

# U.S. Customs and Border Protection

**CBP Dec. 10-02**

## **Recordation of Trade Name “Sony Ericsson Mobile Communications AB”**

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

**ACTION:** Notice of final action.

**SUMMARY:** This document gives notice that “Sony Ericsson Mobile Communications AB” has been recorded with CBP as a trade name by Sony Ericsson Mobile Communications AB.

The application for trade name recordation was properly submitted to Customs and Border Protection (CBP) and published in the **Federal Register**. As no public comments in opposition to the recordation of this trade name were received by CBP within the 60-day comment period, the trade name has been duly recorded with CBP and will remain in force as long as this trade name is in use by this manufacturer, unless the recordant requests cancellation of the recordation or any other provision of the law so requires.

**EFFECTIVE DATE:** January 25, 2010.

**FOR FURTHER INFORMATION CONTACT:** Suzanne E. Kane, Attorney-Advisor, Intellectual Property Rights & Restricted Merchandise Branch, at (202) 325-0119.

### **SUPPLEMENTARY INFORMATION:**

Trade names that are being used by manufacturers or traders may be recorded with CBP to afford the particular business entity with increased commercial protection. CBP procedures for recording trade names are provided at § 133.11 *et seq.* of the CBP Regulations (19 CFR 133.11 *et seq.*). Pursuant to these regulations, Sony Ericsson Mobile Communications AB applied to CBP for protection of its trade name, Sony Ericsson Mobile Communications AB.

On Tuesday, November 10, 2009, CBP published a notice of application for the recordation of the trade name “Sony Ericsson Mobile

Communications AB” in the **Federal Register** (74 FR 58042). The notice advised that before final action would be taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing in opposition of the recordation of this trade name. The closing day for the comment period was January 11, 2010.

At the end of the comment period, January 11, 2010, no comments were received. Accordingly, as provided by § 133.14 of the CBP Regulations, “Sony Ericsson Mobile Communications AB” is recorded with CBP as the trade name used by the manufacturer, Sony Ericsson Mobile Communications AB, and will remain in force as long as this trade name is in use by this manufacturer unless the recordant requests cancellation of the recordation or any other provision of the law so requires.

Dated: January 15, 2010

CHARLES R. STEUART, CHIEF  
*Intellectual Property Rights &  
Restricted Merchandise Branch*

[Published in the Federal Register, January 25, 2010 (75 FR 3914)]

**ACCREDITATION AND APPROVAL OF KING  
LABORATORIES, INC., AS A COMMERCIAL GAUGER AND  
LABORATORY**

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

**ACTION:** Notice of accreditation and approval of King Laboratories, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, King Laboratories, Inc., 1300 E. 223rd St. #401, Carson, CA 90745, has been approved to gauge and accredited to test petroleum and petroleum products in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry

may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of King Laboratories, Inc., as commercial gauger and laboratory became effective on August 25, 2009. The next triennial inspection date will be scheduled for August 2012.

**FOR FURTHER INFORMATION CONTACT:** Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 12, 2010

IRA S. REESE  
*Executive Director*  
*Laboratories and Scientific Services*

[Published in the Federal Register, January 20, 2010 (75 FR 3245)]

## **ACCREDITATION AND APPROVAL OF SAYBOLT LP, AS A COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 21730 S. Wilmington Ave., Suite 201, Carson, CA 90810, has been approved to gauge and accredited to test petroleum and petroleum products in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on September 23, 2009. The next triennial inspection date will be scheduled for September 2012.

**FOR FURTHER INFORMATION CONTACT:** Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 12, 2010

IRA S. REESE  
*Executive Director*  
*Laboratories and Scientific Services*

[Published in the Federal Register, January 20, 2010 (75 FR 3244)]

**ACCREDITATION AND APPROVAL OF SGS NORTH AMERICA, INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 300 George Street, East Alton, IL 62024, has been approved to gauge and accredited to test petroleum and petroleum products in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on July 14, 2009. The next triennial inspection date will be scheduled for July 2012.

**FOR FURTHER INFORMATION CONTACT:** Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 12, 2010

IRA S. REESE  
*Executive Director*  
*Laboratories and Scientific Services*

[Published in the Federal Register, January 20, 2010 (75 FR 3245)]

**PROPOSED REVOCATION OF THREE RULING LETTERS  
AND PROPOSED REVOCATION OF TREATMENT  
RELATING TO THE CLASSIFICATION OF CERTAIN JVC  
MULTIFUNCTIONAL DIGITAL CAMERAS**

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

**ACTION:** Notice of proposed revocation of three ruling letters and proposed revocation of treatment relating to the classification of certain JVC multifunctional digital cameras.

**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 proposing to revoke three ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain multifunctional digital cameras. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

**DATES:** Comments must be received on or before March 12, 2010.

**ADDRESSES:** 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, 799 9th Street, N.W., Fifth Floor, Washington,

D.C. 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325–0118.

**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 proposing to revoke three ruling letters relating to the tariff classification of certain models of JVC multifunctional digital cameras. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letters (NY) R04381, dated July 21, 2006 (Attachment A), NY R04507, dated August 15, 2006 (Attachment B), and NY R04505, dated August 15, 2006 (Attachment C), 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 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 is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY R04381, NY R04507, and NY R04505, CBP classified certain models of JVC multifunctional digital cameras in subheading 8525.40.40 (now 8525.80.40), HTSUS, which provided for, in relevant part: "[T]elevision cameras; still image video cameras and other video camera recorders; digital cameras: Still image video cameras and other video camera recorders; digital cameras: Digital still image video cameras." Based on our recent review of these rulings, we have determined that the tariff classification set forth for the JVC cameras is incorrect. It is now CBP's view that the proper tariff classification is subheading 8525.80.50, HTSUS, which provides for: "[T]elevision cameras, digital cameras and video camera recorders: Television cameras, digital cameras and video camera recorders: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY R04381, NY R04507, and NY R04505, 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 merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) H046643 (Attachment D). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: January 21, 2010

GAIL A. HAMILL  
*For*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

NY R04381  
July 21, 2006  
CLA-2-85: RR: NC: 1:108 R04381  
CATEGORY: Classification  
TARIFF NO.: 8525.40.4000

MR. DENNIS FORHART  
PRICEWATERHOUSECOOPERS  
1420 FIFTH AVENUE, SUITE 1900  
SEATTLE, WA 98101

RE: The tariff classification of digital camera from Japan.

DEAR MR. FORHART:

In your letter dated July 13, 2006 you requested a tariff classification ruling.

The item in question is a digital camera denoted as the Everio Camera model number GZMC500US. The camera captures and stores up to 9,999 digital still images and up to sixty minutes of video. It employs 3 CCDs combined with advanced 5-mega-pixel shift technology. The camera can be connected to a PC and or television/monitor for viewing of the images.

The thousands of still images are stored as JPEG files and can also be directly connected to a printer for image reproduction.

The applicable subheading for the Everio Digital camera, model number GZMC500US will be 8525.40.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still image video cameras and other video camera recorders; digital cameras: Still image video cameras and other video camera recorders; digital cameras: digital still image video cameras. The rate of duty will be free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Michael Contino at 646-733-3014.

*Sincerely,*

ROBERT B. SWIERUPSKI  
*Director,*

*National Commodity Specialist Division*



## [ATTACHMENT B]

NY R04507  
August 15, 2006  
CLA-2-85:RR:ENC:1:108 R04507  
CATEGORY: Classification  
TARIFF NO.: 8525.40.4000

MR. DENNIS FORHART  
PRICEWATERHOUSECOOPERS  
1420 FIFTH AVENUE, STE. 1900  
SEATTLE, WA 98101

RE: The tariff classification of a digital camera from Japan.

DEAR MR. FORHART:

In your letter dated July 28, 2006, on behalf of JVC Americas Corporation, you requested a tariff classification ruling.

The subject merchandise is a digital camera, known as the Everio Camera (model number GZ-MG30US). It is stated that this camera can capture and store nearly 10,000 digital still images to an internal 30 GB hard disk drive with the capacity for recording seven hours of DVD-quality video. This camera, which has a 2 ½-inch LCD screen for easy viewing of still images, allows for five different modes (from sport to portrait settings) to capture optimal quality still photos; there is also a choice of four recording modes that allows the user to choose between more shooting time or higher quality.

This camera can be connected to a television for viewing, a VCR/DVD recorder for recording onto a video tape or DVD, a printer to print still image photos, a computer for data transfer, or JVC's Everio Share Station which allows the user to burn images directly onto a DVD. It is also stated that all of the digital camera's capabilities are advertised equally on the good's packaging.

The applicable subheading for this digital camera will be 8525.40.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Still image video cameras and other video camera recorders; digital cameras: Digital still image video cameras. The rate of duty will be free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Michael Contino at 646-733-3014.

*Sincerely,*

ROBERT B. SWIERUPSKI  
*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT C]

NY R04505  
August 15, 2006  
CLA-2-85:RR:ENC:1:108 R04505  
CATEGORY: Classification  
TARIFF NO.: 8525.40.4000

MR. DENNIS FORHART  
PRICEWATERHOUSECOOPERS  
1420 FIFTH AVENUE, STE. 1900  
SEATTLE, WA 98101

RE: The tariff classification of a digital camera from Japan.

DEAR MR. FORHART:

In your letter dated July 28, 2006, on behalf of JVC Americas Corporation, you requested a tariff classification ruling.

The subject merchandise is a digital camera, known as the Everio Camera (model number GZ-MG2OUS). It is stated that this camera can capture and store thousands of digital still images to an internal 20 GB hard disk drive with the capacity for recording nearly 4 ½ hours of DVD movie-quality video. This camera, which has a 2 ½-inch LCD screen for easy viewing of still images, allows for five different modes (from sport to portrait settings) to capture optimal quality still photos; there is also a choice of four recording modes that allows the user to choose between more shooting time or higher quality.

This camera can be connected to a television for viewing, a VCR/DVD recorder for recording onto a video tape or DVD, a printer to print still image photos, or a computer for data transfer. It is also stated that all of the digital camera's capabilities are advertised equally on the good's packaging.

The applicable subheading for this digital camera will be 8525.40.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Still image video cameras and other video camera recorders; digital cameras: Digital still image video cameras. The rate of duty will be free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Michael Contino at 646-733-3014.

*Sincerely,*

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

## [ATTACHMENT D]

HQ H046643  
CLA-2 OT:RR:CTF:TCM H046643 HkP  
CATEGORY: Classification  
TARIFF NO.: 8525.80.50

MR. DENNIS FORHART, DIRECTOR  
PRICE WATERHOUSE COOPERS  
1420 FIFTH AVENUE, SUITE 1900  
SEATTLE, WA 98101

RE: Revocation of NY R04381, R04507, R04505; JVC Everio multifunction digital cameras

DEAR MR. FORHART:

This is in reference to New York Ruling Letters (NY) R04381 (July 21, 2006), R04507 (Aug. 15, 2006), and R04505 (Aug. 15, 2006) issued to you on behalf of your client, JVC Corporation. At issue in those rulings was the tariff classification of JVC Everio cameras, model GZ-MC500US, GZ-MG30US, and GZ-MG20US, respectively, under the Harmonized Tariff Schedule of the United States (HTSUS). The National Commodity Specialist Division, U.S. Customs and Border Protection ("CBP"), classified the cameras in subheading 8525.40.40, HTSUS (2006),<sup>1</sup> as digital still image video cameras. For the reasons set forth in this ruling, we are of the view that the correct classification is under subheading 8525.80.50, HTSUS (2009), as "other" than digital still image cameras or television cameras and hereby revoke NY R04381, NY R04507, and NY R04505.

**FACTS:**

In NY R04381, the JVC Everio camera (model GZ-MC500US) was described as follows:

The item in question is a digital camera denoted as the Everio Camera model number GZMC500US. The camera capture and store [sic] up to 9,999 digital still images and up to sixty minutes of video. It employs 3 CCDs combined with advanced 5-mega-pixel shift technology. The camera can be connected to a PC and or [sic] television/monitor for viewing of images. The thousands of still images are stored as JPEG files and can also be directly connected to a printer for image reproduction.

In addition, this camera has the following features: 200x digital zoom, MPEG-2 digital video format; minimum shutter speed of ½ sec.; maximum shutter speed of 1/4000 sec.; custom, preset and automatic white balance, program, automatic, shutter-priority and aperture-priority exposure modes; pop-up flash; several flash modes; removable 4GB microdrive; storage for 2650 x 1920, 2048 x 1536, 1600 x 1200, 1280 x 960, and 640 x 480 JPEG images; a microphone; USB, composite video/audio output, S-video output connectors, and headphone and DC power input connectors. See <http://cnet.com>, JVC Everio GZ-MC500, Specifications.

In NY R04507, the JVC Everio camera (model GZ-MG30US) was described as follows:

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<sup>1</sup> As a result of the 2007 changes to the Harmonized System, the goods of subheading 8525.40, HTSUS, were transferred to subheading 8525.80, HTSUS. See Presidential Proclamation 8097, 72 Fed. Reg. 453, Vol.72, No. 2.

The subject merchandise is a digital camera ... It is stated that this camera can capture and store nearly 10,000 digital still images to an internal 30GB hard disk drive with the capability for recording seven hours of DVD-quality video. This camera, which has a 2 ½ inch LCD screen for easy viewing of still images, allows for five different modes (from sport to portrait settings) to capture optimal quality still photos; there is also a choice of four recording modes that allows the user to choose between more shooting time or higher quality.

This camera can be connected to a television for viewing, a VCR/DVD recorder for recording onto a video tape or DVD, a printer to print still image photos, a computer for data transfer, or JVC's Everio Share Station which allows the user to burn images directly onto a DVD. It is also stated that all of the digital camera's capabilities are advertised equally on the good's packaging.

In addition this camera has the following features: 800x digital zoom; 8.0 megapixels; progressive scan; CCD optical sensor; NTSC and PAL analog video format and MPEG-2 digital video format; minimum/maximum shutter speeds of ½ sec/ 1/4000 sec; ½ sec camcorder slow shutter modes; storage for 640 x 480 JPEG images; 25 x optical zoom; 2.2 – 55 mm focal length equivalent to a 35 mm camera; built-in microphone; USB, composite video/audio output, S-video output connectors, and headphone and DC power input connectors. *See* <http://cnet.com>, JVC Everio GZ-MG30U, Specifications.

In NY R04505, Everio model GZ-MG20US was described as having the same features as the GZ-MG30US, except that the GZ-MG20US had an internal 20 GB hard disk drive with the capacity for recording nearly 4 ½ hours of DVD movie-quality video, and 6.8 megapixels. *See also* <http://cnet.com>, JVC Everio GZ-MG20U, Specifications.

#### **ISSUE:**

Do the JVC multifunction digital cameras, models GZ-MC500US, GZ-MG30US and GZ-MG20US, principally function as digital still image video cameras of subheading 8525.80.40, HTSUS?

#### **LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation. 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 require otherwise, the remaining GRIs may then be applied.

The 2009 HTSUS provisions under consideration are as follows:

- |         |                                                                                                                                                                                                                            |
|---------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8525    | Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders: |
| 8525.80 | Television cameras, digital cameras and video camera recorders:                                                                                                                                                            |

<b>8525.80.4000</b>	Digital still image video cameras ....
<b>8525.80.50</b>	Other ....

Note 3 to Section XVI, HTSUS, in which heading 8525 is located, provides as follows:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

There is no dispute that the multifunction cameras are correctly classified in heading 8525 (8525.80), HTSUS, (2009) because that heading provides for both digital cameras and video camera recorders and the cameras at issue function as both. At issue is the proper eight digit national tariff rate. Accordingly, GRI 6 is implicated.

GRI 6 provides that the classification of goods in the subheading of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to GRI 1 through 5, on the understanding that only subheadings at the same level are comparable. Relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

You contend that “Digital cameras ... are commonly defined as, ‘a camera that stores images digitally rather than recording them onto film.’” You also state that “cameras that have been historically referred to as camcorders” are not digital machines and that, consequently, digital machines that can record video and capture still images cannot be classified outside of subheading 8525.80.40, HTSUS.

Subheading 8525.80.40, HTSUS (2009) provides for “Digital still image video cameras”. This phrase is not defined in the HTSUS or in the Explanatory Notes to heading 8525, HTSUS.<sup>2</sup> When a tariff term is not defined in the HTSUS, we may look to its legislative history or, failing that, to its common and commercial meaning. *See, for e.g., Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). In this instance, because this provision is directly derived from text that was incorporated into the Harmonized System (HS) and, consequently, into the HTSUS in 1996,<sup>3</sup> we seek guidance from its international legislative history.

Our research has revealed that the phrase “still image video camera” is a term of art, of which the term “digital” is a qualifier. When the phrase “still

<sup>2</sup> 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).

<sup>3</sup> The Harmonized Commodity Description and Coding System is an international convention of the World Customs Organization (“WCO”), to which the United States is a Contracting Party. The phrase “still image video cameras” was replaced in HS 2007 with the phrase “digital cameras”.

image video camera” was first introduced into the Harmonized System in 1996 in heading 8525 (8525.40), the Explanatory Note (EN) to heading 8525 explained that “[t]hese apparatus record images taken by the camera.... The images thus recorded can be reproduced by means of an external television receiver.” EN 85.25(D) (1996). According to the WCO file on the creation of subheading 8525.40, still image video cameras worked by converting images into electric signals and recording them onto a magnetic medium (floppy disk). The camera then had to be connected to a video monitor in order to view the pictures. The products on which the description of a “still image video camera” was based were the Canon Still Video System, comprised of SV Camera R-470 and the SV Player RV-301,<sup>4</sup> as well as the Canon XAPSHOT RC-250 High-Band Still Video Camera.<sup>5</sup> EN 85.25(D) (1996) and the WCO discussions regarding still image video cameras indicate that (1) these cameras record still images by electronic means (CCD) and, (2) the electronic images are viewed on a video display.

Since 1996 when the Harmonized System first provided for still image video cameras, the WCO has attempted to reflect the technological advancements made to these cameras by updating their description in the Explanatory Notes. In 2002 the text of EN 85.25 was updated to reflect that: (1) “data may be stored in analogue or digital form”; (2) “the cameras of the heading capture an image by focusing the image onto a light-sensitive device, such as a complementary metal oxide semiconductor (CMOS) or charge-coupled device (CCD)”; and, (3) “Generally, these cameras are equipped with an optical viewfinder or a liquid crystal display (LCD), or both. Many cameras equipped with an LCD can employ the display both as a viewfinder when taking pictures and as a screen when reproducing images already recorded; in some cases the camera is capable of displaying images received from other sources

<sup>4</sup> The product brochure for the Canon Still Video system states, in relevant part: It’s called SV, for Still Video – the fastest moving new technology in the imaging industry.... Shoot-and-show simplicity means no film to process, no slides to mount. Images are captured by a CCD Image Sensor and recorded on a floppy disk in the SV Camera. They can be displayed by a SV Player directly in the screen of any high-quality TV monitor....

#### **THE MEDIUM: VIDEO FLOPPY**

It’s the key to the shoot-and-show simplicity of Still Video. The durable plastic case contains a “floppy” disk on which images are electromagnetically stored via a recording head inside the camera: 50 images in Field Mode, 25 in Frame Mode....

...

#### **Use Any TV Monitor**

A simple connection to the video input terminal of any TV monitor is all it takes. For TVs lacking a video input, the RV-301 provides an RF (frequency) output. Naturally, output can be recorded on any video deck.

...

#### **Single-Image Display**

Rapid and direct random access to any given picture on an inserted floppy is as simple as keying its track number on the remote controller

....

#### **Continuous Play**

Image display times can be set from 1 to 99 seconds. Playback of the entire floppy will continue until you tell it to stop.

<sup>5</sup> The product brochure for the Canon XAPSHOT camera states, in relevant part:

XAP SHOT means no film, no waste, no waiting. And the whole family can enjoy it — directly on your TV monitor. Images are captured by a high-resolution CCD and recorded on a standard 2-inch video floppy — up to 50 per disk.

on the LCD screen.” EN 85.25(D) (2002)<sup>6</sup>. Also, the phrase “digital cameras” was added to the text of heading 8525 and subheading 8525.40, HTSUS (2002).

When the 2007 changes were made to the HS, text was added to EN 85.25 which further clarified that the group including digital cameras and video camera recorders “covers cameras that capture images and convert them into an electronic signal that is ... recorded in the camera as a still image or as a motion picture (i.e., digital cameras and video camera recorders).” EN 85.25(B) (2007).

Consistent with this legislative history, CBP has previously classified cameras that solely or principally record still images in a digital format and that reproduce the still images on a video display as digital still image cameras in subheading 8525.80.40, HTSUS.<sup>7</sup> See, e.g., NY 817941, dated January 14, 1996 (concerning the Ricoh DC-1 digital camera “that can capture stills and ... motion scenes without the use of film”); HQ 960384, dated April 1, 1999 (concerning the Casio QV-10 “hand-held digital still (‘point and shoot’) camera ... based on camcorder technology...”); HQ 960664, dated April 20, 1999 (concerning the Olympus Digital Still Camera model # D-200L); NY F86533, dated May 17, 2000 (concerning a “digital camera that only takes still images utilizing an image sensor and storing images on computer chips”); and NY G86928, dated February 9, 2001 (concerning digital still image cameras with storage capability).

Subheading 8525.80.50, HTSUS, covers cameras “Other” than digital still image video cameras. It is CBP’s position that cameras that solely or principally record moving images, such as camcorders/video cameras, and cameras that do not principally record still images are classified in this subheading, unless such cameras are more specifically provided for elsewhere in the HTSUS.

Next, we address your view that digital machines that can record video and capture still images cannot be classified outside of subheading 8525.80.40, HTSUS. Subheading 8525.80, HTSUS, the text superior to subheadings 8525.80.40 and 8525.80.50, and which governs the scope of those two subheadings, provides *eo nomine* for “video camera recorders”, as does heading 8525. At the domestic level, subheading 8525.80.50, HTSUS, merely provides for cameras “other” than digital still image video cameras and television cameras. There is nothing in its text to exclude digital camcorders from classification in subheading 8525.80.50. Moreover, the Explanatory Notes to heading 8525, HTSUS, explain that:

<sup>6</sup> The inclusion of this text, regarding the incorporation of a video display into the body of the camera, reflected the unanimous decision of the Harmonized System Committee, taken at its 21st Session (March 1998), to classify a “LCD digital camera” with a 1.8” color LCD screen in subheading 8525.40. See *Harmonized Commodity Description and Coding System, Compendium of Classification Opinions*, CO 8525.40/1. **Digital still camera** fitted with a Charge Coupled Device (CCD) and based on video camera recorder technology.

<sup>7</sup> Digital still image video cameras of subheading 8525.40.00, HTSUS, (the precursor to subheading 8525.80.40) are accorded duty-free treatment under the *Ministerial Declaration on Trade in Information Technology Products*, World Trade Organization, Ministerial Conference, Singapore, December 1996, WT/MIN(96)/16 (the “*Information Technology Agreement*” (“ITA”).

[T]he cameras of this heading convert ... images into analogue or digital data.

The cameras of this heading capture an image by focusing the image onto a light-sensitive device, such as a complementary metal oxide semiconductor (CMOS) or charge-coupled device (CCD). The light-sensitive device sends an electrical representation of the images to be further processed into an analogue or digital record of the images.”

....

In digital cameras and video camera recorders, images are recorded into an internal storage device or onto media (e.g., magnetic tape, optical media, semiconductor media or other storage media of heading 85.23)....

EN 85.25(B) (2009). *See also* EN 85.25(D) (2002). The Explanatory Notes clearly state that video camera recorders of heading 8525 may record images digitally (on semiconductor media).

Therefore, the cameras at issue have the functionality of digital still image video cameras of subheading 8525.80.40, HSTUS, and of other cameras of subheading 8525.80.50. As a result, they meet the description of composite machines provided in Note 3 to Section XVI and must be classified according to their principal function.

CBP has found the analysis developed and utilized by the courts in relation to “principal use” (the “Carborundum factors”) to be a useful aid in determining principal function. Generally, the courts have provided several factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: (1) general physical characteristics, (2) expectation of the ultimate purchaser, (3) channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), (4) use in the same manner as merchandise which defines the class, (5) economic practicality of so using the import, and (6) recognition in the trade of this use. *See United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976); *Lennox Collections v. United States*, 20 Ct. Int’l Trade 194, 196 (1996); *Kraft, Inc. v. United States*, 16 Ct. Int’l Trade 483, 489 (1992); and *G. Heileman Brewing Co. v. United States*, 14 Ct. Int’l Trade 614, 620 (1990). *See also* Headquarters Ruling Letter (“HQ”) W968223, dated January 12, 2007, and HQ 966270, dated June 3, 2003.

In your ruling requests submitted on July 13, and 28, 2006, you did not provide us with information on each of the factors noted above, but you did state the following:

The Everio media cameras are multifunctional cameras designed for the purpose of performing two or more complementary yet alternative functions, still image and video recording. The media cameras in question contain no feature that predominates over any other feature to suggest that one capability constitutes the principal function. In fact, all of the digital camera’s capabilities are advertised equally on the good’s packaging. As such, unlike previous generations of still image OR video cameras, we have concluded that JVC, in the digital Everio camera line has evolved digital technology to such a point that the cameras do not have a single principal function (still image or video).



By your own admission, the cameras at issue are precluded from being classified as digital still image cameras.

*General Physical Characteristics and Recognition in the Trade of Use*

Based on the features of each of the cameras, which is detailed in the FACTS section above, the cameras are able to function as both digital “point and shoot” cameras and as camcorders. These functions have been extensively reviewed by the electronics industry. For example, a review on [pcmag.com](http://pcmag.com) states, in relevant part:

The Everio GZ–MG30 — one of four new hard-drive models (the other three are the GZ–MG20, GZ–MG40 and GZ–MG50) is a one CCD chip camcorder with 25X optical zoom (a 35-mm equivalent of about 42 to 1,050 mm) that allows for more than seven hours of shooting time on the highest quality setting. The hard drive also lets you avoid the continual need to buy additional disc media, which may soften the blow of the hefty \$900 price tag. (The GZ–MG20, GZ–MG40 and GZ–MG50 list for \$800, \$900, and \$1000, respectively. The latter two give you 1.3-megapixel still-image quality photos.)

....

Lastly, we found the digital still-camera capabilities to be inadequate for anything other than Web use. For this camcorder, the stills were only 640-by-480, with an average of only 350 lines of resolution — below our acceptable 1MP range. There’s no flash included on the camera either, so we were unable to test boot-up and recycle times.

Terry Sullivan, *JVC Everio GZ–MG30U*, Oct.17, 2005, [www.pcmag.com](http://www.pcmag.com), accessed on 12/12/08.

The CNET Editors Review on the GZ–MG20, states in pertinent part:

For such a capacious camcorder, the JVC Everio GZ–MG20U is extremely small. It is short in both height and length, though it’s as wide as a typical DV camcorder. This gives it a boxy look, but it’s amazingly comfortable for one-handed shooting and drops easily into a jacket pocket....

....

Other than the standout 25X zoom lens and built-in video light, the Everio’s feature set is more typical of a camcorder half its price, including the 1/6-inch 680,000 pixel CCD....

Still image support is limited to VGA-resolution stills. You can store more than 10,000 shots on the hard drive or shoot stills or full-resolution MPEG–2 video directly to SD cards....

....

Still-image quality is terrible. The VGA-resolution images lack detail and are grainy no matter what the lighting conditions.

Denny Atkin, *JVC Everio GZ–MG20*, [http://reviews.cnet.com/digital-camcorders/jvc-everio-gz-mg20/4505-6500\\_7-31417995](http://reviews.cnet.com/digital-camcorders/jvc-everio-gz-mg20/4505-6500_7-31417995), accessed on 12/12/08 (according to the Editor’s note, the review was based on CNET’s evaluation of the JVC Everio GZ–MG30, which the editor describes as “an identical camcorder except for its larger 30GB hard disk”).

An Infosync review of the MC500E states,<sup>8</sup> in relevant part:

Capable of shooting stills at up to 2560 x 1920 pixels in JPEG format only, the Everio GZ–MC500E delivers photo sizes as taken by a 5 Megapixel camera — but does so by means of pixel shifting technology which combines input from its three CCD sensors to one single image. The results are better than those produced by conventional interpolation techniques, but setting the camera for any higher than 3 Megapixels yields visible loss of detail and quite simply isn't realistic. Stick to this level, however, and the GZ–MC500E delivers a smooth-flowing interface combined with a well-rounded set of capabilities and excellent picture quality with rich saturation and detail.

And what of video recording, you ask? Well, since it doesn't rely on pixel shifting, results are just as excellent — and given the emphasis on video, users will find themselves solidly served by the feature set the GZ–MC500E has to offer. Relying on the MPEG2 format, four settings are available, the highest of which records at 720 x 576 pixels and a bit rate of 8.5 Mbps for up to 60 minutes on the included 4 GB Microdrive.

Jørgen Sundgot, *Review: JVC Everio GZ–MC500E*, Aug. 2, 2005, <http://www.infosyncworld.com/reviews/n/6086.html>, accessed on 2/4/09.

These reviews reveal that, based on the physical characteristics of the cameras, the electronics industry considers these cameras to be principally camcorders that are also capable of taking still images. Accordingly, we find that these factors indicate that the cameras at issue do not principally function as digital still image video cameras of subheading 8525.80.40, HT-SUS.

### *Economic Practicality of Use*

Based on the above-quoted electronics industry assessments that the cameras at issue produce fair to poor quality still images but “excellent” video recordings,<sup>9</sup> we find that it would be economically impractical to purchase these cameras primarily for their still image functionality. Accordingly, we find that that this factor favors classification as other than as a digital still image video camera.

### *Channels of Trade / Environment of Sale / Expectations of the Ultimate Purchaser*

The particular models of the cameras at issue are available at several electronics retailers found on the Internet. *See*, for example, <http://mycybershops.com> and <http://novatechgadgets.com>. Each of these retailers sells camcorders as well as digital cameras. Accordingly, we find that where the cameras are sold is not a dispositive factor in determining their principal function.

<sup>8</sup> The JVC Everio GZ–MC500E is the counterpart of the North American model, the Everio GZ–MC500. At the time of writing of the review (August 2005), they were available throughout Europe and North America, selling in the €1,050 EUR (\$1300 USD) range. <http://www.infosyncworld.com/reviews/n/6086.html>.1

<sup>9</sup> *See, for e.g.*, Sundgot, *supra*.

On the JVC website, the Everio line of cameras is found on the “Everio/camcorder” section of the website, though the particular models at issue are not listed. *See* <http://www.jvc.com>. We are of the view that this description would cause a prospective purchaser to believe that “JVC Everio” is a line of camcorders. On the other hand, in your submission you acknowledged that all of the digital cameras’ capabilities (video and still image capture) are advertised equally on their packaging. Based on this information, we find it reasonable to conclude that purchasers of these cameras would expect to be able to capture still images as well as to record video. Taking into account the disparity between how the cameras are advertised on the JVC website and the capabilities listed on their packaging, we find that we are unable to use these factors to determine the cameras’ principal function.

The Carborundum analysis indicates that these cameras do not principally function as still image cameras. In particular, we refer to the fact that industry reviews of the cameras, which are based on their physical characteristics, all highlight the shortcomings of their still image function. In light of these reviews and given the cost of the cameras, we find that it would be economically impractical to purchase such expensive cameras primarily for their still image function. We find these factors to be persuasive evidence under a Carborundum analysis that the cameras at issue principally function as other than digital still image video cameras of subheading 8525.80.40, HTSUS.

Finally, you cite HQ 966072 (Sept. 4, 2003), which you claim to be a prior CBP ruling on similar merchandise, in support of classification of the instant cameras in subheading 8525.80.40, HTSUS. HQ 966072 concerned the classification of a multifunction digital camera, described on the manufacturer’s website as a “4-in-1 camera” with digital still image, video, TV and PC camera functions. HQ 966072. As described in that ruling:

The basic components in the camera, all of which are incorporated into a rectangular housing (approximately 3.48 inches x 2.26 inches x 0.81 inches), are as follows: a CCD (charged-coupled device) image sensor, 16 MB internal flash memory, a fixed-focus lens, a data-conversion device for converting analog data from the CCD into digital data format for transmission by the Universal Serial Bus (USB) cable, USB and TV connector, optical viewfinder, LCD (liquid crystal display) function menu, synchronized flash, tripod mount, and battery compartment.

This digital camera captures live images in real time (i.e., for videoconferencing) with audio capacity and records digital still images and images in sequential order at 15 frames per second (fps) from 35–90 seconds (i.e., video clips) without audio. It operates independently of a computer, recording approximately 120 photos on 1280 x 1024 (high) resolution, or 228 photos on 640 x 480 VGA mode (low) resolution which can be stored in the camera’s internal flash memory. When connected to a television, it can capture television-generated still images and sequential images.

As in the instant case, classification of the camera was governed by Note 3 to Section XVI, HTSUS, because it was a composite machine of heading 8525, HTSUS. The subheadings under consideration were 8525.40.40 (digital still image video cameras) and 8525.30.90 (other television cameras).

After considering all of the camera's functions and the scope of subheading 8525.40.40, HTSUS, CBP concluded:

The instant camera contains no feature that predominates over any other feature to suggest that one capability constitutes the principal function. In fact, all of the digital camera's capabilities are advertised equally on the good's packaging and in the owner's manual. As such, we are unable to determine the digital camera's principal function.

General EN (VI) to Section XVI provides that, "[w]here it is not possible to determine the principal function, and where as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretative Rule 3(c)...." GRI 3(c) provides that "When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration." Subheadings 8525.30, HTSUS, and 8525.40, HTSUS, merit equal consideration for the reasons stated above. Thus, the digital camera is classified in subheading 8525.40 [8525.40.40, current subheading 8525.80.40], HTSUS.

We find the reasoning in HQ 966072 to be distinguishable from the present classification analysis. The camera described in HQ 966072, although multifunctional, is not similar to the cameras at issue. One of functions of the camera in HQ 966072 (television camera) is not present in the instant cameras and is described by a subheading that is not currently at issue (8525.80.10). Moreover, in HQ 966072 we were unable to determine the principal function of the camera because none of its features predominated over any other feature, which is not the case here.

Based on all of the foregoing analysis, we find that the JVC cameras at issue were erroneously classified as digital still image video cameras because they do not principally function as such. Accordingly, they must be classified in subheading 8525.80.50, HTSUS,<sup>10</sup> as "other" than digital still image cameras of subheading 8525.80.40, HTSUS.

#### **HOLDING:**

By application of GRI 1 and Note 3 to Section XVI, HTSUS, the JVC multifunction digital cameras, models GZ-MC500, GZ-MG30 and GZ-MG20, are classified in heading 8525, HTSUS. They are specifically provided for in subheading 8525.80.50, HTSUS, which provides for: "[T]elevision cameras, digital cameras and video camera recorders: Television cameras, digital cameras and video camera recorders: Other." The 2009 column one, general rate of duty is 2.1% *ad valorem*.

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

NY R04381 (July 21, 2006), NY R04507 (Aug. 15, 2006), and NY R04505 (Aug. 15, 2006) are hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

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<sup>10</sup> Subheading 8525.80.50, HTSUS, is not covered by the provisions of the ITA and the goods of the subheading are not entitled to duty-free treatment under the agreement.

**PROPOSED REVOCATION OF RULING LETTER  
AND PROPOSED REVOCATION OF TREATMENT  
RELATING TO THE TARIFF CLASSIFICATION  
OF ACERTAIN “SHAMU SNAK PAK”**

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

**ACTION:** Notice of proposed revocation of two ruling letters and treatment relating to tariff classification of a plastic food container identified as a “Shamu Snak Pak.”

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke two ruling letters relating to the tariff classification of a plastic food container under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before March 12, 2010.

**ADDRESSES:** 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, 799 9th Street, N.W. 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024.

**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, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP intends to revoke two ruling letters pertaining to the tariff classification of a plastic food container. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letters (NY) N015784, dated September 11, 2007, and NY J86143, dated June 18, 2003 (Attachments A and B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP proposes 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 its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY N015784 and NY J86143, CBP determined that the "Shamu Snak Pak" was classified in heading 9503, HTSUS, which provides for: "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof." It is now CBP's position that the subject food container is properly classified in heading 4202, HTSUS, specifically

subheading 4202.12.20, HTSUS, which provides, in pertinent part, for: “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers: With outer surface of plastics or of textile materials: With outer surface of plastics.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N015784 and NY J86143 and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject according to the analysis contained in proposed Headquarters Ruling Letter H042583, set forth as Attachment C 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 21, 2010

GAIL A. HAMILL

*For*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N015784

September 11, 2007

CLA-2-RR:NC: 2:224

CATEGORY: Classification

TARIFF NO: 9503.00.0080

Ms. SHERRY SAMPSON  
WHIRLEY INDUSTRIES, INC.,  
P.O. BOX 988  
WARREN, PA 16365

RE: The tariff classification of Shamu Snak Pak, Item SNK-SH from China.

DEAR Ms. SAMPSON:

In your letter dated August 10, 2007, you requested a tariff classification ruling.

The sample submitted, Shamu Snak Pak, is a black and white plastic container molded into the shape of a whale. The whale container measures approximately 10 inches in length and 8 ½ inches in height. The container is molded into a replica of “Shamu” the whale which is located in the Sea World Adventure Park. The words “Sea World Adventure Parks” are printed on the outside of the container. The container is constructed to be used as a food container for a children’s meal at the food establishments in a park or zoo and will be given away as a novelty toy. In addition, you state that you intend to import similar items in various colors and shapes such as cheetah heads, tiger heads and monkey heads. These items are put up for the amusement of children.

The applicable subheading for Shamu Snak Pak, Cheetah Heads, Tiger Heads and Monkey Heads will be 9503.00.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Tricycles, scooters, pedal cars...other toys...parts and accessories thereof... Other. The rate of duty will be Free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas McKenna at 646-733-3025.

*Sincerely,*

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



## [ATTACHMENT B]

NY J86143  
June 18, 2003  
CLA-2-95:RR:NC:2:224 J86143  
CATEGORY: Classification  
TARIFF NO.: 9503.49.0000

MR. SPENCER HUTCHINS  
AKA INTERNATIONAL, INC  
1200 SOUTH 192ND ST.  
SUITE 103  
SEATTLE, WA 98148

RE: The tariff classification of a Shamu Snack Pack toy from China

DEAR MR. HUTCHINS:

In your letter dated June 6, 2003, you requested a tariff classification ruling, on behalf of Drink Works, your client.

You are requesting the tariff classification on a product that is described as a Shamu Snack Pack toy, item number 3410-F001. The item is constructed of injection molded polypropylene and is a novelty give away toy that accompanies each kid's meal that is purchased. Because the article is not made for long term use as a lunch box, it will be classified as a toy representing animals in Chapter 95 of the HTS, rather than as other toys in 9503.90 because this is not as specific as 9503.49. The nature of the merchandise dictates that after the meal is finished the plastic Shamu will serve as a child's play thing, a source of amusement. The sample will be returned, as requested by your office.

The applicable subheading for the Shamu Snack Pack toy, item number 3410-F001, will be 9503.49.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for toys representing animals or non-human creatures...and parts and accessories thereof: other. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Tom McKenna at 646-733-3025.

*Sincerely,*

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

## [ATTACHMENT C]

HQ H042583  
CLA-2 OT:RR:CTF:TCM H042583 CkG  
CATEGORY: Classification  
TARIFF NO.: 4202.12.20

Ms. SHERRY SAMPSON  
WHIRLEY INDUSTRIES, INC.  
P.O. BOX 988  
WARREN, PA 16365

Re: Proposed revocation of NY N015784 and NY J86143; classification of plastic food container

DEAR Ms. SAMPSON,

This is in reference to New York Ruling Letters (NY) N015784 and J86143, issued by the Customs and Border Protection (CBP) National Commodity Division on September 11, 2007 and June 18, 2003, respectively, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a plastic food container. We have reconsidered these decisions, and for the reasons set forth below, have determined that classification of the food container as a toy of heading 9503, HTSUS, is incorrect.

**FACTS:**

NY N015784, dated September 11, 2007, issued to Whirley Industries, Inc., describes a sample of the Shamu Snak Pak as “a black and white plastic container molded into the shape of a whale. The whale container measures approximately 10 inches in length and 8 ½ inches in height. The container is molded into a replica of “Shamu” the whale which is located in the Sea World Adventure Park. The words “Sea World Adventure Parks” are printed on the outside of the container. The container is constructed to be used as a food container for a children’s meal at the food establishments in a park or zoo and will be given away as a novelty toy. In addition, you state that you intend to import similar items in various colors and shapes such as cheetah heads, tiger heads and monkey heads.”

NY J86143, dated June 18, 2003, was issued to customs broker Mr. Spencer Hutchins of AKA International, Inc. (representing importer Drink Works). This ruling describes a product called the Shamu Snack Pack, item number 3410-F001, as “constructed of injection molded polypropylene and is a novelty give away toy that accompanies each kid’s meal that is purchased.”

Whirley Industries, Inc. also does business as Whirley Drink Works. The items described in NY N015784 and NY J86143 appear to be substantially similar and we will treat them as such.

**ISSUE:**

The issue is whether the Shamu Snak Pak container is a toy of heading 9503, HTSUS, a container of heading 4202, HTSUS, or a household article of heading 3924, HTSUS.

**LAW AND ANALYSIS:**

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according

to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The HTSUS provisions under consideration are as follows:

- 3924: Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:
- 3924.10: Tableware and kitchenware:
- 3924.10.40: Other.....
- 3924.90: Other:
- 3924.90.56: Other.....  
\* \* \* \* \*
- 4202: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:  
Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers:
- 4202.12: With outer surface of plastics or of textile materials:
- 4202.12.20: With outer surface of plastics . . . . .  
\* \* \* \* \*
- 9503.00.00: Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.....  
\* \* \* \* \*

Chapter Note 2(m) of Chapter 39, HTSUS, provides that Chapter 39 does not cover "Saddlery or harness (heading 4201) or trunks, suitcases, handbags or other containers of heading 4202."

Note 1(d) to Chapter 95 provides that the Chapter does not cover "Sports bags or other containers of heading 4202, 4303 or 4304."

\* \* \* \* \*

EN 39.24 provides, in pertinent part, as follows:

This heading covers the following articles of plastics:

A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes and trays of all kinds, coffee pots, teapots, sugar bowls, beer mugs, cups, sauce boats, fruit bowls, cruets, salt cellars, mustard pots, egg cups, teapot stands, table mats, knife rests, serviette rings, knives, forks and spoons.

(B) Kitchenware such as basins, jelly moulds, kitchen jugs, storage jars, bins and boxes (tea caddies, bread bins, etc.), funnels, ladles, kitchen type capacity measures and rolling pins.

(C) Other household articles such as ash trays, hot water bottles, match-box holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust covers (slipovers).

\* \* \* \* \*

EN 42.02 provides, in pertinent part, the following:

This heading covers only the articles specifically named therein and similar containers.

These containers may be rigid or with a rigid foundation, or soft and without foundation.

Subject to Notes 1 and 2 to this Chapter, the articles covered by the first part of the heading may be of any material. The expression “similar containers” in the first part includes hat boxes, camera accessory cases, cartridge pouches, sheaths for hunting or camping knives, portable tool boxes or cases, specially shaped or internally fitted to contain particular tools with or without their accessories, etc.

EN 95.03 states, in pertinent part, as follows:

D) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults)...This group includes...

(i) Toys representing animals or non human creatures even if possessing predominantly human physical characteristics (e.g., angels, robots, devils, monsters), including those for use in marionette shows.

\* \* \* \* \*

Classification within heading 3924 is subject to Chapter 39, Legal Note 2(m), which excludes from Chapter 39 goods that are classifiable in heading 4202, HTSUS. Goods of heading 4202, HTSUS, are similarly excluded from Chapter 95 by virtue of Chapter Note 1(d). Therefore, if the goods are described in heading 4202, they are excluded from classification in any of the provisions of Chapters 39 or 95, even if they are described therein.

Heading 4202, HTSUS, is a two part heading which covers only the articles specifically named therein and similar containers. The first portion of the heading covers certain cases and containers of any material. The second portion covers, amongst other things, insulated food or beverage bags, only when constructed of certain materials not including plastic. *See* EN 42.02. For the subject merchandise to be classified in heading 4202, HTSUS, we

must therefore find that it falls within the scope of the first part of the heading, as a “similar container” to those enumerated therein.

In classifying goods under the residual provision of “similar containers” of heading 4202, HTSUS, the Court of International Trade has stated as follows: “As applicable to classification cases, *ejusdem generis* (of a similar kind) requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* [by name] in order to be classified under the general terms.” *Totes, Inc. v. United States*, 18 CIT 919, 865 F. Supp. 867, 871 (1994), *aff’d*. 69 F. 3d 495 (Fed. Cir. 1995). The court found that the rule of *ejusdem generis* requires only that the imported merchandise share the essential character or purpose running through all the containers listed *eo nomine* in heading 4202, HTSUSA, i.e., “...to organize, store, protect and carry various items.” *Totes* 865 F. Supp. at 872.

Your website states that your Snak Pak line “Holds standard size kids meal items.” <http://www.whirleydrinkworks.com/prodsum?readform&prod=SNK-MON>. The Shamu Snak Pak thus clearly shares the essential characteristics of goods of heading 4202; it is specifically designed to organize, store, protect and transport food. The Snak Pak is not limited to food, however; like trunks, briefcases, suitcases, etc. of heading 4202, it can be used to store and organize any number and kind of personal items.

Furthermore, the Shamu Snak Pak is comparable to plastic lunchboxes, which have consistently been classified in heading 4202, HTSUS. *See* HQ 952702, dated April 9, 1993; HQ 088472 (August 17, 1992); HQ 950049 (April 21, 1992); HQ 087281 (October 29, 1990); HQ 082488 (February 21, 1990); N047586 (January 21, 2009); NY K81365 (December 17, 2003); NY C86517, (May 6, 1998); and NY N878828 (October 13, 1992). Each ruling cited above found the plastic lunchbox in question to be *ejusdem generis* with the articles set forth in heading 4202, HTSUS. For instance, in HQ 087281, CBP stated as follows: “While the lunchbox allows for short-term storage and protection of food and beverages, it is designed primarily for the convenience of the traveler. Consequently, it is more properly classifiable as a similar container of heading 4202.” In HQ 088472, we stated: “Since the function of the lunchbox at issue is to carry and store one’s food, it is *ejusdem generis* with the containers of Heading 4202 and consequently it is excluded from Headings 3923 and 3924 by virtue of Chapter Note 2(h) of Chapter 39.”

Insofar as the subject merchandise is classified in heading 4202, HTSUS, is cannot be classified in headings 3923 or 3924, HTSUS, in accordance with Chapter 39 Note 2(m), or in heading 9503, HTSUS, in accordance with Chapter 95 Note 1(d).

#### **HOLDING:**

By application of GRI 1, the Shamu Snak Pak is classified in heading 4202, HTSUS, specifically in subheading 4202.12.20, which provides for: “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of

textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers: With outer surface of plastics or of textile materials: With outer surface of plastics.” The 2009 column one, general rate of duty is 20% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

**EFFECT ON OTHER RULINGS:**

NY N015784, dated September 11, 2007 and NY J86143, dated June 18, 2003, are hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

cc: Mr. Spencer Hutchins  
AKA International, Inc  
1200 South 192<sup>nd</sup>  
St. Suite 103  
Seattle, WA 98148



**PROPOSED MODIFICATION AND REVOCATION OF  
RULING LETTERS AND PROPOSED REVOCATION OF  
TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF CERTAIN DRIVER ORGANIZERS**

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

**ACTION:** Notice of proposed modification and revocation of ruling letters and treatment relating to tariff classification of textile driver organizers.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to modify two ruling letters relating to the tariff classification of an “auto visor wallet” and a “Catch-All Organizer” under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke one ruling letter relating to the tariff classification of an “auto wallet” under the HTSUS. CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before March 12, 2010.

**ADDRESSES:** Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W. (Mint Annex), Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20001 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Claudia Garver, Tariff Classification and Marking Branch: (202) 325-0024

### **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, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP intends to modify or revoke three ruling letters pertaining to the tariff classification of textile personal organizers for documents and other personal items. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letters (NY) 813199, dated August 23, 1995 (Attachment A), and NY R04768, dated September 11, 2006 (Attachment B), and the revocation of NY F80907,

dated January 6, 2000 (Attachment C), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP proposes 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 its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY 813199 and NY F80907, CBP determined that certain "auto wallets" were classified in heading 8708, HTSUS, specifically subheading 8708.29.50, HTSUS, which provides for: "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other." In NY R04768, CBP similarly determined that a "Catch-All" organizer was classified in subheading 8708.29.50, HTSUS, as a motor vehicle accessory. It is now CBP's position that the subject organizers are properly classified in heading 4202, HTSUS, specifically subheading 4202.92.90, HTSUS, which provides for: "...wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: other: with outer surface of textile materials: other: other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY 813199 and R04768, revoke NY F80907, and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject organizers according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H075358, set forth as Attachment D to this document, HQ H075360 (Attachment E), and HQ H075361 (Attachment F). 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 21, 2010

GAIL A. HAMILL  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

NY 813199

August 23, 1995

CLA-2-42:S:N:N5:341 813199

CATEGORY: Classification

TARIFF NO.: 4202.92.4500; 8708.99.8080

MR. LOU PIROPATO  
DANIEL F. YOUNG, INC.  
17 BATTERY PLACE  
NEW YORK, NY 10004-1101

RE: The tariff classification of a travel utility pouch and an auto visor wallet from China.

DEAR MR. PIROPATO:

In your letter dated August 1, 1995, on behalf of LaVie International, you requested a tariff classification ruling for a travel utility pouch and an auto visor wallet.

You have submitted two samples with your request, identified as items 16405 and 16403. They are as follows:

Item 16405, described as a "Glove Box Attache", is a travel utility pouch composed of an exterior surface of vinyl designed to contain personal effects during travel. The interior has a textile lining. It measures approximately 10 1/2 inches in width by 5 1/2 inches in height. One end of the pouch has a textile loop. The item is secured by means of a textile zippered closure. You have indicated that the item is an auto accessory designed to contain maps, receipts, papers etc. However, for classification purposes the item is not considered to be an auto accessory and will be classified accordingly.

Item 16403, described as a "Visor Wallet", is an auto visor wallet composed of vinyl designed to be attached to a sun visor in an automobile by means of two elastic straps that are sewn across the back of the article. The item is solely or principally used in an automobile. The visor has a large zippered pocket and two small open pockets on the front exterior designed to hold maps, receipts, registration certificates, toll booklets and other miscellaneous items.

Your samples were returned by pick-up service as you requested.

The applicable subheading for Item 16405, the travel utility pouch of vinyl, will be 4202.92.4500, Harmonized Tariff Schedule of the United States (HTS), which provides for travel, sports and similar bags, with outer surface of sheeting of plastic, other. The rate of duty will be 20 percent ad valorem.

The applicable subheading for Item 16403, the auto visor wallet of vinyl, will be 8708.99.8080, HTS, which provides for other parts and accessories of the motor vehicles of heading 8701 to 8705. The duty rate will be 3 percent ad valorem.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

*Sincerely,*

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

## [ATTACHMENT B]

NY R04768  
September 11, 2006  
CLA-2-87:RR:E:NC:N1:101 R04768  
CATEGORY: Classification  
TARIFF NO.: 8708.29.5060

Ms. ERIN A. BARCLAY  
CASE LOGIC, INC.  
6303 DRY CREEK PARKWAY  
LONGMONT CO 80503

RE: The tariff classification of automotive organizers from China

DEAR Ms. BARCLAY:

In your letter dated August 28, 2006 you requested a tariff classification ruling.

The first item (AXPW-2) is an MP3 Player/Cell Phone Organizer. The primary function of the product is to hold an MP3 player and/or cell phone. The holder sits on top of a wedge comprised of paperboard, with PE loops sewn into place in two vertical rows, and cannot be separated from the wedge. The product is designed to fit between the front seat and the center console in a vehicle and is only for use in the vehicle. The main body is made of nylon, some of which is backed with PU foam. The lining is nylax. There are decorative trimmings using leather, PVC, and nylon and there is a panel of non-slip PVC designed as a resting surface for an MP3 player or cell phone.

The second item (AXAP-15) is a Cell Phone/Sunglass Organizer. The primary function of the product is to hold sunglasses and/or a cell phone or other small items in a divided compartment. The holder sits on top of a wedge comprised of paperboard, with PEA loops sewn into place in two vertical rows, and cannot be separated from the wedge. The product is designed to fit between the front seat and the center console in a vehicle and is only for use in the vehicle. The main body is made of nylon, some of which is backed with PU foam. The lining is nylax. There are decorative trimmings using leather, PVC, and nylon.

The third item (AXNC-5) is a Catch-All. The primary function of the product is to hold small items within reach of the front seat passengers in a vehicle. The holder is a single compartment attached with a snap to a bendable wire covered in nylon webbing. The product is designed so that the bendable wire is inserted into the gaps in the air vents or wrapped around/attached to another surface in the vehicle. The main body is made of nylon, some of which is backed with PU foam. The compartment lining is nylax. There are decorative trimmings using leather, PVC, and nylon.

The fourth item (AXCH-1) is a Cup Holder Organizer. The primary function of this product is to hold an MP3 player and/cell phone. The design incorporates a non-slip PVC patch to act as a rest for a cell phone or MP3 player attached to a ring of PE at an angle. The product is designed to fit inside a vehicle cup holder is only for use in the vehicle. The main body is made of nylon, some of which is backed with PE or paperboard. The lining is polyester. There are decorative trimmings using leather, PVC, and nylon and there is a panel of non-slip PVC designed as a resting surface for an MP3 player or cell phone.

The applicable subheading for the four items will be 8708.29.5060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Parts and accessories of the vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other: Other. The rate of duty will be 2.5 percent.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646-733-3008.

*Sincerely,*

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

## [ATTACHMENT C]

NY F80907  
January 6, 2000  
CLA-2-87:RR:NC:MM:101 F80907  
CATEGORY: Classification  
TARIFF NO.: 8708.29.5060

MR. DAVID L. MCCLEES  
TALUS CORP.  
82 SCOTT DRIVE  
WESTBROOK, MAINE 04092

RE: The tariff classification of an *AutoWallet* from China

DEAR MR. MCCLEES:

In your letter dated December 10, 1999 you requested a tariff classification ruling.

You submitted a sample of the *AutoWallet-Rand*, which is a private label for Rand McNally. The *AutoWallet* is an auto document organizer chiefly used to contain articles such as an auto insurance card, driver's license, registration and other small identification papers. It is made of nylon material with vinyl windows. It is primarily designed to be affixed to an automobile visor, but can also fit into a glove compartment.

The applicable subheading for the *AutoWallet* will be **8708.29.5060**, Harmonized Tariff Schedule of the United States (HTS), which provides for *Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other...Other*. The rate of duty will be 2.5% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212-637-7035.

*Sincerely,*

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

## [ATTACHMENT D]

HQ H075358  
CLA-2 OT:RR:CTF:TCM H075358 CkG  
CATEGORY: Classification  
TARIFF NO.: 4202.92.90

MR. LOU PIROPATO  
DANIEL F. YOUNG, INC.  
17 BATTERY PLACE  
NEW YORK, NY 10004-1101

RE: Modification of New York Ruling Letter 813199; classification of a certain auto visor wallet

DEAR MR. PIROPATO:

This is in regard to New York Ruling Letter (NY) 813199, dated August 25, 1995, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a certain auto visor wallet. In NY 813199, CBP classified the visor wallet in heading 8708, HTSUS, as motor vehicle accessory. We have reconsidered this ruling and have determined that the visor wallet is correctly provided for in heading 4202, HTSUS, as a travel bag or case.

**FACTS:**

The subject article was described in NY 813199 as follows:

Item 16403, described as a “Visor Wallet”, is an auto visor wallet composed of vinyl designed to be attached to a sun visor in an automobile by means of two elastic straps that are sewn across the back of the article. The item is solely or principally used in an automobile. The visor has a large zippered pocket and two small open pockets on the front exterior designed to hold maps, receipts, registration certificates, toll booklets and other miscellaneous items.

**ISSUE:**

Is the subject visor wallet solely or principally suitable for use with a motor vehicle and thus classifiable as an accessory of Heading 8708, HTSUS, or as a travel bag of Heading 4202, HTSUS?

**LAW AND ANALYSIS:**

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions at issue are as follows:

- 4202: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:
- Other:
- 4202.92: With outer surface of sheeting of plastic or of textile materials:
- Other:
- 4202.92.90: Other...
- \* \* \* \* \*
- 8708: Parts and accessories of the motor vehicles of headings 8701 to 8705
- Other parts and accessories of bodies (including cabs):
- 8708.29: Other:
- 8708.29.50 Other:
- \* \* \* \* \*

Section XVII, Note 3 provides as follows:

References in chapters 86 to 88 to “parts” or “accessories” do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those chapters. A part or accessory which answers to a description in two or more of the headings of those chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

EN 87.08 further clarifies that heading 8708 will only cover accessories to motor vehicles of headings 8701 to 8705 if they are suitable for use solely or principally with such motor vehicles.

In NY 813199, CBP found that the subject visor wallet was suitable for use principally with a motor vehicle, because it was primarily designed to be affixed to an automobile visor. However, there is nothing in the design of the article that would limit its use to automobiles. The elastic bands do not necessarily suggest that its principal use would be with a car visor, as opposed to carried in a pocket, handbag, briefcase, etc. Furthermore, the product has no particular design feature which makes it more suitable for use inside a vehicle than outside. Any other means of storing or carrying the wallet, such as a pocket, saddlebag, briefcase or purse, are equally appropriate and suitable. Of course certain documents, such as a vehicle’s registration and insurance, are likely to be kept inside the vehicle, but there is still



nothing that would limit the article to carrying these documents in particular, or that would make it more suitable for such documents than any others.

Finally, Explanatory Note 87.08 lists a number of examples of items included in heading 8708. Such examples include tires, radiators, brake cables, bumpers, engine, battery and similar articles designed specifically for motor vehicles and of little to no use in any other context. Nothing like the article at issue in this case is mentioned in the ENs.

Heading 4202, HTSUS, provides for, among other items, wallets, purses, map cases, traveling bags, and similar containers of textile materials such as the instant article. In classifying goods under the residual provision of “similar containers” of heading 4202, HTSUS, the Court of International Trade has stated as follows: “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* [by name] in order to be classified under the general terms.” *Totes, Inc. v. United States*, 18 CIT 919, 865 F. Supp. 867, 871 (1994), *aff’d*. 69 F. 3d 495 (Fed. Cir. 1995). The court found that the rule of *ejusdem generis* requires only that the imported merchandise share the essential character or purpose running through all the containers listed *eo nomine* in heading 4202, HTSUSA., *i.e.*, “...to organize, store, protect and carry various items.” *Totes* 865 F. Supp. at 872. The Auto-Wallet Rand is designed to store, protect, and carry personal documents. It thus shares the essential character and purpose of the containers of heading 4202, HTSUS. Moreover, the visor wallet’s essential character—*i.e.*, that of a wallet of heading 4202, HTSUS—is evident in both the name of the product and its physical resemblance to general purpose wallets classified in heading 4202, HTSUS.

In addition, many prior rulings have classified similar articles in heading 4202, despite their claimed use as motor vehicle accessories. These include HQ 084931, dated August 14, 1989; HQ 087795, dated August 30, 1990; NY 808002, dated March 28, 1995; NY G87545, dated February 26, 2001; NY G88609, dated April 3, 2001; NY M80989; dated March 16, 2006; and NY N032058, dated July 29, 2008.

#### **HOLDING:**

By application of GRI 1, the visor wallet is classified in subheading 4202.92.9026, HTSUSA (Annotated), which provides for “other” containers and cases, with outer surface of textile materials, of man-made fibers. The rate of duty will be 17.6% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

Subheading 4202.92.9026, HTSUSA, falls within textile category 670. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the “Textile Status Report for Absolute Quotas” which is available on our web site at [www.cbp.gov](http://www.cbp.gov). For current information regard-

ing possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at [otexa.ita.doc.gov](http://otexa.ita.doc.gov).

**EFFECT ON OTHER RULINGS:**

New York Ruling Letter 813199, dated August 23, 1995, is hereby modified.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## [ATTACHMENT E]

HQ H075360  
CLA-2 OT:RR:CTF:TCM H075360 CkG  
CATEGORY: Classification  
TARIFF NO.: 4202.92.90

Ms. ERIN A. BARCLAY  
CASE LOGIC, INC.  
6303 DRY CREEK PARKWAY  
LONGMONT CO 80503

RE: Modification of New York Ruling Letter R04768; classification of “Catch-All” automotive organizer

DEAR Ms BARCLAY:

This is in regard to New York Ruling Letter (NY) R04768, dated September 11, 2006, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the “Catch-All” Organizer. In NY R04768, CBP classified the Catch-All organizer in heading 8708, HTSUS, as motor vehicle accessory. We have reconsidered this ruling and have determined that the Catch-All organizer is correctly provided for in heading 4202, HTSUS.

**FACTS:**

NY R04768 described the instant article as follows:

The third item (AXNC-5) is a Catch-All. The primary function of the product is to hold small items within reach of the front seat passengers in a vehicle. The holder is a single compartment attached with a snap to a bendable wire covered in nylon webbing. The product is designed so that the bendable wire is inserted into the gaps in the air vents or wrapped around/attached to another surface in the vehicle. The main body is made of nylon, some of which is backed with PU foam. The compartment lining is nyllex. There are decorative trimmings using leather, PVC, and nylon.

**ISSUE:**

Is the Catch-All organizer solely or principally suitable for use with a motor vehicle and thus classifiable as an accessory of Heading 8708, HTSUS, or as a travel bag of Heading 4202, HTSUS?

**LAW AND ANALYSIS:**

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, the remaining GRIs may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions at issue are as follows:

- 4202: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:
- Other:
- 4202.92: With outer surface of sheeting of plastic or of textile materials:
- Other:
- 4202.92.90: Other...
- \* \* \* \* \*
- 8708: Parts and accessories of the motor vehicles of headings 8701 to 8705
- 8708.29: Other:
- 8708.29.50 Other:
- \* \* \* \* \*

Section XVII, Note 3 provides as follows:

References in chapters 86 to 88 to “parts” or “accessories” do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those chapters. A part or accessory which answers to a description in two or more of the headings of those chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.”

EN 87.08 further clarifies that heading 8708 will only cover accessories to motor vehicles of headings 8701 to 8705 if they are suitable for use solely or principally with such motor vehicles.

In NY R04768, CBP found that the Catch-All organizer was suitable for use principally with a motor vehicle, due primarily to the bendable wire attached to the back of the article. The presence of the removable wire does not necessarily suggest that the organizer would be attached to the car, as opposed to a belt or bag, nor does it prevent the article from being carried in a pocket, handbag, briefcase, or affixed to a belt. Any such additional means of storing or carrying the organizer are equally appropriate and suitable. Furthermore, the articles the holster is designed to store, such as a cell phone or spectacles, are not items that would be kept in an automobile. They are items normally carried in pockets, bags, etc. While a separate pouch attached to a car visor or elsewhere in the car might make these items accessible, they would be equally accessible if the holster were attached to a bag, or simply

placed in an empty passenger seat. In short, there is nothing in the design of the article that would limit its use to automobiles. Finally, Explanatory Note 87.08 lists a number of examples of items that could be included in heading 8708, HTSUS. Such examples include tires, radiators, brake cables, bumpers, engine, battery and similar articles designed specifically for motor vehicles and of little to no use in any other context. Nothing like the article at issue in this case is mentioned in the EN to heading 8708.

Heading 4202, HTSUS, provides for, among other items, spectacle cases, camera cases, holsters, traveling bags and similar containers of textile materials such as the subject article. In classifying goods under the residual provision of “similar containers” of heading 4202, HTSUS, the Court of International Trade has stated as follows: “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* [by name] in order to be classified under the general terms.” *Totes, Inc. v. United States*, 18 CIT 919, 865 F. Supp. 867, 871 (1994), *aff’d*. 69 F. 3d 495 (Fed. Cir. 1995). The court found that the rule of *ejusdem generis* requires only that the imported merchandise share the essential character or purpose running through all the containers listed *eo nomine* in heading 4202, HTSUSA., *i.e.*, “...to organize, store, protect and carry various items.” *Totes* 865 F. Supp. at 872.

The Catch-All is designed to store, protect, and carry personal items. It thus shares the essential character and purpose of the containers of heading 4202, HTSUS, such as spectacle cases. The Catch-All organizer is therefore *ejusdem generis* with the articles described by heading 4202, HTSUS.

Past rulings have also classified similar articles in Heading 4202, despite their claimed use as motor vehicle accessories. *See e.g.*, Headquarters Ruling Letter 084931, dated August 14, 1989; HQ 087795, dated August 30, 1990; NY G87545, dated February 26, 2001; NY G88609, dated April 3, 2001; NY M80989, dated March 16, 2006; and NY N032058, dated July 29, 2008.

#### **HOLDING:**

By application of GRI 1, the Catch-All organizer is classified in heading 4202, HTSUS, specifically 4202.92.9026, HTSUSA (Annotated), which provides for: “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; ... of textile materials: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other: With outer surface of textile materials: Other: Of man-made fibers.” The rate of duty will be 17.6% ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

Subheading 4202.92.9026, HTSUSA, falls within textile category 670. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to

the time of shipment, the “Textile Status Report for Absolute Quotas” which is available on our web site at [www.cbp.gov](http://www.cbp.gov). For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at [otexa.ita.doc.gov](http://otexa.ita.doc.gov)

**EFFECT ON OTHER RULINGS:**

NY R04768, dated September 11, 2006, is hereby modified.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## [ATTACHMENT F]

HQ H075361

CLA-2 OT:RR:CTF:TCM H075361 CkG

CATEGORY: Classification

TARIFF NO.: 4202.92.90

MR. DAVID L McCLEES  
TALUS CORPORATION  
82 SCOTT DRIVE  
WESTBROOK, MAINE 04092

RE: Revocation of New York Ruling Letter F80907; Classification of “Auto-Wallet Rand”

DEAR MR. McCLEES:

This is in regard to New York Ruling Letter (NY) F80907, dated January 6, 2000, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the “Auto-Wallet Rand.” In NY F80907, CBP classified the Auto-Wallet in heading 8708, HTSUS, as motor vehicle accessory. We have reconsidered this ruling and have determined that it is incorrect.

**FACTS:**

The subject article was described in NY F80907 as follows:

You submitted a sample of the AutoWallet-Rand, which is a private label for Rand McNally. The AutoWallet is an auto document organizer chiefly used to contain articles such as an auto insurance card, driver’s license, registration and other small identification papers. It is made of nylon material with vinyl windows.

**ISSUE:**

Is the subject “Auto Wallet” solely or principally suitable for use with a motor vehicle and thus classifiable as an accessory of Heading 8708, HTSUS, or as a travel bag of Heading 4202, HTSUS?

**LAW AND ANALYSIS:**

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP’s practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions at issue are as follows:

- 4202: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:
- Other:
- 4202.92: With outer surface of sheeting of plastic or of textile materials:
- Other:
- 4202.92.90: Other....
- \* \* \* \* \*
- 8708: Parts and accessories of the motor vehicles of headings 8701 to 8705:
- Other:
- 8708.29.50 Other:
- \* \* \* \* \*

Section XVII, Note 3 provides as follows:

References in chapters 86 to 88 to “parts” or “accessories” do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those chapters. A part or accessory which answers to a description in two or more of the headings of those chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

EN 87.08 further clarifies that heading 8708 will only cover accessories to motor vehicles of headings 8701 to 8705 if they are suitable for use solely or principally with such motor vehicles.

In NY F80907, CBP found that the subject Auto-Wallet was suitable for use principally with a motor vehicle, because it was primarily designed to be affixed to an automobile visor. However, there is nothing in the design of the article that would limit its use to automobiles. The elastic bands do not necessarily suggest that its principal use would be with a car visor, as opposed to carried in a pocket, handbag, briefcase, etc. Furthermore, the product has no particular design feature which makes it more suitable for use inside a vehicle than outside. Any other means of storing or carrying the wallet, such as a pocket, saddlebag, briefcase or purse, is equally appropriate and suitable. Of course certain documents, such as a vehicle’s registration and insurance, are likely to be kept inside the vehicle, but there is still



nothing that would limit the article to carrying these documents in particular, or that would make it more suitable for such documents than any others.

Finally, Explanatory Note 87.08 lists a number of examples of items included in heading 8708. Such examples include tires, radiators, brake cables, bumpers, engine, battery and similar articles designed specifically for motor vehicles and of little to no use in any other context. Nothing like the article at issue in this case is mentioned in the ENs.

Heading 4202, HTSUS, provides for, among other items, wallets, purses, map cases, traveling bags, and similar containers of textile materials such as the instant article. In classifying goods under the residual provision of “similar containers” of heading 4202, HTSUS, the Court of International Trade has stated as follows: “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* [by name] in order to be classified under the general terms.” *Totes, Inc. v. United States*, 18 CIT 919, 865 F. Supp. 867, 871 (1994), *aff’d*. 69 F. 3d 495 (Fed. Cir. 1995). The court found that the rule of *ejusdem generis* requires only that the imported merchandise share the essential character or purpose running through all the containers listed *eo nomine* in heading 4202, HTSUSA., *i.e.*, “...to organize, store, protect and carry various items.” *Totes* 865 F. Supp. at 872. The Auto-Wallet Rand is designed to store, protect, and carry personal documents. It thus shares the essential character and purpose of the containers of heading 4202, HTSUS. Moreover, the Auto-Wallet’s essential character—*i.e.*, that of a wallet of heading 4202, HTSUS—is evident in both the name of the product and its physical resemblance to general purpose wallets classified in heading 4202, HTSUS.

In addition, many prior rulings have classified similar articles in heading 4202, despite their claimed use as motor vehicle accessories. These include HQ 084931, dated August 14, 1989; HQ 087795, dated August 30, 1990; NY 808002, dated March 28, 1995; NY G87545, dated February 26, 2001; NY G88609, dated April 3, 2001; NY M80989; dated March 16, 2006; and NY N032058, dated July 29, 2008.

#### **HOLDING:**

By application of GRI 1, the Auto-Wallet is classified in subheading 4202.92.9026, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for “other” containers and cases, with outer surface of textile materials, of man-made fibers. The rate of duty will be 17.6% ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

Subheading 4202.92.9026, HTSUSA, falls within textile category 670. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the “Textile Status Report for Absolute Quotas” which

is available on our web site at [www.cbp.gov](http://www.cbp.gov). For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at [otexa.ita.doc.gov](http://otexa.ita.doc.gov).

**EFFECT ON OTHER RULINGS:**

New York Ruling Letter F80907, dated January 6, 2000, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**MODIFICATION OF A RULING LETTER AND  
REVOCAION OF TREATMENT RELATING TO THE NAFTA  
ELIGIBILITY AND MARKING OF CERTAIN AUTOMATIC  
DATA PROCESSING SYSTEMS**

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

**ACTION:** Modification of a ruling letter and revocation of treatment relating to the North American Free Trade Agreement (NAFTA) eligibility of certain automatic data processing systems.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying a ruling letter relating to relating to the NAFTA eligibility of certain automatic data processing systems. CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 43, No. 50, on December 10, 2009. No comments were received in response to this notice.

**DATES:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 12, 2010.

**FOR FURTHER INFORMATION CONTACT:** Jean R. Broussard, Tariff Classification and Marking Branch: (202) 325-0284.

**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 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. Section 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, a notice was published in the *Customs Bulletin*, Vol. 43, No. 50, on December 10, 2009, proposing to modify a ruling letter pertaining to the NAFTA eligibility of certain automatic data processing systems. Although in that notice, CBP specifically proposed to modify HQ H027696, dated July 2, 2008, this notice covers any rulings on this merchandise which may exist but have not been specifically 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, 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 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 modifying HQ H027696, and revoking or modifying any other ruling not specifically identified to reflect the proper eligibility of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (HQ) H074136,

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.

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

Dated: January 21, 2010

GAIL A. HAMILL  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H074136

January 21, 2010

CLA-2 OT:RR:CTF:TCM H074136 JRB

CATEGORY: Origin/Marking

TARIFF NO.: 8471.49

Ms. JOYCE WINEMAN  
ACCOUNT MANAGER/LCB  
UPS SUPPLY CHAIN SOLUTIONS  
4950 GATEWAY EAST  
EL PASO, TX 79905

RE: ADP systems; NAFTA eligibility; Marking; Modification of HQ H027696

DEAR Ms. WINEMAN:

This is in reference to HQ H027696, issued to you on July 2, 2008, on behalf of your client, Hon Hai Precision Industry Co. (“Hon Hai”), concerning the tariff classification of certain merchandise under the Harmonized Tariff Schedule of the United States (HTSUS). On May 29, 2009, U.S. Customs and Border Protection (“CBP”) issued a notice in the *Customs Bulletin* proposing to modify HQ H027696 with proposed ruling letter HQ H037540. Based on comments received as a result of this notice, CBP decided to withdraw the proposed modification on August 20, 2009. In HQ H027690, in addition to classifying the merchandise as an automatic data processing (“ADP”) system, CBP also addressed whether the merchandise was eligible for preferential tariff treatment under the NAFTA (the North American Free Trade Agreement). For the reasons set forth below, we are modifying only that portion of the ruling relating to NAFTA eligibility and country of origin marking. We will also be addressing whether the subject merchandise is subject to the merchandise processing fee under 19 U.S.C. §58c(a).

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 December 10, 2009, in the *Customs Bulletin*, Volume 43, No. 50. No comments were received in response to this notice.

**FACTS:**

Hon Hai imports from their subsidiary in Mexico an ADP machine, a keyboard, a mouse, and a monitor packaged together for retail sale. When so packaged, the merchandise is identified by model numbers M9177c and M8307c.

According to the submitted information, the keyboard and mouse are imported into Mexico from various vendors in China, Taiwan, and Malaysia, and the monitor is imported into Mexico from Taiwan. The monitors measure either 19 or 22 inches and have integrated speakers but cannot accept video signals other than VGA and DVI. Some ADP machines may contain TV tuner cards which are also manufactured outside of NAFTA countries. The monitors can only receive analog TV signals through the ADP machine. The TV functions can be controlled through the computer once certain software is installed.

The ADP machine is assembled in Mexico from components originating in China, Taiwan, and Malaysia. The ADP's motherboard is shipped to Mexico in a box with all its components except for the memory (a BIOS ROM chip) and the central processing unit. The following assembly operations occur in Mexico:

1. Chassis installations: rear I/O shield; system fan; power supply; PCA (printed circuit assembly) components such as the processor cooler back plate, retention module, memory module, Intel processor, heat-sink, Bluetooth, front I/O shield, and PCA cabling; Expansion cards, such as a video card, modem card, TV tuner card, wire/wireless card and LED, or an audio card, as requested; optical drive; hard drive; Bluejay module (video and imaging card); bezel subassembly.
2. Final assembly: front bezel installation, connector cover installation, cable routing and side access panel installation.
3. Equipment testing.
4. Software installation.

All of the above stated operations are performed by skilled and trained workers.

All of the ADP machines use Windows Vista as their operating system and all the models perform data processing functions. Additional hardware or software can also be installed by a customer on a machine. The keyboard and mouse connect to the CPU through connectors or USB ports.

#### ISSUES:

- I. Whether an ADP system comprised of an ADP machine assembled in Mexico, a monitor made in Taiwan, and a keyboard and a mouse made in China, Taiwan or Malaysia, is eligible for preferential tariff treatment under the NAFTA?
- II. How should an ADP system that has components originating in different countries be marked for country of origin marking purposes?
- III. Is the ADP system exempt from the merchandise processing fee?

#### LAW AND ANALYSIS:

##### *I. Eligibility for Preferential Treatment Under NAFTA*

You ask whether an ADP machine assembled in Mexico, a monitor made in Taiwan, and a keyboard and a mouse made in China (or in other non-NAFTA countries), and imported into the U.S. as an "ADP system", are eligible for preferential duty rates under NAFTA as goods of a NAFTA country.

As an initial matter, the following is noted on page 2 of the General Notes (GN) of the *HTSUS (2009) (Rev. 1)* :

**COMPILER'S NOTE: The rules of origin provisions for United States free trade agreements, other than those for the United States-Australia Free Trade Agreement, the United States-Singapore Free Trade Agreement and the United States-Chile Free Trade Agreement, have NOT been updated to reflect changes**

**to the tariff schedule resulting from Presidential Proclamation 8097, which modified the HTS to reflect World Customs Organization changes to the Harmonized Commodity Description and Coding System. You will therefore see tariff heading/subheading numbers in the pertinent general notes which do not correspond to numbers in chapters 1 through 97 or to other portions of the same general notes.**

Accordingly, because the NAFTA rules of origin have not been updated to reflect the 2007 changes to the Harmonized System, the pre-2007 classifications for the goods at issue must be used in order to ascertain their correct rule of origin under NAFTA.

General Note 12 of the HTSUS incorporates Article 401, North American Free Trade Agreement, as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (December 8, 1993), into the HTSUS. General Note 12(a)(ii) provides that:

- (a) Goods originating in the territory of a party to the North American Free Trade Agreement (NAFTA) are subject to duty as provided herein. For the purposes of this note—

\* \* \* \* \*

- (ii) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Mexico under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), **and goods enumerated in subdivision (u) of this note**, when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “MX” in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act. (emphasis added)

General Note 12(b) provides in relevant part that:

- (b) For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if—

\* \* \* \* \*

- (v) they are goods enumerated in subdivision (u) of this note and meet all other requirements of this note.

General Note 12(u) incorporates Table 308.1.1 of Annex 308.1 of the NAFTA and provides that:

Goods that shall be considered originating goods. For the purposes of subdivision (b)(v) of this note, notwithstanding the provisions of subdivision (t) above, the automatic data processing machines, automatic data processing units and parts of the foregoing that are classifiable in the tariff provisions enumerated in the first column and are described opposite such provisions, when the foregoing are imported into the customs

territory of the United States from the territory of Canada or of Mexico, shall be considered originating goods for the purposes of this note:

	Provisions	Description
(1)	8471.30.01, 8471.41.01, 8471.49.00, 8471.50.01	Automatic data processing machines
(2)	8471.49.00, 8471.50.01	Digital processing units
(3)	8471.49.00, 8471.60.10	Combined input/output units
(4)	8471.49.00, 8528.41.00, 8528.51.00, 8528.61.00	Display units
(5)	8471.49.00, 8471.60.20, 8471.60.70, 8471.60.80, 8471.60.90	Other input or output units
(6)	8471.49.50, 8471.70	Storage units
(7)	8471.49.00, 8471.80.10, 8471.80.40, 8471.80.90, 8517.62.00, 8517.69.00	Other units of automatic data processing machines
(8)	8443.99, 8473.30, 8517.70, 8529.90	Parts of automatic data processing machines and units thereof
(9)	8471.49.00, 8504.40.60, 8504.40.70	Power supplies for automatic data processing machines
(10)	8504.90.20, 8504.90.40	Parts of power supplies for automatic data processing machines

In HQ H027696, dated July 2, 2008, we properly determined that the merchandise met the terms of an ADP system as defined by Subheading Note 1 to Chapter 84<sup>11</sup> and was correctly classified in subheading 8471.49.00, HTSUS, when imported from the territory of Mexico into the United States. This classification remains the same under the 2006 through 2009 versions of the HTSUS. As this tariff provision is listed in General Note 12(u), the merchandise qualifies as an originating good under NAFTA for duty purposes.

## *II. Marking for Country of Origin Purposes*

The issue of country of origin marking was indirectly raised in some of the correspondence between you and CBP. Although not specifically asked to do so, we will also address this issue because we believe that it is an important corollary to the issues discussed in this ruling.

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

<sup>11</sup> Subheading Note 1 to Chapter 84 provides that: "For the purposes of subheading 8471.49, the term 'systems' means automatic data processing machines whose units satisfy the conditions laid down in note 5(C) to chapter 84 and which comprise at least a central processing unit, one input unit (for example, a keyboard or a scanner), and one output unit (for example, a visual display unit or a printer)."



in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. §1304 was “that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will.” *United States v. Friedlaender & Co.*, 27 CCPA 297, 302, C.A.D. 104 (1940). Part 134, U.S. Customs and Border Protection Regulations (19 C.F.R. §134) implements the country of origin marking requirements and exceptions of 19 U.S.C. §1304.

Section 134.1(b), CBP Regulations (19 C.F.R. § 134.1(b)), defines “country of origin” as:

[T]he country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of [the marking laws and regulations]; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Part 102 of the CBP Regulations sets forth the NAFTA Rules of Origin for country of origin marking purposes. 19 C.F.R. §102.0. 19 C.F.R. §102.11 provides, in pertinent part:

The following rules shall apply for the purposes of determining the country of origin of imported goods other than textile and apparel products covered by § 102.21.

- (a) The country of origin of a good is the country in which:
  - (1) The good is wholly obtained or produced;
  - (2) The good is produced exclusively from domestic materials; or
  - (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in §102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.
- (b) Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:
  - (1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good, or
  - (2) If the material that imparts the essential character to the good is fungible, has been commingled, and direct physical identification of the origin of the commingled material is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the appendix to part 181 of this chapter.
- (c) Where the country of origin cannot be determined under paragraph (a) or (b) of this section and the good is specifically described in the Harmonized System as a set or mixture, or classified as a set, mix-

ture or composite good pursuant to General Rule of Interpretation 3, the country of origin of the good is the country or countries of origin of all materials that merit equal consideration for determining the essential character of the good.

- (d) Where the country of origin of a good cannot be determined under paragraph (a), (b) or (c) of this section, the country of origin of the good shall be determined as follows:

\* \* \*

- (3) If the country of origin of the good cannot be determined under paragraph (d)(1) or (d)(2) of this section, the country of origin of the good is the last country in which the good underwent production.

CBP finds that §102.11(a) is not applicable in this situation. Paragraphs (a)(1) and (a)(2) are not applicable because the ADP system is not wholly obtained or produced in any one country and is not produced exclusively from the domestic materials of any one country. Paragraph (a)(3) (the §102.20 “tariff shift” rules) is not applicable because the foreign-sourced goods (e.g., the monitor, keyboard and mouse) which are simply re-packed with the ADP machine is a non-qualifying operation under 19 C.F.R. §102.17.<sup>12</sup>

As the goods entered into the United States meet the terms of “ADP systems” as defined in Subheading Note 1 to Chapter 84, CBP finds that they constitute a GRI 1 set under the Harmonized System for the purposes of §102.11. Therefore, we find that §102.11(b) is also inapplicable.

In cases where §102.11(a) or (b) do not apply we must also consider the applicability of 19 C.F.R. §102.19 which provides, in relevant part:

NAFTA preference override.

- (a) Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1(q) of this chapter is not determined under § 102.11(a) or (b) or § 102.21 to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin (see § 181.11 of this chapter) has been completed and signed for the good.

As demonstrated above, §102.11(a) and (b) do not apply and the system is originating within the meaning of §181.1(q) because the system qualifies for NAFTA under General Note 12.<sup>13</sup> Therefore, the country of origin of the system is the last NAFTA country in which that good underwent production

<sup>12</sup> 19 C.F.R. §102.17 sets out the rules as to non-qualifying operations under §102.20, in relevant part:

[a] foreign material shall not be considered to have undergone an applicable change in tariff classification specified in § 102.20 or § 102.21 or to have met any other applicable requirements of those sections merely by reason of one or more of the following:

\* \* \*

(c) Simple packing, repacking or retail packaging without more than minor processing;

<sup>13</sup> 19 C.F.R. §181.1(q) provides that the term originating when used with regard to a good or a material, means a good or material which qualifies as originating in the United States, Canada and/or Mexico under the rules set forth in General Note 12, HTSUS, and in the appendix to this part.

other than minor processing.<sup>14</sup> In this case, the country of origin is Mexico because it is the last country where the system underwent production that was beyond minor processing. The ADP machine is assembled in Mexico and it is then packaged together with various input and output units for retail sale. That assembly is not minor processing because it is not one of the nine operations listed in §102.1(m). Thus, the ADP system should be marked as a product of Mexico because Mexico is the last NAFTA country where the good underwent production other than minor processing so long as a properly completed Certificate of Origin is included with the good at the time of importation.

### *Merchandise Processing Fee*

19 U.S.C. §58c(a) provides the statutory authority for certain customs services which states in relevant part that:

(a) Schedule of fees

In addition to any other fee authorized by law, the Secretary of the Treasury shall charge and collect the following fees for the provision of customs services in connection with the following:

\* \* \* \* \*

(9)(A) For the processing of merchandise that is formally entered or released during any fiscal year, a fee in an amount equal to 0.21 percent ad valorem, unless adjusted under subparagraph (B).

However, 19 U.S.C. §58c(b)(10)(B) provides that:

For goods qualifying under the rules of origin set out in section 3332 of this title, the fee under subsection (a)(9) or (10)—

\* \* \* \*

(ii) may not be increased after December 31, 1993, and may not be charged after June 29, 1999, with respect to goods that qualify to be marked as goods of Mexico pursuant to such Annex 311, for such time as Mexico is a NAFTA country.

<sup>14</sup> The phrase “minor processing” is defined at 19 C.F.R. §102.1(m) as the following:

(1) Mere dilution with water or another substance that does not materially alter the characteristics of the good;

(2) Cleaning, including removal of rust, grease, paint, or other coatings;

(3) Application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings;

(4) Trimming, filing or cutting off small amounts of excess materials;

(5) Unloading, reloading or any other operation necessary to maintain the good in good condition;

(6) Putting up in measured doses, packing, repacking, packaging, repackaging;

(7) Testing, marking, sorting, or grading;

(8) Ornamental or finishing operations incidental to textile good production designed to enhance the marketing appeal or the ease of care of the product, such as dyeing and printing, embroidery and appliques, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories notions, findings and trimmings; or

(9) Repairs and alterations, washing, laundering, or sterilizing.

Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

19 U.S.C. §3332(n) provides for the rules of origin of automatic data processing goods under NAFTA:

Notwithstanding any other provision of this section, when the NAFTA countries apply the rate of duty described in paragraph 1 of section A of Annex 308.1 of the Agreement to a good provided for under the tariff provisions set out in Table 308.1.1 of such Annex, the good shall, upon importation from a NAFTA country, be deemed to originate in the territory of a NAFTA country for purposes of this section.

As stated above, Table 308.1.1 is codified in General Note 12(u) which lists ADP systems of subheading 8471.49.00 as being deemed to originate in the territory of a NAFTA country for purposes of origin. In addition, the ADP system qualifies to be marked as a good of Mexico. As such, the subject merchandise qualifies under 19 U.S.C. §58c(b)(10)(B)(ii) as being exempt from the merchandise processing fees.

#### **HOLDING:**

By application of GRI 1, the ADP system is classified in heading 8471, HTSUS. It is specifically provided for in subheading 8471.49.00, HTSUS, which provides for: “Automatic data processing machines and units thereof ...: Other automatic data processing machines: Other, entered in the form of systems.” In accordance with General Note 12(b)(v), the ADP system originates from Mexico under NAFTA.

The country of origin of the system for marking purposes is Mexico so long as the importer presents a NAFTA Certificate of Origin pursuant to 19 C.F.R. §181.11.

Under 19 U.S.C. §58c(b)(10)(B)(ii), the ADP system imported from Mexico qualifies for exemption from the merchandise processing fee.

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

HQ H027696, dated July 2, 2008, is hereby modified.

*Sincerely*

GAIL A. HAMILL

*for*

MYLES B. HARMON,

*Director*

*Commercial & Trade Facilitation Division*



### **MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN SKI MITTENS**

**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 tariff classification of certain ski mittens.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying one ruling letter relating to the tariff classification of ski mittens under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 43, No. 50, on December 10, 2009. CBP received no comments in response to this notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 12, 2010.

**FOR FURTHER INFORMATION CONTACT:** Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

#### **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), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI, a notice was published in the

*Customs Bulletin*, Vol. 43, No. 50, on December 10, 2009, proposing to modify NY N003928, pertaining to the tariff classification of certain ski mittens. CBP received no comments in response to this notice.

As stated in the proposed notice, this action 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, as amended (19 U.S.C. 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In NY N003928, CBP determined that the subject ski mittens, identified as style #SU9196, were classified in subheading 6116.10.4400, HTSUS, which provides for "Gloves, mittens and mitts, knitted or crocheted: impregnated, coated or covered with plastics or rubber: other: without fourchettes: cut and sewn from pre-existing machine-knit fabric that is impregnated, coated or covered with plastics or rubber: other: containing over 50% by weight of plastics or rubber."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N003928 with respect to the classification of style #SU9196, in order to reflect the proper classification of the subject mittens according to the analysis contained in Headquarters Ruling Letter H009365, which is attached 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.

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

Dated: January 21, 2010

GAIL A. HAMILL

*for*

MYLES B. HARMON, DIRECTOR

*Commercial and Trade Facilitation Division*

Attachment

HQ H009365

January 21, 2010  
CLA-2 OT:RR:CTF:TCM H009365 CkG  
Category: Classification  
Tariff No.: 6116.10.08

LORI J.P. BOULLET  
COLUMBIA SPORTSWEAR  
14375 NW SCIENCE PARK DRIVE  
PORTLAND, OR 97229

Re: Modification of NY N003928; Classification of Ski Mittens

DEAR Ms. BOULLET,

This is in response to your letter of February 23, 2007, in which you request the reconsideration of New York Ruling (NY) N003928, issued December 29, 2006, regarding the tariff classification of certain cold-weather mittens under the Harmonized Tariff Schedule of the United States (HTSUS). We have since reviewed NY N003928, and find it to be incorrect. For the reasons set out below, we are modifying this ruling.

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 proposing to modify NY N003928 was published on December 10, 2009, in Volume 43, Number 50, of the *Customs Bulletin*. CBP received no comments in response to the notice.

**FACTS:**

The submitted sample is a pair of lined and insulated unisex mittens with removable inner gloves, style #SU9196, identified as the "Titanium Castle Mountain Mitten." The outer palm side and top portion of the palm side thumb is made up of a coated polyester knit fabric. A knit fabric insert with a visible coating on the underside makes up the bottom portion of the palm side thumb. The backside of the mitten and sidewalls are made up of a coated woven nylon material, and the backside of the thumb is made up of a PU suede material that functions as a nose wipe. The mittens also feature a plastic goggle wipe on the right mitten sidewall, an inner waterproof barrier, a hook and clasp to connect the mittens together, 2 mm of polyurethane inner foam, an additional layer of foam padding and textile-backed vinyl which extends internally across the back of the knuckles, and an extended gauntlet cuff. The partially elasticized wrists feature a draw cord tightening at the back of the hand with a locking end clip. An adjustable draw cord also tightens the gauntlet hem, which also has a locking end clip.

The removable inner gloves are made of brushed knit polyester fabric with woven fabric fourchettes, partially elasticized wrists and hemmed fabric cuffs. The removable inner gloves are affixed to the outer shell mitten by a string that loops around a small pull-tab sewn into the bottom edge of the glove cuffs.



**ISSUE**

- (1) Whether the Titanium mitten is classifiable as a ski mitten/glove of subheading 6116.10.08, HTSUS, or in subheading 6116.10.44, HTSUS, as a coated, covered or impregnated mitten.
- (2) Whether the inner liner should be classified separately

**LAW AND ANALYSIS**

Merchandise imported into the United States is classified under the HTSUS. 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 at issue are as follows:

6116:	Gloves, mittens and mitts, knitted or crocheted
6116.10:	Impregnated, coated or covered with plastics or rubber
6116.10.08:	Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts
6116.10.44:	Other: Containing over 50 percent by weight of plastics or rubber
6116.93:	Of synthetic fibers:
	Other:
	Other:
6116.93.94:	With fourchettes (631)

There is no dispute that the mittens are classified in subheading 6116.10, HTSUS. At issue is the proper eight-digit tariff rate. GRI 6, HTSUS, requires that the GRI's be applied at the subheading level on the understanding that only subheadings at the same level are comparable. The GRI's apply in the same manner when comparing subheadings within a heading.

At the eight-digit subheading level, you request classification of the subject articles as gloves specially designed for use in sport, principally skiing. Subheading 6116.10.08, HTSUS, is a principal use provision. For articles governed by principal use, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that, in the absence of special language or context which otherwise requires, such use "is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use." In other words, the article's principal use at the time of importation determines whether it is classifiable within a particular class or kind.

The CIT has further provided factors which are indicative but not conclusive, to apply when determining whether merchandise falls within a particu-

lar class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. *See United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), *cert. denied*, 429 U.S. 979 (hereinafter Carborundum).

In *Sports Industries, Inc. v. United States*, 65 Cust. Ct. 470, C.D. 4125 (1970), the court, in interpreting the term “designed for use,” examined not only the features of the articles, but also the materials selected and the marketing, advertising and sale of the article. A conclusion that a certain glove is “specially designed” for a particular sport requires more than a mere determination of whether the glove or pair of gloves could possibly be used while engaged in that sport. *See* HQ 965714, dated November 15, 2002; HQ 965157, dated May 14, 2002. To determine whether an article is specially designed for a specific sport requires consideration of whether the article has particular features that adapt it for the stated purpose.

With regard to the proper classification of ski gloves, the court in *Stonewall Trading Company v. United States*, Cust. Ct. 482, C.D. 4023 (1970) held that ski gloves possessing the following features were specially designed for use in the sport of skiing:

- (1) A hook and clasp to hold the gloves together;
- (2) An extra piece of vinyl stitched along the thumb to meet the stress caused by the flexing of the knuckles when the skier grasps the ski pole;
- (3) An extra piece of vinyl with padding reinforcement and inside stitching which is securely stitched across the middle of the glove where the knuckles bend and cause stress;
- (4) Cuffs with an elastic gauntlet to hold the gloves firm around the wrist so as to be waterproof and to keep it securely on the hand.

The Stonewall criteria are used as a guideline to aid in the classification of sports gloves and mittens, but they are neither mandatory nor all-inclusive in determining whether a glove merits classification under this provision. A case by case analysis will be used by CBP in determining whether a glove’s design merits classification as a ski glove under headings 6116 or 6216, HTSUS. *See* Headquarters Ruling Letter (HQ) 954733, dated December 21, 1993; HQ 089589, dated August 19, 1991. Even if the Stonewall criteria are met, a glove is not classifiable as a ski glove if it is not functionally practicable for such use. *See* HQ 952393, dated August 28, 1992; HQ 953629, dated Jul 8, 1993. In addition to the Stonewall criteria outlined above, CBP consistently considers the protective features of a glove (*e.g.*, resistance to wind and water) and how the gloves are advertised and sold. *See e.g.*, HQ 956188, dated December 29, 1994; HQ 954425, dated September 10, 1993; HQ 953629, dated Jul 8, 1993; and HQ 088374, dated June 24, 1991.

In this case, the Titanium Castle Mountain mittens possess three of the four features specified in *Stonewall*: a hook and clasp to hold the gloves together, an extra piece of vinyl with padding reinforcement across the back of the hand where the knuckles bend and cause stress, and cuffs with an elastic gauntlet. In NY N003928, CBP determined that the absence of the second *Stonewall* characteristic precluded the subject mittens from classification as gloves specially designed for use in skiing. However, as noted above, the *Stonewall* criteria are not necessarily determinative of the classification of a glove. CBP will also examine additional physical characteristics such as the construction of the mitten, the materials used and their resistance to the elements as well as the marketing, advertisement and sale of the subject mittens.

You note that the Titanium mittens possess additional physical characteristics that indicate a design for use in skiing, such as a drawcord tightener and locking end clip for the gauntlet cuffs to keep out snow and ice, a nose wipe and goggle wipe, and an inner layer of foam insulation for warmth. CBP has held in the past that such features indicate a specialized design for skiing or snowboarding. *See e.g.*, NY 815169, dated October 19, 1995; NY A80208, dated March 14, 1996; NY H83294, dated July 31, 2001; NY K88512, dated August 20, 2004; NY L86675, dated September 8, 2005; NY M83789, dated June 22, 2006; and NY N021405, dated January 25, 2008. The marketing of the mitten similarly focuses on its suitability for skiing. The Titanium glove packaging, for example, features two skiers ascending a mountain slope. We, therefore, agree that the Titanium Castle Mountain gloves are specially designed for use in sports, including skiing or snowmobiling, and are provided for in subheading 6116.10.08, HTSUS.

With regard to the classification of the removable inner gloves, the issue is whether they are in fact dedicated liners or whether they are suitable for independent use. CBP has consistently classified dedicated and removable glove liners with their paired outer gloves. *See e.g.*, NY G81410, dated September 21, 2000; NY H89549, dated April 12, 2002; NY I87612, dated November 18, 2002; NY K85841, dated June 3, 2004. However, where CBP determines that the inner glove is suitable for separate and independent use, it is classified separately. *See* NY L89356, dated February 10, 2006; NY N042400, dated November 14, 2008. In the instant case, the inner gloves are not securely attached to the outer glove. Furthermore, while we recognize that the liner may be worn under a ski glove while skiing, it is clearly suitable for separate use. The liner possesses no features which indicate that it is specially designed for use with the Titanium Castle Mountain Mitten. The removable glove liner is thus classified separately from the outer mitten. The liner is provided for in subheading 6116.93.94, HTSUS.

#### **HOLDING:**

By application of GRI 1 and 6, the Titanium Castle Mountain Mitten is classified under subheading 6116.10.08, HTSUS, which provides for "Gloves, mittens and mitts, knitted or crocheted: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts." The 2009 column one, general rate of duty is 2.8% *ad valorem*.

The classification of the liner glove remains unchanged.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at [www.usitc.gov/tata/hts](http://www.usitc.gov/tata/hts).

**EFFECT ON OTHER RULINGS:**

NY N003928, dated December 29, 2006, is hereby modified. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

*Sincerely,*

GAIL A. HAMILL

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



**GENERAL NOTICE**

**19 CFR PART 177**

**Modification of a Ruling Letter and Revocation of Treatment Relating to the Classification of NAD, Lithium Salt**

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

**ACTION:** Notice of modification of a ruling letter and treatment relating to the classification of NAD, Lithium Salt.

**SUMMARY:** Pursuant to section 625(c), tariff act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (customs modernization) of the north american free trade agreement implementation act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that customs and border protection (“CPB”) is modifying a ruling concerning the classification of NAD, lithium salt, under the harmonized tariff schedule of the united states (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed revocation was published on December 10, 2009, in volume 43, number 50, of the *Customs Bulletin*. No comments were received in response to this notice.

**EFFECTIVE DATE:** Merchandise entered or withdrawn from warehouse for consumption on or after April 12, 2010.

**FOR FURTHER INFORMATION CONTACT:** Allyson Mattanah, Tariff Classification and Marking Branch (202) 325-0029.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 8, 1993, Title VI (CBP 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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the *CUSTOMS BULLETIN*, Volume 43, No. 50, on December 10, 2009, proposing to revoke New York Ruling Letter (NY) R03289, dated March 13, 2006, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this issue that may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the issue 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 Title VI, CBP is revoking any treatment it previously accorded to substantially identical transac-

tions. 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 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 modifying NY R03289, and revoking or modifying any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter H009527. (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.

Dated: January 21, 2010

GAIL A. HAMILL

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H009527

January 21, 2010

CLA-2 OT:RR:CTF:TCM H009527ARM

CATEGORY: Classification

TARIFF NO.: 2934.99.39

Ms. JULIE ANN KINYOUN  
EMD BIOSCIENCES, INC.  
10394 PACIFIC CENTER COURT  
SAN DIEGO, CA 92121

RE: Proposed Modification of NY R03289; Tariff classification of NAD, Lithium (CAS 64417-72-7) from Germany.

DEAR Ms. KINYOUN:

This is in reference to New York (NY) Ruling Letter R03289, dated March 13, 2006, issued to you by Customs and Border Protection ("CBP") concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of NADH Disodium Salt and NAD, Lithium. In NY R03289, both goods were classified under subheading 2934.99.90, HTSUS, as other heterocyclic compounds. For the reasons set forth below, NY R03289 is modified with respect to NAD, Lithium.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), notice of the proposed action was published in the *CUSTOMS BULLETIN*, Volume 43, No. 50, on December 10, 2009. No comments were received in response to the notice.

#### **FACTS:**

The merchandise at issue is NAD, Lithium (CAS # 64417-72-7) and has a chemical formula of  $C_{21}H_{27}N_7O_{14}P_2Li$ . It is the lithium salt of NAD (nicotinamide adenine dinucleotide). The compound is a modified aromatic monolithium salt of a zwitterionic compound containing the following functional groups: heterocyclic with nitrogen hetero-atoms, heterocyclic with oxygen hetero-atoms, amide, amine, phosphate, and alcohol.

#### **ISSUE:**

Whether NAD, Lithium is a modified aromatic heterocyclic compound of subheading 2934.99.39, HTSUS, or an other heterocyclic compound of subheading 2934.99.90, HTSUS.

#### **LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

At issue is the proper eight-digit national tariff rate applicable to the instant merchandise. GRI 6 provides that the classification of goods in the subheadings of headings shall be determined according to the terms of those

subheadings, any related subheading notes and, *mutatis mutandis*, to the GRIs. The HTSUS provisions under consideration are as follows:

2934:	Nucleic acids and their salts, whether or not chemically defined; other heterocyclic compounds:  Other:
2934.99	Other:  Aromatic or modified aromatic:  Other:
2934.99.39	Products described in additional U.S. note 3 to section VI  * * * * *  Other:  Other:
2934.99.90	Other

The Additional U.S. Notes to Section VI, HTSUS, state, in pertinent part, the following:

2. For the purposes of the tariff schedule:

(a) The term “aromatic” as applied to any chemical compound refers to such compound containing one or more fused or unfused benzene rings;

(b) The term “modified aromatic” describes a molecular structure having at least one six-membered heterocyclic ring which contains at least four carbon atoms and having an arrangement of molecular bonds as in the benzene ring or in the quinone ring, but does not include any such molecular structure in which one or more pyrimidine rings are the only modified aromatic rings present;

\* \* \* \* \*

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

(a) For which the importer furnishes the Chemical Abstracts Service (C.A.S.) registry number and certifies that such registry number is not listed in the Chemical Appendix to the Tariff Schedule; or

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

The structure of the instant merchandise contains 2 six-sided heterocyclic rings each containing four or more carbon atoms and an arrangement of bonds as in a benzene ring, an aromatic compound. In accordance with Additional U.S. Note 2(b) to Section VI, the instant merchandise consists of a modified aromatic compound. Further, it is not listed in the Chemical



Appendix to the HTSUS and is assigned a CAS registry number not listed in the Chemical Appendix to the HTSUS. As such, it is classified in subheading 2934.99.39, HTSUS.

**HOLDING:**

By application of GRIs 1 and 6, the NAD, Lithium is classified in heading 2934, HTSUS. It is specifically provided for in subheading 2934.99.39, HTSUS, which provides for: “Nucleic acids and their salts, whether or not chemically defined; other heterocyclic compounds: Other: Other: Aromatic or modified aromatic: Other: Products described in additional U.S. note 3 to section VI.” The 2009 column one general rate of duty is 6.5% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at *www.usitc.gov*.

**EFFECT ON OTHER RULINGS:**

New York (NY) Ruling Letter R03289, dated March 13, 2006, is modified.

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

*Sincerely,*

GAIL A. HAMILL

*for*

MYLES B. HARMON,

*Director*

*Classification and Trade Facilitation Division*

**REVOCATION OF RULING LETTER AND REVOCATION OF  
TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF A CERTAIN PIEZOELECTRIC  
CERAMIC STACK**

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

**ACTION:** Notice of revocation of one ruling letter and treatment relating to the tariff classification of a piezoelectric ceramic stack.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification of a piezoelectric ceramic stack under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice

of the proposed action was published in the *Customs Bulletin*, Vol. 43, No. 50, on December 10, 2009. CBP received one comment in support of the proposed action.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 12, 2010.

**FOR FURTHER INFORMATION CONTACT:** Claudia Garver, Tariff Classification and Marking Branch: (202) 325-0024

**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), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 43, No. 50, on December 10, 2009, proposing to revoke NY N021072, pertaining to the tariff classification of a piezoelectric ceramic stack. CBP received one comment in support of the proposed action.

As stated in the proposed notice, this action 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, as amended (19 U.S.C. 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In *N021072*, CBP determined that the piezoelectric ceramic stack was classified in heading 6909, HTSUS, which provides for "Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY *N021072*, in order to reflect the proper classification of the piezoelectric crystal according to the analysis contained in Headquarters Ruling Letter H025781, which is attached 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.

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

Dated: January 21, 2010

GAIL A. HAMILL  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H025781

January 21, 2010  
CLA-2 OT:RR:CTF:TCM H025781 CKG  
CATEGORY: Classification  
TARIFF NO.: 8541.60.00

JUDITH HOLDSWORTH  
DEKIEFFER & HORGAN  
SUITE 800  
729 FIFTEENTH STREET, NW  
WASHINGTON, DC 20005

RE: Reconsideration of NY N021072; classification of piezoelectric ceramic stack

DEAR Ms. HOLDSWORTH,

This is in response to your letter of March 12, 2008, requesting reconsideration of New York Ruling Letter (NY) N021072, dated December 28, 2007, regarding the tariff classification of a piezoelectric stack imported from Japan by the Kyocera Industrial Ceramics Corporation.

In NY N021072, CBP classified the piezoelectric stack in heading 6909, Harmonized Tariff Schedule of the United States (HTSUS) as “Ceramic ware for laboratory, chemical or other technical uses.” You suggest classification under heading 8541.60.00, as “Electrical Machinery and Equipment and Parts Thereof; ...Mounted piezoelectric crystal.” We have reviewed that ruling, and for the reasons set forth below, we have determined the initial classification of the piezo ceramic stack to be incorrect. Therefore, we are revoking NY N021072, as it pertains to the classification of the piezo ceramic stack.

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 proposing to modify NY N021072 was published on December 10, 2009, in Volume 43, Number 50, of the *Customs Bulletin*. CBP received one comment in support of the proposed action.

## FACTS

This sample is described as a ceramic piezoelectric stack. A laboratory analysis performed by CBP confirms that the instant article consists of three (3) pieces of a grey material that differ in length. The pieces are octagonal cross section, with adjacent faces of unequal height but alternate faces of essentially equal height. The two smaller faces appear to be partially metallic. It is to be used in fuel injection systems for diesel engines. The sample has a lamellar structure with alternating layers made of two different materials. One layer is a lead zirconate titanate ceramic. Lead zirconate titanate ceramic (also called PZT, an acronym for Pb, the symbol for lead, Zr for zirconium, and Ti for titanium) is a well-known material used in piezoelectric devices. The other layer is PZT mixed with a large amount of silver (Ag). The latter may be considered the internal electrodes of a multilayer (laminated) piezoelectric device. The sample has external electrodes made from silver on two opposing faces to which wires may be attached. After importation, the stack is encapsulated in resin and a lead wire is attached.

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## ISSUE

The issue is whether the merchandise at issue is classifiable in heading 6909, HTSUS, as “Ceramic ware for laboratory, chemical or other technical uses,” or heading 8541, HTSUS, as “mounted piezoelectric crystals.”

## LAW AND ANALYSIS

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The HTSUS provisions at issue are as follows:

- |            |                                                                                                                                                                                                                                                                                                                    |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6909:      | Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods:<br><br>Ceramic wares for laboratory, chemical or other technical uses: |
| 6909.19:   | Other:<br><br>* * * * *                                                                                                                                                                                                                                                                                            |
| 8541:      | Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof:                                                        |
| 8541.6000: | Mounted piezoelectric crystals                                                                                                                                                                                                                                                                                     |

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent 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 these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 69.09(2) provides in pertinent part as follows:

The heading covers in particular:

- (2) Ceramic wares for other technical uses, such as pumps, valves

EN 85.41(A)(III) provides, in pertinent part:

The devices described above fall in this heading whether presented mounted, that is to say with their terminals or leads or packaged (components), unmounted (elements) or even in the form of undiced discs (wafers). However, natural semiconductor materials (*e.g.*, galena) are classified in this heading only when mounted

The devices described above fall in this heading whether presented mounted, that is to say with their terminals or leads or packaged (components), unmounted (elements) or even in the form of undiced discs (wafers). However, natural semiconductor materials (*e.g.*, galena) are classified in this heading only when mounted

“Piezoelectric crystals... are generally in the form of plates, bars, discs, rings, etc., and must, at least, be equipped with electrodes or electric connections. They may be coated with graphite, varnish, etc., or arranged on supports and they are often inside an envelope (*e.g.*, metal box, glass bulb).”

\* \* \* \* \*

In addressing classification of the subject article under heading 8541, HTSUS, as a mounted piezoelectric crystal, we must first establish that the ceramic is a crystal. The website [americanpiezo.com \(http://www.americanpiezo.com/piezo\\_theory/index.html\)](http://www.americanpiezo.com/piezo_theory/index.html) provides the following description of piezoelectric ceramic elements:

“A traditional piezoelectric ceramic is a mass of perovskite crystals, each consisting of a small, tetravalent metal ion, usually titanium or zirconium, in a lattice of larger, divalent metal ions, usually lead or barium, and O<sup>2-</sup> ions”

The laboratory analysis confirms that the instant article primarily consists of lead zirconate titanate ceramic. The piezoelectric stack at issue thus conforms to the above description of a piezoelectric crystal. To fall under heading 8541.60, however, the crystal must also be “mounted.” EN 85.41 provides additional clarification. EN 85.41 (D) states that piezoelectric crystals of heading 8541 must at least be equipped with electrodes or electric connections. EN 85.41(A)(III), which refers to diodes, transistors and similar semiconductor devices, describes such devices as “mounted” if containing terminals or leads or if packaged. According to the importer’s supporting materials as well as the lab analysis performed by CBP, the importer’s piezoelectric stack, as imported, is composed of ceramic plates stacked or laminated together with internal and surface electrodes. No leads or terminals are attached to the crystal as imported.

Pursuant to EN 85.41(D), the presence of electrodes on the surface of the stack is sufficient to bring it within the scope of heading 8541, as a “mounted”

piezoelectric crystal. This conclusion is consistent with prior CBP decisions in which electrodes or electric connections attached to the surface of the crystal were sufficient to deem the crystals “mounted.” See *e.g.*, HQ 957334, dated April 24, 1995; HQ 956905, dated October 26, 1994; and NY F80316, dated December 27, 1999. In the case of NY F80316, for example, crystal quartz discs which were merely painted with silver on both sides, the silver itself acting as an electrode, were classified under subheading 8541.60, HTSUS, as mounted piezoelectric crystals. Furthermore, the “mounted” crystal described in HQ 956905 was virtually identical to the instant article:

“The PZT Transducers are made of a polycrystalline ceramic material containing lead, zirconate, and titanite, which gives the material the ability to transduce an electrical charge into mechanical stress, and visa versa. The PZT material is in the form of plates with nickel-gold electrodes mounted on both surfaces. As used, when an electrical charge is applied to the electrodes, the vibration of the PZT material pumps ink onto the print medium.”

EN 85.41(D) further states, however, that “If...because of the addition of other components, the complete article (mounting plus crystal) can no longer be regarded as merely a mounted crystal but has become identifiable as a specific part of a machine or appliance, the assembly is classified as a part of the machine or appliance in question: *e.g.*, piezo-electric cells for microphones or loudspeakers (heading), sound-heads (heading 85.22)...” Prior CBP decisions have classified similar piezoelectric crystals in heading 8541, but without touching on this particular issue. In HQ 957334, piezoelectric crystals described as a “ceramic resonators” “mounted and equipped with electric connections” were classified under subheading 8541.60, as were the ceramic piezoelectric transducers in HQ 956905. The piezoelectric crystals in this decision were in the form of plates rather than stacks, but as with the subject article, were mounted with electrodes on the surface; an electric charge applied to electrodes mounted on the surface of the crystal caused a vibration which pumped ink onto the print medium. The articles in these cases were similarly designed for use in specific equipment. However, in HQ 953381, dated July 16, 1993, and HQ 955381, dated May 10, 1994, classification in heading 8541 was rejected because of the addition of other components that made the article identifiable as a specific part of a machine. The article in question was a printed circuit board assembly “made of paper phenolic with copper paths and nickel/gold-plated pads.” with a mounted quartz crystal and integrated circuit attached. Because of the presence of these additional components and the configuration of the circuit board itself, CBP held that the assembly was not merely a mounted crystal, but a specific part of a motor classifiable under 8503.00.40 (later reclassified under 9114.90.30 as an assembly for a clock movement by HQ955381). The printed circuit board assembly, however, was clearly more complex than the subject article.

Given prior case law and your assertion that “this exact same type of piezoelectric stack is used as an actuator for ink jet printers, piezoelectric resonators, oscillators, ultrasonic motors, filter, acceleration sensors and knocking sensors”, we agree that the subject article, despite being manufactured for a specific diesel fuel injector model, is not a “complete article” that is “identifiable as a specific part of a machine or appliance.”

The subject article is thus provided for in heading 8541, HTSUS, at GRI 1.

### **HOLDING**

The instant piezo ceramic stack is classifiable under subheading 8541.60.00, HTSUS, as a mounted piezoelectric crystal. The 2008 column one, general rate of duty is Free.

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

NY *N021072*, dated December 28, 2007, 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*.

*Sincerely,*

GAIL A. HAMILL

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



### **AGENCY INFORMATION COLLECTION ACTIVITIES:**

#### **Aircraft/Vessel Report (Form I-92)**

**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: 1651-0102.

**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: Aircraft/Vessel Report (Form I-92). 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** (74 FR 54839) on October 23, 2009, allowing for a 60-day comment period. Three comments were received. 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 [Insert date 30 days from the date this notice is published in the Federal Register].



**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](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-5806.

**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 techniques or other forms of information.

**Title:** Aircraft/Vessel Report

**OMB Number:** 1651-0102

**Form Number:** I-92

**Abstract:** The Form I-92 is part of manifest requirements of Sections 231 and 251 of the Immigration and Nationality Act. This Form is used to collect passenger and crew information from commercial and military airlines and vessels upon arrival in the U.S. at CBP ports of entry. The data collected on Form I-92 is also used by other agencies to develop statistics and trends in international travel, trade, and tourism.

**Current Actions:** This submission is being made to extend the expiration date with no change to the burden hours.

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

**Affected Public:** Businesses, Carriers

720,000

**Estimated Time Per Respondent:** 11 minutes

**Estimated Total Annual Burden Hours:** 129,600

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9<sup>th</sup> Street, NW, 7<sup>th</sup> Floor, Washington, DC. 20229-1177, at 202-325-0265.

Dated: January 13, 2010

TRACEY DENNING  
*Agency Clearance Officer*  
*U.S. Customs and Border Protection*

[Published in the Federal Register, January 20, 2010 (75 FR 3245)]