

U.S. Customs and Border Protection

General Notices

AGENCY INFORMATION COLLECTION ACTIVITIES: Documents Required on Private Aircraft

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

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651–0058.

SUMMARY: U.S. 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: Documents Required on Private Aircraft. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no 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** (73 FR 63001) on October 22, 2008, 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 January 23, 2009.

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 the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION:

U.S. 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 (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: Documents Required Aboard Private Aircraft

OMB Number: 1651–0058

Form Number: None

Abstract: These documents are required by CBP regulations for private aircraft arriving from foreign countries. They pertain to baggage declarations, and if applicable, to Overflight authorizations. CBP also requires that the pilots present documents required by the FAA.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 150,000

Estimated Time Per Respondent: 1 minutes

Estimated Total Annual Burden Hours: 2,490

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

Dated: December 16, 2008

TRACEY DENNING,
Agency Clearance Officer,
Customs and Border Protection.

**AGENCY INFORMATION COLLECTION ACTIVITIES:
NAFTA Regulations and Certificate of Origin**

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

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651–0098.

SUMMARY: U.S. 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: NAFTA Regulations and Certificate of Origin. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no 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** (73 FR 63002) on October 22, 2008, 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 January 23, 2009.

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 the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION:

U.S. 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 (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: NAFTA Regulations and Certificate of Origin

OMB Number: 1651-0098

Form Number: CBP Forms 434 and 446

Abstract: The objectives of NAFTA are to eliminate barriers to trade in goods and services between the United States, Mexico, and Canada and to facilitate conditions of fair competition within the free trade area. CBP uses these forms to verify eligibility for preferential tariff treatment under NAFTA.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 120,050

Estimated Time Per Respondent: 15 minutes

Estimated Total Annual Burden Hours: 30,037

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

Dated: December 16, 2008

TRACEY DENNING,
Agency Clearance Officer,
Customs and Border Protection.

**AGENCY INFORMATION COLLECTION ACTIVITIES:
Declaration of Owner for Merchandise Obtained
(otherwise than) in Pursuance of a Purchase or Agreement
to Purchase and Declaration of Consignee when Entry is
made by an Agent**

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

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0093.

SUMMARY: U.S. 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: Declaration of Owner for Merchandise Obtained (other than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Consignee when Entry is Made by an Agent. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no 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** (73 FR 63000) on October 22, 2008, 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 January 23, 2009.

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 the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

U.S. 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 (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: Declaration of Owner for Merchandise Obtained (otherwise than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Consignee When Entry is Made by an Agent.

OMB Number: 1651-0093

Form Number: CBP Forms-3347 and 3347A

Abstract: CBP Forms-3347 and 3347A allow an agent to submit, subsequent to making the entry, the declaration of the importer of record that is required by statute. These forms also permit a nominal consignee to file the declaration of the actual owner, and to be relieved of statutory liability for the payment of increased duties.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 5,700

Estimated Time Per Respondent: 6 minutes

Estimated Total Annual Burden Hours: 570

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

Dated: December 16, 2008

TRACEY DENNING,
*Agency Clearance Officer,
Customs and Border Protection.*

**AGENCY INFORMATION COLLECTION ACTIVITIES:
Dominican Republic-Central America-U.S. Free Trade
Agreement (CAFTA)**

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

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0125.

SUMMARY: U.S. 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: U.S./Central American Free Trade Agreement (CAFTA). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no 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** (73 FR 63001) on October 22, 2008, 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 January 23, 2009.

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 the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

U.S. 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 (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: CAFTA

OMB Number: 1651-0125

Form Number: None

Abstract: The collection of data for CAFTA is used to ascertain if claims filed with CBP are eligible for duty refunds.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 2,500

Estimated Total Annual Responses: 10,000

Annual Number of Responses per Respondent: 4

Estimated Time Per Response: 24 minutes

Estimated Total Annual Burden Hours: 4,000

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

Dated: December 16, 2008

TRACEY DENNING,
Agency Clearance Officer,
Customs and Border Protection.

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, December 23, 2008

The following documents of U.S. 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 International Trade.*

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF A CERTAIN VACUUM FOR USE IN
HOME POOLS AND SPAS**

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

ACTION: Revocation of a ruling letter and revocation of treatment relating to tariff classification of a certain vacuum for use in home pools and spas.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain vacuums. 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, Vol. 42, No. 47, on November 13, 2008. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 9, 2009.

FOR FURTHER INFORMATION CONTACT: Greg Connor, Tariff Classification and Marking Branch: (202) 325–0025.

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 to 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, Vol. 42, No. 47, on November 13, 2008, proposing to revoke New York Ruling Letter (NY) L82232, dated February 7, 2005, which classified certain pool and spa vacuums in heading 9506, HTSUS. No comments were received in response to the notice. As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. 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 the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised CBP during the comment 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 this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY L82232 to reflect the proper tariff classification of this merchandise under heading 8421, HTSUS, specifically in subheading 8421.21.0000, HTSUSA, which provides for: "Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: Filtering or purifying machinery and apparatus for liquids: For filtering or purifying water", pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) H008519, 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 it to substantially identical transactions.

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

DATED: December 18, 2008

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H008519
December 18, 2008
CLA-2 OT:RR:CTF:TCM H008519 GC
CATEGORY: Classification
TARIFF NO.: 8421.21.0000

RICHARD K. CACIOPPO, ESQ.
WATER TECH, L.L.C.
44 West Ferris Street
East Brunswick, New Jersey 08816

RE: Request for reconsideration of NY L82232 dated February 7, 2005;
Tariff classification of a pool vacuum imported from Taiwan

DEAR MR. CACIOPPO:

This letter is in reference to your request, dated November 29, 2006, on behalf of Water Tech Corp., for reconsideration of NY L82232, dated February 7, 2005, concerning the classification of a pool vacuum under the Harmonized Tariff Schedule of the United States (HTSUS). In NY L82232, the National Commodity Specialist Division of U.S. Customs and Border Protection (CBP) classified the pool vacuum, style WV-001, as an accessory for swimming pools in subheading 9506.99.5500, HTSUS. In light of the additional factual evidence provided to our office, including a supplemental submission dated May 7, 2008, we have determined that the classification in NY L82232 is in error. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C.

§1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on November 13, 2008, in Volume 42, Number 47, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

In your correspondence, you also requested that CBP classify two similar models of pool vacuums marketed by Water Tech, styles WV-002 and WV-003. CBP declines to issue a prospective ruling pursuant to 19 C.F.R. § 177.7(a) on these two devices because it would be in conflict with our position in NY L82232. It is contrary to CBP policy to issue rulings in conflict with each other. You may resubmit your request, if necessary, after the publication of the Final Notice of the revocation of our decision in NY L82232 in the Customs Bulletin.

FACTS:

The imported pool vacuum, style WV-001, is marketed by Water Tech as the “Pool Blaster Max” (formerly as the “Pool Buster Max”). In NY L82232, CBP described it as “a portable, hand-held wet/dry vacuum cleaner for all types of pools . . . [that] is designed to attach to any telescopic pole.” This battery-charged device contains its own internal vacuum motor that creates a suction to collect debris such as hair, sand pebbles, and leaves from the water in a pool or spa. This waste is captured with and stored in a reusable fine filter bag. The device may be operated with or without the accompanying vacuum head attachment.

The device is advertised, marketed, and sold principally for use in home pools and spas. The marketing brochure published by Water Tech states that the device: “contains everything you need in order to clean all gunite, vinyl, and fiberglass pools and spas. [It] is designed for both in-ground and above-ground pools. Both wheel and brush attachments are provided.” The instruction manual published by Water Tech also states that the device is “not intended for use as an all-purpose vacuum cleaner.” While it may be operated for a short period of time above water, its vacuuming function is intended for operation only when it is submerged in water. The cleaning capacity is rated as 40–50 gallons per minute. According to Water Tech, the device is “designed, manufactured, imported and marketed worldwide as [a] water or *wet* vacuum cleaner[].”

Water Tech claims that the device “not only vacuum[s], but filter[s] and purify[ies] all pools of water, including both indoor and outdoor domestic spas, hot tubs, swimming pools, fountains, as we[ll] as ponds, fish tanks and aquariums, rain water collection tanks, cisterns, shrimp tanks and various backyard water gardens, waterfalls, etc.” It is the position of Water Tech that its device is effective in any pool of water. Water Tech explains that while its device is marketed for universal usage in water, its device is primarily intended for usage by the owners of spas, followed by above-ground pools, and then below-ground pools. According to Water Tech, the owners of spas often clean the water on their own, given that spas hold a substantially smaller volume of water than do swimming pools.

Data provided by the Association of Pool and Spa Professionals (formerly the National Pool and Spa Institute) shows that there are three general categories in the pool and spa industry: in-ground pools, above-ground pools, and spas/hot tubs. Water Tech explains that, unlike the two types of pools, spas lack extensive main pumps and filter systems for use with automatic vacuuming machinery that is often employed when cleaning swimming pools. Water Tech has also explained that the device is inefficient when

vacuuming in-ground and above-ground pools, as opposed to when it is used in spas, which are smaller and shallower than those pools.

ISSUE:

What is the correct classification of the pool vacuum under the 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:

8421	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: Filtering or purifying machinery and apparatus for liquids:
8421.21.0000	For filtering or purifying water . . . * * *
8508	Vacuum cleaners; parts thereof: With self-contained electric motor:
8508.11.000	Of a power not exceeding 1,500 W and having a dust bag or other receptacle capacity not exceeding 20 l . . . * * *
9506	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other:
9506.99	Other:
9506.99.5500	Swimming pools and wading pools and parts and accessories thereof . . .

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

Note 3 to Chapter 95, HTSUS, states: “[s]ubject to note 1 above, parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles”. It appears that in NY L82232, note 3 was the basis for classification of the subject merchandise in heading 9506, HTSUS, as an accessory of a swimming and wading pool.

However, this overlooks the fact that Note 3 is subject to Note 1 to Chapter 95, HTSUS. Note 1(m) to Chapter 95 excludes “filtering or purifying machinery and apparatus for liquids or gases (heading 84.21)” from classification in Chapter 95. Accordingly, before determining if the subject merchandise is classifiable as an accessory of a swimming pool by operation of Note 3 to Chapter 95, we must first determine if it fits the terms of heading 8421, HTSUS.

Heading 8421 is a use provision that provides for, in relevant part, “filtering or purifying machinery and apparatus for liquids.” EN 84.21 describes the function of liquid filters within this heading as the “separat[ion] of solid, fatty, colloidal, etc., particles from a liquid, for example, by passing it through a sheet, membrane or mass porous material[.]” The Court of Appeals for the Federal Circuit (CAFC) has defined the term “filter” per the 1986 edition of *Webster’s Third New International Dictionary*:

The dictionary defines the verb “filter” in relevant part as “to subject to the action of a filter: pass (*a liquid or gas*) through a filter for the purpose of purifying or separating or both.” *Id.* at 850 (emphasis added). The noun filter is defined as “a porous article or mass (as of cloth, paper, or sand) that serves as a medium for separating from a *liquid or gas* passed through it matter held in suspension or dissolved impurities or coloring matter.” *Id.* (emphasis added).

Airflow Technology, Inc. v. United States, 2008 U.S. App. LEXIS 9165 at 11–12 (Fed. Cir. Apr. 28, 2008). The definition of “purify,” is not set forth in the HTSUS or the ENs, but it is defined by the same dictionary as meaning, in relevant part, “to make pure: as a: to clear from material defilement or imperfection: free from impurities or noxious matter <~ *ing* air by filtration > <*purified* the house with soap, and water, and sweat> . . .” *Id.* at 1846.

The principal function of the device is to filter and purify the water contained in a swimming pool or spa. It removes solid debris by suctioning it through a filter bag. The water is filtered through the porous filter bag, leaving only the debris inside for later removal from the device. This suction-based process of filtration is within the scope of heading 8421. *See, e.g.*, HQ 958821, dated June 28, 1996 (classifying tanks designed to contain filtration devices for swimming pools in heading 8421); HQ 961455 (classifying a potable water system that fills a tank with filtered water in heading 8421). The ENs to heading 8421 specify that it covers “liquid filters whether of gravity, suction (or vacuum) or pressure types.” *Cf.* NY K87340 dated July 21, 2004 (wherein CBP classified chlorine generator and filter pump units in heading 8421). We also note that Water Tech’s own request for reconsideration concedes that the device is described by heading 8421, although it makes no arguments for or against classification in that provision. To this end, Water Tech stated that the device “not only vacuums water, but also filters and purifies it.” Thus, the subject merchandise is classifiable under heading 8421, HTSUS, as a filtering or purifying apparatus.

Accordingly, we find that the subject merchandise is excluded from classification in Chapter 95, HTSUS, by virtue of Note 1(m) to Chapter 95, as it is a filtering apparatus for liquids under heading 8421, HTSUS.

It is the position of Water Tech that the device is excluded from classification in Chapter 95, HTSUS, because it is not an accessory of swimming

pools, and is thus classifiable as a “vacuum cleaner” of heading 8508.* We will omit discussion on the first prong of counsel’s argument, as we have already found that the subject merchandise is excluded from Chapter 95, HTSUS, by application of Note 1(m). However, regarding heading 8508, HTSUS, we note that CBP has previously defined “vacuum cleaner” on the basis of its common meaning: “In *The Random House College Dictionary*, Random House, 1973, “vacuum cleaner” is defined as “an electrical apparatus for cleaning carpets, floors, furniture, etc., by suction.” HQ W967698, dated March 10, 2006. (The 1986 edition of *Webster’s Third New International Dictionary* contains a substantially similar definition.) CBP has found that the definitions in the dictionaries and the ENs stress that a vacuum cleaner’s method of cleaning is by “suction.” See HQ W967698, dated March 10, 2006. However, “suction” is not the only essential characteristic of a vacuum cleaner of heading 8508. Vacuum cleaners of this heading must also filter the air stream as part of the suction process. The characteristics of suction and filtration of the air stream are emphasized in the description of vacuum cleaners in the ENs to Heading 8508:

Vacuum cleaners perform two functions: the suction of material, including dust, and the filtering of the air stream. Suction is effected by means of a turbine fixed directly onto the shaft of the motor, turning at high velocity. The dust and other material are collected in an internal or external dust bag or other receptacle, whereas the air sucked in and filtered is also used to cool the motor.

CBP has consistently applied these two criteria, which are also set forth in the ENs to heading 8508, to classify an article as a vacuum cleaner of this heading. See HQ 967698, HQ 967904, dated December 21, 2005; NY K85051, dated May 17, 2004; HQ 962622, dated August 11, 1999.

The device at issue does not fit the terms of heading 8508, HTSUS, because it only filters water, and *not* the air stream. As opposed to the wet/dry vacuums, which are classifiable in heading 8508, this device operates only when it is submerged in water. And, to this end, the characterization of the device as a “wet/dry vacuum” in NY L82232 was in error. CBP notes that the device is distinguishable from articles like the Vaqua wet/dry vacuum described in NY L85706, dated July 8, 2005, as “a water filtration, canister-style vacuum cleaner used in the home.” The Vaqua uses water to pick up dust and debris and filters the air stream, but it is not operational when submersed completely in water. It is noteworthy that wet and wet/dry vacuums suction and store water in a receptacle. When the device at issue suctions water, it retains only the debris filtered from the water. We conclude that the device does not meet the terms of a “vacuum cleaner” and is therefore not classifiable in heading 8508, HTSUS. The device does fit the terms of heading 8421, HTSUS, which provides for, in pertinent part, “filtering or purifying machinery or apparatus, for liquids or gases”.

* Water Tech’s submission, dated November 29, 2006, actually identified heading 8509 as the *eo nomine* provision for vacuum cleaners. Effective February 2, 2007, a new heading in the HTSUS was established for vacuum cleaners. Vacuum cleaners formerly classified in heading 8509, HTSUS, migrated to the new heading, 8508, HTSUS. Rulings cited in this letter which control the classification of vacuum cleaners in the HTSUS prior to February 2, 2007 are relevant in CBP’s analysis, despite the migration of vacuum cleaners from heading 8509 to 8508.

HOLDING:

By application of GRI 1, the pool vacuum, WV-001, is classified in heading 8421, HTSUS, as “[c]entrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof[,]” and is specifically provided for in subheading 8421.21.0000, which provides for “[f]iltering or purifying machinery and apparatus for liquids: For filtering or purifying water.” The 2008 column one, general rate of duty is free.

Duty rates are provided for your convenience and 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 L82232, dated February 7, 2005, is hereby REVOKED. 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 and Trade Facilitation Division.

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE CLASSIFICATION OF
CERTAIN ICE CREAM WRAPPING MATERIAL**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the classification of certain ice cream wrapping material composed of layers of paper, aluminum foil, and polyethylene adhered together.

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 a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain ice cream wrapping material composed of layers of paper, aluminum foil, and polyethylene adhered together. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on September 4, 2008, in the Customs Bulletin, Volume 42, No. 37. One comment was received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 9, 2009.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Tariff Classification and Marking Branch at: (202) 325-0034.

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 to 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 a ruling letter relating to the tariff classification of certain ice cream wrapping material composed of layers of paper, aluminum foil, and polyethylene adhered together. Although in this notice CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 954591, dated August 23, 1993, 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 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 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.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking HQ 954591 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper tariff classification of the ice cream wrapping material under heading 7607, HTSUS, as “not backed” aluminum foil, by application of GRI 3(b), according to the analysis set forth in Headquarters Ruling Letter (“HQ”) H034938 (Attached). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: December 17, 2008

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H034938
December 17, 2008
CLA-2 OT:RR:CTF:TCM H034938 HkP
CATEGORY: Classification
TARIFF NO.: 7607.19.60

MS. JANET KIM
UNITED CUSTOMSHOUSE BROKERS, INC.
5777 W. Century Blvd. Suite 510
Los Angeles, CA 90045

RE: Revocation of HQ 954591; ice cream wrapping material

DEAR MS. KIM:

This is in reference to Headquarters Ruling Letter (“HQ”) 954591, issued to you on August 23, 1993, concerning the classification of ice cream wrapping material under the Harmonized Tariff Schedule of the United States (“HTSUS”). In that ruling the U.S Customs Service, (now “U.S. Customs and Border Protection” (“CBP”)) classified the ice cream wrapping material under heading 7607, specifically in subheading 7607.20.10, HTSUS, as “backed” aluminum foil, by application of GRI 1. We have reviewed HQ 954591 and found that this decision is incorrect. For the reasons set forth below, we hereby revoke HQ 954591.

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 was published on September 4, 2008, in the Customs Bulletin, Volume 42, No. 37. One comment was received in response to this notice.

FACTS:

The merchandise at issue is described in HQ 954591 as follows:

The top layer of the wrapping is a clear sheet of polypropylene with reverse printing on one side. The printed polypropylene layer is then laminated to aluminum foil, which is laminated to paper through the use of an intermediate layer of wet polyethylene. The back of the paper is then coated with a hot melt. The paper and plastic backing adds strength to the aluminum foil facilitating its use as wrapping for ice cream. The finished material has a thickness of 0.075 mm.

We have also consulted the original file which contains the following relevant information on the cost breakdown of raw materials, including as percentages of total expenses (approximate figures used):

Oriented polypropylene – \$3/roll (4%)
 7 micron aluminum foil – \$13/roll (18%)
 15 micron wet lamination (polyethylene) – \$1.50/roll (2%)
 25G/sq. meter paper – \$6/roll (8.5%)
 14G/sq. meter hot melt – \$8/roll (11.5%)

Based on our research, “hot melt” is generally described as an adhesive which becomes liquid at high temperatures and reverts to a solid state at normal temperatures. In addition, aluminum foil is generally used in food packaging as a moisture and oxygen transmission barrier to aid in food preservation.

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:

- 3921** Other plates, sheets, film, foil and strip, of plastics:
- 4811** Paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810:
- 7607** Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm:
 Not backed:
- 7607.19 Other:
 Other:

7607.19.60 Other

7607.20 Backed:

7607.20.50 Other

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

In our proposed ruling, we noted that aluminum foil which is combined with another material but that is not backed or coated can only be classified in heading 7607, HTSUS, on the basis of GRI 3 as a composite good.

According to the comment received, CBP’s finding above is inconsistent with definitions of “backed” previously relied upon by the agency. Commenter notes that because the term “backed” is not defined in the HTSUS or the ENs, CBP has, in the past, relied on information from the aluminum industry and explanations of the use of backing found in the ENs. See HQ 960276, dated August 1, 1997, and HQ 966769, dated Jan. 5, 2005. According to Commenter, none of the definitions cited limit the use of the term “backed” to a single side of the article. In this case, argues Commenter, both backing materials used in the ice cream wrapper (OPP and paper) are composed of materials that have been specifically enumerated as exemplars of backing material. Further, each of these materials is a coherent substrate that is applied to the aluminum foil through a laminating process. Accordingly, the ice cream wrapping material meets the requirements for backed foil as defined by the aluminum industry and favorably cited by CBP in HQ 960276. Based on the foregoing, Commenter is of the view that the ice cream wrapping material is classified as “backed aluminum foil” under subheading 7607.20, HTSUS, by application of GRI 1.

Heading 7607, HTSUS, provides for aluminum foil, whether or not backed. As noted by Commenter, the tariff does not define the term “backed”. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. Rocknel Fastener, Inc. v. United States, 267 F.3d 1354, 1356 (Fed. Cir. 2001). “To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials.’” *Id.* (quoting C.J. Tower & Sons of Buffalo, Inc. v. United States, 673 F.2d 1268, 1271, 69 C.C.P.A. 128 (C.C.P.A. 1982); Simod Am. Corp. v. United States, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). The Random House Dictionary of the English Language defines “backing” as “that which forms the back or is placed at or attached to the back of anything to support, strengthen, or protect it. The aluminum industry defines the term “backed foil” as “a lamination composed of foil and a coherent substrate. The substrates or backing may be either self-adherent or bonded to the foil by means of an interposed adhesive. Paper, woven fabrics, cellophane, polyethylene film and the like are typical examples of such backings or substrates.” Cited in HQ 965210, March 20, 2002; HQ 966769, January 5, 2004. Based on these sources, CBP has previously found that the word “backed” is defined, in pertinent part, as “having a back, setting or support”. *Id.* We now find that the Oxford English Dictionary (2008) defines the noun

“back” as: “**3. a. gen.** That side or surface of any part . . . of any object, which answers in position to the back; that opposite to the face or front, or side approached, contemplated or exposed to view; e.g. the back of the head, of the leg; the back of a house, door, picture, bill, tablet, etc.” Also, “**5. a.** The side of any object away from the spectator, or spectators generally, the other or far side. **at the back of:** behind, on the farther side of[.]” Furthermore, EN 74.10 (which applies, *mutatis mutandis*, to heading 76.07 (see EN 76.07)) explains that “backing” may be added to a good to facilitate handling or transport or in order to facilitate subsequent treatment. Based on the common and commercial meaning of the word “backed” and the explanation provided in the ENs, we find that foil to one side of which a coherent substrate has been added (the “back”) in order to strengthen, support, or protect the foil or to facilitate handling, transport or subsequent treatment may be classified in heading 7607 as “backed” foil on the basis of GRI 1.

Commenter also argues that there is no legal authority to support CBP’s “limited interpretation of the term backed.” As previously noted, the Court of Appeals for the Federal Circuit has instructed that when a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. See *Rocknel Fastener*. We have relied on the common and commercial meaning of the term “backed”. Contrary to Commenter’s assertion, our reliance on these terms is not inconsistent with definitions that we have previously used but merely serves to clarify our understanding of the term “backed.”

For these reasons, we find that the ice cream wrapping material is not described by the term “backed”. Although the plastic layer and the paper layer are added to the foil for strength and to support, protect, and facilitate handling, transport and subsequent treatment of the foil, the plastic layer is added to one side of the foil and the paper layer to the other. Therefore, the foil cannot properly be considered to be “backed”. Consequently, the ice cream wrapping material cannot be classified in heading 7607, HTSUS, using a GRI 1 analysis.

Finally, Commenter argues that our proposed holding (classification of the ice cream wrapping material under heading 7607, HTSUS, by application of GRI 3) is inconsistent with our classification decision in NY J84648, dated July 3, 2004.¹ In that ruling, one of the products at issue and of relevance here was described as:

Capsteril® PAF 212 . . . a tri-laminate of PET, aluminum foil and peelable HDPE. This foil gives a peelable sealing to the PE containers. The aluminum foil and peelable HDPE are of the same thickness. The PET layer makes the foil extra tear resistant.

CBP classified this product in subheading 7607.20.50, HTSUS, as backed aluminum foil. Commenter points out that given the similarities between the ice cream wrapping material and the tri-laminate lid, CBP is further confusing the issues surrounding the proper classification of layered aluminum packaging materials.

¹ In response to an assertion made by Commenter, that NY J84648 was affirmed in HQ 966769 (Jan. 5, 2004), we clarify that the latter ruling only concerned the classification of two of the five items described in NYJ84648. Neither of those two items was Capsteril® PAF 212.

Upon review of file NY J84648, CBP has discovered that the PET and HDPE layers are on either side of the foil. As such, CBP has initiated action under 19 U.S.C. § 1625(c), by which CBP is proposing to modify NY J84648 as it relates to the classification of Capsteril® PAF 212.

The wrapping at issue is a composite good consisting of layers of coated paper, classified under heading 4811, HTSUS, aluminum foil, classified under heading 7607, HTSUS, and plastic, classified under heading 3921, HTSUS, adhered together. There is no heading that describes this good in its entirety. GRI 3(b) directs that composite goods consisting of different materials shall be classified as if they consisted of the material or component which gives them their essential character. EN (VIII) to GRI 3(b) explains that the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods. After examining the wrapping, we find that its essential character is imparted by the aluminum layer, by virtue of its cost and its use in relation to preserving the qualities of the ice cream it is used to wrap. Accordingly, the ice cream wrapping material is classified under heading 7607, HTSUS, by application of GRI 3(b).

HOLDING:

By application of GRI 3(b), the ice cream wrapping material is classified under heading 7607, HTSUS. It is specifically provided for in subheading 7607.19.60, HTSUS, which provides for: “Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness not exceeding 0.2 mm: Not backed: Other: Other.” The column one, general rate of duty is 3% *ad valorem*.

EFFECT ON OTHER RULINGS:

HQ 954591 is hereby revoked. 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 and Trade Facilitation Division.

**MODIFICATION OF THE LEGAL ANALYSIS CONTAINED IN
A RULING LETTER CONCERNING THE CLASSIFICATION
OF “POLACOLOR FOIL”**

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

ACTION: Notice of modification of the legal analysis contained in a ruling letter relating to the classification of “Polacolor foil”, which is composed of polypropylene/aluminum foil/ polypropylene adhered together in layers.

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 Modern-

ization) 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 Polacolor foil, with respect to its legal analysis. CBP is not proposing to revoke any treatment previously accorded by it to substantially identical transactions. Notice of the proposed modification was published on September 4, 2008, in the Customs Bulletin, Vol. 42, No. 37. One comment was received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 9, 2009.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Tariff Classification and Marking Branch, at (202) 325–0034.

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 to 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 modifying a ruling letter relating to the tariff classification of Polacolor foil composed of polypropylene/aluminum foil/ polypropylene adhered together in layers, with respect to its legal analysis. Although in this notice CBP is specifically referring to the modification of Headquarters Ruling Let-

ter (HQ) 959298, dated May 8, 1998, 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 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 the notice period.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying HQ 959298 and any other ruling not specifically identified to reflect the proper legal basis on which to classify the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) H034975 (Attached). CBP is not revoking any treatment previously accorded by it to substantially identical transactions.

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

DATED: December 17, 2008

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

Attachment



DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H034975
December 17, 2008
CLA-2 OT:RR:CTF:TCM H034975 HkP
CATEGORY: Classification
TARIFF NO.: 3921.90.40

PORT DIRECTOR
PORT OF ST. ALBANS
U.S. CUSTOMS AND BORDER PROTECTION
50 S. Main Street, Suite 100R
St. Albans, VT 05478

RE: Modification of HQ 959298; Classification of Polacolor foil

DEAR PORT DIRECTOR:

This is in reference to Headquarters Ruling Letter (HQ) 959298, dated May 8, 1998, regarding the classification of an aluminum foil and plastic product, referred to as "Polacolor foil", under the Harmonized Tariff Schedule of the United States ("HTSUS"). In that ruling, the U.S. Customs Service (now U.S. Customs and Border Protection ("CBP")) classified Polacolor foil under heading 3921, HTSUS, using an essential character analysis pursuant to GRI 3. However, in our holding, we stated that classification was in accordance with GRI 1. After reviewing HQ 959298 it is now our view that

Polacolor foil should have been classified using a GRI 1 analysis. For this reason, we hereby modify HQ 959298 with respect to its legal analysis.

We note that under San Francisco Newspaper Printing Co. v. United States, 9 Ct. Int'l Trade 517, 620 F. Supp. 738 (1985), the decision on the merchandise which was the subject of Protest 0201-96-100158 was final on both the protestant and CBP. Therefore, while we may review the law and analysis of HQ 959298, any decision taken herein would not impact the entries subject to that ruling.

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 was published on September 4, 2008, in the Customs Bulletin, Volume 42, No. 37. One comment was received in response to this notice, in which the commenter noted that it was unclear why CBP believes that the Polacolor foil retains the essential character of plastic.

FACTS:

The merchandise at issue was described in HQ 959298 as:

[A]luminum foil sandwiched between two laminates of polypropylene. After importation the Polacolor foil is used to manufacture wrappings for photographic films. Each plastic layer has a thickness of 0.001 [inches]; the aluminum foil has a thickness of 0.003 [inches].

ISSUE:

What is the legal basis for classifying Polacolor foil under heading 3921, 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 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 at the international level. See T.D. 89-80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The General EN to Chapter 39 provides, in relevant part:

* * *

This Chapter also covers the following products, whether they have been obtained by a single operation or by a number of successive operations **provided** that they retain the essential character of articles of plastics:

(b) Plates, sheets, etc., of plastics, separated by a layer of another material such as metal foil, paper, paperboard.

EN 39.21 provides, in relevant part:

This heading covers plates, sheets, film, foil and strip, of plastics, **other than** those of **heading 39.18, 39.19 or 39.20** or of **Chapter 54**. It therefore covers only cellular products or those which have been reinforced, laminated, supported or similarly combined with other materials. (For the classification of plates, etc. combined with other materials, see the General Explanatory Note.)

Polacolor foil is a composite good consisting of foil and plastic. Under GRI 1, the expression “other” in the legal text of heading 3921, HTSUS, is to be construed “according to the terms of the headings and any relative section or chapter notes . . . provided such headings or notes do not otherwise require” Accordingly, heading 3921, HTSUS, has to be read in the context of the other headings in which plastic plates, sheets, film, foil and strip can be classified, *i.e.*, (in Chapter 39) heading 3918, HTSUS, (Floor coverings of plastics; wall and ceiling coverings of plastics), 3919, HTSUS, (Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics) and 3920, HTSUS, (Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials). Based on the text of these headings, we find that heading 3921, HTSUS, provides for, among other things, plastic film (other than those of heading 3918, 3919, or 3920, HTSUS) combined with other materials. We find, therefore, that composite goods consisting in part of plastic sheets or other forms named in the heading may be classified in heading 3921, HTSUS, on the basis of GRI 1, provided they retain the essential character of articles of plastics. This interpretation of the heading text is supported by the Explanatory Notes to heading 3921, HTSUS. See EN 39.21 and the General EN to Chapter 39, which explains that sheets of plastics separated by a layer of foil are provided for in Chapter 39. The Polacolor foil retains the essential character of articles of plastic because the plastic layers encase the foil layer and confer on to it the characteristics of plastic.

Based on the foregoing analysis, we find that Polacolor foil is classified under heading 3921, HTSUS, pursuant to GRI 1. Consequently, there is no need to classify the product using GRI 3. We note that neither the heading text nor the relevant Legal Notes provide for aluminum foil sandwiched between layers of plastic within heading 7607, HTSUS, at the GRI 1 level of classification.

HOLDING:

By application of GRI 1, Polacolor foil is classified under heading 3921, HTSUS. It is specifically provided for in subheading 3921.90.40, HTSUS, which provides for: “Other plates, sheets, film, foil and strip, of plastics: Other: Other: Flexible.” The column one, general rate of duty is 4.2% *ad valorem*.

EFFECT ON OTHER RULINGS:

HQ 959298 is hereby modified with respect to its legal analysis. The classification of the merchandise 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 and Trade Facilitation Division.

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF A SURGICAL CLIP**

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

ACTION: Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of a surgical clip.

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, 2186 (1993), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of a surgical clip under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 42, No. 47, on November 13, 2008. No comments were received in response to the notice.

DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 9, 2009.

FOR FURTHER INFORMATION CONTACT: Richard Mojica, Tariff Classification and Marking Branch, at (202) 325–0032.

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 to 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 a ruling letter pertaining to the tariff classification of a surgical clip. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) G83236, issued on October 17, 2000, 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 have advised CBP during the notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. § 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in the 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 revoking NY G83236 and any other ruling not specifically identified, to reflect the proper classification of the surgical clip according to the analysis contained in Headquarters Ruling Letter (HQ) H035567(Attachment). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: December 17, 2008

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

Attachments

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H035567
December 17, 2008
CLA-2 OT: RR: CTF: TCM H035567 RM
CATEGORY: Classification
TARIFF NO.: 9018.90.80

MR. WILLIAM F. JOFFROY
WILLIAM F. JOFFROY CUSTOMS BROKERS, INC.
P.O. Box 698
Nogales, AZ 85628

RE: Reconsideration of New York Ruling Letter NY G83236, dated October 17, 2000; Classification of a Surgical Clip

DEAR MR. JOFFROY:

This is in reference to New York Ruling Letter (“NY”) G83236, dated October 17, 2000, issued to you on behalf of Coalescent Surgical, Inc., concerning the tariff classification of a surgical clip. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under heading 7508, specifically in subheading 7508.90.50, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Other articles of nickel: Other: Other.” We have reviewed NY G83236 and found it to be incorrect.

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 November 13, 2008, in the Customs Bulletin, Volume 42, No. 47. No comments were received in response to this notice.

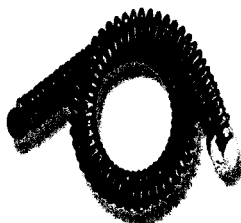
FACTS:

In NY G83236, we described the merchandise as: “a non-sterile surgical clamp made of Nitinol wire. Nitinol is a nickel titanium, an alloy of nickel (Section XV, Chapter 75, Subheading Notes, 1(b)(iii)).” We have since received additional information to indicate that the clamp, which is marketed as the “U-Clip,” is a device used during vascular and cardiac surgery, in lieu of sutures, to join severed vessels and organs. The device consists of a self-closing clip attached to a conventional surgical needle by a flexible member (pictured below).



According to our research gathered from the importer’s website, after joining the vessels and/or organs, the clip automatically retracts when severed from the needle and flexible member, thereby forming a ring (magnified pic-

ture below).² The self-closing clip eliminates the need for knot-tying and suture management during surgery.



ISSUE:

What is the correct tariff classification of the U-Clip under the 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:

7508	Other articles of nickel:
7508.90	Other:
7508.90.50	Other . . .
9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof:
9018.90	Other instruments and appliances and parts and accessories thereof:
	Other:
9018.90.80	Other . . .

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

² See http://www.medtronic.com/cardsurgery/products/uclip_spyder.html#

The ENs to heading 7508, HTSUS, state, in part:

(B) OTHER

This group covers all articles of nickel other than those covered by the preceding group or by the preceding headings of this Chapter or by Note 1 to Section XV, or articles specified or included in Chapter 82 or 83, or more specifically covered elsewhere in the Nomenclature.

The ENs to heading 9018, HTSUS, state, in part:

This heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a diagnosis, to prevent or treat an illness or to operate, etc. Instruments and appliances for anatomical or autoptic work, dissection, etc., are also included, as are, under certain conditions, instruments and appliances for dental laboratories (see Part (II) below). The instruments of the heading may be made of any material (including precious metals).

This heading **does not cover**:

- (a) Sterile catgut and other sterile material for surgical sutures, sterile laminaria and sterile laminaria tents (heading 30.06).

* * *

**(I) INSTRUMENTS AND APPLIANCES
FOR HUMAN MEDICINE OR SURGERY**

This group includes:

- (A) **Instruments which may be used under the same names for several purposes, for example:**

- (1) **Needles** (for sutures, ligatures, vaccination, blood tests, hypodermic needles, etc.).

* * * (15) **Clips** (suture, etc.).

* * * (17) **Surgical staplers** for inserting staples to close a wound.

Heading 9018, HTSUS, provides for, among other things, “[i]nstruments and appliances used in . . . surgical sciences.” The U-Clip is not a general-purpose clip. It is a clip used solely during vascular and cardiac surgery to join vessels and organs. As such, it is analogous to a surgical needle with a suture attached, which we have consistently classified under heading 9018, HTSUS. See Headquarters Ruling Letter (“HQ”) 965845, 965846, and 965847, dated November 7, 2002.

Based on the foregoing, we conclude that the U-Clip is provided for under heading 9018, HTSUS. Our determination is in keeping with the ENs to heading 9018, HTSUS, which describe “clips (suture, etc.)” as “[i]nstruments used . . . only in professional practice (e.g., by surgeons) . . . to operate[.]” Classification under heading 7508, HTSUS, is thereby precluded, as it is limited to articles not more specifically covered elsewhere in the Nomenclature. See EN 75.08(b).

HOLDING:

By application of GRI 1, the U-Clip is classified under heading 9018, specifically in subheading 9018.90.80, HTSUS, which provides for: “Instru-

ments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Other instruments and appliances and parts and accessories thereof: Other. The column one, general rate of duty is: "Free."

Duty rates are provided for convenience only 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 G83236, dated October 17, 2000, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the Customs Bulletin.

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