Bureau of Customs and Border Protection

CBP Decisions

19 CFR Part 181

RIN 1505–AB41

[CBP Dec. 05–24]

TARIFF TREATMENT RELATED TO DISASSEMBLY OPERATIONS UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT

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

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, proposed amendments to the Customs and Border Protection ("CBP") Regulations concerning the North American Free Trade Agreement ("the NAFTA"). The regulatory changes interpret the term "production" to include disassembly and clarify that components recovered from the disassembly of used goods in a NAFTA country are entitled to NAFTA originating status when imported into the United States provided that the recovered components satisfy the applicable NAFTA rule of origin requirements.

EFFECTIVE DATE: August 1, 2005.

FOR FURTHER INFORMATION CONTACT: Shari Suzuki, International Agreements Staff, Office of Regulations and Rulings, (202) 572–8818.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Statutory and Regulatory Background

On December 17, 1992, the United States, Canada, and Mexico (the parties) entered into an agreement, the North American Free

Trade Agreement (the NAFTA). The provisions of the NAFTA were adopted by the United States with the enactment of the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (December 8, 1993).

Under NAFTA Article 401(b) and 19 U.S.C. 3332(a)(1)(B)(i), a good originates in the territory of a party where each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification set out in Annex 401 of the NAFTA as a result of production occurring entirely in the territory of one or more of the parties. These change in tariff classification rules are set forth in General Note 12(t) of the Harmonized Tariff Schedule of the United States ("HTSUS") (hereinafter "the Annex 401 rules"). It is therefore understood that unless a change in tariff classification results from an activity that qualifies as "production," the mere fact that there is a prescribed change in tariff classification will not be considered as meeting a rule of origin.

The NAFTA does not explicitly address the question of whether disassembly occurring in a NAFTA country may be considered NAFTA origin-conferring "production" when the recovery of components by the disassembly operation satisfies the applicable rules of origin listed in Annex 401 of the NAFTA.

Publication of Proposed Regulatory Changes

On March 13, 2003, the U.S. Customs Service (now Customs and Border Protection ("CBP")) published in the **Federal Register** (68 FR 12011) a notice of proposed rulemaking ("NPRM") setting forth proposed amendments to Part 181 to add a new § 181.132 to the CBP Regulations (19 CFR 181.132). The proposed rule stated that components which were recovered from the disassembly of used goods in a NAFTA country would be entitled to NAFTA originating status upon importation into the United States, provided that: (1) the recovered components satisfy the applicable NAFTA rule of origin requirements in Annex 401, and (2) if the rule of origin in Annex 401 applicable to the components does not include a regional value content requirement, the components are subject to further processing in the NAFTA country beyond certain specified minor operations.

The NPRM explained the need for a regulation to address disassembly in order to: (1) provide an appropriate regulatory basis for the treatment of recycled or remanufactured goods under the NAFTA; (2) provide guidance regarding the meaning of the statutory term "production;" and (3) clarify the relationship between the Annex 401 rules of origin and the disassembly of goods. In addition, the NPRM noted that allowing the disassembly of used goods to confer origin under certain circumstances would promote recycling and remanufacturing in North America and, therefore, would advance the economic and environmental objectives of the NAFTA.

The NPRM prescribed a 60-day period for the submission of public comments on the proposed regulatory changes. A total of 10 commenters responded. Nine comments focused on the proposed text while one comment concerned CBP's certification under the Regulatory Flexibility Act of 1980.

A majority of the comments received by CBP supported the proposed amendment which would allow components that are recovered from the disassembly of a used good in a NAFTA country to be entitled to NAFTA originating status upon importation into the United States. Most commenters agreed with CBP that interpreting "production" to include disassembly would promote recycling and remanufacturing in North America.

However, all of the comments suggested changes regarding the approach set forth in the NPRM. Most commenters expressed the opinion that, while the proposed amendment was well intended, it would not completely remedy the situation and, in some cases, would restrict the ability of remanufactured goods to qualify for preferential treatment under NAFTA. Many commenters objected to the addition of a further processing requirement in cases where the applicable rule of origin did not include a regional value content requirement. Several commenters identified practical problems in administering the proposed regulation, including inconsistencies with commercial and accounting practices. Lastly, many commenters maintained that the proposed regulation was too complicated.

DISCUSSION OF COMMENTS

Of the 10 commenters who responded to the solicitation of comments on the proposed Part 181 changes, 9 provided one or more specific comments on the proposed § 181.132 text. The comments are discussed below.

Comment:

Four commenters expressed concern with the unilateral approach being pursued by the U.S. Government in regard to the proposed amendment. The commenters stated that the adoption of an amendment solely within the territory of the United States would give rise to uncertainty within the trading community and result in inconsistent application of the rules of origin between the NAFTA parties. These commenters indicated their preference for the development of a trilateral approach.

CBP's Response:

A trilateral approach remains under discussion in the NAFTA working group. While there appears to be agreement in principle, the trilateral text is still being developed. In the meantime, this in-

terpretive regulatory guidance is needed to aid U.S. importers in exercising reasonable care.

Comment:

Four commenters suggested adopting an approach similar to that taken by the U.S. Administration in several recent free trade agreements. Under this approach, "goods wholly obtained or produced entirely" in the territories of the parties are considered to be originating. "Recovered goods" are specifically included in the definition of "goods wholly obtained or produced entirely" in the territories of the parties. Thus, "recovered goods" are considered to be originating goods. The commenters stated that the same result could be achieved by clarifying the NAFTA definition of "goods wholly obtained or produced" under the NAFTA Uniform Regulations. According to these commenters, this approach recognizes disassembly as conferring origin without the technical and cumbersome requirement of establishing that disassembly operations satisfy the product-specific rules of origin.

Two commenters supported adopting the provision for "recovered goods" in the definition of "goods wholly obtained or produced entirely." One commenter proposed that a new item covering "materials recovered by means of disassembly" be included in the definition of "goods wholly obtained or produced entirely." Another commenter recommended amending the existing provision for waste and scrap, which exists under the definition of "goods wholly obtained or produced entirely," to provide for recovered goods.

CBP's Response:

CBP agrees that the approach taken by the United States in several recent free trade agreements is administrable. However, amending the definition of "goods wholly obtained or produced" in NAFTA cannot be achieved merely by amending the definition found in the regulations. The definition of "goods wholly obtained or produced" is found in Article 401 of the NAFTA and any change would require an amendment to the agreement and implementing legislation.

Comment:

One comment emphasized the importance of consistency. This commenter stated that there should be as much consistency as possible among the various agreements to which the United States is a party.

CBP's Response:

While agreeing that consistency of rules under various free trade agreements is desirable, CBP's responsibility is to implement agreements as negotiated and implemented in U.S. law.

Comment:

Several commenters maintained that the fundamental basis on which the Annex 401 rules were negotiated presumed the manufacture or assembly of a good from its constituent parts. Thus, the commenters believed that interpreting the term "production" to include disassembly is not sustainable when interpreted in context and in light of the objectives and purpose of the agreement.

CBP's Response:

As indicated in the NPRM, CBP finds no evidence showing that the NAFTA intended not to treat "disassembly" as a production process. The term "production" includes a broad range of economic activity. Moreover, the goals of the NAFTA include elimination of barriers to trade, facilitation of cross-border movement of goods, promotion of economic activity in North America, and protection of the environment. Thus, it is consistent with the free trade purposes of NAFTA to treat the recovery of goods by disassembly as "production" under the NAFTA rules of origin.

Comment:

Two commenters expressed a desire for an approach that would confer originating status on goods recovered from disassembly operations in a manner that applies equally to all manufacturers across industry sectors. These commenters note that differences in the structure of the Harmonized System may result in lack of uniformity of application across industry sectors.

CBP's Response:

CBP notes that any lack of uniformity in the treatment of recovered components will parallel the effect of the applicable NAFTA rules of origin on other types of "production." Application of Annex 401 does result in lack of uniformity of application across industry sectors. The results depend on both the structure of the Harmonized System and the product-specific rules in Annex 401 which were negotiated in the context of trade policy goals, which may differ between sectors. There is no uniform level of processing across sectors in the rules.

CBP notes that in many cases where a heading change rule cannot be met, an alternative rule of origin allows a change within the heading provided a regional value content requirement is met. CBP also notes that Article 401(d) provides a special rule for goods and parts that are classified in the same heading or subheading where there can be no change in tariff classification. CBP believes that the fact that some recovered goods will meet a tariff shift requirement while others will not is an insufficient reason to abandon the proposed regulation altogether (as this result will comport with the NAFTA rules of origin themselves).

Comment:

Six commenters were opposed to the imposition of additional processing requirements for recovered components that meet the tariff shift rule under Annex 401. The proposed regulation specified that recovered components that met a tariff shift rule, but were not subject to a regional value content (RVC) requirement, had to be further processed beyond certain minor operations.

The commenters argued that the effect of this requirement is that recovered components that would otherwise qualify for the NAFTA preference would not qualify unless they had been subjected to additional processing. Additionally, these commenters stated that this "advanced-in-value" requirement effectively makes the origin requirements applicable to goods derived from disassembly operations stricter than those applicable to other goods, which need only satisfy the Annex 401 requirements. They believe that requiring goods derived from disassembly operations to satisfy both the Annex 401 rule of origin and the additional processing requirements imposes a double burden on remanufacturers that undermines the goals of the rule.

Two commenters stated that the additional processing requirement is unnecessary because the Annex 401 rules of origin, which were negotiated and agreed to by all three countries, already define the degree of production that will confer origin on non-originating materials. In some cases, that degree of production would involve a tariff shift, in others a regional value content requirement, and in still others a combination of both. However, the commenters argued that, in all cases, the degree of production established by the Annex 401 rules of origin would be sufficient to address when disassembly results in an originating good.

One commenter believed that disassembly is merely the inverse of assembly. Therefore, if the applicable Annex 401 rule of origin provides that origin is conferred by a simple tariff shift that may be achieved through assembly, achieving that same tariff shift through disassembly should also confer origin.

Another commenter argued that while the assembly process is predictable and quantifiable because every part entering the production line is the same, each disassembly is unique due to the condition of the used good, and that disassembly may be far more difficult than simple assembly with clean new parts. Thus, the proposed rule does not recognize the complexity and difficulty of disassembly and ignores the substantial effort necessary to recover parts from used equipment.

Several commenters objected to the proposed rule because some recovered components are not subject to operations other than those enumerated as minor operations in the proposed rule. Two commenters stated that there is little in the remanufacturing process that cannot be categorized within the list of minor operations. One com-

menter stated that the remanufacturing process consists of all the listed processes linked together. Thus, the commenters believed that the additional requirements would preclude the remanufacturing process from conferring originating status on recovered components.

One commenter believed that the additional processing requirement would increase the complexity of NAFTA compliance systems because it may be necessary to record the processing performed on individual recovered components. The commenter stated that this would create a *de facto* direct identification requirement which may be impractical or impossible to implement and very difficult to audit.

CBP's Response:

CBP agrees that the Annex 401 rules define the degree of production required for conferring origin and has deleted the additional processing requirements.

Comment:

Several commenters objected to the application of the Annex 401 rules of origin. They claimed that subjecting recovered components and remanufactured goods to the same NAFTA rules as items produced entirely from new components makes it extremely difficult to qualify remanufactured goods as originating goods under the NAFTA.

The commenters argued that, in many cases, NAFTA certificates are not available for recovered components and, therefore, they must be deemed non-originating. Furthermore, when applying the Annex 401 rules to the remanufactured good, the recovered component often fails to satisfy the required tariff shift because it is generally classified in the same tariff provision as the remanufactured good. These commenters also contended that if the remanufactured good is subject to an RVC rule, the good will fail to meet the rule because the recovered component often represents the majority of the value or net cost of the remanufactured good. In this situation, the RVC cannot be met because the recovered component is deemed to be non-originating.

CBP's Response:

The situation the commenters describe is one of the reasons that more recent free trade agreements take a different approach to recycled and recovered goods, but the issue here is how to interpret NAFTA, and solutions are limited by the NAFTA text. The feasibility of determining the cost or value of a recovered component will be discussed later in this document.

Comment:

Four commenters expressed the view that the proposed rule should be a simple rule that treats all materials yielded from disas-

sembly in a NAFTA country as originating materials. These commenters stated that the removal of a worn component should be an origin-conferring process. This would ensure that the value of the recovered component, including the very substantial content resulting from the labor involved in the removal, will be included in the value of originating materials when determining whether the remanufactured good qualifies as an originating good. By considering the removal of worn parts to be origin conferring, the commenters stated that it would be possible to count that valuable operation towards qualifying the remanufactured good as an originating good.

These commenters contended that the above "simple" rule could be administered more easily than CBP's proposed rule which they characterized as highly complex and difficult, if not impossible, to administer. With respect to CBP's concern regarding sufficient processing, the commenters suggested that CBP could condition this rule by providing that goods yielded from a "minor disassembly" would not be treated as NAFTA originating. They suggested that disassembly of an article into five (or ten) or fewer components by processes such as removing screws, bolts, pins or other fasteners could be treated as a "minor disassembly" operation. Moreover, certain minor operations, such as separating a good and its component by disconnecting cables or by unsnapping could be ruled not to constitute disassembly. Thus, these commenters proposed a rule that treats all components yielded from disassembly as NAFTA originating, subject to a simple disassembly exception. The commenters claimed that their proposal would meet the goals of NAFTA while avoiding administrative problems.

Several remanufacturers expressed dissatisfaction with the proposed regulation for the reason that their recovered parts would never qualify under the proposed rule since the parts would not satisfy the required tariff shift and also would not meet the RVC requirement based only on labor costs. These commenters support a simple disassembly rule under which recovered parts would qualify as originating. If the recovered parts were considered originating, they could meet the RVC requirement associated with the rule for the remanufactured good. This approach would allow the recovered parts to qualify as an originating material but would still require the producer of the remanufactured good to meet the NAFTA Annex 401 rule of origin applicable to the remanufactured good.

CBP's Response:

Although CBP understands the appeal of a "simple" disassembly rule, CBP cannot adopt such an approach because it conflicts with the Annex 401 rules of origin. CBP cannot disregard the rules of origin that already exist for specific products; the Annex 401 rules of origin set the minimum threshold that must be met in order to confer originating status to a good.

The commenters would prefer to have a new rule that allows mere disassembly to confer origin without having to meet any tariff shift or regional value content requirements. CBP does not have the authority to change the Annex 401 rules of origin. The only question addressed in this interpretive regulation is whether the NAFTA definition of production can be interpreted to include disassembly. CBP is not adopting a new rule of origin.

Comment:

One commenter maintained that all goods which are subject to additional processing should be treated as originating goods without regard to whether the good meets the Annex 401 rules. This commenter stated that if CBP must require that goods be advanced in value or improved in condition, then all goods that satisfy the additional processing requirements should be considered originating, regardless of whether they satisfy the specific rule of origin under Annex 401. The commenter recommended a new rule in which the Annex 401 rules are overridden. A component recovered from a good disassembled in the territory of a party would be considered to be originating as a result of such disassembly provided that the recovered component is advanced in value or improved in condition by means of additional processing other than certain listed minor processes.

CBP's Response:

CBP disagrees. The Annex 401 rules of origin set forth the minimum level of processing required and cannot be disregarded.

Comment:

One commenter expressed concern with how CBP will interpret a required change in tariff classification. The commenter provided an example involving a cover from the document feeder portion of a laser printer. The commenter asked whether CBP would focus on the laser printer or the document feeder for the purpose of determining whether the cover met a required change in tariff classification. The cover meets the tariff shift requirement when the laser printer is viewed as the non-originating material. However, the cover does not meet the tariff shift requirement when the document feeder is viewed as the non-originating material.

CBP's Response:

CBP assumes that, in the example provided by the commenter, the remanufacturer disassembled the laser printer into various parts, including the document feeder, and then disassembled the document feeder into its constituent parts, including the cover. Under the principles of self-produced materials contained in Part II, section 4(8) of the Appendix to Part 181 of the CBP Regulations (19 CFR Part 181,

Appendix), the producer should be able to designate the laser printer as the non-originating material for the purpose of determining whether the non-originating materials underwent the applicable change in tariff classification.

Comment:

One commenter suggested that remanufactured goods should be considered to be originating goods and provided a precise definition of remanufactured goods. In order to qualify as an originating good, the product must: (1) be dismantled; (2) have all parts cleaned, inspected and returned to sound working condition; and (3) be reconstructed to sound working condition. In addition to this definition, the commenter recommended a rule which requires that the components undergo processing that restores their functionality and fit; the components be re-assembled back into an item that is the equivalent of the item disassembled; all "new" parts used in the remanufacturing process satisfy the traditional specific rules of origin for the finished item; and the originating value of the recovered parts be some derivation of the core charge value if a core charge applies. The commenter believes that this definition would eliminate the possibility of disassembly operations being used as a method of circumvention because there must be complete reassembly.

This commenter also proposed, with respect to country of origin marking, that all remanufactured parts be labeled "Remanufactured in (named country)," and that the country of origin of the used items imported into a territory and used in the remanufacturing process be the country in which the parts expired, regardless of marking.

CBP's Response:

The Annex 401 rules of origin cannot be disregarded. The regulation under consideration addresses the issue of whether goods that are the result of disassembly are considered to have undergone "production" for purposes of determining whether the good qualifies as an originating good under the NAFTA. The regulation does not address country of origin for marking purposes. Country of origin for NAFTA marking purposes is governed by Part 102 of the CBP Regulations (19 CFR Part 102). CBP notes Headquarters Ruling Letters 561209, dated May 4, 1999, and 561854, dated December 15, 2000, which address the country of origin marking of rebuilt automotive parts.

Comment:

One commenter suggested that, if the restrictions on "minor operations" are included in the final regulation, "precision machining" should be defined as "machining performed on a numerically controlled mill, lathe or similar equipment."

CBP's Response:

As noted above, CBP has decided to delete the portion of the proposed regulation that refers to minor operations.

Comment:

Two commenters stated that it is unlikely that a new non-originating good would be disassembled in one party's territory and shipped to another party where it would be reassembled. According to these commenters, the importer would have to pay duties, fees and brokerage charges on the initial importation into the party where the goods would be disassembled; incur the cost of setting up a disassembly operation; pay the overhead costs and costs to employ workers; pay additional transportation and handling costs; pay broker charges on the subsequent importation into the territory of the other party where the "recovered goods" would be reassembled; and pay all the same costs noted previously for the subsequent reassembly in the territory of the other party. Thus, these commenters believe it is highly unlikely that the duty savings would be substantial enough to make such operations feasible from a cost/benefit standpoint.

One commenter suggested excluding high duty rate goods from the disassembly rule but acknowledged that most high duty rate goods (textiles, footwear, chemicals, agricultural products, etc.) do not easily lend themselves to disassembly.

Another commenter stated that precluding application of the proposed rule to new products adequately deals with possible abuses of disassembly to confer origin.

CBP's Response:

CBP specifically requested comments on the view that an applicable value-content rule or alternative rule would be sufficient to permit the disassembly of new goods to be considered "production." None of the comments received endorsed this view. Accordingly, the final rule continues to reflect the portion of the proposed rule that precludes application of the regulation to new goods.

Article 412 of NAFTA and section 17 of the Appendix to 19 CFR 181 contain a very broad anti-circumvention provision which states that a good will not be considered to be an originating good if the object of the production can be shown by a preponderance of the evidence to have been to circumvent the rules of origin. CBP believes that a change in tariff classification resulting from the disassembly of new, non-originating goods should not make the resulting goods eligible for originating status. Generally, a "new" good is a good which is in the same condition as it was when it was manufactured and which meets the commercial standards for new goods in the relevant industry.

Accordingly, § 181.132(b) in this final rule document provides that the disassembly of new goods will not be considered "production" for the purposes of NAFTA Article 415 and the NAFTA rules of origin. To clarify the meaning of the term "new goods," CBP also has included in § 181.132(b) the definition set forth above for this term.

Comment:

One commenter pointed out an error in proposed § 181.132(c). The reference to "Schedule V" should be "Part V." However, the commenter believes that a reference to automotive goods is unnecessary because remanufactured goods are not used as original equipment in the production of motor vehicles. Thus, they do not fall within the definition of "light duty automotive good" or "heavy-duty automotive good" and would not be subject to tracing requirements.

CBP's Response:

CBP agrees that the reference in proposed § 181.132(c) should have been to "Part V." CBP takes note of the commenter's statement that remanufactured goods are not used as original equipment in the production of motor vehicles. Upon further reflection, CBP has decided to delete paragraph (c) because it is unnecessary.

Comment:

The Office of Advocacy of the U.S. Small Business Administration (SBA) expressed concern that the proposed rule's certification pursuant to the Regulatory Flexibility Act was deficient. CBP certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. However, the SBA is concerned that there is no information on the number of small entities that would be impacted by this rule or the magnitude of the impact. Based on discussions with small entities in the automotive recycling business, the SBA recommended that CBP revisit its certification and at a minimum provide a factual basis for certification. The SBA stated that CBP must show which small entities will be affected and whether those affected constitute a substantial number within the regulatory industry.

CBP's Response:

In the NPRM, CBP certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. However, upon reconsideration, CBP believes that the proposed rule should have stated that the Regulatory Flexibility Act is not applicable to this rule because the rule is exempt from notice and comment procedures pursuant to the Administrative Procedure Act (5 U.S.C. 553). First, this is an interpretive rule that is exempt from notice and public procedure pursuant 5 U.S.C. 553(b)(A). Second, this rule involves a foreign affairs function of the United States be-

cause it implements an international trade agreement. A notice of proposed rulemaking is not required for such rules pursuant to 5 U.S.C. 553(a)(1). Accordingly, because the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*) applies to a rule only when an agency is required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking, this rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Even if the Regulatory Flexibility Act applied to this rule, CBP would again certify that this final rule does not have a significant economic impact on a substantial number of small entities. The rule has only a positive economic impact on small (or other) entities regulated by the rule. The rule regulates only U.S. importers of components of used goods that were recycled or remanufactured in Canada or Mexico, and, rather than increasing the economic burdens on these importers, the rule provides these importers with customs duty relief.

Comment:

Four commenters expressed opposition to requiring a RVC calculation for recovered components because it is claimed either that there is no clear method for valuing individual components or that their value is not readily ascertainable. Most commenters stated that they did not know how to value the components removed from used goods. They requested that the rules clarify how the value and origin of individual used components are to be established. The commenters claimed that identifying the cost of each individual recovered component from the cost of the used good would not be feasible. While there may be an ascertainable value for the used good, there is not necessarily a purchase price or individualized value for the components included inside it. Additionally, the commenters claimed that it is not clear whether the value of the used component or the used good is to be included in the value of non-originating materials.

CBP's Response:

CBP agrees that applying the value-content requirement to the disassembly process raises certain questions. However, the value-content requirement exists as part of the Annex 401 rule and cannot be disregarded.

CBP recognizes that if more than one component is recovered from the used good, the value of the used good should be allocated over the disassembled components. Additionally, the cost of the disassembly would have to be spread over all of the constituent disassembled components and then reallocated and added to the cost of each of those components. CBP notes that it has previously ruled that the scrap value of the parts and components that cannot be reused may be deducted from the value of the non-originating materials. See Headquarters Ruling Letter 547088, dated August 29, 2002.

Remanufacturers may have internal bookkeeping records that would aid in valuing such components. CBP acknowledges that trade in remanufactured goods already exists and is inclined to consider reasonable accounting methods that have been used consistently in the trade.

Comment:

Many commenters began their analysis by attempting to determine whether the used good was an originating good. They stated that it was highly unlikely that a NAFTA certificate of origin could be provided for the used good since the good would probably be several years old and pertinent records would no longer be available.

CBP's Response:

CBP agrees. It is likely that the used good will be assumed to be non-originating. However, the new regulation allows the component recovered from the used good to qualify as an originating good. If the recovered component meets the Annex 401 rule applicable to that component, the recovered component will be considered to be an originating good (or material).

CONCLUSION

Accordingly, based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, CBP believes that the proposed regulatory amendments regarding disassembly should be adopted as a final rule with the following changes:

1. The additional processing requirements set forth in paragraph (a)(2) of proposed § 181.132 have been deleted for the reasons explained in the analysis of comments.
2. Paragraph (c) of the proposed regulation has been deleted because, as explained further in the analysis of comments, the reference to automotive goods in this provision is unnecessary.

EXECUTIVE ORDER 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

REGULATORY FLEXIBILITY ACT

Because this rule interprets and implements the obligations of the United States under the NAFTA, a notice of proposed rulemaking was not required pursuant to 5 U.S.C. 553(a)(1) and (b)(A). Accordingly, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable to this rule.

DRAFTING INFORMATION

The principal author of this document was Shari Suzuki, Office of Regulations and Ruling, Bureau of Customs and Border Protection. However, personnel from other offices participated in its development.

SIGNING AUTHORITY

This document is being issued by CBP in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)), pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain CBP revenue functions.

LIST OF SUBJECTS IN 19 CFR Part 181

Administrative practice and procedure, Canada, Customs duties and inspection, Imports, Mexico, Trade agreements (North American Free Trade Agreement).

AMENDMENTS TO THE REGULATIONS

Accordingly, for the reasons stated in above, Part 181 of the CBP Regulations (19 CFR Part 181) is amended as set forth below.

PART 181 - NORTH AMERICAN FREE TRADE AGREEMENT

1. The authority citation for part 181 is revised to read as follows:

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314.

2. Subpart L of Part 181 is amended by adding a new § 181.132 to read as follows:

§ 181.132 Disassembly.

(a) Treated as production. For purposes of implementing the rules of origin provisions of General Note 12, HTSUS, and Chapter Four of the NAFTA, except as provided in paragraph (b) of this section, disassembly is considered to be production, and a component recovered from a good disassembled in the territory of a Party will be considered to be originating as the result of such disassembly provided that the recovered component satisfies all applicable requirements of Annex 401 and this part.

(b) Exception; new goods. Disassembly, as provided in paragraph (a) of this section, will not be considered production in the case of components that are recovered from new goods. For purposes of this paragraph, a "new good" means a good which is in the same condi-

tion as it was when it was manufactured and which meets the commercial standards for new goods in the relevant industry.

ROBERT C. BONNER,
Commissioner of Customs and Border Protection.

Approved: June 27, 2005

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, June 30, 2005 (70 FR 37669)]

Notice of Proposed Rulemaking

19 CFR PARTS 101 AND 122

ESTABLISHING A NEW PORT OF ENTRY AT NEW RIVER VALLEY, VIRGINIA, AND TERMINATING THE USER-FEE STATUS OF NEW RIVER VALLEY AIRPORT

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Department of Homeland Security's Regulations pertaining to the Bureau of Customs and Border Protection's field organization by conditionally establishing a new port of entry at New River Valley, Virginia, and terminating the user-fee status of New River Valley Airport. The new port of entry would consist of all the area surrounded by the continuous outer boundaries of the Montgomery, Pulaski and Roanoke counties in the state of Virginia, including New River Valley Airport, which is currently operated as a user-fee airport. These changes will assist the Bureau of Customs and Border Protection in its continuing efforts to provide better service to carriers, importers and the general public.

DATES: Comments must be received on or before September 6, 2005.

ADDRESSES: You may submit comments, identified by the title of this document, by any of the following methods:

• Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

• Mail: Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis Dore, Office of Field Operations, 202–344–2776.

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of its continuing efforts to provide better service to carriers, importers, and the general public, the Department of Homeland Security (DHS), Bureau of Customs and Border Protection (CBP), is proposing to amend 19 CFR 101.3(b)(1)[TSPU1] by conditionally establishing a new port of entry at New River Valley, Virginia. The new port of entry would include the area surrounded by the continuous outer boundaries of the Montgomery, Pulaski and Roanoke counties in the Commonwealth of Virginia. This area includes New River Valley Airport, located in the town of Dublin, Virginia, which currently operates and is listed as a user-fee airport at 19 CFR 122.15(b). This proposed change of status for New River Valley Airport from a user-fee airport to inclusion within the boundaries of a port of entry would subject the airport to the passenger processing fee provided for at 19 U.S.C. 58c(a)(5)(B).

Port of Entry Criteria

The criteria considered by CBP in determining whether to establish a port of entry are found in Treasury Decision (T.D.) 82–37 (Revision of Customs Criteria for Establishing Ports of Entry and Stations, 47 FR 10137), as revised by T.D. 86–14 (51 FR 4559) and T.D. 87–65 (52 FR 16328).[TSPU2] Under these criteria, CBP will evaluate whether there is a sufficient volume of import business (actual or potential) to justify the expense of maintaining a new office or expanding service at an existing location. Specifically, CBP will consider whether the proposed port of entry location can:

(1) Demonstrate that the benefits to be derived justify the Federal Government expense involved;

(2) Except in the case of land border ports, be serviced by at least two major modes of transportation (rail, air, water, or highway); and

(3) Except in the case of land border ports, have a minimum population of 300,000 within the immediate service area (approximately a 70-mile radius).

In addition, one of the following actual or potential workload criteria (minimum number of transactions per year), or an appropriate combination thereof, must be met in the area to be serviced by the proposed port of entry:

(1) 15,000 international air passengers;

(2) 2,500 formal entries for consumption in United States commerce (each valued over $2,000), with the applicant location committing to optimal use of electronic data input means to permit integration with any CBP system for electronic processing of entries, with no more than half of the 2,500 entries being attributed to one private party;

(3) For land border ports, 150,000 vehicles;

(4) 2,000 scheduled international aircraft arrivals (passengers and/or crew); or

(5) 350 cargo vessel arrivals.

Finally, facilities at the proposed port of entry must include, where appropriate, wharfage and anchorage adequate for oceangoing vessels, cargo and passenger facilities; warehouse space for the secure storage of imported cargo pending final CBP inspection and release; and administrative office space, inspection areas, storage areas, and other space as necessary for regular CBP operations.

In certain cases, where the potential workload at a given location shows pronounced growth, CBP will consider granting conditional port-of-entry status to the location, pending further review of the actual workload generated within the new port of entry. See T.D. 96–3 and 97–64.

New River Valley's Workload Statistics

The proposal in this document to conditionally establish New River Valley, Virginia, as a port of entry is based on CBP's analysis of the following information:

1. New River Valley is serviced by three modes of transportation:

(a) rail (The Norfolk Southern Railway and the CSX Corporation);

(b) air (Roanoke Regional Airport (US Airways, United Express, Northwest, Delta), New River Valley User-Fee Airport, and Virginia Tech/ Montgomery Executive Airport);

(c) highway (three U.S. interstate highways, I–81, I–64 and I–77).

2. The area within the immediate service area (approximately a 70-mile radius) of the New River Valley airport had a population, as of the 2000 census, of over 702,000.

3. Regarding the five actual or potential workload criteria:

(a) the number of consumption entries valued at over $2,000 each and filed in the port of New River Valley, Virginia, increased from 1,257 in FY 2001 to 1,817 in FY 2003, a rate of increase of forty-five percent;

(b) the projected number of such entries to be filed in FY 2004 is 1,776, an increase of forty-one percent over the number filed in FY 2001; and

(c) CBP's projection is that, according to the data, over 2,500 consumption entries, each valued at over $2,000, will be filed per year by FY 2007, and possibly by FY 2006, in the area to be included in

the port of New River Valley, Virginia, with no more than half of those entries being made by one private party.

CBP facilities are already in place at the New River Valley User Fee Airport and will continue to be provided at no cost to the Federal Government, as discussed below. CBP believes that the establishment of this port will provide significant benefits to the New River Valley community, further enhancing the economic growth that is already being experienced in this area, by providing enhanced business competitiveness for existing enterprises and enabling the retention and expansion of the number of jobs in the area.

(d) The New River Valley User Fee Airport in Dublin, Virginia, has, for over three years, provided and maintained administrative office space for a CBP office. Roanoke Regional Airport and Virginia Tech/Montgomery Executive Airport have also provided adequate facilities for regular CBP operations, including passenger and cargo inspection areas, and storage areas as necessary.

CBP believes that the New River Valley community is committed to making optimal use of electronic data transfer capability to permit integration with the CBP Automated Commercial System for processing entries. The New River Valley User Fee Airport has, for over three years, provided and maintained electronic data equipment software necessary to conduct regular CBP business. CBP has been informed that the airport is committed to upgrade equipment as necessary and, in fact, is currently in the process of installing a frame relay computer system, at no expense to the Federal Government, in order that adequate integration may be maintained with the Department of Homeland Security and the CBP systems.

Conditional Status

Based on the information above and the level and pace of development in New River Valley and the surrounding area, CBP believes that there is sufficient justification for the establishment of New River Valley, Virginia, as a port of entry on a conditional basis. If, after reviewing the public comments, CBP decides to create a port of entry at New River Valley and terminate New River Valley Airport's designation as a user-fee airport, then CBP will notify the airport of that determination in accordance with the provisions of 19 CFR 122.15(c). However, it is noted that this proposal relies on potential (within approximately 3 years), rather than actual, workload figures. Therefore, even if the proposed port of entry designation is adopted as a final rule, CBP will, in 3 years, review the actual workload generated within the new port of entry. If that review indicates that the actual workload is below the T.D. 82–37 (as amended) standards, procedures may be instituted to revoke the port of entry status. In such case, the airport may reapply to become a user-fee airport under the provisions of 19 U.S.C. 58b.

Description of Proposed Port of Entry Limits

The geographical limits of the proposed New River Valley port of entry would be as follows:

The continuous outer boundaries of the Montgomery, Pulaski and Roanoke counties in the Commonwealth of Virginia.

PROPOSED AMENDMENTS TO REGULATIONS

If the proposed port of entry designation is adopted, the list of CBP ports of entry at 19 CFR 101.3(b)(1) will be amended to add New River Valley as a port of entry in Virginia, and New River Valley Airport will be deleted from the list of user-fee airports at 19 CFR 122.15(b).

COMMENTS

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to CBP, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and 19 CFR 103.11(b), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, 799 9th Street, NW, 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

AUTHORITY

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

EXECUTIVE ORDER 12866 AND THE REGULATORY FLEXIBILITY ACT

With DHS approval, CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. The Office of Management and Budget has determined that this regulatory proposal is not a significant regulatory action as defined under Executive Order 12866. This proposed rule also will not have significant economic impact on a substantial number of small entities. Accordingly, it is certified that this document is not subject to the additional requirements of the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

SIGNING AUTHORITY

The signing authority for this document falls under 19 CFR 0.2(a) because the establishment of a new port of entry and the termination of the user-fee status of an airport are not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, the notice of proposed rulemaking may be signed by the Secretary of Homeland Security (or his or her delegate).

DRAFTING INFORMATION

The principal author of this document was Steven Bratcher, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

Date: April 29, 2005

ROBERT C. BONNER,
Commissioner,
Customs and Border Protection.

Date: June 23, 2005

MICHAEL CHERTOFF,
Secretary.

[Published in the Federal Register, July 5, 2005 (70 FR 38637)]

General Notices

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, June 29, 2005,

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

19 CFR PART 177

MODIFICATION OF RULING LETTERS AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF WATER BOTTLES

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

ACTION: Notice of modification of tariff classification ruling letters and revocation of treatment relating to the classification of water bottles.

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 three ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of water bottles. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed actions was published in Customs Bulletin on March 16, 2005. One comment was received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 11, 2005.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, General Classification Branch, at (202) 572–8721.

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)), on March, 16, 2005, a notice was published in the Customs Bulletin Volume 39, No.12 proposing to modify three rulings relating to the tariff classification of water bottles. One comment was received in response to the notice. As stated in the proposed notice, although CBP is specifically referring to New York Ruling Letters ("NY") 880582, dated June 10, 1994, NY 897965, dated November 30, 1992 and NY 867193 dated October 17, 1991, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should 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. Any person involved with substantially identical merchandise should have advised CBP. 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.

Based on the information and material available in the proposed notice, CBP determined that the water bottles that were subject of the three rulings are not articles of conveyances, and determined that the water bottles are classified in subheading 3926.90.9880, HTSUS, as "Other articles of plastics and articles of other materials of heading 3901 to 3914: Other: Other: Other."

The comment that was submitted contends that the subject plastic bottles meet requirements of Heading 3923, HTSUS, in that the bottles are used to hold and convey water or beverages, or alternatively they would be appropriately classified in heading 3924, HTSUS, as Tableware, kitchenware, other household articles and toilet articles, of plastics.

The submitted comment has been fully considered and as explained in HQ 967540, HQ 967541, and 967542 (attached), in our judgment heading 3923 includes articles for the packing and conveyance of goods. The use of the terms "conveyance" and "packing" connote that heading 3923, HTSUS is intended to cover only goods that are intended for commercial use and not plastic bottles that are intended for personal use by a consumer.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY 880582, NY 897965, and NY 867193. CBP also is modifying or revoking any other ruling not specifically identified in order to reflect the proper classification of merchandise pursuant to the analysis set forth in HQ 967541. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transaction that are contrary to the determination set forth in this notice.

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

DATE: June 22, 2005

Robert F. Altneu for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

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

HQ 967540
June 22, 2005
CLA–2 RR:CR:GC 967540 RSD
CATEGORY: Classification
TARIFF NO. 3926.90.9880

MR. STEVE MCFARLAND
GLOBAL PROMOTIONS, INC.
820 Livingston Street
P.O. Box 186
Tewksbury, Massachusetts 01876

RE: Modification of NY 880582 with respect to the tariff classification of a plastic water bottle.

DEAR MR. MCFARLAND:

This is in reference to New York Ruling Letter (NY) 880582, issued on November 30,1992, by the Customs and Border Protection (CBP), National Commodity Specialist Division, regarding the classification of a water bottle that comes with a waist pack under the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered NY 880582 and determined that the classification of the water bottle is not correct.

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 880582 as described below was published in the Custom Bulletin on March 16, 2005. One comment was received in response to the notice. It is discussed in the Law and Analysis section of this ruling.

FACTS:

The merchandise under consideration in NY 880582 was a waist pack composed of nylon and insulated with a foamed plastic material. The waist pack, was described in the ruling as similar to a holster with a nylon-webbing strap so that it can be worn around the waist. The waist pack was used to hold the plastic water bottle during leisure activities and travel. The waist pack was imported both with the bottle and separately from the bottle. In NY 880582, CBP found that the water bottle was classified in heading 3923, HTSUS, as articles for the conveyance or packing of goods, of plastics.

ISSUE:

Whether the water bottle under consideration in NY 880582 is classified in heading 3923, HTSUS, as articles for the conveyance or packing of goods, or in heading 3926, HTSUS, as other articles of plastic?

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 HTSUS provisions under consideration are as follows:

3923	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics:
3923.30.00	Carboys, bottles, flasks and similar articles
* * * * * * * * * * *	
3924	Tableware, kitchenware, other household articles and toilet articles, of plastics:
3924.90	Other:
3924.90.55	Other.
* * * * * * * * * * * * *	
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other

One comment was received in response to the notice. The position of the commenter is that the plastic water bottles including sports and camping bottles should be classified in heading 3923, HTSUS, as articles for the conveyance or packing of goods of plastic. In this instance, the commenter points out that the plastic bottles at issue are a means of conveying water, beverages or other goods from place to place. The commenter's view is that the plastic sports bottles should be considered of the same class or kind as flasks and canteens which are classified in heading 3923, HTSUS, because like flasks, canteens and beverage packaging bottles, they can hold water or other beverages, and they can be used to convey goods already in the possession of the user for his convenience. The commenter further maintains that heading 3923, HTSUS has no commercial restriction on it. However, the commenter suggests that if CBP continues to believe that there is a commercial aspect to Heading 3923, HTSUS and that these subject bottles are not commercial products, an alternative classification for the plastic water bottles would be heading 3924, as other household articles of plastic.

The commenter has not persuaded us to amend our proposal. In reaching our conclusion, we reviewed the Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represents the official interpretation of the tariff at the international level. The ENs, although neither dispositive nor 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.

EN 39.23 states, in pertinent part:

> This heading covers all articles of plastics commonly used for the . . . conveyance of all kinds of products.
>
> . . .

EN 39.26 states, in pertinent part:

> This heading covers articles, not elsewhere specified or included, of plastics . . .

In HQ 952264, dated November 25, 1992, CBP addressed EN 39.23 as it relates to heading 3923, HTSUS. In that ruling, CBP distinguished the plastic sports bottles at issue therein from the ENs description of plastics commonly used for the conveyance of all kinds of products, holding that heading 3923, HTSUS, pertained only to products for the conveyance of commercial goods, but not personal items, i.e., containers for packing and shipping bulk and commercial goods. Our determination that heading 3923, HTSUS, does not cover bottles that are designed to be filled by the end users was based on the language in EN 39.23, which states that the heading "covers all articles of plastics commonly used for the packing or conveyance of all kinds of products." In our judgment the use of the term "products" in EN 39.23 indicates that heading 3923, HTSUS covers only commercial products. See HQ 963204, August 15, 2001. Therefore, we have repeatedly ruled that subheading 3923.30.00, HTSUS, applies only to bottles, such as beverage bottles, that are designed to be filled and sold to the ultimate consumer with a beverage therein, and not to containers that will be filled by the end user. As such, the plastic sports bottles at issue therein, which were not designed to be filled prior to sale could not be classified in subheading 3923.30.00, HTSUS. CBP has consistently adhered to the standard set forth in HQ 952264. *See* HQ 963204, dated August 15, 2001, HQ 961434, dated March 19, 1999, HQ 960373, dated February 8, 1999, HQ 955407, dated October 6, 1994, and HQ 954072, dated September 2, 1993.

In addition, we reject the commenter's alternative claim that the plastic water bottle could be classified in heading 3924, HTSUS. We do not believe that the plastic water bottle that was under consideration NY 880582 meets the terms of heading 3924, HTSUS, because it cannot be described as tableware, kitchenware, other household articles and toilet articles, of plastics.

With respect to the water bottle that accompanied the waist pack at issue in NY 880582, it was neither designed to hold or contain a beverage when sold to the ultimate consumer. Therefore, we find that the water bottle at issue in NY 880582 does not meet the terms of heading 3923, HTSUS. As a result, it is classified in the residual heading for other articles of plastics, heading 3926, HTSUS. It is specifically provided for in subheading 3926.90.98, HTSUS, wherein CBP has repeatedly classified similar products. *See* NY K82067, dated January 14, 2004, NY J85490, dated June 19, 2003, HQ 962403, dated January 17, 2001, HQ 962655, dated July 7, 2000, and HQ 960373, dated February 8, 1999.

As the holding in NY 880582 with respect to the water bottle is inconsistent with the classification of similar merchandise, as previously discussed, NY 880582 with respect to the waist pack water bottle is modified, accordingly.

HOLDING:

The waist pack water bottle is classified in subheading 3926.90.9880, HTSUSA, as: "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other."

EFFECT ON OTHER RULINGS:

NY 880582 dated November 30 1994, is modified with respect to the classification of the water bottle. The classification of the other item that is described in NY 880582 is unchanged. In accordance with 19 U.S.C. 1625(c),

this ruling will become effective 60 days after publication in the Customs Bulletin.

Robert F. Altneu for MYLES B HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967541
June 22, 2005
CLA–2 RR:CR:GC 967541 RSD
CATEGORY: Classification
TARIFF NO. 3926.90.9880

MS. MONA WEBSTER
TARGET STORES
33 South Sixth Street
P.O. Box 1392
Minneapolis, Minnesota 55440–1392

RE: Modification of NY 897965 with respect to the tariff classification of the plastic water bottle.

DEAR MS. WEBSTER:

This is in reference to New York Ruling Letter (NY) 897965, issued on June 10, 1994, by the Customs and Border Protection (CBP), National Commodity Specialist Division, regarding the classification of a waist bag containing a water bottle under the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered NY 897965 and have determined that the classification of the water bottle is not correct.

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 897965 as described below was published in the Custom Bulletin on March 16, 2005. One comment was received in response to the notice. It is discussed in the Law and Analysis section of this ruling.

FACTS:

In NY 897965 CBP considered the classification of a waist bag containing a water bottle. The ruling described the merchandise as a waist bag composed of textile man-made material designed with an insulated holder containing a plastic travel water bottle. The water bottle was secured within the holder by a permanently affixed elastic strap. In NY 897965, CBP found that the water bottle was classified in heading 3923, HTSUS, as articles for the conveyance or packing of goods, of plastics.

ISSUE:

Whether the water bottle is classified in heading 3923, HTSUS, as an article for the conveyance or packing of goods or as an article of plastic under heading 3926, 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 HTSUS provisions under consideration are as follows:

3923	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics:
3923.30.00	Carboys, bottles, flasks and similar articles
* * * * * * * * * * * *	
3924	Tableware, kitchenware, other household articles and toilet articles, of plastics:
3924.90	Other:
3924.90.55	Other.
* * * * * * * * * * * *	
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other

One comment was received in response to the notice. The position of the commenter is that the plastic water bottles including sports and camping bottles should be classified in heading 3923, HTSUS, as articles for the conveyance or packing of goods of plastic. In this instance, the commenter points out that the plastic bottles at issue are a means of conveying water, beverages or other goods from place to place. The commenter's view is that the plastic sports bottles should be considered of the same class or kind as flasks and canteens which are classified in heading 3923, HTSUS, because like flasks, canteens and beverage packaging bottles, they can hold water or other beverages, and they can be used to convey goods already in the possession of the user for his convenience. The commenter further maintains that heading 3923, HTSUS has no commercial restriction on it. However, the commenter suggests that if CBP continues to believe that there is a commercial aspect to Heading 3923, HTSUS and that these subject bottles are not commercial products, an alternative classification for the plastic water bottles would be heading 3924, as other household articles of plastic.

The commenter has not persuaded us to amend our proposal. In reaching our conclusion, we reviewed the Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represents the official interpretation of the tariff at the international level. The ENs, although neither dispositive nor 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.

EN 39.23 states, in pertinent part:

> This heading covers all articles of plastics commonly used for the . . . conveyance of all kinds of products.
>
> . . .

EN 39.26 states, in pertinent part:

> This heading covers articles, not elsewhere specified or included, of plastics . . .

In HQ 952264, dated November 25, 1992, CBP addressed EN 39.23 as it relates to heading 3923, HTSUS. In that ruling, CBP distinguished the plastic sports bottles at issue therein from the ENs description of plastics commonly used for the conveyance of all kinds of products, holding that heading 3923, HTSUS, pertained only to products for the conveyance of commercial goods, but not personal items, i.e., containers for packing and shipping bulk and commercial goods. Our determination that heading 3923, HTSUS, does not cover bottles that are designed to be filled by the end users was based on the language in EN 39.23, which states that the heading "covers all articles of plastics commonly used for the packing or conveyance of all kinds of products." In our judgment the use of the term "products" in EN 39.23 indicates that heading 3923, HTSUS covers only commercial products. See HQ 963204, August 15, 2001. Therefore, we have repeatedly ruled that subheading 3923.30.00, HTSUS, applies only to bottles, such as beverage bottles, that are designed to be filled and sold to the ultimate consumer with a beverage therein, and not to containers that will be filled by the end user. As such, the plastic sports bottles at issue therein, which were not designed to be filled prior to sale could not be classified in subheading 3923.30.00, HTSUS. CBP has consistently adhered to the standard set forth in HQ 952264. *See* HQ 963204, dated August 15, 2001, HQ 961434, dated March 19, 1999, HQ 960373, dated February 8, 1999, HQ 955407, dated October 6, 1994, and HQ 954072, dated September 2, 1993.

In addition, we reject the commenter's alternative claim that the plastic water bottle could be classified in heading 3924, HTSUS. We do not believe that the plastic water bottle that was under consideration NY 880582 meets the terms of heading 3924, HTSUS, because it cannot be described as tableware, kitchenware, other household articles and toilet articles, of plastics.

The water bottle at issue in NY 897965 was neither designed to hold nor contain a beverage when sold to the ultimate consumer. Therefore, we find that the water bottle does not meet the terms of heading 3923, HTSUS. As a result, it is classified in the residual heading for other articles of plastics, heading 3926, HTSUS. It is specifically provided for in subheading 3926.90.98, HTSUS, wherein CBP has repeatedly classified similar products. *See* NY K82067, dated January 14, 2004, NY J85490, dated June 19, 2003, HQ 962403, dated January 17, 2001, HQ 962655, dated July 7, 2000, and HQ 960373, dated February 8, 1999. As the holding of NY 897965 with respect to the water bottle is inconsistent with the classification of similar merchandise, as previously discussed, NY 897965 is accordingly modified.

HOLDING:

The sports water bottles are classified in subheading 3926.90.9880, HTSUS, as: "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other."

EFFECT ON OTHER RULINGS:

NY 897965 dated June 10, 1994, is modified with respect to the classification of the water bottle. The classification of the other item that is described in NY 897965 is unchanged. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Robert F. Altneu for MYLES B HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967542
June 22, 2005
CLA–2 RR:CR:GC 967542 RSD
CATEGORY: Classification
TARIFF NO. 3926.90.9880

MS. KRISTINE A. QUIGLEY
TOTAL LOGISTICS RESOURCE, INC.
P.O. Box 30419
Portland, Oregon 97230

RE: Modification of NY 867193 with respect to the tariff classification of the plastic water bottle.

DEAR MS. QUIGLEY:

This is in reference to New York Ruling Letter (NY) 867193, issued on October 17, 1991, by the Customs and Border Protection (CBP), National Commodity Specialist Division, regarding the classification of a P.K.E. water bottle designed to be used with a bicycle, among other things, under the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered NY 867193 and determined that the classification of the water bottle is not correct.

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 880582 as described below was published in the Custom Bulletin on March 16, 2005. One comment was received in response to the notice. It is discussed in the Law and Analysis section of this ruling.

FACTS:

The item under consideration in NY 867193 was referred to as a "P.K.E. Water Bottle". According to the description provided in NY 867193, the water bottle measured approximately 6 inches in height and 3 inches in width.

The bottle snaps into a frame of a bicycle. The plastic container is intended to carry drinking water for a cyclist. In NY 867193, CBP found that the water bottle was classified in heading 3923, HTSUS, as articles for the conveyance or packing of goods, of plastics.

ISSUE:

Whether the P.K.E. water bottle is classified in heading 3923, HTSUS, as an article for the conveyance or packing of goods, or as an article of plastic under heading 3926, 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 HTSUS provisions under consideration are as follows:

3923	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics:
3923.30.00	Carboys, bottles, flasks and similar articles
* * * * * * * * * * * *	
3924	Tableware, kitchenware, other household articles and toilet articles, of plastics:
3924.90	Other:
3924.90.55	Other.
* * * * * * * * * * * *	
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other
* * * * * * * * * * * *	

One comment was received in response to the notice. The position of the commenter is that the plastic water bottles including sports and camping bottles should be classified in heading 3923, HTSUS, as articles for the conveyance or packing of goods of plastic. In this instance, the commenter points out that the plastic bottles at issue are a means of conveying water, beverages or other goods from place to place. The commenter's view is that the plastic sports bottles should be considered of the same class or kind as flasks and canteens which are classified in heading 3923, HTSUS, because like flasks, canteens and beverage packaging bottles, they can hold water or other beverages, and they can be used to convey goods already in the possession of the user for his convenience. The commenter further maintains that heading 3923, HTSUS has no commercial restriction on it. However, the commenter suggests that if CBP continues to believe that there is a commercial aspect to Heading 3923, HTSUS and that these subject bottles are not commercial products, an alternative classification for the plastic water bottles would be heading 3924, as other household articles of plastic.

The commenter has not persuaded us to amend our proposal. In reaching our conclusion, we reviewed the Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represents the official interpretation of the tariff at the international level. The ENs, although neither dispositive nor 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.

EN 39.23 states, in pertinent part:

> This heading covers all articles of plastics commonly used for the . . . conveyance of all kinds of products.
>
> . . .
>
> EN 39.26 states, in pertinent part:
>
> This heading covers articles, not elsewhere specified or included, of plastics . . .

In HQ 952264, dated November 25, 1992, CBP addressed EN 39.23 as it relates to heading 3923, HTSUS. In that ruling, CBP distinguished the plastic sports bottles at issue therein from the ENs description of plastics commonly used for the conveyance of all kinds of products, holding that heading 3923, HTSUS, pertained only to products for the conveyance of commercial goods, but not personal items, i.e., containers for packing and shipping bulk and commercial goods. Our determination that heading 3923, HTSUS, does not cover bottles that are designed to be filled by the end users was based on the language in EN 39.23, which states that the heading "covers all articles of plastics commonly used for the packing or conveyance of all kinds of products." In our judgment the use of the term "products" in EN 39.23 indicates that heading 3923, HTSUS covers only commercial products. See HQ 963204, August 15, 2001. Therefore, we have repeatedly ruled that subheading 3923.30.00, HTSUS, applies only to bottles, such as beverage bottles, that are designed to be filled and sold to the ultimate consumer with a beverage therein, and not to containers that will be filled by the end user. As such, the plastic sports bottles at issue therein, which were not designed to be filled prior to sale could not be classified in subheading 3923.30.00, HTSUS. CBP has consistently adhered to the standard set forth in HQ 952264. *See* HQ 963204, dated August 15, 2001, HQ 961434, dated March 19, 1999, HQ 960373, dated February 8, 1999, HQ 955407, dated October 6, 1994, and HQ 954072, dated September 2, 1993.

In addition, we reject the commenter's alternative claim that the plastic water bottle could be classified in heading 3924, HTSUS. We do not believe that the plastic water bottle that was under consideration NY 880582 meets the terms of heading 3924, HTSUS, because it cannot be described as tableware, kitchenware, other household articles and toilet articles, of plastics.

Similarly, the water bottle at issue in NY 867193 was neither designed to hold nor contain a beverage when sold to the ultimate consumer. Therefore, we find that the P.K.E. water bottle does not meet the term of heading 3923, HTSUS. As a result, it is classified in the residual heading for other articles of plastics, in heading 3926. It is specifically, provided for in subheading 3926.90.98, HTSUS, wherein CBP has repeatedly classified similar products. *See* NY K82067, dated January 14, 2004, NY J85490, dated June 19, 2003, HQ 962403, dated January 17, 2001, HQ 962655, dated July 7, 2000, and HQ 960373, dated February 8, 1999. As the holding in NY 867193 with

respect to the P.K.E. water bottle is inconsistent with the classification of similar merchandise, as previously discussed, NY 867193 is modified accordingly.

HOLDING:

The P.K.E. water bottle is classified in subheading 3926.90.9880, HTSUSA as: "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other."

EFFECT ON OTHER RULINGS:

NY 867193 dated October 17, 1991, is modified with respect to the classification of the P.K.E. water bottle. The classification of the other items that are described in NY 867193 is unchanged. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Robert F. Altneu for MYLES B HARMON,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF VEHICLE LIGHT HOUSING

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

ACTION: Notice of modification of a tariff classification ruling letter and revocation of treatment relating to the classification of a vehicle light housing.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is proposing to modify one ruling letter relating to the tariff classification of a vehicle light housing under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before August 12, 2005.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Textiles Branch: (202) 572–8713.

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 modify one ruling letter pertaining to the tariff classification of a vehicle light housing. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) K88378, dated August 16, 2004 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during 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 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 HTSUSA. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substan-

tially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY K88378, CBP ruled that a vehicle light housing was classified in subheading 8512.20.4040, HTSUSA, which provides for "Electrical lighting or signaling equipment (excluding articles of heading 8539), windshield wipers, defrosters and demisters, of a kind used for cycles or motor vehicles; parts thereof: Other lighting or visual signaling equipment: visual signaling equipment . . . for vehicles of subheading 8701.20 or heading 8702, 8703, 8704, 8705 or 8711." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error as it pertains to the classification of the vehicle light housing, and that the vehicle light housing should be classified in subheading 8512.90.2000, HTSUS, which provides for "Electrical lighting or signaling equipment (excluding articles of heading 8539), windshield wipers, defrosters and demisters, of a kind used for cycles or motor vehicles; parts thereof: Parts: Of signaling equipment."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY K88378 and to revoke or modify any other ruling not specifically identified, to reflect the proper classification of the vehicle light housing according to the analysis contained in proposed Headquarters Ruling Letter (HQ) 967511, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: June 24, 2005

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 K88378
August 16, 2004
CLA–2–90:RR:NC:MM:101 K88378
CATEGORY: Classification
TARIFF NO.: 8302.30.3060, 8512.20.4040,
8544.41.8000, 8544.49.8000, 9001.90.4000

MR. STEVEN B. VON DOBSCHUTZ
SOUND OFF, INC.
P.O. Box 206
5132 37th Avenue
Hudsonville, Michigan 49426

RE: The tariff classification of a Copper Wire, a Hardware Kit, a Cigarette/ Cigar Power Cord, a Plastic Lens, and a Vehicle Light Housing - all from Taiwan

DEAR MR. VON DOBSCHUTZ:

In your letter dated July 23, 2004 you requested a tariff classification and country of origin ruling.

You submitted samples, technical drawings and brochures of items used in emergency vehicle and commercial vehicle lighting products.

A Copper Wire, UL1015 18 gauge, approximately 18″ long, partially stripped on one end and tinned with solder on the other stripped end. You state that you purchase this wire in a variety of colors, lengths and gauges (typically from 6AWG to 24 AWG, although primarily in 18 AWG). This wire is imported in boxes of up to 3,000 pieces per box. These wires are to be used in electronic assemblies.

A Hardware Kit, consisting of seven metal components in a poly bag. You state that these kits arrive in the US packaged several hundred pieces per shipping carton. This hardware kit (as is) is included with a vehicle warning light inside of a box. The contents of the kit are:

1 pc Metal U Bracket 1 3/8″W x ¾″D x 1 3/16″H with one hole in each upright side.

1 pc Metal 7/16″ hex head bolt, 2 1/8″ total length.

1 pc Metal carriage bolt, 1 ¼″ total length.

2 pcs Metal lock washers ½″ outside diameter x 5/16″ inside diameter.

3 pcs Metal 7/16″ hex nuts.

An 8-foot Cigarette/Cigar Power Cord with terminations and label attached. The unit contains a typical cigar plug end (with 10 amp fuse) on one end of the wire to allow the user to plug into a vehicle's 12 V cigar lighter or auxiliary power outlet. The other end of the wire is connected to a vehicle warning light for police, fire, EMS, towing or other such emergency or recovery vehicles.

A Plastic Lens in a foam bag with gasket attached. The lens is used in strobe or halogen warning lights intended as secondary warning lights for police,

fire, EMS, towing or other such emergency recovery vehicles. The lens provides diffusion and color for the light.

A Vehicle Light Housing, chrome in color, with a T-bracket attached by a bolt with two washers. The unit is a housing for a strobe, halogen, or LED warning light to be mounted on a police, fire, EMS, towing or other such emergency recovery vehicles.

The applicable subheading for the Copper Wire will be 8544.49.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors: Other electric conductors, for a voltage not exceeding 80 V: Other: Other. The rate of duty will be 3.5% ad valorem. The applicable subheading for the Hardware Kit will be 8302.30.3060, Harmonized Tariff Schedule of the United States (HTS), which provides for Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof: Other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof: Of iron or steel, of aluminum or zinc . . . Other. The rate of duty will be 2% ad valorem.

The applicable subheading for the Cigarette/Cigar Power Cord will be 8544.41.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors: Other electric conductors, for a voltage not exceeding 80 V: Fitted with connectors: Other. The rate of duty will be 2.6% ad valorem.

The applicable subheading for the Plastic Lens will be 9001.90.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for Optical fibers and optical fiber cables; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked: Other: Lenses. The rate of duty will be 2% ad valorem.

The applicable subheading for the Vehicle Light Housing will be 8512.20.4040, Harmonized Tariff Schedule of the United States (HTS), which provides for Electrical lighting or signaling equipment (excluding articles of heading 8539), windshield wipers, defrosters and demisters, of a kind used for cycles or motor vehicles; parts thereof: Other lighting or visual signaling equipment: visual signaling equipment . . . For the vehicles of subheading 8701.20 or heading 8702, 8703, 8704, 8705 or 8711. The rate of duty will be 2.5% ad valorem.

This is also in response to your letter dated July 23, 2004 requesting a ruling on whether the proposed method of marking the container in which the Hardware Kit, Plastic Lens, and Vehicle Light Assembly is imported with the country of origin in lieu of marking the article itself is an acceptable

country of origin marking for the imported Hardware Kit, Plastic Lens, and Vehicle Light Assembly. A marked sample container was not submitted with your letter for review.

The Hardware Kit consists of seven metal components in a poly bag. The components are: a metal U bracket, a metal hex head bolt, a metal carriage bolt, two metal lock washers, and three metal hex nuts.

The Plastic Lens is in a foam bag and arrives packed several dozen per imported box. You state that in one application, you periodically sell the unit as is, and packed with a hardware kit, bagged, and labeled.

A vehicle Light Housing that arrives assembled and wrapped in a bubble bag, in shipping cartons of 50–100 pieces. In one application, you sell the unit as is, and packed with a hardware kit, bagged, and labeled.

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

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.41(b), Customs Regulations (19 CFR 134.41(b)), mandates that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain. Section 134.1(d), defines the ultimate purchaser as generally the last person in the U.S. who will receive the article in the form in which it was imported. If an imported article is to be sold at retail in its imported form, the purchaser at retail is the ultimate purchaser. In this case, the ultimate purchaser of the Hardware Kit, Plastic Lens, and Vehicle Light Assembly is the consumer who purchases the product at retail.

An article is excepted from marking under 19 U.S.C. 1304 (a)(3)(D) and section 134.32(d), Customs Regulations (19 CFR 134.32(d)), if the marking of a container of such article will reasonably indicate the origin of such article. Accordingly, if Customs is satisfied that the articles will remain in its container until it reaches the ultimate purchaser and if the ultimate purchaser can tell the country of origin of the Hardware Kit, Plastic Lens, and Vehicle Light Assembly by viewing the container in which it is packaged, the individual pieces would be excepted from marking under this provision.

The Hardware Kit, Plastic Lens, and Vehicle Light Assembly which are imported in containers that are marked in the manner described above, are excepted from marking under 19 U.S.C. 1304 (a)(3)(D) and 19 CFR 134.32(d). Accordingly, marking the container in which the Hardware Kit, Plastic Lens, and Vehicle Light Assembly are imported and sold to the ultimate purchaser in lieu of marking the article itself is an acceptable country of origin marking for the imported items provided the port director is satisfied that the article will remain in the marked container until it reaches the ultimate purchaser.

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

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

ported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646–733–3008.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967511
CLA–2 RR:CR:TE 967511 KSH
TARIFF NO.: 8512.90.2000

STEVEN B. VON DOBSCHUTZ
SOUND OFF, INC.
P.O. Box 206
5132 37th Avenue
Hudsonville, MI 49426

RE: Modification of New York Ruling Letter (NY) K88378, dated August 16, 2004; Classification of a vehicle light housing.

DEAR MR. VON DOBSCHUTZ:

This is in response to your letter of January 5, 2005, in which you request reconsideration of New York Ruling Letter (NY) K88378, issued to you on August 16, 2004, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a vehicle light housing. The vehicle light housing was classified in subheading 8512.20.4040, HTSUS, which provides for "Electrical lighting or signaling equipment (excluding articles of heading 8539), windshield wipers, defrosters and demisters, of a kind used for cycles or motor vehicles; parts thereof: Other lighting or visual signaling equipment: visual signaling equipment . . . For the vehicles of subheading 8701.20 or heading 8702, 8703, 8704, 8705 or 8711." You assert that because the unit by itself does not provide any signaling or emit any light it is better classified in subheading 8512.90.2000, HTSUS, which provides for "Electrical lighting or signaling equipment (excluding articles of heading 8539), windshield wipers, defrosters and demisters, of a kind used for cycles or motor vehicles; parts thereof: Parts: Of signaling equipment." Since the issuance of NY K88378, CBP has reviewed the classification of this item and has determined that the cited ruling is in error as it pertains to the classification of the vehicle light housing.

FACTS:

The submitted sample is a chrome colored vehicle light housing with a T-bracket attached by a bolt with two washers. It is housing for a strobe, halogen, or LED warning light to be mounted on a police, fire, EMS, towing or other such emergency recovery vehicle. The unit by itself does not provide any signaling or emit any light. Upon importation, components such as re-

flector, lens, cable, light and connectors are added to produce an assembled light or it may be sold packed with a hardware kit, bagged and labeled.

ISSUE:

Whether the vehicle light housing is classifiable as visual signaling equipment of subheading 8512.20.4040, HTSUS, or as a part of signaling equipment under subheading 8512.90.2000, 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.

Subheading 8512.20.4040, HTSUS, provides for "Electrical lighting or signaling equipment (excluding articles of heading 8539), windshield wipers, defrosters and demisters, of a kind used for cycles or motor vehicles; parts thereof: Other lighting or visual signaling equipment: visual signaling equipment . . . For the vehicles of subheading 8701.20 or heading 8702, 8703, 8704, 8705 or 8711."

Subheading 8512.90.2000, HTSUS, provides for "Electrical lighting or signaling equipment (excluding articles of heading 8539), windshield wipers, defrosters and demisters, of a kind used for cycles or motor vehicles; parts thereof: Parts: Of signaling equipment."

GRI 2(a) states, in part, that incomplete or unfinished articles are to be classified as if complete or finished provided that, as imported, the incomplete or unfinished article has the essential character of the complete or finished article. Accordingly, if the vehicle light housing has the essential character of electrical lighting or signaling equipment, it was properly classified as such in NY K88378.

The unit, as imported, does not contain the reflector, lens, light bulb or LED module and cables. As such it is not a complete visual signaling equipment item, rather it is a part of visual signaling equipment. The absence of significant components without which the completed article could not function in its intended manner, results in a finding that the imported component does not possess the essential character of the finished good. See HQ 087981, dated December 21, 1990, and NY J80036, dated January 21, 2003. Therefore, it cannot be classified in the heading for the finished good and is classifiable as a part.

HOLDING:

NY K88378, dated August 16, 2004, is hereby modified.

The vehicle light housing is classified in subheading 8512.90.2000, HTSUS, which provides for "Electrical lighting or signaling equipment (excluding articles of heading 8539), windshield wipers, defrosters and demisters, of a kind used for cycles or motor vehicles; parts thereof: Parts:

Of signaling equipment." The general column one rate of duty is 2.5% *ad valorem*.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

PROPOSED MODIFICATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN RAYON FILAMENT YARN

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

ACTION: Notice of proposed modification of a tariff classification ruling letter and revocation of treatment relating to the classification of certain rayon filament yarn.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182,107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain rayon filament yarn. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before August 12, 2005.

ADDRESS: Written comments are to be addressed to U.S. 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 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: Brian Barulich, Textiles Branch, at (202) 572–8883.

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 modify one ruling letter relating to the tariff classification of certain rayon filament yarn. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) H86635, dated January 10, 2002 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

In NY H86635, CBP classified six types of rayon filament yarns from France. One of the yarns, identified in the ruling as #3 or "Ref. 12765/212765" was classified in subheading 5403.32.0000, HTSUSA, which provides for: "Artificial filament yarn (other than sewing thread), not put up for retail sale, including artificial monofilament of less than 67 decitex: Other yarn, single: Of viscose rayon, with a twist exceeding 120 turns/m." Based on our review of the ruling and the article's description, we now believe that the yarn identified as #3 or "Ref. 12765/212765" is classified in subheading 5403.39.0040, HTSUSA, as "Artificial filament yarn (other than sewing thread), not put up for retail sale, including artificial monofilament of less than 67 decitex: Other yarn, single: Other, Multifilament, with twist of 5 turns or more per meter."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY H86635 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967717 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: June 24, 2005

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

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY H86635
January 10, 2002
CLA–2–54:RR:NC:N3:351 H86635
CATEGORY: Classification
TARIFF NO.: 5403.32.0000, 5403.31.0020, 5403.41.0000

MS. ELLEN A. DILAPI
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN, & KLESTATDT LLP
245 Park Ave., 33rd Floor
New York, NY 10167–3397

RE: The tariff classification of rayon filament yarns from France.

DEAR MS. DILAPI:

In your letter dated January 4, 2002, you requested a ruling on behalf of Jasco Fabrics, Inc., on tariff classification.

You submitted samples of six (6) rayon filament yarns, which you describe as follows:

Vendor reference 12778S/212778Z: 100% viscose rayon; 167 decitex; 42 filament; twist of 1288 turns per meter.

Ref. 1445/12806S and 201445/212806Z, which you state are the same as reference numbers 12806S and 212806Z, for which no samples were submitted, except that the latter two are not oiled. (In a telephone conversation with National Import Specialist Mitchel Bayer, you stated that the oiling was not a dressing for sewing thread.): 100% viscose rayon; 110 decitex; 40 filament; twist of 1745 tpm.

Ref. 12765/212765: 100% Bemberg cuprammonium rayon; 110 decitex; 75 filament; twist of 1670 tpm.

Ref. 12702S/212702Z: 72% viscose rayon, 28% polyester; 117 decitex; 49 filament; twist of 1557 tpm.

Ref. 124222EV: 100% viscose rayon; 167 decitex; 42 filament; no twist.

Ref. 1444: 100% viscose rayon;168 decitex (2 x 84, a multiple yarn); 62 filament; twist of 1800 tpm.

The weight of each cone of yarn exceeds 85 grams, meaning that these man-made filament yarns are not put up for retail sale according to the definition found in Note 4(A)(a) to Section XI, Harmonized Tariff Schedule of the United States (HTS). You state in your letter that the yarns are neither high tenacity nor textured.

The applicable subheading for samples 1–4 (including the two not submitted, as stated in (2) above) will be 5403.32.0000, HTS, which provides for "Artificial filament yarn (other than sewing thread), not put up for retail sale, . . . other yarn, single; of viscose rayon, with a twist exceeding 120 turns/m." The general rate of duty will be 10 percent ad valorem.

The applicable subheading for sample 5 will be 5403.31.0020, HTS, which provides for "Artificial filament yarn (other than sewing thread), not put up for retail sale . . . ; other yarn, single; of viscose rayon, untwisted or with a twist not exceeding 120 turns/m; multifilament, untwisted. . . ." The general rate of duty will be 10 percent ad valorem. The applicable subheading for sample 6 will be 5403.41.0000, HTS, which provides for "Artificial filament yarn (other than sewing thread), not put up for retail sale, . . . ; other yarn, multiple (folded) or cabled; of viscose rayon." The general rate of duty will be 10 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 Mitchel Bayer at 646–733–3102.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967717
CLA–2 RR:CR:TE 967717 BtB
CATEGORY: Classification
TARIFF NO.: 5403.39.0040

MS. ELLEN A. DILAPI
GRUNFLED, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT LLP
399 Park Avenue
25th Floor
New York, NY 10022–4877

Re: Classification of rayon filament yarns from France; NY H86635 Modified

DEAR MS. DILAPI:

On January 10, 2002, U.S. Customs and Border Protection (CBP) issued New York Ruling Letter (NY) H86635 to you on behalf of Jasco Fabrics, Inc. In NY H86635, CBP classified six types of rayon filament yarns from France (referred to as #'s 1–6) under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Upon review of that ruling, we have found that the classification provided for one type of rayon filament yarn (#3) is incorrect. This ruling, Headquarters Ruling Letter (HQ) 967717, hereby modifies NY H86635 in regard to that type of rayon filament yarn. The classifications set forth in NY H86635 for the other types of yarns are correct and this ruling does not modify them.

FACTS:

In NY H86635, rayon filament yarn #3 ("Yarn #3"), also identified as "Ref. 12765/212765" is described as: "100% Bemberg cuprammonium rayon; 110 decitex; 75 filament; twist of 1670 tpm."

In that ruling, CBP classified Yarn #3 in subheading 5403.32.0000, HTSUSA, which provides for: "Artificial filament yarn (other than sewing thread), not put up for retail sale, including artificial monofilament of less than 67 decitex: Other yarn, single: Of viscose rayon, with a twist exceeding 120 turns/m."

ISSUE:

Whether Yarn #3 is classified in subheading 5403.32.0000, HTSUSA, or in subheading 5403.39.0040, HTSUSA, as "Artificial filament yarn (other than sewing thread), not put up for retail sale, including artificial monofilament of less than 67 decitex: Other yarn, single: Other, Multifilament, with twist of 5 turns or more per meter."

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." If 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, in order.

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

at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

The ENs to Chapter 54, in pertinent part, state that:

> The main **artificial fibres** are :
>
> (A) **Cellulosic fibres**, namely :
>
> (1) **Viscose rayon**, which is produced by treating cellulose (generally in the form of sulphite wood pulp) with sodium hydroxide; the resulting alkali-cellulose is then treated with carbon disulphide and transformed into sodium cellulose xanthate. The latter is in turn transformed into a thick solution known as viscose by dissolving it in dilute sodium hydroxide. After purification and maturing, the viscose is then extruded through spinnerets into a coagulating acid bath to form filaments of regenerated cellulose. **Viscose rayon** also covers modal fibres, which are produced from regenerated cellulose by a modified viscose process.
>
> (2) **Cuprammonium rayon (cupro)**, obtained by dissolving cellulose (generally in the form of linters or chemical wood pulp) in a cuprammonium solution; the resulting viscous solution is extruded into a bath where filaments of precipitated cellulose are formed.

As the ENs above illustrate, cuprammonium rayon varies from viscose rayon. In the case at hand, Yarn #3 is made of cuprammonium rayon, not viscose rayon. It should, therefore, not be classified as a yarn of viscose rayon, but should be classified in subheading 5403.39, HTSUSA, the provision covering cuprammonium rayon. As Yarn #3 has a twist of 5 turns or more per meter, it is classified in subheading 5403.39.0040, HTSUSA.

HOLDING:

Yarn #3, also identified as "Ref. 12765/212765," is classified in subheading 5403.39.0040, HTSUSA, as "Artificial filament yarn (other than sewing thread), not put up for retail sale, including artificial monofilament of less than 67 decitex: Other yarn, single: Other, Multifilament, with twist of 5 turns or more per meter." The applicable column one, general rate of duty for the merchandise under the 2005 HTSUSA is 8% *ad valorem*.

NY H86635, dated January 10, 2002, is hereby modified.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF MOTOR SUPPORT BEARINGS, OIL FILLER CAPS, AND FELT WICK LUBRICATORS

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

ACTION: Notice of revocation of tariff classification ruling letters and revocation of treatment relating to the classification of motor support bearings, oil filler caps, and felt wick lubricators.

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 two ruling letters relating to the tariff classification of three items packaged together, motor support bearings, oil filler caps, and felt wick lubricators under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed actions was in Customs Bulletin on April 27, 2005. No comments were received in response to the proposed notice.

DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 11, 2005.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, General Classification Branch, at (202) 572–8721.

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 responsibil-

ity 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 is revoking two ruling letters relating to the tariff classification of certain motor support bearings, oil filler caps, and felt wick lubricators. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letters (NY) K88338, dated August 23, 2004, and NY J88158 dated September 9, 2003, this notice also covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise. Any person involved with 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. In NY J88158, CBP classified support motor support bearings, oil filler caps and felt wick lubricators that were used in diesel trucks in subheading 8302.30.30, HTSUS as: "Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof: other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof: Of iron or steel, of aluminum or of zinc."

In NY K88338, CBP considered the classification of these same items when they were used to support the traction motors of railroad locomotives rather than the traction motors of diesel trucks. CBP determined in NY K88338 that the three items were classified in subheading 8302.49.60, HTSUS, which provides for "Base metal mount-

ings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof; other mountings, fittings and similar articles, and parts thereof: Other: Other: : Of iron or steel, of aluminum or Of zinc..

Based on our analysis of the scope of the terms of heading 8302, HTSUS, we now believe the following three items, motor support bearings, oil filler caps and felt wick lubricators, subject to this notice are classified as a set in subheading 8483.30.80, HTSUS, as transmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft coupling (including universal joints), parts thereof: bearing housings; plain shaft bearings: Other.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY J88158 and NY K88338 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letters (HQs) 967417 and 967544 (Attachments A and B, respectively). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions that is contrary to the determination set forth in this notice.

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

DATED: June 24, 2005

Robert F. Altneu for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

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

HQ 967417
June 24, 2005
CLA–2 RR:CR:GC 967417 RSD
CATEGORY: Classification
TARIFF NO.: 8483.30.80

GERN F. SCOTT
SENIOR CONSULTANT, TRADE AND REGULATORY SERVICES
PBB GLOBAL LOGISTICS
670 Young Street
Tonawanda, New York 14150

RE: Revocation of NY K88338 regarding the classification of motor support bearings, felt wicks and oil filler caps that are used to support traction motors on diesel railroad locomotives

DEAR MR. SCOTT:

This is in response to your letter dated October 21, 2004, on behalf of Miller Felpax Corporation requesting reconsideration of NY K88338 dated August 23, 2004, which concerned the classification of motor support bearings, felt wick lubricators and oil filler caps that are used on diesel railway locomotive cars under the Harmonized Tariff Schedule United States (HTSUS).

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 K88338 as described below was published in the Custom Bulletin on April 27, 2005. No comments were received in response to the notice.

FACTS:

The merchandise under consideration consists of three items that are used in diesel railway locomotive vehicles. The three items are motor support bearings, felt wick lubricators, and oil filler caps. All three items work together in the traction motor of railway locomotive cars. The motor support bearings are split bearings used to support the weight of the traction motor on the locomotive drive. The felt wick lubricator is an oil reservoir with a spring loading device that keeps the felt wick in contact with the wheel axle. The oil filler cap is predominately made of steel with a plastic outer cap. It has a central metal probe with a spring surrounding the probe.

A traction motor suspension bearing is a split-sleeve bearing, normally 200 mm to 230 mm in diameter and 280 mm long. The bearing surface is babbit-cast on brass supporting half sleeves. Typical radial and lateral bearing clearance are 0.3–1.2 mm and 1.6–5 mm, respectively. Two of these bearings, one each at the commutator and pinion end, support the weight of the traction motor on the locomotive drive axle. The traction motor support bearings are lubricated by a felt wick assembly, which is typically 25 mm thick by 150 mm wide, with one end held against the axle surface by spring

pressure and the opposite end immersed up to 100 mm deep in a 5 liter capacity oil reservoir.

Oil is drawn up from the oil reservoir through the wick to the axle surface by capillary action. The traction motor has three suspension mounts on the locomotive. Two are provided by the support bearings, which connect one side of the traction motor to the wheel axle. The third point is provided by two lugs on the motor frame that contact the top and bottom of the nose support assembly on the locomotive frame.

The nose suspension arrests the upward or downward movement of the motor depending on the direction of rotation when power is applied. The support bearings are of a split "hour glass" design. A half of each bearing assembly is inserted in the motor frame while the mating half is installed in the support in the support bearing cap. Both halves are machined together and are identified by a serial number. The bearings are matched and must be kept and installed together. The oil filler cap is predominantly made of steel with a plastic outer cap. It has a central metal probe with the spring surrounding the probe. There is a U.S. patent on these products.

In NY K88338 dated August 23, 2004, Customs and Border Protection (CBP) determined that the items under consideration were classified in subheading 8302.49.60 HTSUS, as: "Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof: Other mountings, fittings and similar articles, and parts thereof: Other mountings: Other: Other: Of iron or steel, of aluminum or of zinc."

ISSUE:

Whether the motor support bearings, felt wick lubricators and oil filler caps are classified in heading 8302, HTSUS, as other mounting fittings and similar articles, or in heading 8607, HTSUS, as parts of railway locomotives, or in heading 8483, HTSUS, as plain shaft bearings?

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:

8302	Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof:
	Other mountings . . . . .
8302.49	Other:
	Other:

8302.49.60	Of iron or steel, of aluminum or of zinc . . .
* * * * * * * * * * * * *	
8483	Transmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft coupling (including universal joints); parts thereof:
8483.30	Bearing housings; plain shaft bearings:
8483.30.80	Other . . .
* * * * * * * * * * * * *	
8607	Parts of railway or tramway locomotives or rolling stock:
	Other:
8607.91.00	Of locomotives . . .
* * * * * * * * * * * * *	

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. CBP believes the ENs should always be consulted. See, T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 83.02 provides in pertinent part:

> This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles). The heading **does not**, however, **extend** to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.
>
> The heading covers:
>
> . . .
>
> (C) **Mountings, fittings and similar articles suitable for motor vehicles** (e.g. motor cars, lorries or motor coaches) not being parts or accessories of **Section XVII.** For example: made up ornamental beading strips; foot rests; grip bars, rails and handles; fittings for blinds (rods, brackets, fastening fittings, spring mechanisms, etc.); interior luggage racks; window opening mechanisms; specialised ash trays; tail-board fastening fittings.
>
> .

Because neither the HTSUS nor the ENs define the terms mountings and fittings, we have looked at standard dictionary definitions for these terms to determine whether the diesel motor support bearings are classifiable in

heading 8302, HTSUS. Webster's New World Dictionary, Second College Edition, 1974 defines the word fitting as:

> . . . 2. a small part used to join, adjust, or adapt other parts, as in a system of pipes 3. [pl.] the fixtures, furnishings, or decoration of a house, office, automobile, etc.

The web site Dictionary.com defines the word mounting when used as a noun as:

> 1. The act or manner of mounting. 2. A means of conveyance, such as a horse, on which to ride. 3. An opportunity to ride a horse in a race. 4. An object to which another is affixed or on which another is placed for accessibility, display, or use, especially:
>
> a. A glass slide for use with a microscope.
> b. A hinge used to fasten stamps in an album.
> c. A setting for a jewel.
> d. An undercarriage or stand on which a device rests while in service.

Based on these definitions for the terms mountings and fittings, we find that the motor support bearings for railroad cars under consideration cannot be characterized as either a fitting or a mounting that would be classified in heading 8302, HTSUS. Accordingly, we look at the alternative heading of 8483, HTSUS.

EN 84.83 describes bearing housings and plain shaft bearings as:

> **(B) BEARING HOUSINGS AND PLAIN SHAFT BEARINGS**
>
> . . .
>
> On the other hand **plain shaft bearings** are classified in this heading even if they are presented without housings. They consist of rings of anti-friction metal or other material (e.g., sintered metal or plastics). They may be in one piece or in several pieces clamped together, and form a smooth bearing in which a shaft or axle turns.

The *McGraw-Hill Encyclopedia of Science & Technology* defines the term anti-friction bearing as: "A machine element that permits free motion between moving and fixed parts. Anti-friction bearings are essential to mechanized equipment: they hold or guide moving machine parts and minimize friction and wear."

The web site http://www.micropat.com/classdef/CLSDEF/class384/s000000.html gives further guidance by explaining that bearings are devices:

> designed for general use, where one element continuously bears the weight of another, either suspended therefrom, or imposed thereon, and wherein there is either linear motion (e.g., cross head) rotary motion (e.g., of a shaft or axle), or oscillating movement (e.g. a lever) between the two elements. The bearings may have either sliding, or rolling contact with the supported member.
>
> The class includes (a) supports for bearings where such supports are specially formed to receive, and are placed in combination with, bearings, and when not limited to any classified art; (b) antifriction means, as balls, or rollers, designed to receive a rotating shaft, or to be used in

connection with a pivoted, sliding, or rotary element; and (c) lubricating devices wherein any of the above bearings are modified for receiving and supplying lubricant.

The web site http://www.grindwellnorton.co.in/UsefulInfo/ui__bearing.htm indicates:

Bearings are "the Essential items" required to reduce or eliminate the friction between moving parts.

* * *

Bearings can be used to provide sliding contact between mating parts or rolling contact between the mating parts. Hence broadly the bearing can be classified into two main types:

Plain Bearings: Used to minimize "friction" by providing sliding contact between mating parts.

Rolling Contact Bearings: Used to minimize "friction" by providing rolling contact between mating parts.

Plain Bearings:

Plain bearings operate on the principle of Boundary layer lubrication. The load carrying capacity of plain bearings depends on the type of film which is formed between the mating surfaces.

The web site Engineering.com explains that:

The relative motions between the mating surfaces of a plain bearing may take place in the following ways:

1. As pure sliding with any lubricating medium between the moving surfaces.
2. With hydrodynamic lubrication where a film buildup of lubricating medium is produced.
3. With hydrostatic lubrication where a lubricating medium is introduced under pressure between the moving surfaces.
4. With a combination of hydrodynamic and hydrostatic lubrication.

Based on the information available, we conclude that the motor support bearings under consideration are split-sleeve bearings used on the commutator and pinion end of a traction motor of a railway locomotive. The traction motor bearings are sliding bearings that rely on an oil film rather than rolling elements, such as metal balls, to mediate against the friction associated with a rotating shaft. Sliding type bearings are provided for as plain shaft bearings in heading 8483, HTSUS.

We note that although the motor support bearings are used in railroad locomotive cars, they are excluded from being classified in heading 8607, HTSUS, as parts of railroad cars under Note 2(e) to Section XVII which states that: "The expressions 'parts' and 'parts and accessories' do not apply to the following articles, whether or not they are identifiable as for the goods of this section:

(e) Machines or apparatus of heading 8401 to 8479 or parts thereof; articles of heading 8481 or 8482 or, provided they constitute integral parts of engines or motors, articles of heading 8483;

The motor support bearings are necessary for the traction motor to perform its function in the railway locomotives, and they are classifiable in heading 8483, HTSUS, as plain shaft bearings. Thus, we conclude that they are integral parts of the traction motors, and under Note 2(e), to Section XVII, they are excluded from being classified in heading 8607, HTSUS.

In addition to the motor support bearings, the merchandise under consideration includes two other items, felt wick lubricators and oil filler caps. It is our understanding that the three parts work together in coordinated manner. The felt wick lubricator supplies the lubrication of the traction motor support bearing, and oil filler cap serves as the storage device of the lubricant that the traction motor support bearing slides upon.

GRI 3 states that: "[w]hen by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings classification shall be effected as follows":

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

The relevant part of the ENs states that for purposes of Rule 3 the term "goods put up in sets for retail sale" means goods which: (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and, (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

Applying these criteria to the three items, the traction motor support bearings, felt wick lubricators, and oil filler caps, we find that these articles meet each of the three requirements for "sets" stated in the ENs. As noted above, the bearing is *prima facie* classifiable in heading 8483, HTSUS, as a plain shaft bearing. The felt wick lubricator is *prima facie* classifiable in heading 5602, HTSUS, as felt, and the oil filler cap, which is mostly made of steel, is *prima facie* classifiable in heading 7326, HTSUS, as other articles of iron or steel. In providing the lubricant on which the traction motor support bearing slides, the felt wick and oil filler cap work with the traction motor support bearing so that the three items can effectively function together to carry out the specific activity of supporting and reducing friction in the traction motor of a railroad locomotive.

We recognize that the bearing kits are not sold directly to consumers,. However, in HQ 083968 dated July 6, 1989, CBP considered fuel modifications kits delivered without repacking to car dealers, who as the ultimate consumers, installed the components of the kits on recalled cars without charge to the owners. We noted that because the items were put up in a manner suitable for sale directly to users they were sets. We pointed out that there is no requirement that sets actually be sold at retail. In this case, the motor support bearing, felt wick lubricators and oil filler caps are packaged together and are sold directly to users who will install these items into the traction motor of a railroad locomotive without being repackaged. Thus,

we conclude that the three items under consideration constitute a set. Accordingly, we must then determine which of the three items imparts the essential character to the set.

The ENs indicate that essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods. In regard to the three items in the set, the bearing has a far greater bulk, weight and value than the two other components. The bearings also play the principal role in reducing friction and supporting the traction motor of a railroad locomotive. Therefore, of the three components, we conclude that the motor support bearing imparts the essential character to the set. As such, the three items (the motor support bearings, the felt lubricators and the oil filler caps) are classified as a set in the same heading as the motor support bearing, heading 8483, HTSUS, as bearing housings, housed bearings and plain shaft bearings.

HOLDING:

By application of GRI 3(b), the traction motor support bearings for railroad locomotives, felt wick lubricators, and oil filler caps are classified as a set based on the essential character of the set being the bearing in heading 8483, HTSUS. It is provided for in subheading 8483.30.80, HTSUS, as "[t]ransmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft coupling (including universal joints); parts thereof: Bearing housings; plain shaft bearings: Other . . ." with a column one, general rate of duty of 4.5 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.

EFFECT ON OTHER RULINGS:

NY K88338 dated August 23, 2004 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Robert F. Altneu for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

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

HQ 967544
June 24, 2005
CLA–2 RR:CR:GC 967544 RSD
CATEGORY: Classification
TARIFF NO. 8483.30.80

MR. JAMES F. MORGAN
PBB GLOBAL LOGISTICS
883-D Airport Park Road
Glen Burnie, Maryland 21061

RE: Revocation of NY J88158 regarding the tariff classification of a diesel truck motor support bearing, oil cap with a probe and felt wick lubricator

DEAr MR. MORGAN:

This is in reference to New York Ruling Letter (NY) NY J88158 dated September 9, 2003, issued by the Customs and Border Protection (CBP) National Commodity Specialist Division, (NCSD) regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a diesel motor support bearing, oil cap with a probe and felt wick lubricator used in a truck. We have reconsidered NY J88158 and determined that the classification of the support bearing, the oil cap and the felt wick lubricator is not correct.

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 K88158 as described below was published in the Custom Bulletin on April 27, 2005. No comments were received in response to the notice.

FACTS:

In NY J88158, CBP stated that the traction motor has three suspension mounts in the truck. Two are provided by the support bearings that connect to one side of the traction motor to the wheel axle. The third point is provided by two lugs on the motor frame that contact the top and bottom of the nose support assembly on the truck frame. The nose suspension thus arrests the upward or downward movement of the motor depending on the direction of rotation when power is applied. The support bearings are of the split "hour glass" design. A half of each bearing assembly is inserted in the motor frame while the mating half is installed in the support bearing cap. Both halves are machined together and are identified by a serial number. The bearings are thus matched and must be kept together and installed in sets. The commutator end and pinion end bearing assemblies of the current narrow window type are interchangeable. The motor support bearings have a machined brass outer surface, and an inner surface of steel. Each bearing half is 12¼″ long, having an outside diameter at the flange end of 12″, and an outside diameter of 9″ at the opposite end. The thickness of the housing is approximately 9/16″. One half of the bearing support has a slot to accept the

felt wick lubricator. It is 7″ long by 1 7/8″ wide. Together, the two motor support bearing halves weigh approximately 70 pounds.

A felt wick inserted in the oil reservoir in each bearing cap provides lubrication of traction motor support bearings. A spring loading arrangement keeps the wicks in firm contact with the wheel axle through an opening in the bearing. A narrow window traction motor support bearing cap and support bearing arrangement has been in use since the late D–47 traction motor. The narrow window provides increased oil capacity and larger bearing surface as well as an improved wick lubricator.

The Oil Filler Cap is predominately steel with a plastic cap. It has a central metal probe with a spring surrounding the probe.

In J88158, CBP held that the applicable subheading for diesel motor support bearing, oil cap with probe and felt wick lubricator was 8302.30.30, HTSUS, which provides for: "Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof: Other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof: Of iron or steel, of aluminum or of zinc."

ISSUE:

Whether the motor support bearings, felt wick lubricators and oil filler caps are classified in heading 8302, HTSUS, as other mounting fittings and similar articles suitable for motor vehicles, or in heading 8483, HTSUS, as plain shaft bearings?

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:

8302	Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof:
8302.30	Other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof:
8302.30.60	Of iron or steel, aluminum or of zinc . . .

* * * * * * * * * * * * *

8483	Transmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft coupling (including universal joints); parts thereof:
8483.30	Bearing housings; plain shaft bearings:
8483.30.80	Other . . .

* * * * * * * * * * * * *

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. CBP believes the ENs should always be consulted. See, T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 83.02 indicates:

> This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles). The heading **does not**, however, **extend** to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.
>
> The heading covers:
>
> . . .
>
> (C) **Mountings, fittings and similar article suitable for motor vehicles** (e.g. motor cars, lorries or motor coaches) not being parts or accessories of **Section XVII**. For example: made up ornamental beading strips; foot rests; grip bars, rails and handles; fittings for blinds (rods, brackets, fastening fittings, spring mechanisms, etc.); interior luggage racks; window opening mechanisms; specialised ash trays; tail-board fastening fittings.

Because neither the HTSUS nor the ENs define the terms mountings and fittings, we have looked at the standard dictionary definitions for these terms to determine whether the diesel motor support bearings are classifiable in heading 8302, HTSUS. Webster's New World Dictionary, Second College Edition, 1974 defines the word fitting as:

> . . . 2. a small part used to join, adjust, or adapt other parts, as in a system of pipes 3. [pl.] the fixtures, furnishings or decoration of a house, office, automobile, etc.

The web site Dictionary.com defines the word mounting when used as a noun as:

> 1. The act or manner of mounting. 2. A means of conveyance, such as a horse, on which to ride. 3. An opportunity to ride a horse in a race. 4. An object to which another is affixed or on which another is placed for accessibility, display, or use, especially:
>
> a. A glass slide for use with a microscope.
> b. A hinge used to fasten stamps in an album.
> c. A setting for a jewel.
> d. An undercarriage or stand on which a device rests while in service.

Based on these dictionary definitions for the terms mountings and fittings, we find that the diesel motor support bearings under consideration cannot be characterized as either a fitting or a mounting that would be classified in heading 8302, HTSUS. Thus, we look at the alternative heading proposed, heading 8483, HTSUS, to determine if it describes the diesel motor support bearing of a truck.

EN 84.83 describes bearing housing and plain shaft bearings as:

> (B) **BEARING HOUSINGS AND PLAIN SHAFT BEARINGS**
>
> On the other hand **plain shaft bearings** are classified in this heading even if they are presented without housings. They consist of rings of anti-friction metal or other material (e.g., sintered metal or plastics). They may be in one piece or in several pieces clamped together, and form a smooth bearing in which a shaft or axle turned.

The *McGraw-Hill Encyclopedia of Science & Technology* defines the term anti-friction bearing as "A machine element that permits free motion between moving and fixed parts. Anti-friction bearings are essential to mechanized equipment: they hold or guide moving machine parts and minimize friction and wear."

The web site http://www.micropat.com/classdef/CLSDEF/class384/s000000.html gives further guidance by explaining that bearings are devices:

> designed for general use, where one element continuously bears the weight of another, either suspended therefrom, or imposed thereon, and wherein there is either linear motion (e.g., cross head) rotary motion (e.g., of a shaft or axle), or oscillating movement (e.g., a lever) between the two elements. The bearings may have either sliding, or rolling contact with the supported member.
>
> The class includes (a) supports for bearings where such supports are specially formed to receive, and are placed in combination with, bearings, and when not limited to any classified art; (b) antifriction means, as balls, or rollers, designed to receive a rotating shaft, or to be used in connection with a pivoted, sliding or rotary element; and (c) lubricating devices wherein any of the above bearing are modified for receiving and supplying lubricant.

The web site http://www.grindwellnorton.co.in/UsefulInfo/ui__bearing.htm indicates:

Bearings are "the Essential items" required to reduce or eliminate the friction between moving parts.

* * *

Bearing can be used to provide sliding contact between mating parts or rolling contact between the mating parts. Hence broadly the bearing can be classified into two main types:

Plain Bearings: Used to minimize "friction" by providing sliding contact between mating parts.

Rolling Contact Bearings: Used to minimize "friction" by providing rolling contact between mating parts.

Plain Bearings:

Plain bearings operate on the principle of Boundary layer lubrication. The load carrying capacity of plain bearings depends on the type of film which is formed between the mating surfaces.

The web site Engineering.com explains that:

The relative motions between the mating surfaces of a plain bearing may take place in the following ways:

1. As pure sliding with any lubricating medium between the moving surfaces.
2. With hydrodynamic lubrication where a film buildup of lubricating medium is produced.
3. With hydrostatic lubrication where a lubricating medium is introduced under pressure between the moving surfaces.
4. With a combination of hydrodynamic and hydrostatic lubrication.

Based on the information available, we conclude that the motor support bearings under consideration are split-sleeve bearings used on the traction motor of a diesel truck. The diesel motor traction support bearings are sliding bearings that rely on an oil film rather than rolling elements, such as metal balls, to mediate against the friction associated with a rotating shaft that are provided for as plain shaft bearings in heading 8483, HTSUS.

In addition to the motor support bearings, the merchandise under consideration includes two other items, felt wick lubricators and oil filler caps. It is our understanding that three parts work together as a unit. The felt wick lubricator supplies the lubrication to the traction motor support bearing, and oil filler cap serves as a storage device for the lubricant that is used by the support bearing.

GRI 3(b) states that [w]hen by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings classification shall be effected as follows:

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

The relevant ENs state that for purposes of Rule 3 the term "goods put up in sets for retail sale" means goods which: (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and, (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

Applying these criteria to the three items, the traction motor support bearings, felt wick lubricators, and oil filler caps, we find that these articles meet each of the three requirements for "sets" stated in the ENs. As noted above, the bearing is *prima facie* classifiable in heading 8483, HTSUS, as a plain shaft bearing. The felt wick lubricator is *prima facie* classifiable in heading 5602, HTSUS, as felt, while the oil filler cap, which is mostly made of steel, is *prima facie* classifiable in heading 7326, HTSUS, as other articles of iron or steel. In providing the lubricant on which the traction motor support bearing slides, the felt wick and oil filler cap work with the traction motor support bearing so that the three items can effectively function together to carry out the specific activity of supporting and reducing friction in the traction motor of a diesel truck.

We recognize that the bearing kits are not sold directly to consumers. However, in HQ 083968 dated July 6, 1989, CBP considered fuel modifications kits that were delivered without repacking to car dealers, who as the ultimate consumers, installed the components of the kits on recalled cars without charge to the owners. We determined that because the items were put up in a manner suitable for sale directly to users they were sets. In support of this determination, we pointed out that there is no requirement that sets actually be sold at retail. In this case, the motor support bearing, felt wick lubricators and oil filler caps are packaged together and sold directly to users who will install the items into the traction motor of a diesel truck without being repackaged. Thus, we conclude that the three items under consideration constitute a set. Accordingly, we must then determine which of the three items in the set imparts the essential character to the set.

The ENs indicate that essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight, value, or by the role of the constituent material in relation to the use of the goods. In the regard to the three items in the set under consideration, the motor support bearing has far greater bulk, weight and value as compared to the other components in the set. Of the three components in the set, the motor support bearing also plays the principal role of providing the support and reducing friction in the traction motor of a diesel truck. Therefore, we conclude that the traction motor support bearing is the component that imparts the essential character to the set. Accordingly, the three items under consideration (the motor support bearings, felt lubricators and the oil filler caps) are classified as a set in the same heading as the motor support bearing, heading 8483, HTSUS, as bearing housings, housed bearings and plain shaft bearings.

HOLDING:

By application of GRI 3(b), the traction motor support bearings, felt wick lubricators, and oil filler caps used on diesel trucks are classified as a set based on the essential character of the set being transaction motor support bearing in heading 8483, HTSUS. It is provided for in subheading

8483.30.80, HTSUS, as [t]ransmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft coupling (including universal joints); parts thereof: bearing housings; plain shaft bearings: Other . . ." with a column one, general rate of duty of 4.5 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.

EFFECT ON OTHER RULINGS:

NY J88158 dated September 9, 2003, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Robert F. Altneu for MYLES B. HARMON,
Director,
Commercial Rulings Division.