

# Bureau of Customs and Border Protection

## *General Notices*

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, January 28, 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.*

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### 19 CFR PART 177

#### REVOCATION AND MODIFICATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN ELECTRONIC HANG TAGS

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

**ACTION:** Notice of revocation and modification of ruling letters, and revocation of treatment relating to tariff classification of certain electronic hang tags.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two ruling letters and modifying one ruling letter pertaining to the tariff classification of certain electronic hang tags under the Harmonized Tariff Schedule of the United States (“HTSUS”) and revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the Customs Bulle-

tin on November 19, 2003. No comments were received in response to the notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 11, 2004.

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

**SUPPLEMENTARY INFORMATION:**

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the Customs Bulletin on November 19, 2003, proposing to revoke two ruling letters and modify one ruling letter pertaining to the tariff classification of certain electronic hang tags. No comments were received in response to the notice.

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

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

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

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY 801735 and NY C80921 and is modifying NY H83244 in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 966784, HQ 966785, and HQ 966786, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs to substantially identical transactions. HQ 966784, HQ 966785, and HQ 966786 are set forth as Attachments A, B, and C, respectively, 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: January 21, 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 966784**

January 21, 2004

**CLA-2 RR:CR:GC 966784 GOB**

**CATEGORY: Classification**

**TARIFF NO.: 8543.81.00**

ABEL MEDINA  
PARKER & COMPANY  
P.O. Box 271  
4694 Coffee Port Road  
Brownsville, TX 78521

**RE:** Modification of NY 801735; Electronic Hang tag

DEAR MR. MEDINA:

This letter is with respect to NY 801735 dated September 28, 1994, which was issued to you on behalf of Asset Protection, Inc. with respect to the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of certain hang tags. We have reviewed NY 801735 and believe one of the classifications therein is incorrect. This ruling sets forth the correct classification.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY 801735, as described below, was published in the Customs Bulletin on November 19, 2003. No comments were received in response to the notice.

**FACTS:**

NY 801735 involved the classification of an electronic hang tag and an ink tag. This modification of that ruling pertains only to the electronic hang tag, which was described as follows:

The electronic tag contains an inductive coil that is tuned to a certain frequency. When passed through two antennas that are set to a selected frequency, the signal is picked up and an alarm is triggered.

In NY 801735, Customs classified the electronic hang tag in subheading 8531.90.90, HTSUS, as: "Electric sound or visual signaling apparatus. . . parts thereof: Parts: Other: Other." We now believe the hang tag is classified in subheading 8543.81.00, HTSUS, as: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Proximity cards and tags."

**ISSUE:**

What is the classification under the HTSUS of the subject electronic hang tag?

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tar-

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

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

The HTSUS provisions under consideration are as follows:

8531	Electric sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof:
8531.90	Parts:
	Other:
8531.90.90	Other
*	* * * *
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	Other machines and apparatus:
8543.81.00	Proximity cards and tags

EN 85.31 provides that heading 8531, HTSUS, includes, *inter alia*, the following: electric bells, buzzers, door chimes; electric sound signaling apparatus, horns, sirens; other electrical signalling apparatus for vehicles; indicator panels; burglar alarms; fire alarms; electric vapor or gas alarms; and flame alarms.

EN 85.43 provides in pertinent part as follows:

The heading includes, *inter alia*:

...

(14) **Proximity cards or tags and electronic proximity cards/tags**, which may or may not have a magnetic stripe. Proximity cards/tags usually consist of an integrated circuit with a read only memory, which is attached to a printed antenna. The card/tag operates by creating a field interference (the nature of which is determined by a code contained in the read only memory) at the antenna in order to affect a signal transmitted from, and reflected back to, the reader. This type of card/tag does not transmit data.

We find that the electronic tags are not of the class or kind of goods described in heading 8531, HTSUS, and EN 85.31. They are not among the goods enumerated in EN 85.31. We find, therefore, that they are not described in heading 8531, HTSUS.

The electronic hang tags are, in essence, electronic proximity tags as described in EN 85.43, above. We find that they are described in heading 8543,

HTSUS, and are classified in subheading 8543.81.00, HTSUS, as: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter. . . : Other machines and apparatus: Proximity cards and tags."

**HOLDING:**

The electronic hang tags are classified in subheading 8543.81.00, HTSUS, as: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter . . . : Other machines and apparatus: Proximity cards and tags."

**EFFECT ON OTHER RULINGS:**

NY 801735 is modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after 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 966785**  
January 21, 2004  
**CLA-2 RR:CR:GC 966785 GOB**  
**CATEGORY: Classification**  
**TARIFF NO.: 8543.81.00**

PEARL SZEWCZYK  
AMERI-CAN CUSTOMHOUSE BROKERS, INC.  
*15 Lawrence Bell Drive*  
*Amherst, NY 14221*

**RE:** Revocation of NY C80921; Electronic Hang tags

DEAR MS. SZEWCZYK:

This letter is with respect to NY C80921 dated November 10, 1997, which was issued to you on behalf of ID Security Systems with respect to the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of certain electronic hang tags. We have reviewed NY C80921 and believe it is incorrect. This ruling sets forth the correct classification.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY C80921, as described below, was published in the Customs Bulletin on November 19, 2003. No comments were received in response to the notice.

**FACTS:**

In NY C80921, the electronic hang tag was described as follows:

. . . the radio frequency tag is a 2 inch X 2.5 inch rectangular device which is designed to be affixed to a book or other object and used in con-

junction with an alarm system. The tag is comprised of a layer of paper, polythene, an aluminum antenna coil, and a capacitor. In operation, the capacitor tunes the coil to a designated frequency. When the antenna coil comes in contact with the radio frequency signal sent out by the anti-shoplifting alarm apparatus, the coil resonates at the frequency which is recognized by the anti-shoplifting alarm.

In NY C80921 Customs classified the subject hang tag in subheading 8531.90.90, HTSUS, as: "Electric sound or visual signaling apparatus. . .; parts thereof: Parts: Other: Other." We now believe the hang tag is classified in subheading 8543.81.00, HTSUS, as: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Proximity cards and tags."

**ISSUE:**

What is the classification under the HTSUS of the subject electronic hang tags?

**LAW AND ANALYSIS:**

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

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

The HTSUS provisions under consideration are as follows:

8531	Electric sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof:
8531.90	Parts:
	Other:
8531.90.90	Other
*	* * * *
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	Other machines and apparatus:
8543.81.00	Proximity cards and tags

EN 85.31 provides that heading 8531, HTSUS, includes, *inter alia*, the following: electric bells, buzzers, door chimes; electric sound signaling appara-

tus, horns, sirens; other electrical signalling apparatus for vehicles; indicator panels; burglar alarms; fire alarms; electric vapor or gas alarms; and flame alarms.

EN 85.43 provides in pertinent part as follows:

The heading includes, *inter alia*:

...

(14) **Proximity cards or tags and electronic proximity cards/tags**, which may or may not have a magnetic stripe. Proximity cards/tags usually consist of an integrated circuit with a read only memory, which is attached to a printed antenna. The card/tag operates by creating a field interference (the nature of which is determined by a code contained in the read only memory) at the antenna in order to affect a signal transmitted from, and reflected back to, the reader. This type of card/tag does not transmit data.

We find that the subject electronic hang tags are not of the class or kind of goods described in heading 8531, HTSUS, and EN 85.31. They are not among the goods enumerated in EN 85.31. We find, therefore, that they are not described in heading 8531, HTSUS.

The electronic hang tags are, in essence, electronic proximity tags as described in EN 85.43, above. We find that they are described in heading 8543, HTSUS, and are classified in subheading 8543.81.00, HTSUS, as: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter. . . : Other machines and apparatus: Proximity cards and tags."

**HOLDING:**

The electronic hang tags are classified in subheading 8543.81.00, HTSUS, as: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter. . . : Other machines and apparatus: Proximity cards and tags."

**EFFECT ON OTHER RULINGS:**

NY C80921 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after 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 966786**

January 21, 2004

**CLA-2 RR:CR:GC 966786 GOB**

**CATEGORY: Classification**

**TARIFF NO.: 8543.81.00**

CURTIS W. KNAUSS  
NEVILLE PETERSON LLP  
80 Broad Street  
New York, NY 10004

**RE:** Revocation of NY H83244; Electronic Hang tags

DEAR MS. KNAUSS:

This letter is with respect to NY H83244 dated August 6, 2001, which was issued to you on behalf of Target Corporation with respect to the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of certain electronic hang tags. We have reviewed NY H83244 and believe it is incorrect. This ruling sets forth the correct classification.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY H83244, as described below, was published in the Customs Bulletin on November 19, 2003. No comments were received in response to the notice.

**FACTS:**

In NY H83244, the electronic hang tag was described as follows:

... the hang tag consists of a radio frequency circuit sandwiched between printed paper or cardboard labels. In operation, the radio frequency circuit interacts with a transmitter and receiver to trigger an alarm in cases where the tag has not been deactivated by a cashier.

In NY H83244 Customs classified the subject hang tag in subheading 8531.90.90, HTSUS, as: "Electric sound or visual signaling apparatus . . . : parts thereof: Parts: Other: Other." We now believe the hang tag is classified in subheading 8543.81.00, HTSUS, as: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Proximity cards and tags."

**ISSUE:**

What is the classification under the HTSUS of the electronic hang tag?

**LAW AND ANALYSIS:**

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



**HOLDING:**

The electronic hang tags are classified in subheading 8543.81.00, HTSUS, as: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter. . . : Other machines and apparatus: Proximity cards and tags."

**EFFECT ON OTHER RULINGS:**

NY H83244 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

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

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**19 CFR PART 177****PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF AL-PTBBA AND PARA-T-BUTYL BENZOIC ACID ALUMINUM SALT**

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

**ACTION:** Notice of proposed revocation of two tariff classification ruling letters and treatment relating to the classification of AL-PTBBA and para-t-Butylbenzoic acid aluminum salt.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke two rulings concerning the tariff classification of AL-PTBBA and para-t-Butylbenzoic acid aluminum salt, respectively, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATE:** Comments must be received on or before March 12, 2004.

**ADDRESS:** Written comments are to be addressed to Bureau of Customs and Border Protection, Office of Regulation and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at 799 9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

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

**SUPPLEMENTARY INFORMATION:**

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of AL-PTBBA and to revoke a ruling pertaining to the classification of para-t-Butylbenzoic acid aluminum salt. Although in this notice Customs is specifically referring to New York Ruling Letter (NY) 867971, dated November 21, 1991, and NY B80857, dated February 18, 1997, respectively, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to those identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs

intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY 867971 and in NY B80857, the merchandise was classified in subheading 2916.39.45, HTSUS, the provision for "Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Products described in additional U.S. note 3 to section VI." NY 867971 and NY B80857 are set forth as Attachments A and B, respectively, to this document. It is now Customs position that one of the two names given for the substance in each of the rulings was not correctly identified. We are proposing to revoke both rulings to clearly identify the two substances and their respective CAS registry numbers in each ruling, and correctly classify each substance.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY 867971 and NY B80857, and any other ruling not specifically identified, to reflect the proper classification, names and CAS numbers of the merchandise pursuant to the analysis set forth in proposed HQs 966773 and 966774, which are set forth as Attachment C and D, respectively, to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: January 23, 2004

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

Attachments

[ATTACHMENT A]

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

**NY 867971**

November 21, 1991

CLA-2-29:S:N:N1:240 867971

CATEGORY: Classification

TARIFF NO.: 2916.39.4000

MR. A. J. SPATARELLA  
KANEMATSU USA  
114 West 47 Street  
New York, N.Y. 10036

RE: The tariff classification of AL-PTBBA from Japan

DEAR MR. SPATARELLA:

In your letter dated October 19, 1991, you requested a tariff classification ruling.

The applicable HTS subheading for AL-PTBBA, CAS# 13170-05-3, also known as bis [4-(1,1-dimethylethyl) benzoato-o] hydroxy aluminum will be 2916.39.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: other. The duty rate will be 13.5 percent ad valorem.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE  
*Area Director,  
New York Seaport.*

[ATTACHMENT B]

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

**NY B80857**

February 18, 1997

CLA-2-29:RR:NC:2:240 B80857

CATEGORY: Classification

TARIFF NO.:2916.39.4500

MR. JOSEPH J. CHIVINI  
AUSTIN CHEMICAL COMPANY, INC.  
*1565 Barclay Boulevard*  
*Buffalo Grove,*  
*Illinois 60089-4537*

RE: The tariff classification of Para-t-Butyl benzoic acid aluminum salt  
(CAS # 13170-05-3) from Japan

DEAR MR. CHIVINI:

In your letter dated December 23, 1996, you requested a tariff classification ruling. The applicable subheading for Para-t-Butyl benzoic acid aluminum salt also known as Bismethylethylbenzoatohydroxy aluminum will be 2916.39.4500, Harmonized Tariff Schedule of the United States (HTS), which provides for aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: other: other: other: products described in additional U.S. note 3 to section VI. The rate of duty will be 11.4 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stephanie Joseph at 212-466-5768.

GWENN KLEIN KIRSCHNER,  
*Chief, Special Products Branch,*  
*National Commodity Specialist Division.*

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 966773  
CLA-2 RR:CR:GC 966773 AM  
**CATEGORY:** CLASSIFICATION  
**TARIFF NO.:** 2916.39.45; 2916.39.75

MR. A.J. SPATARELLA  
KANEMATSU USA  
114 West 47th Street  
New York, N.Y. 10036

Re: AL-PTBBA, bis [4-(1,1-dimethylethyl) benzoato-o] hydroxy aluminum;  
Revocation of NY 867971

DEAR MR. SPATARELLA:

This is regarding New York Ruling Letter (NY) 867971, issued to you on November 21, 1991, classifying "AL-PTBBA also known as bis [4-(1,1-dimethylethyl) benzoato-o] hydroxy aluminum, CAS 13170-05-3," [sic] under the Harmonized Tariff Schedule of the United States (HTSUS), in subheading 2916.39.45, the provision for "Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Products described in additional U.S. note 3 to section VI." We have now discovered that NY 867971 referred to two different substances, AL-PTBBA, CAS # 4067-14-5 and bis [4-(1,1-dimethylethyl) benzoato-o] hydroxy aluminum, CAS # 13170-05-3, each classified under different subheadings. We propose to revoke NY 867971 to correct and clarify the classification of the named products.

**FACTS**

The product is a salt of an aromatic monocarboxylic acid. CAS Number 13170-05-3, which was used in reference to the product in NY 867971, is not listed in the chemical appendix whereas CAS Number 4067-14-5, which was not referenced in NY 867971, is listed in the chemical appendix to the HTSUS.

A review of **CAS # 13170-05-3** results in the following chemical names and formulae:

Aluminum, bis [4-(1,1-dimethylethyl)benzoato-kO]hydroxy- (TSCA, PICCS)

Aluminum, bis [4-(1,1-dimethylethyl)benzoato-O]hydroxy- (NDSL)

Bis [4-(tert-butyl)benzoato-O]hydroxyaluminium (English, French, German) (NDSL, EINECS)

bis [4-(terc-butyl)benzoato-O]hidroxialuminio (Spanish) (EINECS)

Aluminium, bis [4-(1,1-dimethylethyl)benzoato-O]hydroxy- (AICS)

Bis [4-(1,1-dimethylethyl)benzoato-O]hydroxy aluminum (ECL, PICCS)

BIS [4-(1,1-DIMETHYLETHYL)BENZOATO-O] HYDROXY ALUMINUM (PICCS)

ALPTBB 300

Aluminum hydroxy-di-p-tert-butylbenzoate

Aluminum hydroxybis [4-(tert-butyl)benzoate]



Aluminum, bis (p-tert-butylbenzoato)hydroxy-  
 Aluminum, bis [4-(1,1-dimethylethyl)benzoato-O]-, hydroxide  
 Aluminum, bis [4-(1,1-dimethylethyl) benzoate-O]hydroxide  
 Bis (p-tert-butyl benzoate)hydroxyaluminum  
 Hydroxyaluminum bis (p-tert-butylbenzoate)  
 S 4030  
 Sandostab 4030  
 YK  
 YK (nucleation agent)  
 FORMULA:  $C_{22}H_{27}AlO_5$

A search for **CAS #4067-14-5** results in the following chemical names and formulae:

Para-tert-butyl benzoic acid aluminum salt  
 Benzoic acid, 4-(1,1-dimethylethyl)-, aluminum salt (TSCA, NDSL, ENCS)  
 4-(1,1-Dimethylethyl)benzoate d'aluminium (French) (NDSL, EINECS)  
 aluminium 4-(1,1-dimethylethyl)benzoate (EINECS)  
 Aluminium-4-(1,1-dimethylethyl)benzoat (German) (EINECS)  
 4-(1,1-dimetiletel)benzoato de aluminio (Spanish) (EINECS)  
 Al 300  
 Al 300 (nucleating agent)  
 Aluminium p-tert-butylbenzoate  
 Aluminum 4-tert-butylbenzoate  
 Aluminum p-tert-butylbenzoate  
 APBB  
 Benzoic acid, p-tert-butyl-, aluminum salt  
 p-tert-Butylbenzoic acid aluminum salt  
 PTBBA-AL  
 FORMULA:  $C_{11}H_{14}O_2 \cdot 1:3Al$

#### ISSUE

What is the classification, in the HTSUS, of AL-PTBBA, bis [4-(1,1-dimethylethyl) benzoato-o] hydroxy aluminum, and products assigned CAS 13170-05-3?

#### LAW AND ANALYSIS

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the sub-headings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a

commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See, T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS provisions under consideration are the following:

- 2916            Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:
- Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives:
- 2916.39            Other:
- Other:
- Other:
- 2916.39.45            Products described in additional U.S. note 3 to section VI
- 2916.39.75            Other

Additional U.S. Note 3 to Section VI, HTSUS, provides:

The term "products described in additional U.S. note 3 to section VI" refers to "any product not listed in the Chemical Appendix to the Tariff Schedule and—"

- (a) For which the importer furnishes the Chemical Abstracts Service (C.A.S.) registry number and certifies that such registry number is not listed in the Chemical Appendix to the Tariff Schedule; or
- (b) Which the importer certifies not to have a C.A.S. registry number and not to be listed in the Chemical Appendix to the Tariff Schedule, either under the name used to make Customs entry or under any other name by which it may be known.

In NY 867971, the merchandise was identified by two different names, AL-PTBBA and bis [4-(1,1-dimethylethyl) benzoato-o] hydroxy aluminum. These are actually two different products. Only bis [4-(1,1-dimethylethyl) benzoato-o] hydroxy aluminum is assigned CAS # 13170-05-3, mentioned in the ruling, while AL-PTBBA is assigned CAS # 4067-14-5. CAS # 13170-05-3 is not listed in the Chemical Appendix but CAS # 4067-14-5 is so listed. Therefore, the classification for bis [4-(1,1-dimethylethyl) benzoato-o] hydroxy aluminum, CAS # 13170-05-3, and all other substances assigned this CAS number listed in the FACTS section of this ruling, is subheading 2916.39.45, the provision for "Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Products described in additional U.S. note 3 to section VI." The classification for AL-PTBBA, CAS # 4067-14-5 and all other substances assigned this CAS number listed in the FACTS section of this ruling, is 2916.39.75, the provision for "Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, ni-

trated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Other.”

#### **HOLDING**

The classification for bis [4-(1,1-dimethylethyl) benzoato-o] hydroxy aluminum, CAS # 13170-05-3, and all other substances assigned this CAS number listed in the FACTS section of this ruling, is subheading 2916.39.45, the provision for “Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Products described in additional U.S. note 3 to section VI.”

The classification for AL-PTBBA, CAS # 4067-14-5, and all other substances assigned this CAS number listed in the FACTS section of this ruling, is 2916.39.75, the provision for “Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Other.”

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

NY 867971 is REVOKED to reflect the correct classification of the two different products named.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 966774  
CLA-2 RR:CR:GC 966774 AM  
**CATEGORY: CLASSIFICATION**  
**TARIFF NO.:** 2916.39.45, 2916.39.75

MR. JOSEPH J. CHIVINI  
AUSTIN CHEMICAL COMPANY, INC.  
1565 Barclay Blvd.  
Buffalo Grove, IL 60089-4537

**Re:** para-t-Butylbenzoic acid aluminum salt; Bismethylethylbenzoatohydroxy aluminum, CAS 13170-05-3; Revocation of NY B80857

DEAR MR. CHIVINI:

This is regarding New York Ruling Letter (NY) B80857, issued to you on February 18, 1997, classifying “Para-t-Butyl benzoic acid aluminum salt, Bismethylethylbenzoatohydroxy aluminum, CAS 13170-05-3,” (sic) under the Harmonized Tariff Schedule of the United States (HTSUS), in subheading 2916.39.45, the provision for “Unsaturated acyclic monocarboxylic acids,

cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Products described in additional U.S. note 3 to section VI.”

We have now discovered that one of the chemical names used in NY B80857 is not assigned the CAS number used therein. We propose to revoke NY B80857 to clarify the correct classification of these two different products.

#### FACTS

Customs Laboratory Report, NY20030419, dated July 10, 2003, analyzing a similar product, states, in pertinent part, the following:

Product Name: p-tert-Butylbenzoic acid, aluminum salt  
 CAS Registry Name: 4-(1,1-Dimethylethyl)Benzoic Acid, Aluminum Salt  
 CAS Number: 4067-14-5

Which is listed in the chemical appendix (HTSUS 2003).

Stated use: Not Provided  
 Report: The product is a salt of an aromatic monocarboxylic acid . . .  
 Product Name: Bismethylethylbenzoatohydroxy aluminum  
 CAS Registry Name: BIS[94-91,1,-dimethylethyl]benzoato-KO]Hydroxyaluminum  
 CAS Number: 13170-05-03

Which is not listed in the chemical appendix (HTSUS 2003).

Stated use: Not provided  
 Report: The product is a salt of an aromatic monocarboxylic acid . . .  
 Comment: The two product (sic) are different compounds with different CAS names and numbers.

A review of **CAS # 13170-05-3** results in the following chemical names and formulae:

Aluminum, bis[4-(1,1-dimethylethyl)benzoato-kO]hydroxy- (TSCA, PICCS)  
 Aluminum, bis[4-(1,1-dimethylethyl)benzoato-O]hydroxy- (NDSL)  
 Bis[4-(tert-butyl)benzoato-O]hydroxyaluminium (English, French, German) (NDSL, EINECS)  
 bis[4-(terc-butil)benzoato-O]hidroxialuminio (Spanish) (EINECS)  
 Aluminium, bis[4-(1,1-dimethylethyl)benzoato-O]hydroxy- (AICS)  
 Bis[4-(1,1-dimethylethyl)benzoato-O]hydroxy aluminum (ECL, PICCS)  
 BIS[4-(1,1-DIMETHYLETHYL)BENZOATO-O] HYDROXY ALUMINUM (PICCS) ALPTBB 300

Aluminum hydroxy-di-p-tert-butylbenzoate  
 Aluminum hydroxybis[4-(tert-butyl)benzoate]  
 Aluminum, bis(p-tert-butylbenzoato)hydroxy-  
 Aluminum, bis[4-(1,1-dimethylethyl)benzoato-O]-, hydroxide  
 Aluminum, bis[4-(1,1-dimethylethyl) benzoate-O]hydroxide  
 Bis(p-tert-butyl benzoate)hydroxyaluminum  
 Hydroxyaluminum bis(p-tert-butylbenzoate)  
 S 4030  
 Sandostab 4030  
 YK  
 YK (nucleation agent)  
 FORMULA: C<sub>22</sub>H<sub>27</sub>AlO<sub>5</sub>

A search for **CAS #4067-14-5** results in the following chemical names and formulae:

para-tert-Butylbenzoic acid aluminum salt  
 Benzoic acid, 4-(1,1-dimethylethyl)-, aluminum salt (TSCA, NDSL, ENCS)  
 4-(1,1-Dimethylethyl)benzoate d'aluminium (French) (NDSL, EINECS)  
 aluminium 4-(1,1-dimethylethyl)benzoate (EINECS)  
 Aluminium-4-(1,1-dimethylethyl)benzoat (German) (EINECS)  
 4-(1,1-dimetiletil)benzoato de aluminio (Spanish) (EINECS)  
 Al 300  
 Al 300 (nucleating agent)  
 Aluminium p-tert-butylbenzoate  
 Aluminum 4-tert-butylbenzoate  
 Aluminum p-tert-butylbenzoate  
 APBB  
 Benzoic acid, p-tert-butyl-, aluminum salt  
 p-tert-Butylbenzoic acid aluminum salt  
 PTBBA-AL  
 FORMULA: C<sub>11</sub>H<sub>14</sub>O<sub>2</sub>.1:3Al

#### ISSUE

Where are para-t-Butylbenzoic acid, aluminum salt, CAS 4067-14-5, and Bismethylethylbenzoatohydroxy aluminum, CAS 13170-05-03, classified in the HTSUS?

#### LAW AND ANALYSIS

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may

be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See*, T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS provisions under consideration are the following:

2917           Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:

Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives:

2917.39           Other:

Other:

Other:

2916.39.45           Products described in additional U.S. note 3 to section VI

2916.39.75           Other

Additional U.S. Note 3 to Section VI, HTSUS provides:

The term "products described in additional U.S. note 3 to section VI" refers to "any product not listed in the Chemical Appendix to the Tariff Schedule and—"

- (a) For which the importer furnishes the Chemical Abstracts Service (C.A.S.) registry number and certifies that such registry number is not listed in the Chemical Appendix to the Tariff Schedule; or
- (b) Which the importer certifies not to have a C.A.S. registry number and not to be listed in the Chemical Appendix to the Tariff Schedule, either under the name used to make Customs entry or under any other name by which it may be known.

In NY B80857, the merchandise was identified by two different names, para-t-Butylbenzoic acid aluminum salt and Bismethylethylbenzoatohydroxy aluminum. We have now discovered that these are two different substances. The merchandise was also identified by CAS # 13170-05-3, which corresponds to the chemical name Bismethylethylbenzoatohydroxy aluminum. CAS # 13170-05-3 is not listed in the Chemical Appendix. Bismethylethylbenzoatohydroxy aluminum, and all of the substances with the chemical names listed in the FACTS section of this document, *supra*, under CAS # 13170-05-3, are classified in subheading 2916.39.45, the provision for "Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Products described in additional U.S. note 3 to section VI."

The correct CAS # for para-t-Butylbenzoic acid aluminum salt is 4067-14-5, which is listed in the chemical appendix. Para-t-Butylbenzoic acid aluminum salt, and all of the substances with the chemical names listed in the FACTS section of this document, *supra*, under CAS # 4067-14-5, are classi-

fied in subheading 2916.39.75, the provision for “Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Other.”

**HOLDING**

Bismethylethylbenzoatohydroxy aluminum, CAS # 13170-05-3, is classified in subheading 2916.39.45, the provision for “Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Products described in additional U.S. note 3 to section VI.”

Para-t-Butylbenzoic acid aluminum salt, CAS # 4067-14-5, is classified in subheading 2916.39.75, the provision for “Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Other.”

**EFFECT ON OTHER RULINGS**

NY B80857 is REVOKED.

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

—

**REVOCATION AND MODIFICATION OF RULING LETTERS AND  
REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF MEN'S SWIMWEAR**

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

**ACTION:** Notice of revocation of a tariff classification ruling letter and modification of one ruling letter and revocation of any treatment relating to the classification of certain men's garments.

**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 revoking one ruling letter, New York Ruling Letter (NY) I84257, and modifying one ruling letter New York Ruling Letter (NY) I80536, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain men's garments. Similarly, CBP is revoking any treatment previously ac-

corded by it to substantially identical merchandise. Notice of the proposed modification and revocation was published on December 10, 2003, in Volume 37, Number 50, of the CUSTOMS BULLETIN. No comments were received.

**EFFECTIVE DATE** This action is effective for merchandise entered or withdrawn from warehouse or for consumption on or after April 11, 2004.

**FOR FURTHER INFORMATION:** Shirley Greitzer, Textiles Branch: (202) 572-8823.

**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 CBP 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 CBP 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, a notice was published on December 10, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 50, proposing to revoke one ruling letter, New York Ruling Letter (NY) I84257, to modify one ruling letter New York Ruling Letter (NY) I80536, and to revoke any tariff treatment pertaining to the tariff classification of certain men's garments. These rulings held that elastic cords with stoppers were not drawstrings and did not meet the Hampco Apparel, Inc. v. United States, 12 CIT 92 (1986), requirements for swimwear. 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 that may exist but which



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 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 personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should have advised 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 their agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY I84257, and modifying NY I80536, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) 966760 and HQ 966759, respectively. HQ 966760, revoking NY I84257, is set forth as "Attachment A" to this document. HQ 966759, modifying NY I80536, is set forth as "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

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

DATED: January 23, 2004

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

Attachments

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 966759  
January 23, 2004  
CLA-2 RR:TC:TE 966759 SG  
CATEGORY: Classification  
TARIFF NO.: 6211.11.1010

MS. LINDA MOYER  
ASSOCIATED MERCHANDISING CORPORATION  
500 Seventh Avenue  
New York, NY 10018

RE: Modification of New York Ruling (NY) I80536, dated April 23, 2002;  
Men's Woven Swimwear, Heading 6211, HTSUS; Shorts, Heading 6203,  
HTSUS

DEAR MS. MOYER:

This is in reference to New York ruling letter (NY) I80536, issued to you on April 23, 2002, regarding the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of two pairs of men's shorts. We have reconsidered NY I80536 and found it to be partially in error.

In NY I80536, we found that a garment identified as style S3S-A1 was classified in subheading 6203.43.4030, HTSUSA, as men's shorts. We have reviewed the matter and believe that the correct classification of the garment is in subheading 6211.11.1010, HTSUSA, as men's swimwear. Therefore, this ruling modifies NY I80536.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed modification of NY I80536, was published on December 10, 2003, in the Customs Bulletin, Volume 37, Number 50. No comments were received in response to this notice.

FACTS:

The garment involved, style S3S-A1, is a pair of men's shorts made of 100 percent woven nylon fabric with an inner lining of knit mesh fabric. It features an elasticized waistband with an elastic cord with a barrel clasp running through the entire length of the waistband, two side slash pockets with mesh pocket lining, a side seam cargo pocket with a flap which closes by means of a hook and loop fabric, and grommets for drainage.

ISSUE:

Whether style S3S-A1 is properly classified as men's swimwear, heading 6211, HTSUS, or men's shorts, heading 6203, HTSUS?

LAW AND ANALYSIS:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes, taken in order. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRIs will be applied, in the order of their appearance.

In Hampco Apparel, Inc. v. United States, 12 CIT 92 (1988), the Court of International Trade stated that three factors must be present if a garment is to be considered swimwear for tariff purposes:

- (1) the garment has an elasticized waistband through which a drawstring is threaded,
- (2) The garment has an inner lining of lightweight material, namely nylon tricot, and
- (3) the garment is designed and constructed for swimming.

Beyond possessing the listed criteria, the court determined that the garment at issue therein was designed, manufactured, marketed and intended to be used as swimwear. The court therefore concluded that the garment before it was properly classified as swimwear.

Although the Hampco decision involved classification of swimwear under the previous tariff schedule, i.e., the Tariff Schedules of the United States, it is relevant to decisions under the HTSUSA as the tariff language at issue is the same and the current tariff does not offer any new or different guidance regarding the distinction between swimwear and shorts.

The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories, CIE 13/88, November 23, 1988, also provide guidance in classifying garments as either men's shorts or swimwear. The Guidelines state:

Garments commercially known as jogging or athletic shorts are normally loose-fitting short pants usually extending from the waist to the upper thigh and usually have an elastic waistband. They may resemble swim trunks for men, boys, or male infants, which are not included in this category.

Swim trunks will usually have an elasticized waist with a drawstring and a full lightweight support liner. Garments which cannot be recognized as swim trunks will be considered shorts.

In an informed compliance publication, "Apparel Terminology under the HTSUS," dated November, 2000, Customs and Border Protection (CBP) provided basic definitions of textile terms which are commonly utilized in the HTSUS and by the trade community. These definitions are not intended to be conclusive for classification purposes, but rather to provide a basic guideline. In the informed compliance publication, shorts and swimwear are defined as:

**Shorts** (6103, 6104, 6203, 6204)- are trousers which do not cover the knee or below.

**Swimwear** (6112, 6211)- is a term referring to garments designed for swimming. Included in this term are swim trunks, which usually have an elasticized waist with a drawstring threaded through it, and a full lightweight support liner. Garments that cannot be identified specifically as swim trunks will be considered shorts. Multiple-use "sports" or "athletic" shorts that bear a close resemblance to swim trunks and are designed for running, team sports etc. are not considered swimwear.

\* \* \* \*

See, U.S. Customs Service, What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS. 34 Cust. B. & Dec. 52, 153 (Dec. 27, 2000).

In Headquarters Ruling Letter (HQ) 081477, dated March 21, 1988, we stated that under the Tariff Schedules of the United States, in order to de-

termine whether a garment is designed and constructed for swimming, we will first look at the appearance of the garment. If the appearance is inconclusive, the following evidence will be considered: the way in which the garment has been designed, manufactured, marketed or advertised; the way in which the manufacturer or importer intends the garment to be used, and the way in which a garment is chiefly used. (We note that under the HTS "principal use" replaced "chief use".) See HQ 952751, dated January 12, 1993;

HQ 952209, dated October 2, 1992; HQ 951841, dated August 11, 1992; and HQ 950501, dated December 17, 1991. As such, Customs analysis is in fact, a two part test, that is, (a) examination of the physical attributes of the garment (three Hampco features); and (b) where ALL three features are not present or not conclusive, we then look to the factors set forth in United States v. Carborundum Company, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), cert. denied, 429 U.S. 979 (hereinafter Carborundum)-design, manufacture, marketing or advertising; intended use of the garment and principal use of the garment, for guidance.

Style S3S-A1 has a mesh inner liner, it therefore meets the Hampco criteria that it has an inner lining of lightweight material.

In the case of style S3S-A1, it has a fully elasticized waistband. We note that although there is no requirement that the entire waistband be elasticized (HQ 087264, dated June 13, 1990 and HQ 965981, dated March 3, 2003), it is our view that at least 1/2 of the waistband must be elasticized.

We must then ascertain whether the garment has a "drawstring threaded through the elasticized waistband". Without a functioning drawstring, the garment does not satisfy the Hampco test. The American Heritage Dictionary of the English Language, New College Edition, published by Houghton Mifflin Company, 1976 edition, at page 397, defines a drawstring as "A cord or ribbon run through a hem or casing and pulled to tighten or close an opening." Nothing in the definition precludes the cord or ribbon from being made of rubber or elastic, so long as it serves to tighten the entire span of the waistband, that the tightening provided by the cord is not minimal, and thus serves the function of a drawstring. In our view the elastic cord does all of these things, while the barrel clasp holds the tightening in place. The waistband construction is adapted for swimming; the tightening provided by the elastic cord and barrel clasp is not minimal and serves the function of a drawstring, which is to adjust the size of the waistband. Accordingly, style S3S-A1, which has a elastic cord with barrel clasp threaded through the waistband, meets the criteria of having a functional drawstring threaded through the elasticized waistband.

CBP has been consistent in ruling that even in those instances where the first two factors enumerated by the court in Hampco are present, the third factor (the garment is designed and constructed for swimming) must still be present. Where the third factor is lacking, the article will be considered shorts (See also, HQ 086436, dated May 3, 1990; HQ 086979, dated May 15, 1990; HQ 087476, dated September 7, 1990; HQ 950207, dated December 3, 1991 and HQ 950652, dated February 12, 1992).

The garment is made of a woven nylon outer shell fabric and possesses a mesh liner. The fabrics used to construct this article are relatively lightweight, quick drying, and will not retain an inordinate amount of water. The pockets have been constructed to facilitate drainage. These features indicate that this garment has been designed principally for swimming and thus qualifies as men's swimwear in heading 6211, HTSUS.

**HOLDING:**

The garment, style number S3S-A1, meets the Hampco criteria for classification as swimwear. It is properly classified in subheading 6211.11.1010, HTSUSA, the provision for "Track suits, ski-suits and swimwear; other garments: Swimwear: Men's or boys': Of man-made fibers: Men's", textile category 659, dutiable at the column one rate of 28 percent ad valorem.

NY I80536, dated April 23, 2002, is hereby **MODIFIED**.

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

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

