U.S. Customs and Border Protection

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING PRINTER AND FAX MACHINE

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of the HP LaserJet Enterprise 500 Color Printer and Fax Machine M551. Based upon the facts presented, CBP has concluded in the final determination that China is the country of origin of the HP LaserJet Enterprise 500 Color Printer and Fax Machine M551, for purposes of U.S. Government procurement.

DATES: The final determination was issued on April 3, 2013. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within May 10, 2013.

FOR FURTHER INFORMATION CONTACT: Karen Greene, Valuation and special Programs Branch, Regulations and Rulings, Office of International Trade (202–3235–0041).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on April 3, 2013, pursuant to subpart B of part 177, Customs and Border Protection (CBP) Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of the HP LaserJet Enterprise 500 Color Printer and Fax Machine M551 which may be offered to the United States government under an undesignated government procurement contract. This final determination, in HQ H219519, was issued at the request of Hewlett-Packard Company under procedures set forth at 19 CFR part 177, Subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination CBP concluded that the HP LaserJet Enterprise 500 Color Printer and Fax Machines M551 assembled in Mexico from foreign made parts are products of China for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register.**

Dated: April 3, 2013.

SANDRA L. BELL,
Executive Director,
Regulations and Rulings, Office of International Trade.

Attachment

HQ H219519

April 3, 2013

MAR–2 OT:RR:CTF:VS H219519 KSG

CARLOS HALASZ
PRODUCT COMPLIANCE STRATEGY & POLICY HEWLETT-PACKARD COMPANY
8501 SW 152 STREET
PALMETTO BAY, FL 33157

RE: Government Procurement; Country of Origin of HP LaserJet Enterprise 500 Color M551 Printer and Fax Machine; substantial transformation

DEAR MR. HALASZ:

This is in response to your letter dated May 21, 2012, requesting a final determination on behalf of Hewlett-Packard Company ("HP"), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection ("CBP") Regulations (19 CFR Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 ("TAA") as amended (19 U.S.C. 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

The final determination concerns the country of origin of the HP LaserJet Enterprise 500 Color Printer and Fax Machine M551 ("LaserJet 500"). We note that as a U.S. importer, HP is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination. A telephone conference was held on this matter on September 27, 2012.

FACTS:

The LaserJet 500 is a laser-based office machine for printing and faxing, suitable for use in homes and small to medium-size businesses. It is composed of the following components: (1) an incomplete print engine, which consists of a metal frame, plastic skins, motors, controller board (supplier provided firmware), a laser scanning system, fuser, paper trays, cabling, paper transport rollers, miscellaneous sensing and imaging systems; (2) the formatter board, which consists of a printed circuit board, industry standard components and customized integrated circuits; (3) the fax card; (4) the hard disc drive; (5) the solid state drive; (6) the firmware; (7) the intermediate transfer belt ("ITB"); and (8) minor components and accessories. The incomplete print engine may also come in two other configurations that include either the ITB or the base unit and all of the hardware components.

It is stated that the complete print engine is the central mechanism of the LaserJet 500 that performs printing. It translates a laser image generated by the formatter to markings on paper, transports paper, and fuses the image on the paper. The ITB is essential to the imaging function because it transfers the image from each toner cartridge to the ITB by color plane and then carries the image to the paper. The print formatter is the main controller of the printer. Its main function is to receive input data from remote devices via different input ports, translate that data into format the print engine understands, and send the data onto the print engine, enabling the information to be printed onto paper. It is also responsible for providing command and control signals allowing the engine to start, run and stop motors in a manner

that allows the paper to move from input devices to the designated output bin of the printer, while at the same time putting the printed image on the paper.

All the parts are produced in China except for the hard disc drive, which is produced in Malaysia. The firmware that allows access to the hardware (such as trays, and paper size) and software (ex. job counting, security, stored jobs) is developed and written in the U.S. and is tested and debugged in either Brazil or India. The formatter and other sub-systems have their own firmware for operation.

You presented three different scenarios. In scenarios one and two, the LaserJet 500 undergoes the following operations in Mexico: final assembly, downloading firmware written in U.S., and testing, which includes making settings appropriate to the country of the buyer and the client's specific needs. In scenario one, the assembly takes 3–4 minutes whereby the external memory drive is installed onto the formatter and the cables are routed as necessary. The firmware for the engine and formatter is downloaded onto the hard drive or solid state drive. In scenario two, the assembly takes 7–8 minutes and involves the assembly discussed in scenario one, plus the installation of the ITB. In both scenarios, the testing takes 7–14 minutes and includes making certain settings for the language, paper, functionality, and other feature settings, as described above. In scenario three, the LaserJet 500 undergoes assembly in Mexico that takes 2–3 minutes, the firmware for the sub-systems (engine, formatter) is downloaded onto the hard drive or solid state drive, and the product undergoes testing.

The cost of the incomplete print engine is the most expensive of the hardware components, with the formatter board being the second-most expensive component.

ISSUE:

What is the country of origin of the imported LaserJet 500 for government procurement purposes under the three different scenarios?

LAW AND ANALYSIS:

Pursuant to Subpart B of part 177, 19 CFR 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR 177.22(a).

It is your position that the country of origin in scenarios one and two is Mexico because the final assembly, programming and testing results in a finished and operational laser printer. You believe that the country of origin in scenario three is Mexico because although the incomplete print engine

already includes all hardware components when it is imported into Mexico, the production processing in Mexico consists of loading the firmware onto the print engine.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States,* 573 F. Supp. 1149 (CIT 1983), aff'd 741 F. 2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. In Customs Service Decision ("C.S.D.") 85–25, 19 Cust. Bull. 844 (1985), CBP held that for purposes of the Generalizes System of Preferences, the assembly of a large number of fabricated components onto a printed circuit board in a process involving a considerable amount of time and skill resulted in a substantial transformation. In that case, in excess of 50 discrete fabricated components were assembled.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factor such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

In *Data General v. United States,* 4 CIT 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedule of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign Programmable Read Only Memory Chip ("PROM") in the United States substantially transformed the PROM into a U.S. article. In programming the imported PROM's, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function that is, its "memory" which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs were designed by a U.S. project engineer with many years of experience in "designing and building hardware." While replicating the program pattern from a "master" PROM may be a quick one-step process, the development of the pattern and production of the "master" PROM required much time and expertise. The court noted that it was undisputed that programing altered the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-function circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory

device, possessing a desired distinctive circuit pattern, was no less a substantial transformation than the manual interconnection of transistors, resistors and diodes upon a circuit board created a similar pattern.

You cite HRL H185775, dated December 21, 2011, where CBP ruled that a laser-jet machine that operates as a printer, scanner, copy and fax machine, was considered a product of Mexico for procurement purposes. The scanner in that case was designed, developed and assembled in the U.S. The control panel was also designed in the U.S. The print engine was produced in Vietnam. The formatter, control panel, and solid state drive were produced in China. The hard disk drive was produced in Malaysia. This case is distinguishable from the instant case because the hardware was produced in various Asian countries.

You also cite HRL H175415, dated October 4, 2011, where CBP held that development of U.S. software, at significant cost to the company and over many years plus the programming of an imported local area network switch in the U.S. together substantially transformed the switch in the U.S. In that case, the software provided the hardware with its essential character of data transmission by providing network switching and routing functionality among other operations. Accordingly, the country of origin of the switch was considered the U.S.

Unlike H185775, in all three scenarios presented in this case, all the components except the hard disc drive are produced in China. The assembly performed in Mexico is a simple assembly not significant enough to result in a substantial transformation of those Chinese components and subassemblies. There is no showing that in any of the scenarios, the processing in Mexico is complex. The downloading of the firmware in Mexico does not change or define the use of the finished printer/fax machine. The firmware itself provides the essential characteristics of performing as a printer and fax machine. While the firmware may be developed in the U.S., the downloading is not occurring in the U.S. Further, the firmware downloaded in Mexico does not include all the firmware necessary for the finished good. Furthermore, some of the assemblies (formatter, for example) have their own firmware. All the significant parts that are the essence of the finished product are produced in China, particularly the high-cost print engine and formatter board. Accordingly, we find that the country of origin of the imported LaserJet 500 for government procurement purposes would be China under all three scenarios.

HOLDING:

Based on the facts provided, the LaserJet 500 will be considered a product of China under all three scenarios for government procurement purposes.

Sincerely,

SANDRA L. BELL,
Executive Director,
Regulations and Rulings Office
of International Trade.

[Published in the Federal Register, April 10, 2013 (78 FR 21387)]

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING CERTAIN ULTRASOUND SYSTEMS

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of certain ultrasound systems. Based upon the facts presented, CBP has concluded in the final determination that the U.S. is the country of origin of the ultrasound systems for purposes of U.S. government procurement.

DATES: The final determination was issued on April 3, 2013. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before May 10, 2013.

FOR FURTHER INFORMATION CONTACT: Elif Eroglu, Valuation and Special Programs Branch: (202) 325–0277.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on April 3, 2013, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of the Siemens Medical S2000 and Antares ultrasound systems which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, Headquarters Ruling Letter ("HQ") H219597, was issued at the request of Siemens Medical Solutions USA under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, the assembly of the S2000 and Antares ultrasound systems in the U.S., from parts made in Japan, Korea, Italy, China, and the U.S., constitutes a substantial transformation, such that the U.S. is the country of origin of the finished articles for purposes of U.S. government procurement.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: April 3, 2013.

SANDRA L. BELL
Executive Director,
Regulations and Rulings, Office
of International Trade.

Attachment

HQ H219597

April 3, 2013
OT:RR:CTF:VS H219597 EE
CATEGORY: Marking

ALAN W. H. GOURLEY
CROWELL & MORING LLP
1001 PENNSYLVANIA AVE., NW
WASHINGTON, DC 20004

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, CBP Regulations; Ultrasound Systems

DEAR MR. GOURLEY:

This is in response to your correspondence of January 30, 2012 and additional information you submitted on May 22, 2012, July 23, 2012, August 29, 2012, and September 4, 2012, requesting a final determination on behalf of Siemens Medical Solutions USA, Inc. ("Siemens Medical"), pursuant to subpart B of part 177, U.S. Customs and Border Protection ("CBP") Regulations (19 C.F.R. § 177.21 *et seq.*). A meeting between counsel and this office occurred on November 13, 2012 to allow counsel the opportunity to discuss the case and present further arguments. Counsel submitted an additional supplemental submission on November 16, 2012. Under the pertinent regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of the Siemens Medical S2000 and Antares ultrasound systems. We note that Siemens Medical is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

The merchandise at issue are two Siemens Medical ultrasound units, known as the S2000 and Antares ultrasound systems, engineered, designed, and subject to final assembly in the U.S. from U.S. and foreign components. The S2000 and Antares ultrasound systems are diagnostic imaging systems that transmit sound waves and then receive and process the echoes of those waves to create a visual representation of a patient's tissues and organs. You state these systems comprise three core elements: (1) the transducers that send and receive the acoustic signals from the patient; (2) the electronics module that processes signals and "beamform" the data to convert it into a form that can be used by Siemens' proprietary application software; and (3) the application software that manipulates and displays the patient image data to allow for diagnostic and prescriptive use by healthcare professionals.

One of the most critical elements required for the manufacture of a functional ultrasound system is the transducer which is the handset that is passed over the surface of the patient's body, where it produces high-frequency sound waves that penetrate the area of the body being scanned.

The transducer focuses the sound-wave beam of pulses into specific dimensions as well as scans the beam over the region of interest in the patient's anatomy. The transducer then receives the "echo" of these sound waves as they rebound from the patient's internal organs and tissue, and transmits this returned data (as electrical impulses) to the electronics module. The quality of the beam and return echo define the quality of the signal and resulting image which is of key significance to the diagnostician employing the ultrasound. The typical customer-ordered S2000 or Antares ultrasound systems will have three or more transducers that allow for application-specific usage. The transducers are manufactured in Korea.

The electrical signals from the transducer are processed by the electronics module and, once converted to usable digital data, manipulated by the application software and then displayed on the machine's monitor for the clinical user. The proprietary software is run on what are essentially commoditized computer hardware components.

The application software is stated to be the key element that enables the electronics module to "translate" the data received from the transducer into an image to be displayed on the monitor. The software performs a variety of functions including standard work flow items such as archiving and displaying patient data as well as image data manipulation/transformation, custom display, and analytics/calculations. Depending on the specific customer's intended end-use (*e.g.,* cardio or prenatal) and requirements, different aspects of the software may be activated/enabled through the use of licensing keys.

Manufacturing Process Electronics Module Assembly:

You state that the manufacturing of the electronics module in China involves: (1) the incorporation and testing of the Chinese-origin circuit boards (printed wiring assemblies) to specification; and (2) the incorporation of Chinese-origin real-time manager assembly, which includes a commercial computer motherboard, CPU, hard drive, and video card. These assembly operations also require the installation of Chinese-origin subcomponents and sub-assemblies including:

- A "backplane" which is a circuit board that connects the various system boards;
- A "cardcage" which is a mechanical structure to which the backplane is bolted;
- A "continuous beamformer" used for Doppler imaging to depict both visual images and audio interpretation of blood flow;
- A power supply system (including a U.S.-origin transformer, Japanese-origin power supplies for both the analog and digital portions of the system, and the alternating current tray and cable that will connect to the external power receptacle); and
- A trolley frame assembly, which is the structure that houses the CPU and that ultimately will house the other components added after importation into the U.S. (i.e., the monitor, the control panel, connecting cables, transducers, etc.).

Following assembly of the electronics module, the test version of the Siemens Medical's operating system software, which is designed, engineered,

and written in the U.S., is uploaded onto the real-time manager assembly hard drive to test the hardware to correct any manufacturing defects. The testing involves the use of a temporary licensing schema (via the use of a USB license key tool) to temporarily enable various application features. Once the testing is completed and the USB thumb drive is removed, the software is no longer enabled. You state that the condition of the system when it leaves Shanghai is a tested, but incomplete electronics module. You state that even with the application of power, the addition of a control panel, monitor, and transducers, the electronics module, in its form as exported from China, could not be used as a diagnostics ultrasound machine.

Ultrasound System Integration and Testing:

After importation, the partially completed electronics module initially arrives to the facility of a Siemens Medical contract manufacturer in San Jose, CA for completion of the electronics module. This includes the installation of the Italian-origin monitor, the U.S.-origin control panel, and the U.S.-origin outer covers that cover the electronics, the alternating current tray, and the transformer.

In addition, depending on the specific customer order at issue, the assembly may also include installation of the "Physio Module" (a component that provides the system with an interface to patient respiration and electrocardiogram (ECG) data, whereby that data can be overlaid on the ultrasound image such that a video clip of the imaging data will include ECG and respiration data in real time) and a digital video recorder assembly.

Once the assembly is completed, the following series of tests and system adjustments are performed:

- Electrical safety testing of the components.
- Calibration of the Italian-origin display monitor using a specific ultrasound imaging procedure.
- Diagnostic and imaging tests using Korean-origin "slave" transducers to ensure proper functioning of the control panel and monitor.
- 24 hours of reliability testing for any latent failures. This involves a series of power-on and power-off operations, customer use simulations, stress testing of the real-time manager assembly, automated software tests, and tests of numerous standby operations.

At the conclusion of the reliability testing, the system is checked for cosmetic acceptance, which involves a physical review of the product against certain customer criteria. The system is then packaged and shipped to Siemens Medical's Buffalo Grove, Illinois location for final assembly, configuration and testing.

Final Assembly, Configuration, and Testing:

Upon arrival at Siemen's Medical's Buffalo Grove facility, the system is "whitewashed", where the test version of the software is wiped from the system in its entirety. Next, the most current version of the operating system software, which is designed, developed, and written in the U.S., is uploaded to each unit using DVDs. The application software is enabled by loading the permanent licensing keys into the system using a web-based tool that interfaces with Siemen's enterprise resource planning system (SAP). You state

that every feature and system type has a unique license key. The web-based tool identifies the features and system type as shown in the customer's order in the SAP and creates the corresponding license key file on a DVD or USB drive. That file, in turn, is uploaded to the unit and enables only the purchased features in the systems software. Next, the equipment is adjusted and configured to meet customer requirements for line voltage (including addition of the appropriate power cord), language (control panel overlay and system software settings), and documentation devices (printer etc.). An electrical safety test is then performed on the system's final configuration. The final test process is the execution of the Customer Relevant Simulation Testing, which is a high-level imaging process that uses the customer ordered Korean-origin transducers and capitalized transducers to fully test the functionality of the complete ultrasound system (including customized applications, transducers, system, and peripherals). You state that this test requires a highly trained skilled diagnostician as it is intended to replicate the customer's intended user environment.

The S2000 ultrasound system is comprised of approximately 19 subassemblies and additional components. It takes approximately 23–24 hours to produce the finished S2000 ultrasound system of which 13–14 hours takes place in the U.S. The Antares ultrasound system is comprised of 17 subassemblies and additional components. It takes approximately 24–25 hours to produce the finished Antares ultrasound system of which 14–15 hours takes place in the U.S.

You submitted the costed bill of materials for the S2000 and Antares ultrasound systems. You also submitted a copy of the product brochures for the S2000 and Antares systems. Additionally, you provided pictures of various transducers, the electronics components, the partially completed electronics module, the list of printed wire assemblies and functions, and the manufacturing process flow chart.

ISSUE:

What is the country of origin of the S2000 and Antares ultrasound systems for the purpose of U.S. government procurement?

LAW AND ANALYSIS:

Pursuant to subpart B of part 177, 19 C.F.R. § 177.21 *et seq.,* which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. government procurement, CBP applies the provisions of subpart B of part 177 consistent with the Federal Acquisition Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 C.F.R. § 25.403(c)(1). The Federal Acquisition Regulations define "U.S.-made end product" as:

* * * an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 C.F.R. § 25.003.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

In *Texas Instruments v. United States,* 681 F.2d 778, 782 (CCPA 1982), the court observed that the substantial transformation issue is a "mixed question of technology and customs law."

In *Data General v. United States,* 4 Ct. Int'l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. In programming the imported PROMs, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function, that is, its "memory" which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs were designed by a U.S. project engineer with many years of experience in "designing and building hardware." While replicating the program pattern from a "master" PROM may be a quick one-step process, the development of the pattern and the production of the "master" PROM required much time and expertise. The court noted that it was undisputed that programming altered the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a

PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no less a "substantial transformation" than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

HQ H203555, dated April 23, 2012, concerned the country of origin of certain oscilloscopes. CBP considered five manufacturing scenarios. In the various scenarios, the motherboard and the power controller of either Malaysian or Singaporean origin were assembled in Singapore with subassemblies of Singaporean origin into oscilloscopes. CBP found that under the various scenarios, there were three countries under consideration where programming and/or assembly operations took place, the last of which was Singapore. CBP noted that no one country's operations dominated the manufacturing operations of the oscilloscopes. As a result, while the boards assembled in Malaysia were important to the function of the oscilloscopes and the U.S. firmware and software were used to program the oscilloscopes in Singapore, the final programming and assembly of the oscilloscopes was in Singapore and hence represented the last substantial transformation. Therefore, CBP found that the country of origin of the oscilloscopes was Singapore.

HQ H170315, dated July 28, 2011, concerned the country of origin of satellite telephones. CBP was asked to consider six scenarios involving the manufacture of PCBs in one country and the programming of the PCBs with second country software either in the first country or in a third country where the phones were assembled. In the third scenario, the application and transceiver boards for satellite phones were assembled in Malaysia and programmed with U.K.-origin software in Singapore, where the phones were also assembled. CBP found that no one country's operations dominated the manufacturing operations of the phones and that the last substantial transformation occurred in Singapore. *See also* HQ H014068, dated October 9, 2007 (CBP determined that a cellular phone designed in Sweden, assembled in either China or Malaysia and shipped to Sweden, where it was loaded with software that enabled it to test equipment on wireless networks, was a product of Sweden. Once the software was installed on the phones in Sweden, they became devices with a new name, character and use, that is, network testing equipment. As a result of the programming operations performed in Sweden, CBP found that the country of origin of the network testing equipment was Sweden).

In this case, substantial manufacturing operations are performed in China, the U.S., Korea, and Italy. The electronics module, which is partially assembled in China, is imported into the U.S., where it is assembled with other core components, including the Korean-origin transducers that send and receive the acoustic signals, the Italian-origin monitor that permits display of images, and the U.S.-origin control panel that serves as the user interface. The completely assembled ultrasound systems are then uploaded with U.S. designed, developed, and written operating system software and application software. You state that the software is necessary for the ultrasound systems to perform their intended function of providing diagnostic information (an observable image with related data). As previously noted, it takes approximately 23–24 hours to produce the finished S2000 ultrasound system of which 13–14 hours takes place in the U.S. It takes approximately 24–25 hours to produce the finished Antares ultrasound system of which 14–15 hours takes place in the U.S. You claim that the assembly, integration, and

testing in the U.S. is conducted by specialized technicians. You also state that all of the research & development, product engineering and design investment occur in the U.S. Based on the totality of the circumstances, we find that the last substantial transformation occurs in the U.S., the location where the final assembly and installation of the operating system software and application software occurs. Prior to the assembly and programming in the U.S., the products are unable to carry out the functions of ultrasound systems. However, the assembly and programming in the U.S. creates a new product that is capable of providing diagnostic information. Consequently, we find that the country of origin of the ultrasound systems is the U.S.

HOLDING:

The imported components that are used to manufacture the S2000 and Antares ultrasound systems are substantially transformed as a result of the assembly and software installation operations performed in the U.S. Therefore, we find that the country of origin of the S2000 and Antares ultrasound systems for government procurement purposes is the U.S.

Notice of this final determination will be given in the *Federal Register*, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days after publication of the *Federal Register* notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

SANDRA L. BELL,
Executive Director,
Regulations and Rulings, Office
of International Trade.

[Published in the Federal Register, April 10, 2013 (78 FR 21389)]

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 3 2013)

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

SUMMARY: The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in February 2013. The last notice was published in the CUSTOMS BULLETIN on April 3, 2013.

Corrections or updates may be sent to: Intellectual Property Rights Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, D.C. 20229–1177.

FOR FURTHER INFORMATION CONTACT: Delois Johnson, Paralegal, Intellectual Property Rights Branch, Regulations & Rulings, Office of International Trade, (202) 325–0088.

Dated: April 10, 2013

CHARLES R. STEUART
Chief, Intellectual Property Rights Branch
Regulations & Rulings Office of International Trade

CBP IPR RECORDATION — MARCH 2013

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 05–00944	3/28/2013	1/28/2023	Q	QUESTECH CORPORATION	No
TMK 13–00297	3/25/2013	1/24/2022	BABE	WEIXIANG PAN	No
TMK 13–00298	3/25/2013	11/20/2022	HAPPI BY DENA	DENA DESIGNS, INC.	No
TMK 06–00641	3/14/2013	3/2/2023	INDIANENSIS UNIVERSITATIS SIGILLUM MDCCCXX LUX ET VERITAS	INDIANA UNIVERSITY RESEARCH AND TECHNOLOGY CORPORATION	No
TMK 02–00742	3/14/2013	11/17/2022	CHANEL	CHANEL INC.	No
TMK 02–00743	3/14/2013	11/24/2022	CC DESIGN	CHANEL, INC.	No
TMK 03–00957	3/28/2013	3/20/2023	HOPSTEINER AND DESIGN	S.S. STEINER, INC.	No
TMK 13–00299	3/25/2013	1/17/2017	JUST ME FOR MEN BY PARIS HILTON AND DESIGN	PARIS HILTON	No
TMK 04–00053	3/14/2013	8/5/2023	DESIGN (TOOTHBRUSHES)	GLAXOSMITHKLINE LLC	No
TMK 04–00054	3/14/2013	7/29/2023	DESIGN	GLAXOSMITHKLINE LLC	No
TMK 03–00796	3/25/2013	6/1/2023	KCR ROYALS AND DESIGN	KANSAS CITY ROYALS BASEBALL CORP	No
TMK 13–00304	3/25/2013	11/20/2022	DAZZLE PARIS HILTON	PARIS HILTON	No
TMK 03–00917	3/25/2013	3/11/2023	POWER STRIPE	THE DIAL CORPORATION	No
TMK 04–00651	3/25/2013	2/25/2023	BURBERRY CHECK DESIGN	BURBERRY LIMITED	No
TMK 04–01113	3/14/2013	12/24/2022	BULL HEAD LOGO	HOUSTON NFL HOLDINGS L.P.	No
TMK 04–01112	3/14/2013	12/31/2022	HOUSTON TEXANS	HOUSTON NFL HOLDINGS L.P.	No
TMK 13–00320	3/28/2013	2/13/2023	BILL TAPIA	PATRICK ENOS	No

CBP IPR RECORDATION — MARCH 2013

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 05–00635	3/25/2013	4/13/2023	TIGER DESIGN	DETROIT TIGERS INC.	No
TMK 05–00816	3/25/2013	5/4/2023	CHICAGO (STYLIZED)	CHICAGO WHITE SOX, LTD.	No
TMK 05–00826	3/25/2013	5/20/2023	COLTS AND DESIGN	HOUSTON ASTROS LLC.	No
TMK 05–00831	3/25/2013	3/23/2023	DESIGN ONLY	CINCINNATI REDS, THE	No
TMK 05–00853	3/25/2013	5/11/2023	sox	CHICAGO WHITE SOX, LTD.	No
TMK 05–00548	3/28/2013	3/12/2023	CUDDLAIRE	MISS ELAINE, INC.	No
TMK 06–00373	3/14/2013	2/4/2023	RECTANGULAR OUTER PACKAGING DESIGN ONLY	BEAUTE PRESTIGE INTERNATIONAL S.A.	No
TMK 05–00446	3/25/2013	1/28/2023	SUBWAY SERIES	MAJOR LEAGUE BASEBALL PROPERTIES	No
TMK 06–00417	3/25/2013	11/18/2023	DYNAMIC WATERJET	FLOW INTERNATIONAL CORPORATION	No
TMK 06–01481	3/14/2013	6/24/2023	PEDIARIX	GLAXOSMITHKLINE BIOLOGICALS, S.A.	No
TMK 07–00068	3/14/2013	12/17/2022	GE AND DESIGN	GENERAL ELECTRIC COMPANY	No
TMK 08–00031	3/28/2013	3/11/2023	WMS GAMING AND DESIGN	WMS GAMING INC.	No
TMK 09–00055	3/14/2013	12/24/2022	BEACHBODY	PRODUCT PARTNERS, LLC	No
TMK 08–00766	3/14/2013	3/11/2023	DESIGN ONLY	MILLER MANUFACTURING COMPANY	No
TMK 08–00621	3/25/2013	5/3/2023	COMBAT	HENKEL CONSUMER GOODS INC.	No
TMK 08–00765	3/14/2013	3/11/2023	DESIGN ONLY	MILLER MANUFACTURING COMPANY	No
TMK 09–00217	3/14/2013	12/3/2022	SLIM IN 6	BEACHBODY, LLC	No

CBP IPR RECORDATION — MARCH 2013

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 10–00443	3/14/2013	2/2/2023	CHARLES RIVER ASSOCIATES	CRA INTERNATIONAL, INC.	No
TMK 11–00682	3/28/2013	3/30/2023	HALO	HALO ELECTRONICS, INC.	No
TMK 11–00847	3/14/2013	12/8/2022	JAMES BOND 007	DANJAQ, LLC	No
TMK 11–00836	3/14/2013	12/15/2022	007 AND STYLIZED HANDGUN	DANJAQ, LLC	No
TMK 03–00640	3/14/2013	12/24/2022	SILHOUETTED BATTER LOGO DESIGN	MAJOR LEAGUE BASEBALL PROPERTIES	No
TMK 12–00320	3/25/2013	12/31/2022	WUHAN	UNIVERSAL PERCUSSION	No
TMK 12–00508	3/14/2013	12/3/2022	POWERFORCE	BISSELL HOMECARE, INC.	No
TMK 13–00285	3/14/2013	2/9/2020	DESIGN (HUSKY DOG HEAD)	UNIVERSITY OF CONNECTICUT	No
COP 13–00049	3/29/2013	3/29/2033	BICYCLE FRAME DECALS	MOBILITY HOLDINGS, LTD.	Yes
TMK 13–00067	3/14/2013	11/27/2017	DESIGN	ELECTRONIC CONTROLS COMPANY	No
TMK 13–00288	3/14/2013	1/15/2023	IST	I.S.T. ITALIA SISTEMI TECNOLOGICI S.R.L.	No
TMK 13–00333	3/29/2013	7/26/2015	FLOWERBOMB	L'OREAL (FRANCE SOCIÉTÉ ANONYME)	No
TMK 13–00279	3/14/2013	2/7/2022	PAJAMAS FOR YOUR EARS	ACOUSTICSHEEP, LLC	No
TMK 13–00286	3/14/2013	2/8/2023	DUREX	LRC PRODUCTS LIMITED	No
TMK 13–00280	3/14/2013	6/8/2020	ENCOUNTER	COTY US LLC	No
TMK 13–00282	3/14/2013	12/18/2022	V VERTICAL CABLE AND DESIGN	CHIPTECH, INC.	No
TMK 13–00281	3/14/2013	1/2/2017	LITTLE ANNE	LAERDAL MEDICAL A/S	No
TMK 13–00289	3/14/2013	5/22/2022	SMARTDNA	APDN (B.V.I.) INC.	No

CBP IPR RECORDATION — MARCH 2013

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 13–00290	3/14/2013	8/28/2022	ICON A5 AND DESIGN	ICON AIRCRAFT, INC.	No
TMK 13–00287	3/14/2013	11/23/2020	PUR AND DESIGN	PUR WATER PURIFICATION PRODUCTS, INC.	No
TMK 13–00283	3/14/2013	10/30/2022	CELERGEN	CELERGEN LABORATORIES (SUISSE) INC.	No
COP 13–00035	3/14/2013	3/14/2033	TT & DESIGN.	RIVER LIGHT V, L.P.,	No
COP 13–00038	3/25/2013	3/25/2033	BUTTERFLY IN TOWN	BNB ENTERPRISES, INC.	No
COP 13–00043	3/25/2013	3/25/2033	FROG PARTY	BNB ENTERPRISES, INC.	No
COP 13–00041	3/25/2013	3/25/2033	POKEMON CONQUEST.	TECMO KOEI GAMES CO., LTD.,	No
TMK 13–00262	3/14/2013	11/20/2021	NICKEL & NICKEL	NICKEL & NICKEL VINEYARDS, LLC	No
TMK 13–00260	3/14/2013	1/31/2022	MATTHEW DACK	MARC R. LABROSSE	No
TMK 13–00263	3/14/2013	6/30/2022	ENCOUNTER	COTY US LLC	No
COP 13–00036	3/14/2013	3/14/2033	WINDOWS SERVER 2008 ENTERPRISE.	MICROSOFT CORPORATION,	No
TMK 13–00264	3/14/2013	7/3/2022	MATTHEW DACK LOGO	MARC R. LABROSSE	No
TMK 13–00300	3/25/2013	2/5/2023	DESIGN·RAIL	FEENEY, INC.	No
TMK 13–00319	3/25/2013	2/16/2016	PARIS HILTON	PARIS HILTON	No
TMK 13–00284	3/14/2013	12/18/2021	MICHAEL KORS	MICHAEL KORS, L.L.C.	No
TMK 13–00265	3/14/2013	3/24/2019	TESTED/CERTIFIED 2100 HVI HOME VENTILATING INSTITUTE AND DESIGN	HOME VENTILATING INSTITUTE, INC.	No

CBP IPR RECORDATION — MARCH 2013

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 13–00267	3/14/2013	11/8/2021	MICHAEL KORS	MICHAEL KORS, L.L.C.	No
TMK 13–00269	3/14/2013	8/19/2018	AMBA	AMBAWARE PRODUCTS INC	No
TMK 13–00241	3/11/2013	10/17/2016	MICHAEL KORS	MICHAEL KORS, L.L.C.	No
TMK 13–00270	3/14/2013	2/7/2022	RUNPHONES	ACOUSTICSHEEP, LLC	No
TMK 13–00277	3/14/2013	12/4/2022	UVF861	AMAX LIGHTING, INC	No
TMK 13–00268	3/14/2013	11/19/2022	CLIMACOOL	ADIDAS INTERNATIONAL B.V. LLC	No
TMK 13–00274	3/14/2013	9/11/2021	FAR NIENTE	FAR NIENTE WINERY, INC.	No
TMK 13–00272	3/14/2013	9/25/2022	TT WITH DESIGN	RIVER LIGHT V, L.P.	No
TMK 13–00273	3/14/2013	4/26/2021	SLEEPPHONES	ACOUSTICSHEEP, LLC	No
TMK 13–00266	3/14/2013	5/8/2022	KEGELMASTER	HAROLD DAVID WALLICK	No
TMK 13–00321	3/28/2013	3/1/2015	AQUA UV	ROMAR INNOVATIONS, INC.	No
TMK 13–00309	3/25/2013	10/3/2016	HEIRESS	PARIS HILTON	No
TMK 13–00278	3/14/2013	7/6/2019	BIC AND BOY DESIGN	BIC CORPORATION	No
TMK 13–00305	3/25/2013	2/29/2020	A.R.M.S.	RICHARD E. SWAN	No
COP 13–00048	3/28/2013	3/28/2033	BOX -SEROSTIM 4 MG (CODE E6420102C) AND PATIENT LEAFLET (CODE N64Z0103D)	ARES TRADING S.A.,	No
TMK 13–00275	3/14/2013	9/21/2019	DESIGN	BIC CORPORATION	No
TMK 13–00246	3/14/2013	10/4/2021	LEAVE NOTHING UNDONE	LEATHERMAN TOOL GROUP INC.	No
TMK 13–00301	3/25/2013	1/17/2022	TRIJIDOT	TRIJICON, INC.	No

CBP IPR RECORDATION — MARCH 2013

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 13–00276	3/14/2013	6/9/2018	PEN CONFIGURATION	BIC CORPORATION	No
TMK 13–00242	3/14/2013	10/4/2015		LEATHERMAN TOOL GROUP INC.	No
TMK 13–00243	3/14/2013	11/19/2022	DESIGN	ADIDAS INTERNATIONAL B.V. CORPORATION NETHERLANDS	No
TMK 13–00244	3/14/2013	8/31/2016	DESIGN	SHEAFFER PEN CORPORATION	No
TMK 13–00245	3/14/2013	2/15/2020	DESIGN	BIC CORPORATION	No
TMK 13–00247	3/14/2013	9/7/2014	SOLEIL	SOCIÉTÉ BIC	No
TMK 13–00248	3/14/2013	3/9/2023	PUR	PUR WATER PURIFICATION PRODUCTS, INC.	No
TMK 13–00252	3/14/2013	8/17/2015	SHEAFFER	SHEAFFER PEN CORPORATION	No
TMK 13–00249	3/14/2013	11/18/2013	LA GARD	KABA MAS, LLC	No
TMK 13–00250	3/14/2013	6/13/2020	CRISTAL	BIC CORPORATION	No
TMK 13–00251	3/14/2013	2/19/2023	BROWNSVILLE STATION	BROWNSVILLE STATION, INC.	No
TMK 13–00271	3/14/2013	8/12/2018	LEATHERMAN	LEATHERMAN TOOL GROUP, INC.	No
TMK 13–00258	3/14/2013	3/8/2021	APPLE	APPLE INC.	No
COP 13–00037	3/25/2013	3/25/2033	MARIO TENNIS OPEN.	CAMELOT CO., LTD.	No
TMK 13–00303	3/25/2013	1/15/2023	KIRBY	NINTENDO OF AMERICA INC.	No
COP 13–00042	3/25/2013	3/25/2033	HAPPI SCROLL TREE.	DENA DESIGNS, INC.	No

CBP IPR RECORDATION — MARCH 2013

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 13–00047	3/28/2013	3/28/2033	BOX-CETROTIDE 3 MG (CODE 1060370) AND PATIENT LEAFLET (CODE 1060386)	ARES TRADING S.A.	No
TMK 13–00318	3/25/2013	12/20/2015	MYA	MYA SARAY LLC	No
TMK 13–00255	3/14/2013	3/19/2015	LEATHERMAN	LEATHERMAN TOOL GROUP, INC.	No
TMK 13–00254	3/14/2013	2/19/2023	BROWNSVILLE STATION	BROWNSVILLE STATION INC.	No
TMK 13–00256	3/14/2013	2/26/2023	ROCK AND ROLL IS BETTER THAN MUSIC	BROWNSVILLE STATION, INC.	No
TMK 13–00253	3/14/2013	7/13/2019	WITE-OUT	BIC CORPORATION	No
TMK 13–00259	3/14/2013	10/7/2015	BIC & BOY DESIGN	BIC CORPORATION	No
TMK 04–00135	3/14/2013	8/26/2023	DESIGN (FLEXIBLE HEAD TOOTH-BRUSH)	GLAXOSKITHKLINE LLC	No
COP 13–00040	3/25/2013	3/25/2033	XENOBLADE CHRONICLES.	MONOLITH SOFTWARE, INC.	No
TMK 13–00315	3/25/2013	4/2/2022	DESIGN	LUX PRODUCTS CORPORATION	No
TMK 13–00291	3/25/2013	1/1/2023	SRS	TRIJICON, INC.	No
TMK 13–00292	3/25/2013	1/15/2022	TRIJICON	TRIJICON, INC.	No
TMK 13–00293	3/25/2013	4/22/2016	TRIJICON AND DESIGN	TRIJICON, INC.	No
TMK 13–00323	3/28/2013	10/11/2021	TRIJICON AND DESIGN	TRIJICON, INC.	No
TMK 13–00326	3/28/2013	7/13/2022	JVC	JVC KENWOOD CORPORATION	No
TMK 13–00294	3/25/2013	9/14/2019	ACCUPOINT	TRIJICON, INC.	No

CBP IPR RECORDATION — MARCH 2013

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 13–00330	3/28/2013	10/11/2021	TRIJICON AND DESIGN	TRIJICON, INC.	No
TMK 13–00313	3/25/2013	11/16/2022	EATON	EATON CORPORATION	No
TMK 13–00317	3/25/2013	6/10/2013	TRIPOWER	TRIJICON, INC.	No
TMK 13–00314	3/25/2013	6/14/2021	ACCUPIN	TRIJICON, INC.	No
TMK 13–00312	3/25/2013	3/23/2020	RMR	TRIJICON, INC.	No
TMK 13–00296	3/25/2013	12/20/2015	MYA	MYA SARAY, LLC	No
TMK 13–00310	3/25/2013	1/23/2017	JUST ME BY PARIS HILTON AND DESIGN	PARIS HILTON	No
TMK 13–00311	3/25/2013	8/8/2020	THE MOUNTAIN AND DESIGN	THE MOUNTAIN CORPORATION	No
TMK 13–00295	3/25/2013	2/13/2020	ACOG	TRIJICON, INC.	No
TMK 13–00257	3/14/2013	7/6/2020	CWC	COMBAT WATCH COMPANY LLC	No
TMK 13–00261	3/14/2013	12/7/2020	DEXILANT	TAKEDA PHARMACEUTICALS U.S.A., INC.	No
COP 13–00039	3/25/2013	3/25/2033	MARIO PARTY 9.	NINTENDO OF AMERICA INC.	No
TMK 13–00316	3/25/2013	11/1/2021	TRIJICON BRILLIANT AIMING SOLUTIONS DESIGN	TRIJICON, INC.	No
TMK 13–00307	3/25/2013	7/19/2021	PARIS HILTON PASSPORT	PARIS HILTON	No
TMK 04–00055	3/14/2013	5/6/2023	DESIGN	GLAXOSMITHKLINE LLC	No
COP 13–00046	3/28/2013	3/28/2033	HIBISCUS FLORAL DESIGN ON VINYL BEACH TOTE.	GETAGADGET, INC.	No

CBP IPR RECORDATION — MARCH 2013

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 13–00322	3/28/2013	6/15/2020	KNOW YOUR BEAUTY	SUKI, INC.	No
TMK 13–00329	3/28/2013	4/21/2019	SUKI	SUKI KRAMER/SUKI, INC.	No
TMK 13–00331	3/28/2013	12/22/2022	BATH & BODY WORKS	BATH & BODY WORKS BRAND MANAGEMENT, INC.	No
COP 13–00045	3/28/2013	3/28/2033	MIIVERSE	NINTENDO OF AMERICA INC.	No
TMK 03–00639	3/25/2013	1/28/2023	SILHOUETTED BATTER LOGO DESIGN	MAJOR LEAGUE BASEBALL PROPERTIES	No
TMK 13–00306	3/25/2013	8/2/2022	DESIGN	LUX PRODUCTS CORPORATION	No
TMK 13–00302	3/25/2013	12/22/2022	DESIGN	NIKE, INC.	No
TMK 13–00308	3/25/2013	12/7/2020	P. PARIS HILTON AND DESIGN	PARIS HILTON	No
TMK 13–00327	3/28/2013	6/15/2020	KARINA GRIMALDI	ZACCARO-GRIMALDI, INC.	No
TMK 13–00328	3/28/2013	8/22/2022	OBEY AND DESIGN	SHEPARD FAIREY	No
TMK 13–00332	3/29/2013	2/12/2023	POKÉDEX	NINTENDO OF AMERICA INC.	No
COP 13–00044	3/28/2013	3/28/2033	PALM TREE DESIGN.	GETAGADGET, INC.	No
TMK 03–00397	3/29/2013	12/29/2022	BABYGUND	ENESCO, LLC	No
TMK 13–00325	3/28/2013	3/12/2023	TACO	HSG, LLC D/B/A HIGH SPEED GEAR	No
TMK 13–00324	3/28/2013	8/21/2017	OBEY	SHEPARD FAIREY	No

Total Records: 149
Date as of: 4/2/2013

PROPOSED REVOCATION OF RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A "JOHNNY COLLAR" PULLOVER GARMENT

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

ACTION: Notice of revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of a polyester "Johnny Collar" pullover.

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 New York Ruling Letter (NY) N196161, dated April 13, 2012, with regard to the tariff classification of a polyester polyester "Johnny Collar" pullover 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 action.

DATES: Comments must be received on or before May 20, 2013.

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. 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20229 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. Tile 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 is proposing to revoke one ruling letter pertaining to the tariff classification of a polyester pullover garment. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter N196161, dated April 13, 2012 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, 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 N196161, CBP classified the "Johnny Collar" pullover shirt in subheading 6110.30.30, HTSUS, as a (knitted or crocheted) pullover of man-made fibers. CBP maintains the correctness of this classification. However, the holding in NY N196161 is contrary to a prior ruling, NY N187601, dated October 25, 2011, which classified the yarn from which the subject pullover is made in heading 5605,

HTSUS, as a metalized yarn. A knitted or crocheted pullover made wholly of metalized yarn would be classified in subheading 6110.90.90. Hence, the classification of the "Johnny Collar" pullover in subheading 6110.30.30, HTSUS, contrary to NY N187601, was not in compliance with 19 U.S.C. §1625(c)(1). NY N196161 is therefore revoked.

Pursuant to proposed Headquarters Ruling Letter (HQ) H202560, CBP is also proposing to revoke NY N187601 in order to reflect the correct classification of the polyester yarn in heading 5402, HTSUS. Entries of the "Johnny Collar" pullover garment made after the effective date of HQ H202560 will therefore be classified in subheading 6110.30.30, HTSUS, as a pullover of polyester yarn. So long as NY N187601 is in effect, however, the Johnny Collar pullover garment is classified in subheading 6110.90.90, HTSUS, consistent with NY N187601.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N196161, and to revoke or modify any other ruling not specifically identified, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H226262, set forth as Attachment B to this document. 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.

Before taking this action, consideration will be given to any written comments timely received.

Dated: April 8, 2013

IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N196161

April 13, 2012
CLA-2–61:OT:RR:NC:N3:356
CATEGORY: Classification
TARIFF NO.: 6110.30.3053

MS. MARGARET POLITO
222 RIVERSIDE DRIVE
SUITE 14E
NEW YORK, NY 10025

RE: The tariff classification of a men's knit pullover from China.

DEAR MS. POLITO:

In your letter dated December 5, 2010, you requested a tariff classification ruling on behalf of Best Key Trading Limited of Hong Kong. Your sample was destroyed during laboratory analysis and cannot be returned.

Style JC001 is a men's pullover garment that features a V-neckline with a rib knit spread collar (Johnny collar); short, hemmed sleeves; and a straight, hemmed bottom. The finely knit fabric measures 30 stitches per 2 centimeters counted in the horizontal direction.

Although you request classification of the garment under subheading 6105.90.8030, Harmonized Tariff Schedule of the United States (HTSUS), which provides for men's or boys' knit shirts, of other textile materials, subject to man-made fiber restraints, Customs and Border Protection laboratory analysis has determined that the fabric of Style JC001 is composed wholly of polyester yarns.

Consequently, the applicable subheading for Style JC001 will be 6110.30.3053, HTSUS, which provides for: sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: of man-made fibers: other: other: other: other: men's or boys': other. The rate of duty is 32% ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at 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 this ruling letter 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 this ruling, contact National Import Specialist Mary Ryan at 646–733–3271.

Sincerely,

THOMAS J. RUSSO
Director,
National Commodity Specialist Division

[ATTACHMENT B]

HQ H226262
CLA-2 OT:RR:CTF:TCM H226262 CkG
CATEGORY: Classification
TARIFF NO: 6110.90.90

MR. JOHN M. PETERSON
NEVILLE PETERSON, LLP
17 STATE STREET 19TH FLOOR
NEW YORK, NY 10004

RE: Reconsideration of New York Ruling Letter N196161; classification of "Johnny Collar" pullover garment

DEAR MR. PETERSON:

This is in response to your request of June 27, 2012, for the reconsideration of New York Ruling Letter (NY) N196161, issued to Ms. Margaret Polito on behalf of Best Key Textiles on April 13, 2012. This ruling was issued contrary to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), and is hereby revoked.

NY N196161 described the subject merchandise as follows:

> Style JC001 is a men's pullover garment that features a V-neckline with a rib knit spread collar (Johnny collar); short, hemmed sleeves; and a straight, hemmed bottom. The finely knit fabric measures 30 stitches per 2 centimeters counted in the horizontal direction.

The garment at issue is made from a polyester yarn which is manufactured by Best Key by mixing metal powder into a polyester slurry prior to extrusion of the yarn. This yarn was the subject of a prior ruling, NY N187601, dated October 25, 2011. In NY N187601, CBP classified the Best Key yarn in heading 5605, HTSUS, which provides for "Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal."

NY N187601 described the subject yarn as follows:

> two spools of…polyester filament yarn, one of which you state is combined with aluminum powder and the other, zinc powder. Both, you state, contain titanium. You state that the aluminum or zinc powder is added to the slurry that is extruded to create the filaments.

ISSUE:

Whether the instant "Johnny Collar" pullover shirt is classified in subheading 6110.30.30, HTSUS, as a pullover of polyester yarn, or in subheading 6110.90.90, HTSUS, as a pullover of "other" textile material.

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6. GRI 6, HTSUS, requires that the GRI's be applied at the subheading level on the understand-

ing that only subheadings at the same level are comparable. The GRI's apply in the same manner when comparing subheadings within a heading.

The HTSUS provisions under consideration are as follows:

6110:	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted:
6110.30:	Of man-made fibers:
	Other:
	Other:
6110.30.30:	Other…
6110.90	Of other textile materials:
6110.90.90:	Other….
* * * *	

In NY N196161, CBP classified the "Johnny Collar" pullover shirt in subheading 6110.30.30, HTSUS, as a (knitted or crocheted) pullover of man-made fibers. You state that this ruling is inconsistent with our conclusion in NY N187601, dated October 25, 2011, that a polyester monofilament yarn produced by Best Key was classified in heading 5605, HTSUS, as a metalized yarn. You argue that because CBP concluded in NY N187601 that the yarn at issue therein was a metalized yarn, then the Best Key "Johnny Collar" shirt, which is made from that yarn, must be considered to be made of metalized yarn and therefore classified in subheading 6110.90.90, HTSUS, as a knitted or crocheted pullover of "other" textile materials (i.e., not of polyester).

Pursuant to proposed Headquarters Ruling Letter (HQ) H202560 (proposing to revoke NY N187601), we find the "Johnny Collar" pullover is correctly classified in subheading 6110.30.30, HTSUS. In HQ H202560, we conclude that the yarn comprising the pullover is not classified in heading 5605, HTSUS, as a metalized yarn, but rather as a polyester yarn of heading 5402, HTSUS. The pullover garment is therefore correctly classified in subheading 6110.30.30, HTSUS, as a pullover of polyester yarn, and not, as you claim, in subheading 6110.90.90, HTSUS, as a pullover of "other" textile material (i.e., of metalized yarn).

However, because NY N187601 was in effect at the time NY N196161 was issued, the classification of the Best Key "Johnny Collar" pullover in subheading 6110.30.30, HTSUS, contrary to NY N187601, was not in compliance with 19 U.S.C. §1625(c)(1). NY N196161 is therefore revoked. So long as NY N187601 is in effect, the Best Key garment remains classified in subheading 6110.90.90, HTSUS, consistent with NY N187601. Entries of the Best Key "Johnny Collar" pullover garment made after the effective date of HQ H202560 will be classified in subheading 6110.30.30, HTSUS, as a pullover of polyester yarn.

HOLDING:

The instant "Johnny Collar" pullover garment is classified in heading 6110, HTSUS, specifically subheading 6110.30.30, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man made fibers: Other: Other: Other." The 2013 general, column one rate of duty is 32% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N196161, dated April 13, 2012, is hereby revoked.

Sincerely,

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

PROPOSED REVOCATION OF RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A POLYESTER MONOFILAMENT YARN

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

ACTION: Notice of revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of a polyester monofilament yarn.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke New York Ruling Letter (NY) N187601, dated October 25, 2011, with regard to the tariff classification of a polyester monofilament yarn with added metal 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 action.

DATES: Comments must be received on or before May 20, 2013.

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, 90 K St. N.E., 10th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at Customs and Border Protection, 90 K St. N.E., Washington, D.C. 20229 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.

Tile 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 is proposing to revoke one ruling letter pertaining to the tariff classification of a polyester monofilament yarn, manufactured by mixing metal powder into a polyester slurry prior to extrusion of the yarn. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter N187601, dated October 25, 2011 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, 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 N187601, CBP determined that a polyester yarn, produced by mixing metal powder into a polyester slurry prior to extrusion of the yarn, was classified in heading 5605, HTSUS, which provides for

""Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N187601, and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject yarn in heading 5402, HTSUS, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H202560, set forth as Attachment B to this document. 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.

Before taking this action, consideration will be given to any written comments timely received.

Dated: April 8, 2013

IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N187601

October 25, 2011
CLA-2–56:OT:RR:NC:N3:351
CATEGORY: Classification
TARIFF NO.: 5605.00.9000

MS. MARGARET POLITO
ATTORNEY-AT-LAW
222 RIVERSIDE DRIVE, SUITE 14E
NEW YORK, NY 10025

RE: The tariff classification of metalized yarns from China

DEAR MS. POLITO:

In your letter dated October 3, 2011, you requested a tariff classification ruling on behalf of your client, Best Key Textiles Limited of Shenzhen, China.

You submitted two spools of a product you describe as polyester filament yarn, one of which you state is combined with aluminum powder and the other, zinc powder. Both, you state, contain titanium.

You state that the aluminum or zinc powder is added to the slurry that is extruded to create the filaments. For tariff purposes, a yarn combined with metal in the form of powder is considered a metalized yarn.

The applicable subheading for the metalized yarn will be 5605.00.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for metalized yarn, whether or not gimped, being textile yarn, combined with metal in the form of thread, strip, or powder or covered with metal; Other. The general rate of duty will be 13.2% ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at 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 Mitchel Bayer at (646) 733–3102.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

[ATTACHMENT B]

HQ H202560
CLA-2 OT:RR:CTF:TCM H202560 CkG
CATEGORY: Classification
TARIFF NO: 5402.47.90

MR. JOHN M. PETERSON
NEVILLE PETERSON, LLP
17 STATE STREET 19TH FLOOR
NEW YORK, NY 10004

RE: Revocation of New York Ruling Letter N187601; yarn

DEAR MR. PETERSON:

This is in reference to New York Ruling Letter N187601, issued to Ms. Margaret Polito on behalf of Best Key Textiles, Limited (Best Key), on October 25, 2011. We have reconsidered this ruling and find that the classification of the polyester filament yarn at issue as metalized yarn of heading 5605, Harmonized Tariff Schedule of the United States (HTSUS), was in error.

FACTS:

NY N187601 described the subject merchandise as follows:

> two spools of…polyester filament yarn, one of which you state is combined with aluminum powder and the other, zinc powder. Both, you state, contain titanium. You state that the aluminum or zinc powder is added to the slurry that is extruded to create the filaments.

You state that Best Key produces two products. The first is an 80 denier [1] polyester yarn claimed to contain 1900 ppm of aluminum distributed evenly throughout the polyester matrix, with an unspecified amount of titanium dioxide also added as a delusterant. You state that the total presence of metal in the yarn (aluminum, titanium and zinc) accounts for about 0.7% of the total yarn weight. The second product is a 79.6 denier polyester yarn stated to contain 2800 ppm of zinc distributed evenly throughout the polyester matrix with an unspecified amount of titanium dioxide also added as a delusterant. The total presence of metal in the yarn (zinc, titanium and aluminum) is stated to account for about 0.74% of the total yarn weight. However, we note that the CBP Laboratory in New York tested several samples of entries of Best Key garments with different results. The highest level of metal present in the samples analyzed by the CBP Laboratory shows titanium in an amount of 1608 parts per million and aluminum in the amount of 741 ppm, for a total metal content of 0.002% (by volume).

The production process of Best Key's polyester yarns begins with the drawing of polyester yarn. The extruded polyester yarn is broken up into chips and melted to produce a polyester slurry. At this point, aluminum or zinc in powder form is added to the slurry, and titanium dioxide is added as a delusterant. The polymer mixture is then forced through a spinneret, which yields yarns of the desired thickness. Due to the small amount of metal in the yarn, the presence of the metal is not discernible to the naked eye.

[1] A denier is a unit of measure for the linear mass density of fibers.

ISSUE:

Whether the subject yarns are classified in heading 5605, HTSUS, as metalized yarn, or heading 5402, HTSUS, as synthetic filament yarn.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

5402:	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex:
5402.47:	Other, of polyesters:
5402.47.90:	Other. . .
* * *	* *
5605:	Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal:
5605.00.90:	Other…
* * *	* *

In NY N187601, CBP classified a polyester filament yarn, manufactured by Best Key via the introduction of aluminum or zinc powder into a polyester slurry, in heading 5605, HTSUS, as metalized yarn.

You argue that nothwithstanding the extremely minute amount of metal present in the yarn that the yarn satisfies the terms of the heading text to heading 5605, HTSUS, and that there is no minimimum amount of metal needed to constitute a metalized yarn of heading 5605. In addition, you argue that despite the fact that the process of manufacture for the instant yarn is not described in the explanatory notes that the heading text is broad enough to encompass the instant product. In fact you argue that the process of manufacture is irrelevant to the classification of the product.

We agree that it is the nature of the product rather than the process of manufacture which is the key consideration in determining whether the product is classifiable in heading 5605.

CBP has held in the prior rulings that tariff terms are written for the future as well as the present, which means that tariff terms are expected to encompass merchandise not known to commerce at the time of their enactment, as long as the new article possesses an essential resemblance to the one named in the statute. Thus, while heading 5605 may allow for new methods of production of metalized yarn, the article still must have the essential elements of metalized yarn. It remains to apply this test to the instant merchandise. In order to determine what the essential qualities of the metalized yarn of the heading are, CBP may examine dictionaries and other lexicographic materials to determine the term's common meaning. *See*, *e.g.*,

Lonza, Inc. v. United States, 46 F.3d 1098 (Fed. Cir. 1995). The term in question is then construed in accordance with its common and commercial meanings, which are presumed to be the same. *See*, *e.g.*, Nippon Kogasku (USA), Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982); Toyota Motor Sales, Inc. v. United States, 7 C.I.T. 178 (Ct. Int'l Trade 1984); Carl Zeiss, Inc. v. United States, 195 F.3d 1375 (Fed. Cir. 1999); Lonza, 46 F.3d 1098.

Our research and consultation of industry sources indicate that the commercial meaning of "metalized yarn" does not encompass the Best Key yarns at issue. The instant product does not possess an essential resemblance to metalized yarns as understood by the common and commercial meaning of the term. For example, FTC regulations define "metallic" fiber **as** "A manufactured fiber composed of metal, plastic-coated metal, metal-coated plastic, or a core completely covered by metal." ***See*** **Section 303.7 of the** Rules and Regulations Under the Textile Fiber Products Identification Act (**Generic names and definitions for manufactured fibers),** 16 CFR § 303.7. CBP also consulted numerous technical sources on metallic yarns and fibers, none of which referenced such a product in their discussion of metalized yarn. Indeed, no reference material on textiles was found in our research which described similar products as metalized yarns. Rather, technical sources on metalized yarn noted that metallic yarns consist of pre-existing yarn or plastic film bonded to metal, as do producers of metalized yarns such as Huntingdon Yard Mill (*http://www.hymill.com/usa/?page_id=2*), SwicoFil (*http://www.swicofil.com/metallicyarn.html*), Bally Ribbon Mill (*http://www.ballyribbon.com/fibers/performance/metalized-yarns*) and Metlon (*http://www.metlon.com/metallic.htm*). For example, "Metallic Fibers" by Anita A. Desai, an Assistant Professor at the Sarvajanik College of Engineering & Technology, Textile Technology Department, defines a metallic yarn as "a continuous flat monofilament produced by a combination of plastic film and metallic component so that the metallic component is protected." *See http://www.fibre2fashion.com/industry-article/3/213/metallic-fibres1.asp* (2007). The International Bureau for the Standardization of Man-Made Fibres further notes that "metalized" yarns are yarns coated with metal. *Terminology of Man-Made Fibres*, Int'l Bur. for the Standardization of Man-Made Fibres (2009), available at *http://www.bisfa.org/Portals/BISFA/Terminology/BISFA%20Terminology2009%20% 28final%20version% 29.pdf*. *See also* G. Mohan Kumar, V. S. Sidharth *Metallic Yarns and Fibres in Textile*, Department Of Textile Technology, Bannari Amman Institute of Technology (2011); Irfan Ahmed Shaikh, *Pocket Textile Expert 1st Edition*; Virginia Hencken Elsasser, *Textiles: Concepts and Principles, 2nd ed*, Centenary College (2010); Allen C. Cohen *Beyond Basic Textiles* (1997).

Similarly, textile industry experts consulted by CBP from trade groups such as the American Fiber Manufacturers Association and the National Council of Textile Organizations were in agreement that the textile industry considers a metalized yarn to be either a textile yarn covered or coated with metal, or a plastic film deposited with metal and slit into yarn. This is consistent with what CBP has classified in heading 5605 in the past.

It is also noteworthy that the fiber combined with metal in the process used by Best Key looks and feels like a standard polyester fiber, as does the resulting fabric. The presence of metal is not discernible except by laboratory testing. However, a typical metalized yarn or fabric has a distinctive metallic

appearance (hence its popularity for decorative applications). *See e.g.*, "Metallic Fibers", *supra*. In addition, adding metal before extrusion, for antimicrobial, antistatic or other purposes, is not itself a new procedure. Heretofore, such products have not been considered metalized yarns. *See, e.g., http://www.noblebiomaterials.com/category.asp?itemid=380*; *http://www.trevira.com/en/textiles-made-from-trevira/antimicrobial-textiles/how-trevira-bioactive-works.html*; *http://www.cloverbrook.com/MerylSkinlifePage.htm*.

Finally, none of the exemplars mentioned in the EN to heading 5605, HTSUS, describe a product in which the presence of metal is not visually apparent. On the contrary, most describe a substantial presence of metal, either in the form of coatings, or other process. This is further support for the conclusion that the Best Key products do not have the character of products of heading 5605, HTSUS.

In summary, the Best Key yarns do not conform to the commercial meaning of metalized or metallic yarn, because the products that are considered metalized yarns or fibers have a metallic character of appearance, which is usually the result of the presence of a significantly higher metal content than the instant products.

Finally, we note that while CBP does not impose a strict requirement with respect to the amount of metal that must be present in order for a yarn to be considered metalized, tests conducted by the CBP Laboratory indicate that the samples of Best Key's yarns submitted for analysis contain only trace amounts of metal. The highest level of metal present in the samples analyzed shows titanium in the amount of 1608 parts per million and aluminum in the amount of 741 ppm. These results indicate that the subject yarns contain at most .002% metal by volume. Even assuming that 1900 ppm aluminum and 2800 ppm of zinc are present in the instant yarns, as stated by the importer, the amount of aluminum or zinc by volume would still only amount to roughly .002%, or 0.7% by weight. In contrast, a yarn that is 1% metal by volume has 100,000 ppm. Given that natural fibers in particular may naturally contain trace amounts of metal absorbed from the soil, to classify any fiber with as little metal as is present in the instant yarn in heading 5605, HTSUS, would run the risk of including in heading 5605 products with metal naturally present. As noted above, by contrast, the products recognized as metalized yarns in the textile industry have much higher concentrations of metal, with the result that the metal is immediately apparent.

HOLDING:

The Best Key yarn is classified in heading 5402, HTSUS, specifically subheading 5402.47.90, HTSUS, which provides for "Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex: Other, of polyesters: Other." The 2012 column one, general rate of duty is 8% *ad valorem*.

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

EFFECT ON OTHER RULINGS:
NY N187601, dated October 25, 2011, is hereby revoked.

Sincerely,

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

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF JEWELRY BOXES COVERED IN PLASTIC-COATED PAPER

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

ACTION: Notice of modification of one ruling letter and revocation of treatment relating to tariff classification of certain jewelry boxes covered with plastic-coated paper.

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 certain jewelry boxes covered with plastic-coated paper under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 45, on November 2, 2011. One comment was received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 24, 2013.

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

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Tile VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws.

In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

> Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 45, No. 45, on November 2, 2011, proposing to modify Headquarters Ruling Letter (HQ) 953610, dated April 30, 1993, in which CBP determined that the subject merchandise was classified under heading 4202, HTSUS, and specifically under subheading 4202.99.10, HTSUS (1993), which provides for, in pertinent part: "…jewelry boxes… of 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: Other: Other: Of material other than leather, composition leather, sheeting of plastics, textile materials, vulcanized fiber or paperboard wholly or mainly covered with paper: Of plastics…."
>
> 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 (19 U.S.C. §1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying HQ 953610 to reflect the proper tariff classification of this merchandise under sub-

heading 4202.92.90, HTSUS, which provides for, in pertinent part: "[t]runks, suitcases…and similar articles; traveling bags…jewelry boxes…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 sheeting of plastic or of textile materials: Other: Other, Other", pursuant to the analysis set forth in HQ H129655, which is attached to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions.

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

Dated: April 9, 2013

IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H129655

April 8, 2013
CLA-2 OT:RR:CTF:TCM H129655 GC
CATEGORY: Classification and Marking
TARIFF NO.: 4202.92.90

MS. DIANE HUDYKA
HARPER ROBINSON & COMPANY
POST OFFICE BOX 81380
CLEVELAND, OHIO 44181

RE: Modification of HQ 953610; Tariff classification of jewelry presentation box covered plastic-coated paper

DEAR MS. HUDYKA:

On April 30, 1993, U.S. Customs and Border Protection (then the U.S. Customs Service) issued Headquarters Ruling Letter (HQ) 953610 to your client, Boxit Corporation. HQ 953610 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of four styles of hinged jewelry presentation boxes. We have since reviewed HQ 953610 and find it to be in error with respect to the fourth style of presentation box, which is described in detail herein.

Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 45, on November 2, 2011. One comment was received in response to the notice.

FACTS:

According to HQ 953610, the sample jewelry box was covered by "a leatherette plastic coated paper with a caliper of approximately .006 inches wrapped over a plastic box" and contained a textile covered insert fitted to hold various items of jewelry. We have since learned that the instant jewelry box was coated with Skivertex®.

In HQ 953610, the subject merchandise is classified in subheading 4202.99.10 (HTSUS) (1993), which provides for, in pertinent part: "…jewelry boxes… of 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: Other: Other: Of material other than leather, composition leather, sheeting of plastics, textile materials, vulcanized fiber or paperboard wholly or mainly covered with paper: Of plastics…"

ISSUE:

Is the subject jewelry box covered in Skivertex® classified under subheading 4202.92, HTSUS, as having an outer surface of sheeting of plastic, or under subheading 4202.99, HTSUS, as having an outer surface of other materials?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and

legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. The HTSUS provisions under consideration in this case are as follows:

4202	Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, camera cases, gun cases, holsters and similar containers; traveling 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, 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…
* * * *	
4202.99	Other:
	Of material other than leather, composition leather, sheeting of plastics, textile materials, vulcanized fiber or paperboard wholly or mainly covered with paper:
4202.99.10	Of plastics…

Because the instant classification dispute occurs beyond the four-digit heading level, GRI 6 is implicated. GRI 6 states:

> For legal purposes, 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 the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

At the six-digit level, the majority of goods under heading 4202, HTSUS, are classified by the material that comprises the "outer surface" of the good. In this instance, the material that comprises the outer layer is a composite material, i.e., the outer layer is composed of a base material of paper that is coated with plastic. CBP addressed this issue in Headquarters Ruling Letter (HQ) 963618, dated August 2, 2002 (citing HQ 087760, dated October 31, 1991), wherein CBP explained:

> At the four-digit level, heading 4202, HTSUSA, requires that a good be "of or "wholly or mainly covered with" a specified material. However, at the six-digit level, the nomenclature classifies goods by the material which comprises the "outer surface." In classifying goods such as these, we must distinguish between the requirements of the four and six-digit headings, since they dictate different criteria for classifying goods. This distinction was also discussed in (HQ) 954021[dated November 1, 1993], wherein Customs, noting HQ 087760 [dated October 31, 1991], stated: "Evident in the above are two important distinctions: (1) a covering vs. an outer

surface, and (2) classification at the four-digit (or heading) level vs. classification at the six-digit (or subheading) level."

The "outer surface" is that which is both visible and tactile. *See* HQ 086775, dated July 9, 1990; *see also* HQ 954021, dated November 1, 1993. In a number of rulings, CBP has addressed the issue of whether jewelry box frames, which were made of plastic or metal and were covered with paper backings to which textile materials had been applied, had an outer surface of textiles or paper. Additional U.S. Note 2 to Chapter 42, HTSUS, is instructive in this regard, providing that:

> For the purposes of classifying articles under subheadings 4202.12, 4202.22, 4202.32, and 4202.92, articles of textile fabric impregnated, coated, covered or laminated with plastics (whether compact or cellular) shall be regarded as having an outer surface of the textile material or of plastic sheeting, depending upon whether and the extent to which the textile constituent or the plastic constituent makes up the exterior surface of the article.

Additional U.S. Note 2 to Chapter 42, HTSUS, and its expression of the concept of "outer surface" by use of the term "exterior surface," serves as guidance when classifying other articles in heading 4202, HTSUS, that are composed of composite materials. As indicated in HQ 953610, the subject jewelry box is coated entirely with the Skivertex® material, the outer surface of which consists of a thin layer of plastics material.

The issue of whether the boxes are covered with "sheeting of plastics" is addressed in *Sarne Handbags Corp. v. United States*, 100 F.Supp. 2d 1126; 2000 CIT 51 (2000), wherein the court, applying Additional U.S. Note 2 to Chapter 42, HTSUS, found that a handbag made of plastic coated textile was classified as having an outer surface of sheeting of plastic. In *Sarne*, the Court of International Trade articulated the definition of "sheeting" as "material in the form of or suitable for forming into a broad surface of something that is unusually thin, or is a material in the form of a continuous thin covering or coating." *Id.* at 1134. The commenter questions the applicability of the *Sarne* decision with respect to the instant matter in light of the fact that *Sarne* specifically addresses Additional U.S. Note 2 to Chapter 42, HTSUS, which pertains to textile and plastic combinations and not plastic combined with other materials, such as paper or even leather. Furthermore, the commenter notes that the plastic sheeting in Skivertex® is very thin, at less than 0.015 mm, which the commenter asserts is the *de minimis* standard for items featuring a "sheeting of plastics" as described in subheading 4202.92, HTSUS.

Notwithstanding the nature of the Skivertex® composite paper-plastic material, the plastic component is both visible and tactile, thus making the jewelry boxes it covers quite distinguishable from boxes covered in plain paper or paper that has been painted. Thus, we have found that *Sarne's* discussion of the term "sheeting of plastics" to be particularly instructive with respect to materials such as Skivertex®, and such an approach is indeed entirely consistent with CBP's classification in subheading 4202.92, HTSUS, of jewelry boxes covered in plastic-coated paper, including those covered by

Skivertex®. *See* HQ 966090, dated December 22, 2003; *see also* HQ 965563, dated September 24, 2002 and HQ 963618, dated August 2, 2002.

Thus, applying the principals set forth in Additional U.S. Note 2 of Chapter 42, HTSUS, *Sarne*, and the rulings following *Sarne*, we conclude that that the outer surface of the subject jewelry box is "plastic sheeting" as contemplated in subheading 4202.92, HTSUS, which provides for other articles "with outer surface of sheeting of plastic or of textile materials."

HOLDING:

By application of GRI 1 the "final sample" identified in HQ 953610 is properly classified as a jewelry box under heading 4202, HTSUS. By application of GRI 1 and GRI 6, the subject merchandise is specifically provided for in subheading 4202.92.90, HTSUS, which provides for, in pertinent part: "[t]runks, suitcases…and similar articles; traveling bags…jewelry boxes…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 sheeting of plastic or of textile materials: Other: Other, Other." The general column one rate of duty, for merchandise classified in this subheading is 17.6 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

HQ 953610, dated April 30, 1993, 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,

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

PROPOSED MODIFICATION OF RULING LETTER AND PROPOSED MODIFICATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN MARKING UNDER NAFTA OF APOMORPHINE HYDROCHLORIDE AMPOULES

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

ACTION: Notice of proposed modification of a ruling letter and proposed modification of treatment relating to the country of origin marking of apomorphine hydrochloride ampoules under NAFTA.

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 a ruling letter relating to the country of origin marking of apomorphine hydrochloride ampoules under the NAFTA Marking Rules. CBP also proposes to modify any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before May 20, 2013.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Valuation and Special Programs Branch, 90 K Street, N.E., Washington, D.C. 20229 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: Karen Greene, Valuation and Special Programs Branch: (202) 325–0041.

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 proposes to modify a ruling letter related to the country of origin marking under the NAFTA Marking Rules of imported apomorphine hydrochloride ampoules.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP proposes to modify 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 action.

In NY 188116, set forth respectively as Attachment A to this document, CBP found that the ampoules were NAFTA originating, and the country of origin for marking purposes under the NAFTA Marking Rules is France. We have reviewed the ruling and determined that the analysis is not correct. It is now our position that pursuant to 19 CFR 102.19(a), the country of origin for marking purposes of the imported apomorphine hydrochloride ampoules under the NAFTA Marking Rules is Canada.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY 188116 and any other ruling not specifically identified, in order to reflect the proper interpretation of the NAFTA Marking Rules according to the analysis in Headquarters Ruling Letter H200037 set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to modify any treatment previously accorded by CBP to substantially identical transactions.

Dated: April 9, 2013

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT A]

NY I88116
November 15, 2002
CLA-2–30:RR:NC:2:238 I8116
CATEGORY: Classification
TARIFF NO.: 3004.90.9140

MR. BRIAN KAVANAUGH
DERINGER LOGISTICS CONSULTING GROUP
1 LINCOLN BLVD., SUITE 225
ROUSES POINT, NY 12979

RE: The tariff classification and country of origin marking of ampoules containing Apomorphine Hydrochloride as the active ingredient; ARTICLE 509

DEAR MR. KAVANAUGH:

This is in response to your letter dated October 29, 2002, on behalf of your client, Draxis Pharma, requesting a ruling on the tariff classification and country of origin of ampoules containing the emetic Apomorphine Hydrochloride as the active ingredient. For the record, we note, as indicated in your letter, that this office, in NY H89094, dated March 25, 2002, ruled that Apomorphine Hydrochloride, imported in bulk form, was properly classifiable within subheading 2933.99.7000, HTS.

The applicable subheading for ampoules containing Apomorphine Hydrochloride as the active ingredient will be 3004.90.9140, Harmonized Tariff Schedule of the United States (HTS), which provides for "Medicaments … consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: Other: Other: Other: Medicaments primarily affecting the central nervous system: Other." The general rate of duty will be free.

This merchandise may be subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number 301–443–1544.

You state that Apomorphine Hydrochloride will be produced in France and exported to Canada. In Canada, the Apomorphine Hydrochloride will be mixed with Sodium Hydroxide (produced in Sweden) and Hydrochloric Acid (produced in the United States), for pH adjustment, and then put up in ampoules. The ampoules will then be packaged and labeled, using packaging materials and labels of Canadian origin, for shipment to the United States. Based on the foregoing circumstances, it is our determination that, pursuant to General Note 12(b)(ii)(A), HTS, the imported product qualifies as "goods originating in the territory of a NAFTA party."

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134 of the Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The country of origin marking requirements for a "good of a NAFTA country" are also determined in accordance with Annex 311 of the North American Free Trade Agreement ("NAFTA"), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102 of the Customs Regulations. The marking requirements of these goods are set forth in Part 134 of the Customs Regulations.

Section 134.45(a)(2) of the Customs Regulations, provides that "a good of a NAFTA country" may be marked with the name of the country of origin in English, French or Spanish. Section 134.1(g) of the regulations, defines a "good of a NAFTA country" as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.

Applying the NAFTA Marking Rules set forth in Part 102 of the Customs Regulations to the facts of this case, we find that, having failed to satisfy any of the criteria set forth in §102.11(a), §102.11(b)(1) is the rule which must be applied to the imported ampoules. Under this rule, the country of origin of the imported ampoules is the country or countries of origin of the single material that imparts the essential character to them. In this case, the essential character is imparted by the active ingredient, (the French-produced) Apomorphine Hydrochloride. It is, therefore, our determination that the country of origin of the imported goods is France.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. Part 181).

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 Harvey Kuperstein at 646–733–3033.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT B]

HQ H200037
OT:RR:CTF:VS H200037 KSG

BRIAN KAVANAUGH
DERINGER LOGISTICS CONSULTING GROUP
1 LINCOLN BOULEVARD, SUITE 225
ROUSES POINT NY 12979

RE: Apomorphine hydrochloride ampoules: NAFTA Marking;102.19(a)

DEAR MR. KAVANAUGH:

In New York Ruling Letter ("NY") NY 188116, dated November 15, 2002, CBP ruled that imported apomorphine hydrochloride in ampoules qualified as goods originating in the territory of a NAFTA party and that the country of origin for marking purposes was France. Upon review of NY 188166, we have determined that the portion of the ruling relating to the country of origin marking is incorrect and that the country of origin for marking purposes under the NAFTA Marking Rules is Canada.

FACTS:

Apomorphine hydrochloride is produced in France and exported to Canada. Sodium hydroxide is produced in Sweden and exported to Canada. Hydrochloric acid is produced in the U.S. and exported to Canada. In Canada, the three ingredients are mixed and put up in ampoules, packaged, labeled, and shipped to the United States. Apomorphine hydrochloride, which you state is classified in subheading 2933.99 of the Harmonized Tariff Schedule of the United States ("HTSUS"), is the active ingredient in the finished product.

In NY 188166, CBP determined that the imported ampoules were classified in subheading 3004.90, HTSUS. Further, in NY 188116, CBP held that the apomorphine hydrochloride ampoules were NAFTA originating under General Note ("GN")12, HTSUS, and that the country of origin for marking purposes is France.

ISSUE:

What is the country of origin of the imported apomorphine hydrochloride ampoules under the NAFTA Marking Rules?

LAW AND ANALYSIS:

General Note ("GN") 12, HTSUS, incorporates Article 401 of NAFTA into the HTSUS. General Note 12(a)(i) provides, in pertinent part:

> (i) 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 Canada 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), 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 "CA" in parentheses, are eligible for such duty rate, in accordance with section 201 of the NAFTA Implementation Act.

Accordingly, the imported product will be eligible for the "Special" "CA" rate of duty provided it is a NAFTA "originating" good under GN 12(b), HTSUS, and qualifies to be marked as a product of Canada under the NAFTA Marking Rules. GN 12(b), HTSUS, provides, in pertinent part:

> 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—
>
> (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and /or the United States; or
>
> (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—
>
> (A) except as provided in subdivision (f) of this note, each of the non-originating materials **used in the production of such goods** undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or
>
> (B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or
>
> (iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials. (emphasis added)

The apomorphine hydrochloride ampoules were not produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials. Therefore, we must consider whether they satisfy the tariff-shift rule set forth in GN 12(t), HTSUS.

The GN 12 rule for subheading 3004.90, HTSUS, is as follows:

> A change to subheading 3004.90 from any other subheading, except from, subheading 3006.92

In this case, the tariff shift rule is satisfied and the ampoules are considered originating goods under GN 12.

We must next consider whether the goods qualify to be marked as goods of Canada under the NAFTA Marking Rules.

Under 19 CFR 102.11(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.

This product is neither wholly obtained or produced in a single NAFTA country or produced exclusively from domestic materials. The tariff shift rule for goods of subheading 3004.90 set forth in 19 CFR 102.20 is as follows:

> A change to subheading 3004.90 from any other subheading, except from subheading 3003.90 or 3006.92, and provided that the domestic content of the therapeutic or prophylactic content is no less than 40 percent by weight of the total therapeutic or prophylactic content.

In this case, the 40 percent domestic content requirement is not met. Therefore, the tariff shift rule set forth in 19 CFR 102.20 is not met. Applying 102.11(b)(1), the apomorphine hydrochloride from France is the active ingredient and it imparts the essential character to the finished product.

However, 19 CFR 102.19(a) provides as follows:

…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 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.

The language of 19 CFR 102.19(a) must be examined because the good has been determined to satisfy the General Note 12 tariff shift rule. The manufacturing that occurs in Canada in this case is more than minor processing as defined in 19 CFR 102.1(m). Since the apomorphine hydrochloride ampoules underwent production other than minor processing in Canada, pursuant to 19 CFR 102.19(a), the country of origin for marking purposes under the NAFTA Marking Rules is Canada.

HOLDING:

The country of origin for marking purposes of the imported apomorphine hydrochloride ampoules, processed as described above, is Canada.

EFFECT ON OTHER RULNGS:

NY 188116 is hereby MODIFIED.

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

Sincerely,

MYLES B. HARMON,
Director,
Commercial & Trade Facilitation Division

AGENCY INFORMATION COLLECTION ACTIVITIES:

Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers

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: 1651–0053.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (78 FR 6128) on January 29, 2013, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before May 9, 2013.

ADDRESSES: Interested persons are invited to submit written comments on this 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 U.S. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites 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: Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers.

OMB Number: 1651–0053.

Form Number: None.

Abstract: Commercial laboratories seeking accreditation or approval must provide the information specified in 19 CFR 151.12 to Customs and Border Protection (CBP), and Commercial Gaugers seeking CBP approval must provide the information specified under 19 CFR 151.13. After the initial accreditation, a private company may "extend" its accreditation to add facilities by submitting a formal written request to CBP. This application process is authorized by Section 613 of Public Law 103–182 (NAFTA Implementation Act), codified at 19 U.S.C. 1499, which directs CBP to establish a procedure to accredit privately owned testing laboratories. The information collected is used by CBP in deciding whether to approve individuals or businesses desiring to measure bulk products or to analyze importations. Instructions for completing these applications are accessible at: *http://www.cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/app_info/app_instructions.ctt/app_instructions.pdf.*

ACTION: CBP proposes to extend the expiration date of this information collection with a change to the burden hours as a result of revised estimates by CBP. There are no changes to the information collected.

Type of Review: Extension (with change).

Affected Public: Businesses.

Reporting:

Estimated Number of Respondents: 100.
Estimated Number of Responses per Respondent: 1.
Estimated Number of Total Responses: 100.
Estimated Time per Response: 75 minutes.
Estimated Total Burden Hours: 125.

Record Keeping:

Estimated Number of Record Keepers: 100.
Estimated Time per Record Keeper: 60 minutes.
Estimated Total Burden Hours: 100.

Dated: Dated: April 3, 2013.

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

[Published in the Federal Register, April 9, 2013 (78 FR 21145)]