

# Bureau of Customs and Border Protection

## *General Notices*

### **TERMINATION OF DRAWBACK RULINGS**

The following drawback rulings are hereby terminated pursuant to §191.7(d) and §191.8(h) of the CBP regulations. The rulings have been reviewed by the Chicago drawback office and it has been determined that no claim or certificate of manufacture or delivery has been filed for more than 5 years. Termination is effective the date of this notice.

41-00024-000 ACME NORTH AMERICA CORP.  
41-00025-000 ADC TELECOMMUNICATIONS, INC.  
41-00029-000 AGE INTERNATIONAL INC  
41-00050-000 AMKUS RESCUE SYSTEMS  
41-00064-000 AQUATECH, INC.  
41-00079-000 BIOMET INC  
41-00089-000 BLOOMFIELD MANUFACTURING CO.  
41-00100-000 CAMPBELL TOBACCO REHANDLING CO.  
41-00121-000 CINTEX OF AMERICA INC.  
41-00124-000 CLIMATE CONTROL INC  
41-00138-000 EBEX CORPORATION  
41-00144-000 DAY & ZIMMERMAN INC  
41-00147-000 DETROIT TOOL & ENGINEERING CO DBA DT  
INDUSTRIES INC  
41-00151-000 DIEBOLD, INC.  
41-00189-000 ENDRESS & HAUSER  
41-00190-000 ENERGY DYNAMICS, INC  
41-00280-000 HARLOC  
41-00355-000 JOHNSON LEVEL & TOOL MFG.CO.  
41-00357-000 I I STANLEY CO INC  
41-00358-000 ILLINOIS LOCK CO.  
41-00360-000 INDUS INTERNATIONAL INC  
41-00364-000 HURCO MFG., CO., INC,  
41-00368-000 HEYE-AMERICA INC  
41-00435-000 LINK-BELT CONSTRUCTION EQUIP CO  
41-00436-000 LINK-BELT CONSTRUCTION EQUIP CO  
41-00443-000 KAWASAKI MOTORS MANUFACTURING  
41-00510-000 LISTER-PETTER INC.

41-00600-000 MCGEAN-ROHCO, INCORPORATED  
41-00604-000 MAXTOR COLORADO CORPORATION  
41-00737-000 HONEYWELL INC MICRO SWITCH DIV  
41-00775-000 TELEX COMMUNICATION INC.  
41-00782-000 ULTRA-MET MFG CO  
41-00825-000 SLIGH FURNITURE COMPANY  
44-00078-000 ACME METAL SPINNING INC.  
44-00079-000 ACME TUBE/J.L. INC.  
44-00083-000 ADVANCE WHEEL CORP  
44-00095-000 ALBAUGH CHEMICAL CORPORATION  
44-00180-000 AUTOMATIC LIQUID PACKAGING INC  
44-00188-000 ANDES METAL PROCESSORS  
44-00193-000 APPLETON MILLS, INC. VOITH FABRICS  
44-00233-000 BULL HN INFORMATION SYSTEMS INC  
44-00238-000 CARGILL INC  
44-00239-000 CARGILL INC  
44-00285-000 CLIPPER BELT LACER CO  
44-00287-000 COILCRAFT INC  
44-00291-000 COMBINED ALLOYS, LIMITED PARTNER  
44-00294-000 COMMERCIAL INTERTECH CORP.  
44-00320-000 CONTINENTAL GRAIN CO  
44-00321-000 COOPER TIRE & RUBBER CO  
44-00344-000 EDWARDS-WARREN TIRE CO DBA AMERICA  
OTR  
44-00354-000 DELCO ELECTRONICS CORP  
44-00554-000 ELJER MANUFACTURING INC. DBA SELKINK  
METALBESTOS  
44-00580-000 ESSEX GROUP, INC.  
44-00595-000 FABRICATING & WELDING CORP.  
44-00600-000 FLEISCHMANN MALTING CO.  
44-00725-000 GARSER METAL PRODUCTS, INC.  
44-00728-000 GEN CORP., AUTOMOTIVE VIBRATION  
CONTROL PRODUCTS  
44-00915-000 H. & H. MACHINE CO., INC.  
44-00934-000 HAWTHORNE METAL PRODUCTS CO.  
44-01179-000 KATOLIGHT CORPORATION  
44-01180-000 KASLE STEEL CORPORATION  
44-01181-000 KALSEC INC  
44-01193-000 INRYCO INC.  
44-01199-000 J & F STEEL CORPORATION  
44-01202-000 JOHNSON CONTROLS, INC. AUTOMOTIVE  
SYSTEM GROUP  
44-01228-000 GTE PRODUCTS CORP  
44-01232-000 GRIMMER SCHMIDT CORP.  
44-01454-000 KIESLING & HESS FINISHING CO.  
44-01456-000 KLEIN TOOLS INC  
44-01459-000 KNAPE AND VOGT MANUFACTURING CO

44-01465-000 LESER COMPUTER, INC. V TECH COMPUTERS  
INC  
44-01466-000 LAWTER INTL INC  
44-01467-000 LADISH MALTING CO.  
44-01607-000 LEAR SIEGLER SEATING CORPORATION  
44-01610-000 LEMCO INDUSTRIES, INC.  
44-01889-000 MCGILL MANUFACTURING CO INC  
44-01899-000 MATERIAL HANDLING CRANE SYSTEMS  
44-01902-000 MATSUSHITA COMM.CORP OF AMER.  
44-01908-000 MEDINA BLANKING INC.  
44-01915-000 MAYCO, INC.  
44-01938-000 LUCAS SUMITOMO BRAKES, INC.  
44-02129-000 METAL SALES MANUFACTURING CORP.  
44-02137-000 METALS TECHNOLOGY CORP.  
44-02142-000 MTD PRODUCTS INC.  
44-02301-000 MICRO MATRIX SYSTEMS  
44-02303-000 VAN LEEUWEN INC.  
44-02387-000 IRWIN INDUSTRIAL TOOL COMPANY  
44-02398-000 TEMPEL STEEL COMPANY  
44-02400-000 TEXAS PETROCHEMICAL CORP  
44-02403-000 THOMAS ERIE INC  
44-02407-000 TOTAL PETROLEUM INC.  
44-02412-000 TOOL TECH INC  
44-02415-000 TM INDUSTRIAL SUPPLY INC  
44-02470-000 MORGEN INDUSTRIES INC DBA MORGEN  
MFG CO  
44-02538-000 STEEL BRITE POLISHING INC.  
44-02539-000 STAR SPRINKLER CORP  
44-02558-000 UNITED STATES CAN COMPANY  
44-02568-000 VISKASE CORP  
44-02704-000 ROCHE COLORADO CORP  
44-02942-000 EAGLE OTTAWA LEATHER CO.  
44-04076-000 CHICAGO ROLL COMPANY  
44-05070-000 MSC PRE FINISHED METALS  
44-05510-000 IKG INDUSTRIES DIV HARSCO CORP

CARL AMBROSON,  
*Area Port Director,  
Chicago, Illinois.*

**AGENCY INFORMATION COLLECTION ACTIVITIES:  
Visa Waiver Program Carrier Agreement (Form I-775)**

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

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Visa Waiver Program Carrier Agreement (Form I-775). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (71 FR 67149) on November 20, 2006, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before February 23, 2007.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:**

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Title:** Visa Waiver Program Carrier Agreement

**OMB Number:** 1651-0110

**Form Number:** Form-I-775

**Abstract:** The Form I-775 provides for certain aliens to be exempt from the non-immigrant visa requirements if seeking entry as a visitor for no more than 90 days, provided that no potential threat exists to the security of the United States.

**Current Actions:** There are no changes to the information collection. This submission is to extend the expiration date.

**Type of Review:** Extension (without change)

**Affected Public:** Individuals

**Estimated Number of Respondents:** 400

**Estimated Time Per Respondent:** 2 hours

**Estimated Total Annual Burden Hours:** 800

**Estimated Total Annualized Cost on the Public:** N/A

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: January 16, 2007

TRACEY DENNING,  
*Agency Clearance Officer,  
Information Services Branch.*

[Published in the Federal Register, January 24, 2007 [(72 FR 3150)]

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, January 24, 2007*

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,  
*Executive Director,  
Regulations and Rulings Office of Trade.*

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### 19 CFR PART 177

#### **MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN CUT-TO-LENGTH INSULATED WIRE WITH CONNECTORS AND TERMINALS SUBASSEMBLIES**

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the classification of certain cut-to-length insulated wire with connectors and terminals.

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 a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain cut-to-length insulated wire with connectors and terminals. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Volume 40, Number 41, on October 4, 2006. One comment was received in response to this notice and is addressed in the attached ruling.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 8, 2007.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Tariff Classification and Marking Branch, at (202) 572-8828.

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, a notice was published in the Customs Bulletin, Volume 40, Number 41, on October 4, 2006, proposing to modify New York Ruling Letter (NY) L85665, dated July 12, 2005, relating to the tariff classification of certain cut-to-length insulated wire with connectors and terminals. One comment was received in response to the notice. As stated in the proposed notice, this modification 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 rulings identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should 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 transactions. Any person involved with substantially identical transactions should have advised CBP during this notice pe-

riod. 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.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY L85665 and any other ruling not specifically identified to reflect the proper legal analysis found in Headquarters Ruling Letter (HQ) W967801, which is set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions 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.

DATED: January 18, 2007

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

Attachment

[ATTACHMENT]

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

HQ W967801

January 18, 2007

**CLA-2 RR:CTF:TCM W967801 HkP**

**CATEGORY: Classification**

**TARIFF NO.: 8544.30.0000**

MELVIN S. SCHWECHTER, ESQ.  
PAULA S. SMITH, ESQ.  
LEBOEUF, LAMB, GREENE & MACRAE, LLP  
1875 Connecticut Avenue, NW  
Suite 1200  
Washington, DC 20009

**RE:** Modification of NY L85665; cut-to-length insulated wire with connectors and terminals

DEAR MR. SCHWECHTER & MS. SMITH:

This is in reference to your letter dated August 23, 2005, requesting reconsideration of New York Ruling Letter ("NY") L85665, issued to you on July 12, 2005, on behalf of your client Alcoa Fujikura Ltd. ("AFL"), in which the tariff classification of certain types of cut-to-length insulated wire with connectors and terminals subassemblies (the "subassemblies") were determined under the Harmonized Tariff Schedule of the United States Annotated



("HTSUSA"). U.S. Customs and Border Protection ("CBP"), using a GRI 2(a) analysis, classified the subassemblies in subheading 8544.30.0000, HTSUSA, as articles having the essential character of wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships. You contend that the subassemblies are properly classified in subheading 8544.41.8000, HTSUSA, as other electrical conductors for a voltage not exceeding 80V. For the reasons set forth below, we hereby modify NY L85665.

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 was published on October 4, 2006, in the Customs Bulletin, Volume 40, Number 41. One comment was received from you in response to this notice. A discussion of the comment and CBP's reasoning are found in the "Law and Analysis" section below.

**FACTS:**

The subject subassemblies consist of cut-to-length insulated wire (ranging in number from 2 to 50) joined with at least one connector and with terminals on one or both ends of each wire and will be imported from Honduras. Some models of subassemblies also contain clips, retainers, light bulbs, brackets, corrugated plastic tubing and/or tape. We were informed that in all cases the insulated wire is of a voltage not exceeding 80V. These subassemblies will be used in the manufacture of automobile wiring harnesses.

CBP was informed that, after importation into the United States the subassemblies will undergo finishing operations, including routing, splicing, twisting, taping, and inserting additional connectors or terminals where required. Clips, brackets, relays and/or fuses may also be added. The subassemblies will then be known as "modules." Each module will be assembled with other Honduran subassemblies imported and converted into modules to form a complete and finished wiring harness. However, in no case will all of the subassemblies needed to complete a finished wiring harness be imported together. Each wiring harness will be dedicated for use in a particular model of automobile.

We were also told that, with respect to the majority of the types of subassemblies, the circuits contained in each subassembly are not dedicated for use in a particular electrical system of an automobile. Rather, the subassemblies contain circuits assigned to a variety of the vehicle's electrical systems. For example, some of the circuits on one subassembly may be dedicated for use in the air conditioning unit, others for the CD player, and others for the sunroof of a vehicle. However, we note that all of the samples provided for our consideration are dedicated to a particular use.

There are nine subassemblies under consideration. Samples have been provided of seven types of subassemblies. The samples are identified in Exhibit D by model number as follows:

- (1) 1J1 970 039 – *modulo radiador* (radiator module)
- (2) 1J1 970 043 – *modulo faros* (headlight module)
- (3) 1J1 970 083 – *mod. tanque de combustible* (fuel tank module)
- (4) 1J1 970 126 – *mod. cinturones* (security system module)
- (5) 1J5 970 149 – *arnes tanque de combustible* (fuel tank harness)
- (6) 1J1 970 076 – *arnes bocina* (speaker harness)
- (7) 1J1 970 016 – *modulo de radio* (radio module)

These photographs are included as representative of the items under consideration:



Sample 1 – radiator module



Sample 7 – radio module

You have provided us with photographs of model numbers: (8) 1K5 970 113, which is for an undetermined use, and (9) 1K5 970 091, which is identified in Exhibit E as a “*bocinas*”, a speaker assembly.

**ISSUE:**

Whether the subject subassemblies are wiring sets of subheading 8544.30, HTSUS.

**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 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

- |              |   |
|--------------|---|
| 8544         | Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; . . . :<br>* * * |
| 8544.30.0000 | Ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships . . . . .<br>Other electric conductors, for a voltage not exceeding 80V:                 |
| 8544.41      | Fitted with connectors:<br>* * *  |
| 8544.41.8000 | Other . . . . .   |

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope

of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

Heading 8544, HTSUS, provides for, *inter alia*: “Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors.” EN 85.44 explains that the goods of heading 8544, HTSUS, are made up of (A) a conductor, (B) one or more coverings of insulating material, (C) in certain cases, a metal sheath, and (D) sometimes a metal armouring. Because the subject subassemblies are made up of conductors (*i.e.*, wire) and one or more coverings of insulating material, we find that they are properly classified in heading 8544, HTSUS. CBP has consistently found that the main function of articles of heading 8544, HTSUS, is the conduction of electricity.

Classification must therefore take place at the subheading level. GRI 6 provides that the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5, on the understanding that only subheadings at the same level are comparable.

You argue that the subject subassemblies are not “wiring sets” of subheading 8544.30.00, HTSUS, because they do not, in their condition as imported, meet the definition of “wiring sets” as used in that subheading and are therefore not specifically described by its terms. You state that all of the subassemblies have incomplete connections and are incapable of functioning by themselves without being assembled with up to 49 other modules to form a completed wiring harness. You further state that incomplete wiring sets are not classifiable in subheading 8544.30.0000, HTSUSA. You contend that AFL’s subassemblies are properly classified in subheading 8544.41.8000, HTSUSA, as other electrical conductors, for a voltage not exceeding 80 V, fitted with connectors.

As an initial matter, we agree that unfinished wiring sets cannot be classified in subheading 8544.30.0000, HTSUSA, because the terms of the subheading make it clear that articles classified therein must constitute a “set”. CBP erred in NY L85665 when it applied a GRI 2(a) essential character analysis to wiring sets.

As you have stated, the term “wiring sets” is not defined in the tariff. EN 85.44 merely provides an example of a wiring set, stating that heading 8544, HTSUS, “includes wire, etc. of the types described above made up in sets (e.g., multiple cables for connecting motor vehicle sparking plugs to the distributor).” You argue that this language indicates that “sets” may include more than one cable, and that a “wiring set” should perform a discrete specific function in a vehicle. However, we note that ENs are not dispositive or legally binding. In support of your position, you cite ITT Thompson Industries, Inc., v. United States (“ITT Industries”), 537 F. Supp. 1272 (citations omitted) (1982). In that case the court noted, “there is no patterned commercial definition of the term ‘wiring sets.’” On consulting a dictionary, the court found that “wiring” meant, *inter alia*, “an arrangement of wires used for electric distribution”, and that “sets” meant, *inter alia*, “an apparatus of electrical or electronic components assembled so as to function as a unit (radio set, television set, amplifying set, sending set).” The court concluded, “It is apparent from these definitions and related examples that a ‘set’ must be capable of performing a specific function by itself without assistance from an outside source.” The court went on to find that “a conclusion that the harnesses do not constitute a wiring set designed for use in motor vehicles

would be directly in contrast to the visual samples as well as the weight of the overall evidence.” At 1280. Yet, despite concluding that a set must be capable of performing a specific function without assistance, the court also found that the harnesses constituted only parts of either electric lighting equipment designed for motor vehicles, or only parts of other sound or visual signaling apparatus because, “[t]he harnesses, standing alone, cannot produce actual illumination nor can they produce an actual sound or visual signal. They are only parts of those respective systems.” At 1281.

Decisions by the courts interpreting nomenclature under the HTSUS’ predecessor tariff code, the Tariff Schedules of the United States (“TSUS”), are not deemed dispositive under the HTSUS. However, on a case-by-case basis, such decisions should be deemed instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTS. Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, August 23, 1988, 102 Stat. 1107, 1147; H.R. Rep. No. 576, 100th Cong., 2d Sess. 549-550 (1988); 1988 U.S.C.C.A.N. 1547, 1582-1583. In this instance, we find that notwithstanding the CIT’s definition of “set” in ITT Industries, the court held the subject merchandise to be a wiring set.

A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meaning. Nippon Kogaku (USA) Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982). The online Oxford English Dictionary ([www.askoxford.com](http://www.askoxford.com)) defines “wiring” as “a system of wires providing electric circuits for a device or building”, and “set” as “a number of things or people grouped together as similar or forming a unit.” Taken together, we consider the common and commercial meaning of “wiring set” to be a system of wires, grouped together to form a unit, to provide electric circuits for an automobile.

Your argument for classification in subheading 8544.41.8000, HTSUSA, appears to be based, in part, on the notion that only wiring harnesses, as defined by you, are properly classified in subheading 8544.30.0000, HTSUSA. Based on your description of the production process, a wiring harness is formed only after several subassemblies are converted into “modules” and then several modules are assembled into a wiring harness. Anything less must be classified in subheading 8544.41, HTSUSA. We call your attention to the fact that subheading 8544.30.0000, HTSUSA, is an *eo nomine* provision for wiring sets; “harness” is not a part of the language of the provision. However, because *eo nomine* provisions normally include all forms of the article, and because wiring harnesses are within the terms of heading 8544, HTSUS, as explained by the ENs, in that they consist of a conductor and one or more coverings of insulated material, then insulated wiring sets, such as wiring harnesses, are classified in subheading 8544.30.0000, HTSUSA, as if provided for by name. Indeed, this was the finding of the court in ITT Industries. Similarly, any other article that falls within the terms of the subheading is classified there as if provided for by name. A wiring harness is simply “the major assembly of a vehicle’s electrical system” usually bunched together in a loom or assembly, and more generally, a “harness” is “a group of electrical conductors laced or bunched in a given configuration, usually with several breakouts.” ([www.autoglossary.com](http://www.autoglossary.com)). Based on these definitions, we

find that both a harness and a wiring harness are sets of subheading 8544.30.0000, HSTUSA. In fact, the language of the subheading, “ignition wiring sets” (a group of electrical conductors in a given configuration) and “other wiring sets” (an assembly of a vehicle’s electrical system), appears to aid such an interpretation.

In your comment you state that even though in coming up with its definition of wiring sets “the CIT looked to both *Webster’s new International Dictionary* and the *IEEE Standard Dictionary of Electrical and Electronic Terms*, HQ 967801 instead implicitly rejected the definitions in those dictionaries” and looked instead to find a definition “that omits any notion of the item having to be complete in itself to perform the function in question.” You further state that there is really no conflict in the ITT Industries definition because:

The specific function that a wiring set performs is not turning on the light bulb or opening the power window by itself, but rather the correct and effective conduction of electricity from the power source to the item that requires the electricity in order to function . . . If the item, such as the subassemblies at issue in the ruling request, cannot perform the required electrical conduction function properly on their own (because they need to be joined to other subassemblies), then they cannot be wiring sets. So much the more so if all one has is two wires soldered/joined together and terminated with nothing else to allow those wires to conduct electricity in a vehicle properly.

You also challenge the fact that CBP consulted the compact version of the Oxford English Dictionary found on the Internet. You state that the full official version of the Oxford English Dictionary provides a much more exact definition for the word “set”, that is, “A collection of instruments, tools or machines customarily used together in a particular operation; a **complete apparatus employed for some specific purpose.**” (your emphasis) and, “A piece of electrical or electronic apparatus, as a telephone, telegraph receiver or transmitter, a radio or television receiver, etc. Also, a radar transmitter and receiver.”

We note that even if, *arguendo*, your interpretation of what the court in ITT Industries meant is correct, this does not contradict the term “wiring sets” as used in this ruling. Subheading 8544.30.0000, HTSUSA, provides for “ignition wiring sets”, *i.e.*, “a complete apparatus employed for some specific purpose.” However, the subheading also provides for “other wiring sets” with no specific purpose mentioned. Accordingly, CBP cannot require any specific purpose of other wiring sets where none is required by the tariff.

You also comment that the definition of “wiring sets” as a “system of wires grouped together to form a unit” used in this ruling is “far too broad, goes far beyond any previous ruling by Customs dealing with wiring sets, and is unnecessary to resolve the matters at issue in the subject ruling request.” To the contrary, CBP has found that in order to properly classify merchandise it needs to understand the breadth of the classifications in contention. We do not find that determining the scope of a tariff provision exceeds our duty to correctly classify your merchandise.

You further comment:

[A]t a minimum, any ruling that is finally issued should make clear that its definition of “wiring set” does not apply to just any two insulated wires that are soldered/joined together and terminated, if they will ulti-

mately be used in an automobile, unless they incorporate some or all of the items such as fuses, connectors, switches or transistors that allows those two wires to actually conduct electricity in an automobile properly.

With regard to the issue of whether or not a set is required to have connectors, we are aided by the rules of construction, which instruct that a subheading is subordinate to the terms of its superior heading. Heading 8544, HSTUS, provides for insulated wire, cable and other electric conductors, "whether or not fitted with connectors". Generally, an electrical connector joins electrical circuits together. A search on the Internet for "electrical connector" revealed that there are many types of connectors, broadly classified in five groups: terminal blocks, crimp-on terminals, insulation displacement connectors, plug and socket connectors, and component and device connectors. In automotive terms, a "harness connector" is "an electrical connector at the end of a wire or harness used to connect the conductor to a device or system." (www.autoglossary.com). Subheading 8544.30.0000, HTSUSA, provides for ignition wiring sets and other wiring sets of a kind used in vehicles. When read in the context of heading 8544, HTSUS, it becomes clear that this subheading includes wiring sets *whether or not* fitted with connectors. Note the difference between this subheading and subheading 8544.41.8000, HTSUSA, which specifically includes the optional limiting language found in heading 8544, HTSUS: "fitted with connectors." See **HQ 966989**, dated Feb. 10, 2005, stating CBP's position on the relationship of subheadings to headings under the tariff. Based on the foregoing, we find that wiring sets of subheading 8544.30.0000, HTSUSA, need not be fitted with connectors.

You have told us that after importation the subassemblies may be routed, spliced, twisted, taped, and have additional connectors or terminals inserted, and that clips, brackets, relays and/or fuses may also be added. You have also said that after this additional assembly operation, the module, as it is now called, must be further assembled with other modules in order to form a complete wiring harness. It is for these reasons that you argue these imports are not sets classifiable under subheading 8544.30.0000, HTSUSA. However, EN 85.44 explains, "[p]rovided they are insulated, . . . heading [8544] covers electric wire, cable and other conductors (e.g. braids, strip, bars) used as conductors in electrical machinery, apparatus or installations." CBP has previously found that the only requirement for classification in subheading 8544.30.0000, HTSUSA, is that the insulated wires or other electrical conductors be in sets. See **HQ 955026**, dated September 27, 1993, and **HQ 958653**, dated April 15, 1996. See also **HQ 088477**, dated May 9, 1991, and **HQ 959173**, dated September 10, 1996. Therefore, once the subject subassemblies (which are imported in sets) are capable of conducting electricity, then even if they are not routed, spliced, twisted, taped, and do not have additional connectors or terminals inserted, or clips, brackets, relays and/or fuses added, or other additions not required for conducting electricity, they are classified in subheading 8544.30.0000, HTSUSA. In the present case, we find that none of the items added in the post-importation assembly stage is essential for conducting electricity, even though they may aid in the proper management of such electricity. Consequently, we find that the lack of these additional components on importation does not preclude the subassemblies from being classified in subheading 8544.30.0000, HTSUSA.

It is your belief that a wiring set must be capable of performing a specific function by itself without assistance from an outside source. You argue that the subassemblies under consideration do not materially resemble the automotive wire harness assemblies typically classified under subheading 8544.30.0000, HTSUSA. You state that CBP has classified wiring harnesses or wiring harness assemblies dedicated to a specific function in this subheading. You also state that an AFL subassembly may contain many different types of circuits, such as for headlights, air conditioning, and an alarm system, and therefore will perform multiple rather than a specific function within an automobile. You argue that because the subassemblies will not perform a specific function, they are not wiring harnesses and therefore cannot be classified in subheading 8544.30.0000, HTSUSA. However, we note that the samples you have provided to us as representative of your imports are all each dedicated to a specific function. We also note that in your comment you state that of the seven subassemblies for which samples were submitted, only two of them are dedicated 100% to a single function and that the other five had wires used in multiple functions. You state that this was indicated in a column in Exhibit D to your Request for Reconsideration. We note that the column in question is the only indicator of multi-function use and that there is no indication of what these other uses might be. We consider the information we have before us, and when we are presented with samples identified by the importer as radiator, headlight, fuel tank, security system, and radio modules, and fuel tank and speaker harnesses, then in the absence of substantiated evidence to the contrary, CBP concludes that the identified use is the only use of the merchandise.

We believe that your reasoning indicates a misperception of the function of a wiring harness as the major assembly of a vehicle's electrical system. By its nature, such an assembly contains circuits assigned to different components of a vehicle, but its specific function is to conduct electricity throughout the vehicle. The court has found such articles provided for in subheading 8544.30.0000, HTSUSA. See ITT Industries. As we have previously stated, it is our position that wiring sets, whether assigned to one or many of a vehicle's components, are classified in subheading 8544.30.0000, HTSUSA. As we have consistently ruled, the unifying characteristic of wiring sets of subheading 8544.30.0000, HTSUSA, is that their main function is to control the flow of electricity. We refer your attention to **HQ 958653**, dated April 15, 1996, in which we classified circuitry for most of a car's engine control elements (sensors, fuel injectors, ignition control, air conditioning, clutch coil control, idle speed control, exhaust gas recirculation solenoid control, alternator and battery, oil pressure sensor, water temperature control, radio noise suppression, and some steering components) in subheading 8544.30.0000, HTSUSA. In **HQ 955026** (September 27, 1993) we classified an instrument panel assembly, the main function of which is to interface between the body computer, instrument cluster, radio, air bag module, I/P switches, body wiring, engine compartment wiring, and all other modules in the panel, in subheading 8544.30.0000, HTSUSA. cf **HQ 962623**, dated July 22, 1999, and **HQ 958653**, dated April 15, 1996. AFL's subassemblies are imported as sets, that is, as wires grouped together to form a unit, either by being taped together, or by being housed together in plastic casing, or fitted together with connectors, and whether containing a dedicated circuit or many circuits are used to conduct electricity within an automobile. They are

substantially similar to articles classified in subheading 8544.30.0000, HTSUSA, in previous CBP rulings.

Finally, we consider your argument that wiring sets of subheading 8544.30.0000, HTSUSA, must conform to the characteristics of other “set” provisions found elsewhere in the tariff. Those other provisions require that the subject items be imported packaged together for retail sale without re-packing. However, subheading 8544.30.0000, HTSUSA, specifically provides that a wiring set need not have connectors in order to be considered a set, even though connectors are needed for the set to function as intended. Because the tariff implicitly recognizes that the wiring sets of subheading 8544.30.0000, HTSUSA, may require further assembly, we find that these wiring sets are distinguished from other sets provided for in the tariff.

**HOLDING:**

By application of GRI 1 we find that the AFL subassemblies are provided for in heading 8544, HTSUS, which provides for: “Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors,” and are specifically provided for in subheading 8544.30.0000, HTSUSA, which provides for: “Ignition wiring sets and other wiring sets of a kind used in vehicles.”

**EFFECT ON OTHER RULINGS:**

NY L85665, dated July 12, 2005, is hereby modified with respect to its legal analysis. The classification of the items described therein is unchanged. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial & Trade Facilitation Division.*

**PROPOSED REVOCATION OF RULING LETTERS AND  
REVOCATION OF TREATMENT RELATING TO  
CLASSIFICATION OF “LOW FAT BUTTER SUBSTITUTES”**

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

**ACTION:** Notice of proposed revocation of ruling letters and treatment relating to the classification of “low fat butter substitutes.”

**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 revoke two ruling letters pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of “low fat butter substitutes” and to revoke any treatment previously accorded by CBP to substantially identical transactions.



Comments are invited on the correctness of the proposed action.

**DATE:** Comments must be received on or before March 9, 2007.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, 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 Mr. Joseph Clark at 202-572-8768.

**FOR FURTHER INFORMATION CONTACT:** Peter T. Lynch, Tariff Classification and Marking Branch, 202-572-8778.

**SUPPLEMENTARY INFORMATION:**

**Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke two ruling letters pertaining to the tariff classification of a product referred to as "low fat butter substitutes." Although in this notice CBP is specifically referring to two rulings, New York Ruling Letters (NY) B80051, dated December 11, 1996, and NY B85495, dated May 14, 1997, this notice covers any rulings on this merchandise which may exist but have

not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (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 transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

In NY B80051, dated December 11, 1996, and NY B85495, dated May 14, 1997, the classification of a product commonly referred to as a "low fat butter substitute" was determined to be in subheading 0405.20.4000, HTSUS, which provides for "butter and other fats and oils derived from milk; dairy spreads: dairy spreads: butter substitutes, whether in liquid or solid state: other." These ruling letters are set forth in "Attachment A" and "Attachment B" to this document. Since the issuance of these rulings, CBP has had a chance to review the classification of this merchandise and has determined that the classification is in error and that the merchandise is properly classified in subheading 0405.20.6000, or 0405.20.7000, HTSUSA, the in-quota and over-quota provisions that provide for "dairy spreads: other: dairy products described in additional U.S. note 1 to chapter 4: described in additional U.S. note 10 to this chapter and entered pursuant to its provisions," and "dairy products described in additional U.S. note 1 to chapter 4: other," respectively.

CBP, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY B80051 and NY B85495, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letters (HQ) 968239 and 968240 (see "Attachment C" and "Attachment D" 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: January 18, 2007

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

## Attachments



## [ATTACHMENT A]

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

NY B80051 December 11, 1996  
CLA-2-04:RR:NC:2:231 B80051  
CATEGORY: Classification  
TARIFF NO.: 0405.20.4000

MR. LOUIS MARINO  
SCHRATTER FOOD INCORPORATED  
72 Summit Avenue  
Montvale, NJ 07645

RE: The tariff classification of a low fat butter substitute from Belgium.

DEAR MR. MARINO:

In your letter, dated November 25, 1996, you have requested a tariff classification ruling.

The product is a low fat butter substitute. The brand name is "Corman." The ingredients are 51-53 percent water, 39-41 percent butterfat, 4.5 percent milk proteins, 2 percent modified starch, 0.6 percent emulsifier (monodiglyc-eride), 0.3 percent lactic acid, 0.2 percent salt, 0.1 percent potassium sorbate, and 0.002 percent beta carotene. The product is packed in 227 gram cups.

The applicable subheading for the "Corman" brand low fat butter substitute will be 0405.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for butter and other fats and oils derived from milk; dairy spreads, dairy spreads, butter substitutes, whether in liquid or solid state, other. The rate of duty will be 14.6 cents per kilogram. In 1997 the rate of duty will be 14.3 cents per kilogram.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 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 Ralph Conte at (212) 466-5759.

ROGER J. SILVESTRI,  
*Director,*  
*National Commodity Specialist Division.*

[ATTACHMENT B]

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

NY B85495  
May 14, 1997  
CLA-2-04:RR:NC:2:231 B85495  
CATEGORY: Classification  
TARIFF NO.: 0405.20.4000

MR. JAMES MARINO  
KATTEN, MUCHIN, AND ZAVIS  
525 West Monroe Street, Suite 1600  
Chicago, IL 60661-3693

RE: The tariff classification of a low fat butter substitute from Canada.

DEAR MR. MARINO:

In your letter, dated April 15, 1997, you have requested a tariff classification ruling on behalf of your client, Kerry Ingredients, Beloit, WI.

The product is a low fat butter substitute. The ingredients are 48-51 percent water, 42-44 percent butterfat (milk fat), 4-5 percent milk proteins, 2 percent lactose, 0.6 percent emulsifiers, 0.1 percent salt, and 0.001 percent flavoring. The product is packed in 40 pound boxes with polyliners.

The applicable subheading for the low fat butter substitute will be 0405.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for butter and other fats and oils derived from milk; dairy spreads, dairy spreads, butter substitutes, whether in liquid or solid state, other. The general rate of duty will be 14.3 cents per kilogram.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 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 Ralph Conte at (212) 466-5759.

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

## [ATTACHMENT C]

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

HQ W968239  
CLA-2 RR:CTF:TCM W968239ptl  
CATEGORY: Classification  
TARIFF NO.: 0405.20.6000, 0405.20.7000

MR. LOUIS MARINO  
SCHRATTER FOOD INCORPORATED  
72 Summit Avenue  
Montvale, NJ 07645

RE: Classification of Low Fat Butter Substitute; Revocation of NY B80051

DEAR MR. MARINO:

In NY B80051, issued to you on December 11, 1996, a product with the brand name "Corman," described as a low fat butter substitute, was classified in subheading 0405.20.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "butter and other fats and oils derived from milk; dairy spreads: dairy spreads: butter substitutes, whether in liquid or solid state: other." We have reviewed that ruling and determined that the classification provided was incorrect. This letter revokes that ruling and provides the correct classification of the product.

**FACTS:**

Information contained in NY B80051 indicates that the ingredients of "Corman" are: 51-53 percent water, 39-41 percent butterfat, 4.5 percent milk proteins, 2 percent modified starch, 0.6 percent emulsifier (monodiglyceride), 0.3 percent lactic acid, 0.2 percent salt, 0.1 percent potassium sorbate, and 0.002 percent beta carotene. The product is packed in 227 gram cups.

**ISSUE:**

Whether a product that is a low fat butter alternative is classified in the subheading that provides for butter substitutes containing less than 45 percent by weight of butterfat, or the subheading that provides for other dairy spreads.

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, 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 in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUSA subheadings under consideration are as follows:

**0405** Butter and other fats and oils derived from milk; dairy spreads:

\* \* \*

0405.20 Dairy spreads:

Butter substitutes, whether in liquid or solid state:

Containing over 45 percent by weight of butterfat:

\* \* \*

405.20.4000 Other

Other:

Dairy products described in additional U.S. note 1 to chapter 4:

\* \* \*

0405.20.6000 Described in additional U.S. note 10 to this chapter and entered pursuant to its provisions.

0405.20.7000 Other<sup>1</sup>

The product under consideration is a low fat dairy spread that can be used as an alternative to butter by those seeking to reduce their consumption of butterfat. The HTSUS notes to Chapter 4 define dairy spreads as follows:

2. For the purposes of heading 0405:

\* \* \*

(b) The expression "dairy spreads" means a spreadable emulsion of the water-in-oil type, containing milkfat as the only fat in the product, with a milkfat content of 39 percent or more but less than 80 percent by weight.

The ENs further describe the products and provide additional information regarding the composition of dairy spreads in heading 04.05 when they provide, in relevant part, as follows:

**04.05 - BUTTER AND OTHER FATS AND OILS DERIVED FROM MILK; DAIRY SPREADS.**

0405.10 - Butter

0405.20 - Dairy spreads

0405.90 - Other

This heading covers:

\* \* \*

**(B) Dairy spreads.**

This group covers dairy spreads, i.e., spreadable emulsions of the water-in-oil type, containing milkfat as the only fat in the product, and having a milkfat content of 39 % or more but less than 80 % by weight (see Note 2 (b) to this Chapter). Dairy spreads may contain optional ingredients such as cultures of harmless lactic-acid-producing bacteria, vi-

tamins, sodium chloride, sugars, gelatine, starches; food colours; flavours; emulsifiers; thickening agents and preservatives.

The product at issue, "Corman," is said to contain between 39 and 41 percent milkfat. It also contains permitted emulsifiers and salt. Thus, it is described by the language of the ENs as a dairy spread. Within subheading 0405.20, there are two types of dairy spreads: "butter substitutes" and "other."

In *Rudolph Faehndrich v. United States*, 49 Cust. Ct. 1 (1962), the Customs Court held that a product referred to as butter oil which contained 99.9 percent butter oil of butter fat and 0.1 percent moisture that was used as a source of butterfat in the production of ice cream, baked goods and candy was not classifiable as a butter substitute because it could not take the place of butter in substantially all respects and substantially all conditions. The court held that the butter oil was not commonly or commercially regarded as butter, but was a distinct commodity having a different name and much more limited uses than butter.

The courts have also addressed the distinction of the term "substitute." In *Bulova Watch Co. v. United States*, 21 C.C.P.A. 156, (1933), the court while discussing the distinctions between the relative hardness of bushings and jewels in watch movements, stated, "a substitute for a jewel, . . . must possess, at least in some degree, that quality for which a jewel is selected. . . ." The court continued: ". . . a device that does not possess this quality can not be held to be a substitute for a jewel, even though in its use it may perform some of the functions of a jewel."

When considering the classification of the instant product, as a "low-fat butter substitute," it is necessary to understand how "butter" is defined in the tariff. In note 2 (a) to Chapter 4, butter is defined as follows:

The term "butter" means natural butter, whey butter or recombined butter (fresh, salted or rancid, including canned butter) derived exclusively from milk, with a milkfat content of 80 percent or more but not more than 95 percent by weight, a maximum milk solids-not-fat content of 2 percent by weight and a maximum water content of 16 percent by weight. Butter does not contain added emulsifiers, but may contain sodium chloride, food colors, neutralizing salts and cultures of harmless lactic-acid-producing bacteria.

We note that under the tariff definition, "butter" contains almost twice as much butterfat and less than one-third the amount of water than the subject product. The economically significant component of butter is its butterfat. How this butterfat and the other components of butter react to other ingredients when used in the preparation of foodstuffs is crucial to understanding whether a product can truly be considered a substitute. The high fat and low water content of butter permits the creation of smooth gravies, baked products, and ice creams and evenly fried foods. In order to obtain similar results when using "low fat" alternatives, a fat must be added from another source and the additional moisture must be removed.

While the subject product, "Corman," may be capable of performing some of the functions of butter, it contains three times as much moisture and half the butterfat as actual butter. Thus, its functionality is limited to uses where these differences would be acceptable. Its primary purpose is for use as a low-fat alternative to butter, rather than a substitute for butter. Because of its higher water content and lower milk fat content, "Corman" will

not perform in the same manner as butter if used for either frying or baking. The higher water content will cause significant splattering if frying is attempted, and will introduce additional moisture in dough and other materials it has been blended with. It can be used as a spread on bread or toast where the ingredient differences will not have a significant impact.

Based on the foregoing discussion, it is our opinion that the subject product, "Corman," is not a butter substitute but, rather, it is a low-fat alternative to butter with its own identity — distinct from that of butter — and is classified as an "other" dairy spread.

**HOLDING:**

The product "Corman," referred to as a "low fat butter substitute" in NY B80051, dated December 11, 1996, composed of 51–53 percent water, 39–41 percent butterfat (milkfat), 4.5 percent milk proteins, 2 percent modified starch, 0.6 percent emulsifier (monodiglyceride), 0.3 percent lactic acid, 0.2 percent salt, 0.1 percent potassium sorbate, and 0.002 percent beta carotene, is classified in subheading 0405.20.6000, HTSUSA, which provides for dairy spreads, other, dairy products described in additional U.S. note 1 to chapter 4, described in additional U.S. note 10 to this chapter and entered pursuant to its provisions. The 2006 duty rate is 10 percent, *ad valorem*. This is a quota provision. If the tariff rate quota is closed, the product is classified in subheading 0405.20.7000, HTSUSA. The 2006 duty rate is 70.4 cents per kilogram, plus 8.5 percent, *ad valorem*. Goods classified in subheading 0405.20.7000, HTSUSA, may be subject to additional safeguard duties in subheadings 9904.04.50–9904.05.01, HTSUS.

NY B80051, dated December 11, 1996, is revoked in accordance with the above holding.

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

[ATTACHMENT D]

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

HQ W968240  
CLA-2 RR:CTF:TCM W968240ptl  
CATEGORY: Classification  
TARIFF NO.: 0405.20.6000, 0405.20.7000

MR. JAMES MARINO  
KATTEN, MUNCHIN AND ZAVIS  
525 West Monroe Street  
Suite 1600  
Chicago, IL 60661-3693

RE: Classification of Low Fat Butter Alternative; Revocation of NY B85495

DEAR MR. MARINO:

In NY B85495, issued on May 14, 1997, to you on behalf of your client, Kerry Ingredients of Beloit, Wisconsin, a product, described as a low fat but-



ter substitute, was classified in subheading 0405.20.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for “butter and other fats and oils derived from milk; dairy spreads: dairy spreads: butter substitutes, whether in liquid or solid state: other.” We have reviewed that ruling and determined that the classification provided was incorrect. This letter revokes that ruling and provides the correct classification of the product.

**FACTS:**

Information contained in NY B85495 indicates that the product’s ingredients are: 48–51 percent water, 42–44 percent butterfat (milkfat), 4–5 percent milk proteins, 2 percent lactose, 0.6 percent emulsifiers, 0.1 percent salt, and 0.001 percent flavoring. The product is packed in 40 pound boxes with polyliners.

**ISSUE:**

Whether a product called a low fat butter substitute is classified in the subheading that provides for butter substitutes containing less than 45 percent by weight of butterfat, or the subheading that provides for other dairy spreads.

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, 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 in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUSA subheadings under consideration are as follows:

<b>0405</b>	Butter and other fats and oils derived from milk; dairy spreads:
0405.20	Dairy spreads:
	Butter substitutes, whether in liquid or solid state:
	Containing over 45 percent by weight of butterfat:
	* * *
0405.20.4000	Other
	Other:
	Dairy products described in additional U.S. note 1 to chapter 4:
	* * *

0405.20.6000 Described in additional U.S. note 10 to this chapter and entered pursuant to its provisions.

0405.20.7000 Other<sup>1</sup>

The product under consideration is marketed as a low fat butter substitute dairy spread. The HTSUS notes to Chapter 4 define dairy spreads as follows:

2. For the purposes of heading 0405:

\* \* \*

(b) The expression “dairy spreads” means a spreadable emulsion of the water-in-oil type, containing milkfat as the only fat in the product, with a milkfat content of 39 percent or more but less than 80 percent by weight.

The ENs further describe the products and provide additional information regarding the composition of dairy spreads in heading 04.05 when they provide, in relevant part, as follows:

**04.05 – BUTTER AND OTHER FATS AND OILS DERIVED FROM MILK; DAIRY SPREADS.**

0405.10 – **Butter**

0405.20 – **Dairy spreads**

0405.90 – **Other**

This heading covers:

\* \*

(B) **Dairy spreads.**

This group covers dairy spreads, i.e., spreadable emulsions of the water-in-oil type, containing milkfat as the only fat in the product, and having a milkfat content of 39 % or more but less than 80 % by weight (see Note 2 (b) to this Chapter). Dairy spreads may contain optional ingredients such as cultures of harmless lactic-acid-producing bacteria, vitamins, sodium chloride, sugars, gelatine, starches; food colours; flavours; emulsifiers; thickening agents and preservatives.

The product at issue is said to contain between 42 and 44 percent milkfat. It also contains permitted emulsifiers and salt. Thus, it is described by the language of the ENs as a dairy spread. Within subheading 0405.20, there are two types of dairy spreads: “butter substitutes” and “other.”

In *Rudolph Faehndrich v. United States*, 49 Cust. Ct. 1 (1962), the Customs Court held that a product referred to as butter oil which contained 99.9 percent butter oil of butter fat and 0.1 percent moisture that was used as a source of butterfat in the production of ice cream, baked goods and candy was not classifiable as a butter substitute because it could not take the place of butter in substantially all respects and substantially all conditions. The court held that the butter oil was not commonly or commercially regarded as butter, but was a distinct commodity having a different name and much more limited uses than butter.

The courts have also addressed the distinction of the term “substitute.” In *Bulova Watch Co. v. United States*, 21 C.C.P.A. 156 (1933), the court while discussing the distinctions between the relative hardness of bushings and jewels in watch movements, stated, “a substitute for a jewel, . . . must possess, at least in some degree, that quality for which a jewel is selected. . . .”

The court continued: “. . . a device that does not possess this quality can not be held to be a substitute for a jewel, even though in its use it may perform some of the functions of a jewel.”

When considering the classification of the instant product, a “low-fat butter substitute,” it is necessary to understand how “butter” is defined in the tariff. In note 2 (a) to Chapter 4, butter is defined as follows:

The term “butter” means natural butter, whey butter or recombined butter (fresh, salted or rancid, including canned butter) derived exclusively from milk, with a milkfat content of 80 percent or more but not more than 95 percent by weight, a maximum milk solids-not-fat content of 2 percent by weight and a maximum water content of 16 percent by weight. Butter does not contain added emulsifiers, but may contain sodium chloride, food colors, neutralizing salts and cultures of harmless lactic-acid-producing bacteria.

We note that under the tariff definition, “butter” contains almost twice as much butterfat and less than one-third the amount of water than the subject product. The economically significant component of butter is its butterfat and how it reacts to other ingredients when used in the preparation of foodstuffs. The high fat and low water content of butter permits the creation of smooth gravies, baked products, and ice creams. How this butterfat and the other components of butter react to other ingredients when used in the preparation of foodstuffs is crucial to understanding whether a product can truly be considered a substitute. The high fat and low water content of butter permits the creation of smooth gravies, baked products, and ice creams and evenly fried foods. In order to obtain similar results when using “low fat” alternatives, a fat must be added from another source and the additional moisture must be removed.

While the subject product may be capable of performing some of the functions of butter, it contains three times as much moisture and half the butterfat as actual butter. Thus, its functionality is limited to uses where these differences would be acceptable. Its primary purpose is for use as a low-fat alternative to butter, rather than a substitute for butter. Because of its higher water content and lower milk fat content, the subject product will not perform in the same manner as butter if used for either frying or baking. The higher water content will cause significant splattering if frying is attempted, and will introduce additional moisture in dough and other materials it has been blended with. It can be used as a spread on bread or toast where the ingredient differences will not have a significant impact.

Based on the foregoing discussion, it is our opinion that the subject product is not a butter substitute but, rather, it is a low-fat alternative to butter with its own identity — distinct from that of butter — and is classified as an “other” dairy spread.

**HOLDING:**

The product referred to as a “low fat butter substitute” in NY B85495, dated May 14, 1997, composed of 48–51 percent water, 42–44 percent butterfat (milkfat), 4–5 percent milk proteins, 2 percent lactose, 0.6 percent emulsifiers, 0.1 percent salt, and 0.001 percent flavoring, is classified in subheading 0405.20.6000, HTSUSA, which provides for dairy spreads, other, dairy products described in additional U.S. note 1 to chapter 4, described in additional U.S. note 10 to this chapter and entered pursuant to its provisions. The 2006 duty rate is 10 percent, *ad valorem*. This is a quota provision. If

the tariff rate quota is closed, the product is classified in subheading 0405.20.7000, HTSUSA. The 2006 duty rate is 70.4 cents per kilogram, plus 8.5 percent, *ad valorem*. Goods classified in subheading 0405.20.7000, HTSUSA, may be subject to additional safeguard duties in subheadings 9904.04.50–9904.05.01, HTSUS.

NY B85495, dated May 14, 1997, is revoked in accordance with the above holding.

MYLES B. HARMON,  
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