client, allows for "the medical provider to gain access to the patient's chest area." However, it is distinguishable from a scrub top because it does not have the usual pullover design with no front opening at the neck. With the pajama pant, your client's affidavit describes it as having an overlap fly. However, scrub pants do not have a fly, as a fly "[may] come open and does not provide significant modesty to the user." Your client also stated:

A doctor in a hospital would not use this product as a scrub pant because [it does] not provide . . . [a] degree of modesty. Moreover, a fly would serve no purpose on a scrub pant, which is designed to be used in a surgical environment, because the use of the fly by male medical staff for its intended purpose (to facilitate urination) would necessitate that the medical staff go back through the sterilization process again. Conversely, the fly serves an important purpose with respect to sleepwear for a patient, because it . . . facilitate[s] urination by a male patient.

\* \* \*

Because scrub pants are specifically designed for medical staff, it would be extremely uncommon in a healthcare environment for a patient to wear scrub pants.

Some other features of scrub bottoms are that they have sewn pockets on both sides of the garment, which makes the pants reversible. According to your client, hospital sleepwear bottoms are designed for sleeping and do not need pockets. The same also applies to the subject pajama shorts that do not have a fly, any pockets or complete leg coverage. Thus, it is your position that as the articles at issue do not have any of these features, they are not suitable to be worn as scrubs by hospital/healthcare staff. You assert they are only for wear in the hospital by patients.

In the affidavit, your client also referred to the submitted advertisements which show the pajama pants in six other colors/pattern styles along with the one style, Tracy, blue-colored pajama top. Your client stated that the garments are offered in various printed fabric and other colors for easy coordination with other gowns. According to your client, scrubs are manufactured in a limited range of colors and fabrics selected by medical staff. We find that the garments are not scrubs, but we must consider whether they are sleepwear within heading 6207, HTSUSA.

First, CBP has consistently ruled that pajamas are generally two-piece garments worn for sleeping. One-piece garments are not classifiable as paja-

mas. Sleep shorts and sleep pants used for sleeping fall into a residual provision within heading 6207, HTSUS, for similar articles. In determining the classification of the subject garments, CBP usually considers the factors discussed in two decisions of the Court of International Trade. In Mast Industries, Inc. v. United States, 9 CIT 549, 552 (1985), *aff'd* 786 F.2d 1144 (CAFC, April 1, 1986), the court dealt with the classification of a garment claimed to be sleepwear and cited Webster's Third New International Dictionary which defined "nightclothes" as "garments to be worn to bed." In Mast, the court ruled that the garments at issue were designed, manufactured, and marketed as nightwear and were chiefly used as nightwear. Similarly, in St. Eve International, Inc. v. United States, 11 CIT 224 (1987), the court ruled that the garments at issue were designed, manufactured, and advertised as sleepwear and were chiefly used as sleepwear. In the case of International Home Textile, Inc. v. United States, 21 CIT 280, March 18, 1997, the court addressed the issue of whether certain men's garments were properly classified under the provision for cotton pants, shorts and tops or as sleepwear under the HTSUSA. The court held that in order to be classified as sleepwear, the loungewear items at issue must share that essential character of being for a "private activity", e.g., sleeping. The court also stated that garments classified as sleepwear would be inappropriate for use at "informal social occasions in and around the home, and for other individual, non-private activities in and around the house e.g., watching movies at home with guests, barbecuing at a backyard gathering, doing outside home and yard maintenance work, washing the car, walking the dog, and the like."

The merchandise at issue was classified as outerwear or loungewear in headings 6203, 6204 or 6205, HTSUS, which provide for, *inter alia*, men's trousers, women's shorts, and men's shirts, respectively. However, upon review, the merchandise, which is described by you as hospital garments/patient pajamas, is not scrubs. The garments are not worn outside, but inside in a hospital setting by patients who are receiving medical treatment to recuperate from illness or injury.

In sum, the merchandise is designed for exclusive use by patients while staying in the hospital. Although the subject garments may be worn inside for social activity, it is our view that any use, other than use during a hospital stay while recuperating, would be a fugitive use. See Hampco Apparel, Inc. v. United States, 12 CIT 92 (1988)<sup>1</sup>. Thus, it is our determination that the garments should be reclassified as sleepwear in heading 6207, which provides for, *inter alia*, pajamas and similar articles.

**HOLDING:**

NY J83809, dated May 21, 2003, is hereby modified. If the tops and bottoms are imported separately (or have no matching component in a shipment), they are classifiable as other sleepwear in subheading 6207.91.3010, HTSUSA, which provides for "Men's or boys' singlets and other undershirts, underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles: Other: Of cotton: Other: Sleepwear," dutiable under the general column one rate of 6.1 percent *ad valorem*, quota category number 351.

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<sup>1</sup>In Hampco, the Court of International Trade stated: "The fact that a garment could have a fugitive use or uses does not take it out of the classification of its original and primary use. The primary design, construction, and function of an article will be determinative of classification, whether or not there is an incidental or subordinate function."



If the tops and bottoms are imported in shipments containing equal numbers of matching tops and bottoms, they are classifiable as other men's pajamas in subheading 6207.21.0030, HTSUSA, dutiable under the general column one rate of 8.9 percent *ad valorem*, quota category number 351.

The designated textile and apparel category may be subdivided into parts. If so, the 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 you check on behalf of your client, close to the time of shipment, the Textile Status Report for Absolute Quotas, previously available on the Customs Electronic Bulletin Board (CEBB), which is now available on the CBP website at [www.cbp.gov](http://www.cbp.gov).

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

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

19 CFR PART 177

**PROPOSED REVOCATION OF A RULING LETTER AND  
TREATMENT RELATING TO THE TARIFF CLASSIFICA-  
TION OF CERTAIN LASER UNITS FOR BARCODE SCAN-  
NERS**

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

**ACTION:** Notice of proposed revocation of a ruling letter and treatment relating to certain laser units for barcode scanners.

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

**DATE:** Comments must be received on or before September 3, 2004.

**ADDRESS:** Written comments are to be addressed to U.S. Cus-

toms and Border Protection, 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 and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** Tom Peter Beris, General Classification Branch, at (202) 572-8789.

**SUPPLEMENTARY INFORMATION:**

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the classification of a laser unit for barcode scanners used with point-of-sale ("POS") terminals. Although in this notice CBP is specifically referring to one ruling, HQ 958839, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importation's of the same or similar merchandise, or the importer's or CBPs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importation's of merchandise subsequent to this notice.

In HQ 958839, dated March 28, 1996 ("Attachment A" to this document), CBP ruled that a laser unit which was a component of various horizontal scanners which were used with POS systems was classified under subheading 8473.29.00, which provided for accessories of the machines of heading 8470, HTSUS (cash registers).

CBP has had an opportunity to reexamine the issue, and now believes that the laser unit should have been classified under 8473.30.50, HTSUS. This classification is based upon the language of heading 8471, HTSUS. This interpretation is also consistent with the Explanatory Notes ("EN") which indicate that barcode scanners not elsewhere specified or included are classifiable in subheading 8471.90, HTSUS. Therefore, parts suitable for use solely or principally with these machines are classifiable in subheading 8473.30, HTSUS. Although not legally binding nor dispositive, the Harmonized Commodity Description and Coding System Explanatory Notes constitute the official interpretation of the Harmonized System at the international level. 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.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke HQ 958839 and any other ruling not specifically identified to the extent that they do not reflect CBPs interpretation of the text of heading 8471, HTSUS, pursuant to the analysis set forth in proposed HQ 966863 ("Attachment B"). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

**DATED:** July 20, 2004

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

**HQ 958839**  
**March 28, 1996**  
**CLA-2 RR:TC:MM 958839 LTO**  
**CATEGORY: Classification**  
**TARIFF NO.: 8473.29.00**

**PORT DIRECTOR**  
**U.S. CUSTOMS SERVICE**  
**511 NW Broadway Room 0198**  
**Portland, Oregon 97209**

**RE: Protest 2904-95-100167; Laser Unit; horizontal scanners; point-of-sale systems; HQs 088941, 956605, 957084; NYs 894422, 896418; headings 8470, 8471; subheading 8473.30.45 (8473.30.50); section XVI, note 1(m); chapter 90, note 1; chapter 90, additional U.S. note 3**

**DEAR PORT DIRECTOR:**

The following is our decision regarding Protest 2904-95-100167, which concerns the classification of a laser unit for a horizontal scanner under the Harmonized Tariff Schedule of the United States (HTSUS). The subject merchandise was entered on May 16, 1994, and the entries were liquidated on April 7, 1995. The protest was timely filed on July 6, 1995.

**FACTS:**

The laser units are a component of various horizontal scanners which are used with point-of-sale (POS) systems. The laser diode-based horizontal scanners include the Spectra-Physics HS1250, a brochure of which was provided by the protestant. The horizontal scanners are designed to read bar codes in transaction-intensive environments. The HS1250 is described as an "ideal solution for supermarkets, discount, mass merchandise and home improvement stores."

The laser units were entered under subheading 8473.30.45 (now, 8473.30.50), HTSUS, which provides for other parts and accessories of the machines of heading 8471, HTSUS. They were classified upon liquidation under subheading 9013.80.60, HTSUS, which provides for other optical instruments and appliances.

**ISSUE:**

Whether the laser units for horizontal scanners are classifiable as other optical instruments and appliances under heading 9013, HTSUS.

**LAW AND ANALYSIS:**

The General Rules of Interpretation (GRI's) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states, in pertinent part, that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes. . . ." 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), Customs published a notice on February 14, 1996, in the Customs Bulletin, Volume 30, Number 7, proposing to revoke New York Ruling Letter (NY) 894422, issued by the Area Director of Customs, New York Seaport, on February 7, 1994, and NY 896418, issued by the Area Director of Customs, New York Seaport, on April 6, 1994. In NY 894422, the Symbol Technologies, Inc. ("Symbol"), PDF 1000 portable bar code scanner was held to be classifiable under subheading 8471.92.84 (now, 8471.60.80), HTSUS, which provides for other input units for automatic data processing (ADP) machines: optical scanners. Plastic housings for the PDF 1000 were classified under subheading 8473.30.50, HTSUS, which provides for other parts and accessories of the machines of heading 8471, HTSUS. In NY 896418, the Symbol LS 2000II hand-held scanner, which was principally used with point-of-sale devices, was held to be classifiable under subheading 8473.29.00, HTSUS, which provides for accessories of the machines of heading 8470, HTSUS (cash registers).

After carefully reviewing the scope of chapters 84, 85 and 90, HTSUS, and structure of the tariff schedule as it pertains to the classification of devices incorporating "optical elements," we found it unnecessary to revoke NY 894422 and NY 896418. On April 17, 1996, we published a notice of withdrawal of our proposed revocations of NY 894422 and NY 896418, in the Customs Bulletin, Volume 30, Number 16. Generally, "optical instruments and appliances" are classified within chapter 90, HTSUS. Articles of chapter 90 are excluded from several sections of the tariff schedule, including section XVI, which covers chapters 84 and 85. See Section XVI, note 1(m) (for exceptions to this rule, see, e.g., Chapter 90, note 1(g)(h)). Thus, if a device is an "optical instrument or appliance," as defined by additional U.S. note 3 to chapter 90, and it is not excluded by note 1 to chapter 90, it must be classified in one of the many chapter 90 headings that cover "optical" devices: for example, heading 9014 (navigational instruments); heading 9015 (surveying, hydrographic, oceanographic, hydrological, meteorological or geophysical instruments); heading 9018 (medical, surgical, dental or veterinary instruments); heading 9027 (instruments for physical or chemical analysis; various measuring or checking instruments); and heading 9031 (other measuring or checking instruments), HTSUS. Heading 9013, HTSUS, is the "basket" provision for optical instruments and appliances within chapter 90. The heading covers "other optical instru-

ments and appliances, not specified or included elsewhere in this chapter." Additional U.S. note 3 to chapter 90 provides that, for the purposes of chapter 90, the terms optical appliances and optical instruments "refer only to those appliances and instruments which incorporate one or more optical elements, but do not include any appliances or instruments in which the incorporated optical element or elements are solely for viewing a scale or for some other subsidiary purpose (emphasis added)." Customs has defined the term "subsidiary" as follows: "[s]erving to supplement or assist \* \* \* [s]econdary in importance; subordinate." See HQ 088941, dated January 16, 1992 (citing Webster's II New Riverside University Dictionary (1984), pg. 1155).

In the April 17, 1996, notice of withdrawal of the proposed revocations, we stated as follows:

The bar code scanning devices incorporate a mirror which, in the process of reading a bar code symbol, assists in both the production of the scan line and the production of the signal. The mirror, arguably, serves to supplement or assist in the performance of the scanner's primary function. However, it is our opinion that the scanner, and devices similar to the scanner, which incorporate a laser diode, one or more optical elements (such as a mirror, prism or lens), and significant electrical or mechanical features (such as a decoder, digitizer, or motor), were not intended to be classified as "optical instruments or appliances" within chapter 90. Similar devices incorporating laser diodes, optical elements and various electrical and/or mechanical features, include the laser printers, CD-ROM drives, document scanners and optical mice of heading 8471, HTSUS, the compact disc players of heading 8519, HTSUS, and the laser disc players of heading 8521, HTSUS. The optics of these devices are considered "subsidiary" for tariff classification purposes, and therefore, the scanners, laser printers, CD-ROM drives, document scanners, optical mice, compact disc players, laser disc players and similar devices, cannot be classified as "optical instruments or appliances" within chapter 90.

Based on the above reasoning, the horizontal scanner cannot be classified under heading 9013, HTSUS. See also HQ 957084, dated April 29, 1996. The scanner also cannot be classified as a part or accessory of an ADP machine (or unit thereof) under subheading 8473.30.45, HTSUS, because it is not principally used with the ADP machines (or units thereof) of heading 8471, HTSUS. Rather, the scanner, which is not a "good included" in any chapter 84, 85 or 90 heading, is classifiable under subheading 8473.29.00, HTSUS, which provides for accessories of the machines of heading 8470, HTSUS (cash registers). The laser unit, a part of the horizontal scanner, is also classifiable under this subheading.

**HOLDING:**

The laser unit is classifiable under subheading 8473.29.00, HTSUS.

The protest should be GRANTED to the extent reclassification of the merchandise as indicated above results in a net duty reduction or partial allowance. In accordance with section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, this decision, together with the Customs Form 19,

should be mailed by your office to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to the mailing of the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act and other public access channels.

JOHN DURANT,  
*Director;*  
*Tariff Classification Appeals Division.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

**HQ 8966865**  
**CLA-2 RR: CR: GC 966865 TPB**  
**CATEGORY: Classification**  
**TARIFF NO.: 8473.30.5000**

TERRY L. ALBERTS  
SPECTRA-PHYSICS SCANNING  
*c/o PSC, Inc.*  
*959 Terry Street*  
*Eugene, OR 97402-9150*

**RE:** Laser Unit; Barcode Scanner; Protest 2904-95-100167; HQ 958839 Revoked.

DEAR MR. ALBERTS:

This is in reference to HQ 958839, dated March 28, 1996, which answered Protest 2904-95-100167. That ruling dealt with the classification of a laser unit for a horizontal scanner under the Harmonized Tariff Schedule of the United States ("HTSUS").

In review of that ruling, Customs and Border Protection ("CBP") has come to the conclusion that the classification issued was in error, and for the reasons stated below, hereby revokes HQ 958839 and classifies the laser unit in subheading 8473.30, HTSUS. Under *San Francisco Newspaper Printing Co. v. United States* 9 CIT 517, 620 F. Supp. 738 (1985), the liquidation of the entries covering the merchandise which was the subject of protest is final on both the protestant and CBP. Accordingly, this decision will not impact the classification of the merchandise which was covered by the entries subject to HQ 958839.

**FACTS:**

The merchandise is described in HQ 958839 as follows:

The laser units are a component of various horizontal scanners which are used with point-of-sale ("POS") systems. The laser diode-based hori-

zontal scanners include the Spectra-Physics HS1250, a brochure of which was provided by the protestant. The horizontal scanners are designed to read bar codes in transaction-intensive environments.

In HQ 958839 CBP held that:

The scanner also cannot be classified as a part or accessory of an ADP machine (or unit thereof) under subheading 8473.30.45, HTSUS, because it is not principally used with the ADP machines (or units thereof) of heading 8471, HTSUS. Rather, the scanner, which is not a "good included" in any chapter 84, 85 or 90 heading, is classifiable under subheading 8473.29.00, HTSUS, which provides for accessories of the machines of heading 8470, HTSUS (cash registers). The laser unit, a part of the horizontal scanner, is also classifiable under this subheading.

**ISSUE:**

Are the laser units classified under subheading 8473.29, HTSUS, which provides for parts and accessories of the machines of heading 8470, or under subheading 8473.30, HTSUS, which provides for parts and accessories of the machines of heading 8471?

**LAW AND ANALYSIS:**

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

The HTSUS provisions under consideration are as follows:

8473	Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of heading 8469 to 8472:
	Parts and accessories of the machines of heading 8470
8473.29	Other
8473.30	Parts and accessories of the machines of heading 8471

As indicated in the "Facts" section above, HQ 958839 indicated that the horizontal scanner used to read bar codes could not be classified under heading 8471, HTSUS, because it was not principally used with automatic data processing ("ADP") machines (or units thereof). Heading 8471, HTSUS, reads as follows:

Automatic data processing machines and units thereof; magnetic or **optical readers**, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included:

Emphasis added.

The above heading language does not limit itself merely to ADP machines and units thereof. It goes on to indicate that this heading provides for, *inter alia*, optical readers. The horizontal scanner used to read bar codes meets the terms of this heading, so it cannot be excluded from classification under heading 8471, HTSUS, as determined in HQ 958839.



This interpretation is also consistent with a decision by the Harmonized System Committee in its 21st Session (March 1998) to amend Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") to clarify the classification of bar code readers. The 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. The ENs to 84.71 read, in pertinent part, as follows:

(II) MAGNETIC OR OPTICAL READERS, MACHINES FOR  
TRANSCRIBING DATA ONTO DATA MEDIAN CODED FORM  
AND MACHINES FOR PROCESSING SUCH DATA, NOT  
ELSEWHERE SPECIFIED OR INCLUDED

(A) MAGNETIC OR OPTICAL READERS

...

- (2) Optical readers. These do not require the use of special ink. The characters are read by a series of photoelectric cells and translated on the binary code principle. This group also includes bar code readers. These machines generally use photosensitive semiconductor devices, e.g. laser diodes, and are used as input units in conjunction with an automatic data processing machine or with other machines, e.g. cash registers. They are designed for working in the hand, for placing on a table or fixing to a machine.

Underlining added.

From the above description, it is clear that bar code readers of the kind classified in HQ 958839 were within the scope of heading 8471 as optical readers. CBP concurs with this interpretation and would classify these types of devices under subheading 8471.90, HTSUS. The laser unit, therefore, would be classified in subheading 8473.30, HTSUS, which provides for parts and accessories of the machines of heading 8471.

**HOLDING:**

For the reasons stated above, the laser unit is classified under subheading 8473.30.5000, Harmonized Tariff Schedule of the United States Annotated, which provides for parts and accessories of the machines of heading 8471. The 2004 column one, general rate of duty is free. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS**

HQ 958839, dated March 28, 1996, is revoked.

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

**MODIFICATION AND REVOCATION OF RULING LETTERS  
AND REVOCATION OF TREATMENT RELATING TO TARIFF  
CLASSIFICATION OF POSITION SENSORS**

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

**ACTION:** Modification and revocation of ruling letters and revocation of treatment relating to tariff classification of position sensors.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling and revoking two other rulings relating to the tariff classification of position sensors, and revoking any treatment CBP has previously accorded to substantially identical transactions. Notice of the proposed modification and revocations was published on June 9, 2004, in the Customs Bulletin.

**EFFECTIVE DATE:** This modification and revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 3, 2004.

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

Pursuant to CBP's obligations, a notice was published on June 9, 2004, in the Customs Bulletin, Volume 38, Number 24, proposing to modify NY J87676, dated August 27, 2003, and to revoke NY G86705, dated March 1, 2001, and HQ 965764, dated August 13, 2002, all of which classified certain crankshaft position sensors as electric machines and apparatus having individual functions, not specified or included elsewhere in [chapter 85], in subheading 8543.89.96, Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in response to this notice.

As stated in the proposed notice, this modification and revocation will cover any rulings on this merchandise which may exist but have not been specifically 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 have advised CBP during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment it previously accorded 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, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised CBP during this 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.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY J87676 and revoking NY G86705 and HQ 965764 to reflect the proper classification of the position sensors in subheading 8543.40.00, HTSUS, as electric synchros and transducers, in accordance with the analysis in HQ 967103, HQ 967134 and HQ 967135, which are set forth as Attachments A, B and C to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment it previously accorded to substantially identical transactions.

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

**DATED:** July 20, 2004

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

**HQ 967103**  
July 20, 2004  
**CLA-2 RR:CR:GC 967103 JAS**  
**CATEGORY:** Classification  
**TARIFF NO.:** 8543.89.4000

MR. DENNIS FORHART  
PRICE WATERHOUSE COOPERS LLP  
*Worldtrade Management Services*  
*400 Renaissance Center*  
*Detroit, MI 48243-1507*

**RE:** Hall-Effect Speed Sensor; NY J87676 Modified

DEAR MR. FORHART:

In NY J87676, which the Director, National Commodity Specialist Division, New York, issued to you on August 27, 2003, on behalf of Borg Warner Diversified Transmission Products, Inc., a Hall-Effect Speed Sensor (sensor) and a Torque-On-Demand Electronic Control Unit were held to be classifiable in subheading 8543.89.9695, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as electrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85].

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 modification of NY J87676 was published on June 9, 2004, in the *Customs Bulletin*, Volume 38, Number 24. No comments were received in response to that notice.

**FACTS:**

The function of the speed sensor, part #1386-140-006, is to detect the speed of a shaft via a square-toothed tone wheel on the shaft. Typically, sensors of this type consist of a flex circuit, aluminum nickel cobalt magnet, plastic mold surrounding the magnet, three electrically insulated conductor wires, two wires to be connected to a printed circuit board such as an on-board automotive computer, the third wire to be used as a ground, epoxy resin to fill air spaces and hold the components in place, all in a hard black plastic housing. Hall-effect Speed Sensors are used mainly in automotive engines to generate electrical signals relative to a rotating cam or crankshaft which are relayed to an on-board printed circuit board (pcb). The pcb processes these signals and, in relation thereto, initiates or ceases an action within the automotive engine.

The HTSUS provisions under consideration are as follows:

- |                   |   |
|-------------------|---|
| <b>8543</b>       | Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [Chapter 85]. . .: |
| <b>8543.89</b>    | Other:  |
| <b>8543.89.40</b> | Electric synchros and transducers..   |

Other:

**8543.89.96**

Other

**ISSUE:**

Whether the Hall-Effect Gear Tooth Sensor (sensor) is more specifically described within heading 8543 as electric synchros and transducers.

**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. With certain exceptions not at issue here, Section XVI, Note 2(a), HTSUS, states that parts of machines which are goods included in any of the headings of chapter 84 or chapter 85 are in all cases to be classified in their respective headings.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. 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).

Subheading 8543.89.40 in part provides for electric synchros and transducers. The term *transducer* is not defined in the text of the HTSUS or in the ENs. When not so defined, terms are construed in accordance with their common and commercial meaning, which are presumed to be the same. *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982), and related cases. Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. In HQ 964599, dated December 22, 2000, in considering the classification of optical encoders, we examined the term *transducer* and determined that it encompasses devices which convert variations in one energy form into corresponding variations in another, usually electrical form. Among these is the *velocity transducer* in which the velocity of rotating shafts can be measured by an optical encoder with a suitable light source and detector. By choosing an appropriate pattern, the output data can be produced in binary form suitable for direct input to a computer system. Optical encoders come in two kinds, *absolute encoders* and *incremental encoders*. The *absolute encoder* is a *position transducer* with output in the form of parallel binary digits. *See McGraw-Hill Encyclopedia of Science & Technology*, Vol. 18, pp. 459-462 (6th ed., 1987). Position sensors of the type at issue here are transducers which convert physical condition data such as position, speed and acceleration into electrical signals that can be recognized by a processor. The sensor at issue here is a transducer which converts shaft rotations into an output of electric pulses. Notwithstanding the fact that position sensors might function as parts of larger instrumentation systems, they are goods included in heading 8543, in accordance with Section XVI, Note 2(a) and Chapter 90, Note 2(a), HTSUS.

**HOLDING:**

Under the authority of GRI 1, the Hall-Effect Gear Tooth Sensor is provided for in heading 8543. It is classifiable in subheading 8543.89.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The current column 1 rate of duty is 2.6 percent ad valorem. Duty rates are pro-

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

**EFFECT ON OTHER RULINGS:**

NY J87676, dated August 27, 2003, is modified with respect to the Hall-Effect Speed Sensor. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

**HQ 967134**  
July 20, 2004  
**CLA-2 RR:CR:GC 967134 JAS**  
**CATEGORY:** Classification  
**TARIFF NO.:** 8543.89.4000

MS. PETE MENTO  
EXPEDITORS TRADEWIND, LLC  
*1015 Third Avenue, 12th Floor*  
*Seattle, WA 98104*

**RE:** Hall-Effect Gear Tooth Sensor; HQ 965764 Revoked

DEAR MR. MENTO:

In HQ 965764, dated August 13, 2002, issued to you on behalf of Honeywell Inc., Microswitch Division, Freeport, IL, a Hall-Effect Gear Tooth Sensor (sensor) was held to be classifiable in subheading 8543.89.9695, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as electrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85].

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 HQ 965764 was published on June 9, 2004, in the Customs Bulletin, Volume 38, Number 24. No comments were received in response to that notice.

**FACTS:**

The sensor consists of a flex circuit, aluminum nickel cobalt magnet, plastic mold surrounding the magnet, three electrically insulated conductor wires, two wires to be connected to a printed circuit board such as an on-board automotive computer, the third wire to be used as a ground, epoxy resin to fill air spaces and hold the components in place, all in a hard black plastic housing.

In HQ 965764, the sensor was described as being used mainly in automotive engines to generate electrical signals relative to a rotating cam or crankshaft which are relayed to an on-board printed circuit board (pcb). The pcb processes these signals and, in relation thereto, initiates or ceases an action within the automotive engine. The sensor was found to be more than just an analogue monolithic integrated circuit of heading 8542. It provided no measurement data or readout to the pcb, but was found to consist of an assembly of components that formed a complete electronic device.

The HTSUS provisions under consideration are as follows:

**8543** Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [Chapter 85] . . . :

**8543.89** Other:

**8543.89.40** Electric synchros and transducers. . .

Other:

**8543.89.96** Other

**ISSUE:**

Whether the Hall-Effect Gear Tooth Sensor (sensor) is more specifically described within heading 8543 as electric synchros and transducers.

**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. With certain exceptions not at issue here, Section XVI, Note 2(a), HTSUS, states that parts of machines which are goods included in any of the headings of chapter 84 or chapter 85 are in all cases to be classified in their respective headings.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. 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).

Subheading 8543.89.40 in part provides for electric synchros and transducers. The term *transducer* is not defined in the text of the HTSUS or in the ENs. When not so defined, terms are construed in accordance with their common and commercial meaning, which are presumed to be the same. *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982), and related cases. Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. In HQ 964599, dated December 22, 2000, in considering the classification of optical encoders, we examined the term *transducer* and determined that it encompasses devices which convert variations in one energy form into corresponding variations in another, usually electrical form. Among these is the *velocity transducer* in which the velocity of rotating shafts can be measured by an optical encoder with a suitable light source and detector. By choosing an appropriate pattern, the output data can be produced in binary form suitable for direct input to a computer system. Optical encoders come in two kinds, *absolute encoders* and *incremental encoders*. The *absolute*

*encoder* is a *position transducer* with output in the form of parallel binary digits. See *McGraw-Hill Encyclopedia of Science & Technology*, Vol. 18, pp. 459–462 (6th ed., 1987). Position sensors of the type at issue here are transducers which convert physical condition data such as position, speed and acceleration into electrical signals that can be recognized by a processor. The Hall-Effect Gear Tooth Sensor is a transducer which converts shaft rotations into an output of electric pulses. Notwithstanding the fact that position sensors might function as parts of larger instrumentation systems, they are goods included in heading 8543, in accordance with Section XVI, Note 2(a) and Chapter 90, Note 2(a), HTSUS.

**HOLDING:**

Under the authority of GRI 1, the Hall-Effect Gear Tooth Sensor is provided for in heading 8543. It is classifiable in subheading 8543.89.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The current column 1 rate of duty is 2.6 percent ad valorem. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

HQ 965764, dated August 13, 2002, 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.

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

**HQ 967135**  
July 20, 2004  
**CLA-2 RR:CR:GC 967135 JAS**  
**CATEGORY:** Classification  
**TARIFF NO.:** 8543.89.4000

MS. MARY ELIZABETH STROM  
AMERICAN HONDA MOTOR CO., INC.  
*1919 Torrance Boulevard*  
*Torrance, CA 90501-2746*

**RE:** Crankshaft Position Sensor; NY G86705 Revoked

DEAR MS. STROM:

In NY G86705, which the Director of the National Commodity Specialist Division, New York, issued to you on March 1, 2001, crankshaft position sensors, part #s 37841-PK2-026 and 37840-PJ1-752, were held to be classifiable in subheading 8543.89.9695, Harmonized Tariff Schedule of the United



States Annotated (HTSUSA), as electrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85].

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 G86705 was published on June 9, 2004, in the Customs Bulletin, Volume 38, Number 24. No comments were received in response to that notice.

**FACTS:**

The position sensors were described in NY G86705 as being used in conjunction with the crankshaft of an internal combustion piston engine. They produce and transmit electrical pulses to communicate the rotational position of the crankshaft to the electronic control unit (ECU) so that the fuel injection sequence is properly accomplished.

The HTSUS provisions under consideration are as follows:

**8543** Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [Chapter 85] . . . :

**8543.89** Other:

**8543.89.40** Electric synchros and transducers. . .

Other:

**8543.89.96** Other

**ISSUE:**

Whether crankshaft position sensors are more specifically described within heading 8543 as electric synchros and transducers.

**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. With certain exceptions not at issue here, Section XVI, Note 2(a), HTSUS, states that parts of machines which are goods included in any of the headings of chapter 84 or chapter 85 are in all cases to be classified in their respective headings.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. 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).

Subheading 8543.89.40 in part provides for electric synchros and transducers. The term *transducer* is not defined in the text of the HTSUS or in the ENs. When not so defined, terms are construed in accordance with their common and commercial meaning, which are presumed to be the same. *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982), and related cases. Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. In HQ 964599, dated December 22, 2000, in considering the classification of optical encoders, we examined the term *transducer* and determined

that it encompasses devices which convert variations in one energy form into corresponding variations in another, usually electrical form. Among these is the *velocity transducer* in which the velocity of rotating shafts can be measured by an optical encoder with a suitable light source and detector. By choosing an appropriate pattern, the output data can be produced in binary form suitable for direct input to a computer system. Optical encoders come in two kinds, *absolute encoders* and *incremental encoders*. The *absolute encoder* is a *position transducer* with output in the form of parallel binary digits. See McGraw-Hill Encyclopedia of Science & Technology, Vol. 18, pp. 459–462 (6th ed., 1987). Position sensors of the type at issue here are transducers which convert physical condition data such as position, speed and acceleration into electrical signals that can be recognized by a processor. The crankshaft position sensors are transducers which convert shaft rotations into an output of electric pulses. Notwithstanding the fact that crankshaft position sensors might function as parts of larger instrumentation systems, they are goods included in heading 8543, in accordance with Section XVI, Note 2(a) and Chapter 90, Note 2(a), HTSUS.

**HOLDING:**

Under the authority of GRI 1, crankshaft position sensors, part #s 37841–PK2–026 and 37840–PJ1–752 are provided for in heading 8543. They are classifiable in subheading 8543.89.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The current column 1 rate of duty is 2.6 percent ad valorem. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY G86705, dated March 1, 2001, 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.

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

**REVOCATION OF RULING LETTER AND REVOCATION OF  
TREATMENT RELATING TO TARIFF CLASSIFICATION  
OF MOISTURE METERS**

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

**ACTION:** Notice of revocation of three ruling letters and revocation of treatment relating to tariff classification of moisture meters.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking three ruling letters pertain-

ing to the tariff classification of moisture meters under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP also is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin on June 16, 2004.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 3, 2004.

**FOR FURTHER INFORMATION CONTACT:** Neil S. Helfand, General Classification Branch, (202) 572-8791.

**SUPPLEMENTARY INFORMATION:**

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the Customs Bulletin on June 16, 2004, proposing to revoke three ruling letters pertaining to the classification of moisture meters. No comments were received in response to this 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 CBP during this notice period.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY 895922, NY 860128 and HQ 089800 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 966940 and HQ 966941. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. HQ 966940 and HQ 966941 are set forth as Attachments to this document.

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

**DATED:** July 20, 2004

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachments

## [ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

**HQ 966940**

July 20, 2004

**CLA-2 RR:CR:GC 966940 NSH**

**CATEGORY:** Classification

**TARIFF NO.:** 9025.80.3500

MR. JAMES ALBERTI  
A.J. ARANGO, INC.  
1516 E. Eighth Avenue  
Tampa, FL 33605

**RE:** NY 895922 revoked; Moisture tester

DEAR MR. ALBERTI:

This is in response to the receipt by U.S. Customs and Border Protection of supplemental information pertaining to moisture analyzers. This information has resulted in our reconsideration of NY 895922, dated March 30, 1994, and issued to you at that time, on the classification of a moisture tester, imported by Feaster Horticultural Corp., under the Harmonized Tariff Schedule of the United States (HTSUS).

**FACTS:**

The merchandise at issue is the "Speedy Moisture Tester." On March 30, 1994, Customs issued NY 895922, holding that the moisture tester was classified under subheading 9027.80.80, HTSUS (1991), as "Other instruments and apparatus for physical and chemical analysis . . . Other."

The Speedy Moisture Tester is used to test the moisture in soils and aggregates. The literature provided indicates that the unit is a calcium carbide gas pressure moisture tester in which free moisture in the test material reacts with a calcium carbide reagent to form acetylene gas. This gas, sealed in the body of the Speedy Moisture Tester, registers the percentage of moisture in the sample on a Bourdon-type gauge, an integral part of the body of the merchandise. The percentage of moisture content is displayed in terms of "wet" or "dry" weight.

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 895922, as described below, was published in the Customs Bulletin on June 16, 2004. No comments were received in response to the notice.

**ISSUE:**

Whether the Speedy Moisture Tester is a hygrometer of heading 9025, HTSUS.

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. The ENs, although neither dispositive or legally binding, facilitate classification by providing a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

9025	Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments; parts and accessories thereof:
9025.80	Other instruments:
	Other:
9025.80.35	Hygrometers and psychrometers, non-recording
*	* * * * *
9025.80.40	Thermographs, barographs, hygrographs and other recording instruments
*	* * * * *
9027	Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes; parts and accessories thereof:
9027.80	Other instruments and apparatus:
	Other:
9027.80.80	Other

In NY 895922, Customs classified the Speedy Moisture Tester under subheading 9027.80.80, HTSUS (there have been no changes to the HTSUS with regard to this subheading since the issuance of this ruling). The Speedy Moisture Tester is designed to determine the moisture content of soils and aggregates. The unit is essentially a calcium carbide gas pressure moisture tester and it determines moisture content by reacting the sample with a calcium carbide reagent to form acetylene gas. An examination of the gas using a Bourdon-type gauge then reveals the percentage of moisture in the sample, displaying it in terms of "wet" or "dry" weight.

EN 90.25 states in pertinent part as follows:

**(D) Hygrometers and Hygrographs**

These are used to determine the moisture content of the air, other gases or solid matter. The main types are:

- (1) **Chemical hygrometers**, based on absorption of moisture by chemical substances which are then weighed.

EN 90.27 states in pertinent part as follows:

This heading also **excludes**:

...

(h) Hydrometers, thermometers, hygrometers and similar instruments of **heading 9025**, whether or not for use in laboratories.

Customs notes initially that the moisture tester at issue is not substantially similar to the exemplars listed in EN 90.27, as there is no example therein of a device that determines the moisture content of a sample. In contrast, EN 90.25 (D) describes hygrometers as being used to “determine the moisture content of . . . **solid matter**” [Emphasis added], and the description for chemical hygrometers shows that they are a type of hygrometer used to determine the moisture content of solid matter. Although the chemical hygrometer is described as weighing a chemical substance subsequent to the absorption of moisture in order to determine moisture content, we note that the Speedy Moisture Tester, although employing a different evaluation process, similarly undertakes to determine the moisture content of a solid material. It should be noted that the meaning of an *eo nomine* designation is determined as of the effective date of the tariff statute, but will nevertheless include all articles subsequently created which fairly come within its scope. *Sears Roebuck & Co. v. United States*, 46 CCPA 79, C.A.D. 701 (1959); *Hoyt, Shetston & Sciaroni et al.*, 52 CCPA 101, C.A.D. 865 (1965). Furthermore, if the difference is in the nature of an improvement and the essential character is preserved or incidentally altered, an unlimited *eo nomine* designation will include it. *Robert Bosch Corp. et al. V. United States*, 63 Cust. Ct. 96, 103–104, C.D. 3881 (1969). As such, although previously classified under heading 9027, HTSUS, the Speedy Moisture Tester is provided for under heading 9025, HTSUS. Therefore, the exclusion within EN 90.27 is applicable and, consequently, the Speedy Moisture Tester cannot be classified under heading 9027, HTSUS.

Customs has previously ruled that devices used for ascertaining the moisture content of a solid are classified under heading 9025, HTSUS. In NY E86303, dated September 14, 1999, Customs classified a moisture meter under subheading 9025.80.35, HTSUS. Similar to the Speedy Moisture Tester, the moisture meter classified therein was likewise designed to measure the moisture content in a solid, namely the presence of liquid water in soil. In addition, in NY G86536, dated February 15, 2001, Customs classified a moisture meter under subheading 9025.80.10, HTSUS. The product, called the “Moisture Meter-Sonde Hygrometrique,” determined the moisture content of soil and, therefore, is also functionally equivalent to the Speedy Moisture Tester.

Within heading 9025, HTSUS, the Speedy Moisture Tester is not considered an electrical instrument for classification purposes. Additional U.S. Note 2 to chapter 90 addresses the term “electrical” and states as follows:

For the purposes of this chapter, the term “electrical” when used in reference to instruments, appliances, apparatus and machines, refers to those articles the operation of which depends on an electrical phenomenon which varies according to the factor to be ascertained.

Customs notes that the “Moisture Meter-Sonde Hygrometrique,” described above, is considered an “electrical” instrument because of the process employed by that model to determine the moisture content of soil. The instru-

ment determines moisture content by having the user insert a metal rod composed of zinc and copper into the soil that is being measured. The rod is then reacted by the milli-voltage in the soil to obtain an accurate reading. As such, this moisture meter relies in part on electricity in order to obtain a reading because the proportional variation of voltage in different soil samples will yield different results. In contrast, the Speedy Moisture Tester deduces moisture content by ascertaining the percentage of moisture in acetylene gas, which was obtained by reacting the soil or other aggregate material with a calcium carbide reagent to form the acetylene gas. Although the instrument is powered by electricity, it is distinguishable from instruments of chapter 90 that are termed “electrical” because there is no variance in the electrical current that can affect the outcome of the measurement process. Therefore, the Speedy Moisture Tester is not an electrical instrument.

Finally, the Speedy Moisture Tester appears to be a non-recording instrument because it is not designed to record changes in the moisture content of a sample over time, as would a hygrograph. EN 90.25 states that hygrographs are “similar to hair hygrometers but record variations of relative humidity. . .” Similarly, Webster’s Third New International Dictionary of the English Language Unabridged (1993), defines “hygrograph” as “an instrument for recording automatically variations in the humidity of the atmosphere.” Presumptively, the information obtained by a hygrograph is used to construct a graph over time that documents these atmospheric variations. These definitions for a hygrograph are in keeping with its *eo nomine* designation under subheading 9025.80.40, HTSUS, which provides for “. . . hygrographs and other **recording instruments**” [Emphasis added]. This subheading constitutes the only direct reference to “recording instruments” within heading 9025, HTSUS. In contrast, hygrometers are specifically provided for under subheading 9025.80.35, HTSUS and it is apparent that the HTSUS does not contemplate a hygrometer, other than a hygrograph, which includes a recording capability. Furthermore, the Speedy Moisture Tester does not possess the ability to record data variations between diverse samples with the intent of constructing a graph or similar means by which to record variations between samples. In view of the foregoing, the Speedy Moisture Tester is classified under subheading 9025.80.35, HTSUS, as a non-recording hygrometer.

**HOLDING:**

Under the authority of GRI 1, the Speedy Moisture Tester is classified under subheading 9025.80.3500, HTSUSA, as “Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments; parts and accessories thereof: Other instruments: Other: Hygrometers and psychrometers, non-recording.” The applicable rate of duty is 1.4 percent *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY 895922 is REVOKED.

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*



## [ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

**HQ 966941**

July 20, 2004

**CLA-2 RR:CR:GC 966941 NSH**

**CATEGORY:** Classification

**TARIFF NO.:** 9025.80.3500

MR. KERRY J. KIGGINS  
METTLER TOLEDO, INC.  
60 Collegeview Road  
Westerville, OH 43081

**RE:** HQ 089800 and NY 860128 revoked; Moisture Analyzer

DEAR MR. KIGGINS:

This is in response to your letter of December 29, 2003, requesting reconsideration of HQ 089800, dated September 13, 1991, on the classification of a moisture analyzer under the Harmonized Tariff Schedule of the United States (HTSUS). Your letter has been referred to this office for reply.

**FACTS:**

The merchandise at issue is the Mettler LJ16 moisture analyzer. NY 860128, dated February 21, 1991, held that the moisture analyzer was classified under subheading 9027.80.80, HTSUS (1991), as "Other instruments and apparatus for physical and chemical analysis . . . Other." At that time, your Customs representative stated that the moisture analyzer was an electronic balance and should have been classified under subheading 9016.00.20, HTSUS (1991), or subheading 8514.10.00, HTSUS (1991). This classification as set forth in NY 860128 was affirmed by HQ 089800.

The LJ16 moisture analyzer is used in operations where the moisture content of the same materials has to be routinely determined daily, i.e., quality assurance operations and production processes. Essentially, it consists of a weighing scale called a balance and an infrared dryer. After placing a sample on the balance and closing the lid, the weight of the sample is automatically recorded. Immediately thereafter, the sample is dried with the use of infrared radiation. Upon completion of the drying process, the moisture content of the sample is displayed in grams and by a percentage. In addition, data on the drying time and temperature can be obtained.

In requesting this reconsideration, Mettler claims classification of the Moisture Analyzer under subheading, 9027.80.45, HTSUS (2004), which provides for instruments and apparatus for physical or chemical analysis. Because HQ 089800 was itself a reconsideration of NY 860128, this ruling letter also applies to that NY ruling.

In addition, you also have provided information on five models of moisture analyzer, HB43, HG63, HG63P, HR83 and HR83P, all of which feature a halogen dryer and appear substantially similar in both primary function and measuring technique to the LJ16 at issue.

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 HQ 089800 and

NY 860128, as described below, was published in the Customs Bulletin on June 16, 2004. No comments were received in response to the notice.

**ISSUE:**

Whether the LJ16 moisture analyzer is a hygrometer of heading 9025.

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. The ENs, although neither dispositive or legally binding, facilitate classification by providing a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

9025	Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments; parts and accessories thereof:
9025.80	Other instruments:
	Other:
9025.80.35	Hygrometers and psychrometers, non-recording
*	* * * * *
9025.80.40	Thermographs, barographs, hygrographs and other recording instruments
*	* * * * *
9027	Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes; parts and accessories thereof:
9027.80	Other instruments and apparatus:
	Other:
9027.80.45	Electrical
*	* * * * *
9027.80.80	Other

In HQ 089800, Customs classified the LJ16 moisture analyzer under sub-heading 9027.80.80, HTSUS (there have been no changes to the HTSUS

with regard to this subheading since the issuance of HQ 089800). You assert that the LJ16 is classified under subheading 9027.80.45, HTSUS, because it is “electrical.”

The LJ16 moisture analyzer is designed to determine the moisture content of a material. It accomplishes this by having the user place the sample material, which in the case of the LJ16 is a sample of solid matter, on a balance; the weight of the sample is then recorded. Subsequently, infrared radiation is used to dry the sample, which is again weighed. The divergence between the two measurements, if any, is on account of the moisture content of the sample. It is because of the drying process that the moisture content is quantifiable; it is displayed in grams and as a percentage of the whole sample.

EN 90.25 states in pertinent part as follows:

(D) **Hygrometers and Hygrographs**

These are used to determine the moisture content of the air, other gases or solid matter. The main types are:

- (1) **Chemical hygrometers**, based on absorption of moisture by chemical substances which are then weighed.

...

EN 90.27 states in pertinent part as follows:

This heading also **excludes**:

...

- (h) Hydrometers, thermometers, hygrometers and similar instruments of **heading 9025**, whether or not for use in laboratories.

Customs notes initially that the moisture analyzer at issue is not substantially similar to the exemplars listed in EN 90.27, as there is no example therein of a device that determines the moisture content of a sample. In contrast, EN 90.25 (D) describes hygrometers as being used to “determine the moisture content of . . . **solid matter**” [Emphasis added], and the description of chemical hygrometers is substantially similar to the moisture analyzer at issue. Although the chemical hygrometer is described as weighing a chemical substance subsequent to the absorption of moisture in order to determine moisture content, and the LJ16 is described as measuring the reduced weight of a solid subsequent to the evaporation of moisture in order to determine moisture content, we note that this method of weighing and measuring is essentially the same process. It should be noted that the meaning of an *eo nomine* designation is determined as of the effective date of the tariff statute, but will nevertheless include all articles subsequently created which fairly come within its scope. *Sears Roebuck & Co. v. United States*, 46 CCPA 79, C.A.D. 701 (1959); *Hoyt, Shetston & Sciaroni et al.*, 52 CCPA 101, C.A.D. 865 (1965). Furthermore, if the difference is in the nature of an improvement and the essential character is preserved or incidentally altered, an unlimited *eo nomine* designation will include it. *Robert Bosch Corp. et al. V. United States*, 63 Cust. Ct. 96, 103–104, C.D. 3881 (1969). As such, although the LJ16 was previously classified under heading 9027, HTSUS, it is provided for under heading 9025, HTSUS. Therefore, the exclusion within EN 90.27 is applicable and consequently the LJ16 cannot be classified under heading 9027, HTSUS.

Customs has previously ruled that devices used for measuring the moisture content of a solid are classified under heading 9025, HTSUS. In NY E86303, dated September 14, 1999, Customs classified a moisture meter under subheading 9025.80.35, HTSUS. Although differing significantly in both design and sensitivity from the LJ16, this moisture meter was likewise designed to measure the moisture content in a solid, namely the presence of liquid water in soil. Similarly, in NY G86536, dated February 15, 2001, Customs classified a moisture meter under subheading 9025.80.10, HTSUS. The product, called the "Moisture Meter-Sonde Hygrometrique," measured the moisture content of soil and therefore is also functionally equivalent to the LJ16.

Within heading 9025, HTSUS, the LJ16 is not considered an electrical instrument for classification purposes. Additional U.S. Note 2 to chapter 90 addresses the term "electrical" and states as follows:

For the purposes of this chapter, the term "electrical" when used in reference to instruments, appliances, apparatus and machines, refers to those articles the operation of which depends on an electrical phenomenon which varies according to the factor to be ascertained.

Customs notes that the "Moisture Meter-Sonde Hygrometrique," described above, is considered an "electrical" instrument because of the process employed by that model to determine the moisture content of soil. The instrument determines moisture content by having the user insert a metal rod composed of zinc and copper into the soil that is being measured. The rod is then reacted by the milli-voltage in the soil to obtain an accurate reading. As such, this moisture meter relies in part on electricity in order to obtain a reading because the proportional variation of voltage in different soil samples will yield different results. In contrast, the LJ16 operates by determining the divergence of weight from a sample, subsequent to that sample being dried by infrared radiation. Although the instrument is powered by electricity, it is distinguishable from instruments of chapter 90 that are termed "electrical" because there is no variance in the electrical current that can affect the outcome of this process. Rather, it is deduced by a calculation involving the divergence from the first and second weighing of the sample. Therefore, the LJ16 is not an electrical instrument.

Finally, the LJ16 moisture analyzer appears to be a non-recording instrument because it is not designed to record changes in the moisture content of a sample over time, as would a hygrograph. EN 90.25 states that hygrographs are "similar to hair hygrometers but record variations of relative humidity. . ." Similarly, Webster's Third New International Dictionary of the English Language Unabridged (1993), defines "hygrograph" as "an instrument for recording automatically variations in the humidity of the atmosphere." Presumptively, the information obtained by a hygrograph is used to construct a graph over time that documents these atmospheric variations. These definitions for a hygrograph are in keeping with its *eo nomine* designation under subheading 9025.80.40, HTSUS, which provides for ". . . hygrographs and other **recording instruments**" [Emphasis added]. This subheading constitutes the only direct reference to "recording instruments" within heading 9025, HTSUS. In contrast, hygrometers are specifically provided for under subheading 9025.80.35, HTSUS and it is apparent that the HTSUS does not contemplate a hygrometer, other than a hygrograph, which includes a recording capability. Furthermore, the LJ16

moisture analyzer, although containing some limited electronic memory of individual sample measurements, does not possess the ability to record data variations between diverse samples with the intent of constructing a graph or similar means by which to display variations between samples.

In view of the foregoing, the LJ16 is classified under subheading 9025.80.35, HTSUS, as a non-recording hygrometer. You have also submitted information regarding five additional models of moisture analyzers. Because Customs believes the HB83, HG63, HG63P, HR83 and HR83P moisture analyzers are updated models of the LJ16, substantially equivalent in both their primary function and measuring technique, they would also be classified under subheading 9025.80.35, HTSUS.

**HOLDING:**

Under the authority of GRI 1, the LJ16, HB83, HG63, HG63P, HR83 and HR83P moisture analyzers are classified under subheading 9025.80.3500, HTSUSA, as "Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments; parts and accessories thereof: Other instruments: Other: Hygrometers and psychrometers, non-recording." The applicable rate of duty is 1.4 percent *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

HQ 089800 and NY 860128 are REVOKED.

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

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