

U.S. Customs Service

General Notices

PROPOSED COLLECTION; COMMENT REQUEST

PRIOR DISCLOSURE REGULATIONS

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Prior Disclosure Regulations. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927-1429.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In

this document Customs is soliciting comments concerning the following information collection:

Title: Prior Disclosure Regulations

OMB Number: 1515-0212

Form Number: N/A

Abstract: This collection of information is required to implement a provision of the Customs Modernization portion of the North American Free Trade Implementation Act (Mod Act) concerning prior disclosure by a person of a violation of law committed by that person involving the entry or introduction or attempted entry or introduction of merchandise into the United States by fraud, gross negligence or negligence, pursuant to 19 U.S.C. 1592(c)(4), as amended.

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

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 3,500

Estimated Time Per Respondent: 60 minutes

Estimated Total Annual Burden Hours: 3,500

Estimated Annualized Cost to the Public: N/A

Dated: July 1, 2002.

TRACEY DENNING,
Information Services Branch.

[Published in the Federal Register, July 16, 2002 (67 FR 46705)]

PROPOSED COLLECTION; COMMENT REQUEST

FOREIGN TRADE ZONE ANNUAL RECONCILIATION CERTIFICATION AND RECORD KEEPING REQUIREMENT

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927-1429.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement

OMB Number: 1515-0151

Form Number: N/A

Abstract: Each Foreign Trade Zone Operator will be responsible for maintaining its inventory control in compliance with statute and regulations. The operator will furnish Customs an annual certification of their compliance.

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

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 260

Estimated Time Per Respondent: 45 minutes

Estimated Total Annual Burden Hours: 195

Estimated Total Annualized Cost on the Public: \$1,025.50

Dated: July 1, 2002.

TRACEY DENNING,
Information Services Branch.

[Published in the Federal Register, July 16, 2002 (67 FR 46706)]

PROPOSED COLLECTION; COMMENT REQUEST

AUTOMOTIVE PRODUCTS TRADE ACT OF 1965

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Automotive Products Trade Act of 1965. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927-1429.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Automotive Products Trade Act of 1965

OMB Number: 1515-0178

Form Number: N/A

Abstract: Under APTA, Canadian articles may enter the U.S. so long as they are intended for use as original motor vehicle equipment in the U.S. If diverted to other purposes, they are subject to duties. This information collection is issued to track these diverted articles and to collect the proper duties on them.

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

Type of Review: Extension (without change)
Affected Public: Business or other for-profit institutions
Estimated Number of Respondents: 12,300
Estimated Time Per Respondent: 15 minutes
Estimated Total Annual Burden Hours: 23,587
Estimated Total Annualized Cost on the Public: \$46,500

Dated: July 1, 2002.

TRACEY DENNING,
Information Services Branch.

[Published in the Federal Register, July 16, 2002 (67 FR 46704)]

PROPOSED COLLECTION; COMMENT REQUEST

DOCUMENTS REQUIRED ABOARD PRIVATE AIRCRAFT

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Documents Required Aboard Private Aircraft. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2-C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927-1429.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of auto-

mated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Documents Required Aboard Private Aircraft

OMB Number: 1515-0175

Form Number: N/A

Abstract: The documents required by Customs regulations for private aircraft arriving from foreign countries pertain only to baggage declarations, and if applicable, to Overflight authorizations. Customs' also requires that the pilots present documents required by FAA to be on the plane.

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

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 150,000

Estimated Time Per Respondent: 1 minutes

Estimated Total Annual Burden Hours: 2,490

Estimated Total Annualized Cost on the Public: \$49,800

Dated: July 1, 2002.

TRACEY DENNING,
Information Services Branch.

[Published in the Federal Register, July 16, 2002 (67 FR 46706)]

PROPOSED COLLECTION; COMMENT REQUEST

ENTRY AND IMMEDIATE DELIVERY APPLICATION

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry and Immediate Delivery Application. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927-1429.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Entry and Immediate Delivery Application

OMB Number: 1515-0069

Form Number: Customs Form 3461 and 3461 Alternate

Abstract: Customs Form 3461 and 3461 Alternate are used by importers to provide Customs with the necessary information in order to examine and release imported cargo.

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

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 6,100

Estimated Time Per Respondent: 15.5 minutes

Estimated Total Annual Burden Hours: 949,500

Estimated Annualized Cost to the Public: \$15,658,500

Dated: June 27, 2002.

TRACEY DENNING,
Information Services Branch.

[Published in the Federal Register, July 16, 2002 (67 FR 46707)]

PROPOSED COLLECTION; COMMENT REQUEST

ENTRY SUMMARY AND CONTINUATION SHEET

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry Summary and Continuation Sheet. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927-1429.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Entry Summary and Continuation Sheet

OMB Number: 1515-0065

Form Number: Customs Form 7501, 7501A

Abstract: Customs Form 7501 is used by Customs as a record of the impact transaction, to collect proper duty, taxes, exactions, certifica-

tions and enforcement endorsements, and to provide copies to Census for statistical purposes.

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

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondent: 38,193

Estimated Time Per Respondent: 20 minutes

Estimated Total Annual Burden Hours: 20,010,000

Estimated Annualized Cost to the Public: \$153,295,000

Dated: June 21, 2002.

TRACEY DENNING,
Information Services Branch.

[Published in the Federal Register, July 16, 2002 (67 FR 46707)]

PROPOSED COLLECTION; COMMENT REQUEST

DISCLOSURE OF INFORMATION ON INWARD AND OUTWARD VESSEL MANIFEST

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Disclosure of Information on Inward and Outward Vessel Manifest. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Branch Printing and Records Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927-1429.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant

to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Disclosure of Information on Inward and Outward Vessel Manifest

OMB Number: 1515-0124

Form Number: N/A

Abstract: This information is used to grant a domestic importer's, consignee's, and exporter's request for confidentiality of its identity from public disclosure.

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

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 578

Estimated Time Per Respondent: 30 minutes

Estimated Total Annual Burden Hours: 289

Estimated Total Annualized Cost on the Public: \$1,400

Dated: July 1, 2002.

TRACEY DENNING,
Information Services Branch.

[Published in the Federal Register, July 16, 2002 (67 FR 46705)]

PROPOSED COLLECTION; COMMENT REQUEST

CREW'S EFFECTS DECLARATION

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Crew's Effects Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 16, 2002, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927-1429.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Crew's Effects Declaration

OMB Number: 1515-0061

Form Number: Customs Form 1304

Abstract: Customs Form 1304 contains a list of Crew's effects that are accompanying them on the trip, which are required to be manifested, and also the statement of the master of the vessel attesting to the truthfulness of the merchandise being carried on board the vessel as Crew's effects.

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

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 206,100

Estimated Time Per Respondent: 5 minutes

Estimated Total Annual Burden Hours: 17,326

Estimated Total Annualized Cost on the Public: \$188,150

Dated: July 1, 2002.

TRACEY DENNING,
Information Services Branch.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, July 17, 2002.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
(for Michael T. Schmitz, Assistant Commissioner,
Office of Regulations and Rulings.)

PROPOSED MODIFICATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF A PAPER WEB INSPECTION SYSTEM

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of ruling letter and revocation of treatment relating to tariff classification of a paper web inspection system.

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 intends to modify a ruling relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of apparatus for detecting variances in the quantity and quality of light, and to revoke any treatment Customs has previously accorded to substantially identical transactions. The merchandise at issue, the Autospec System, is used for inspecting the paper web for imperfections during the papermaking process. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before August 30, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. 20220, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 572-8779.

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), 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 based on the premise 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 Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, 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 declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify a ruling relating to the tariff classification of apparatus for detecting imperfections in the paper web during the papermaking process. Although in this notice Customs is specifically referring to one ruling, NY 856065, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been identified. Any party who has received an interpretative 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 Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transac-

tions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY 856065, dated September 24, 1990, the Autospec System, apparatus for detecting variances in the quantity and quality of light in the process of inspecting the paper web for imperfections during the paper-making process, among other merchandise, was held to be classifiable in subheading 9031.40.00 (now 49.90), HTSUS, as other optical measuring or checking instruments and appliances. This ruling was based on Customs belief that the apparatus conformed to this subheading description. NY 856065 is set forth as "Attachment A" to this document.

It is now Customs position that the Autospec System is classifiable in subheading 9027.50.40, HTSUS, as other electrical instruments and apparatus for physical or chemical analysis using optical radiations. Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY 856065 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis in HQ 965327, which is set forth as "Attachment B" to this document.

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: July 15, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, September 24, 1990.
CLA-2-84:S:N:N1:103 856065
Category: Classification
Tariff No. 8419.89.1000 and 9031.40.0080

MS. SUSIE PORTER
THE A. W. FENTON COMPANY INC.
P. O. Box 360614
Columbus, OH 43236-0614

Re: The tariff classification of the Microset Steam Profiler and the Autospec System from West Germany.

DEAR MS. PORTER:

In your letter dated August 29, 1990 on behalf of ABB Process Automation, Inc. you requested a tariff classification ruling.

The Microset Steam Profiler is used to correct variations in the moisture profile of a paper web during the manufacturing process by applying steam to the paper. This action

raises the temperature of the paper sheet and softens its fibers, resulting in improved water removal at the press nip and a denser sheet. The Steam Profiler is custom designed for assembly into the fourdrinier or press sections of a papermaking machine, and is constructed of stainless steel and fiberglass. The unit contains three zones—a front seal zone, a profiling zone, and a turbo seal zone. The front and turbo seal zones eliminate steam leakage from the profile zone. The profile zone is composed of several compartments which selectively apply the steam across the paper sheet. Each Steam Profiler comes with mounting brackets; in addition, a lifting device to retract the unit from the paper web is included for fourdrinier applications. The Steam Profiler can be used with sensors and an electronic moisture control module. However, this ruling covers the Steam Profiler only.

The Autospec System is designed for the inspection of the sheet surface in a moving paper web. The Autospec System inspects the entire sheet surface for holes, spots, and streaks. The system uses CCD (charge coupled device) cameras, which are mounted above or below the sheet surface. A low energy light is beamed through the sheet surface (the transmission method) or reflected off the sheet surface (the light reflection method). The sheet surface image is focused on the CCD camera and a reading is taken. The readings are converted into digital signals for interpretation.

The applicable subheading for the Microset Steam Profiler will be 8419.89.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for other machinery, plant or laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature * * *: for making paper pulp, paper or paperboard. The rate of duty will be 2.4 percent ad valorem.

The applicable subheading for the Autospec System will be 9031.40.0080, HTS, which provides for measuring or checking instruments, appliances and machines, not specified or included elsewhere * * *: other optical instruments and appliances. The rate of duty will be 10 percent ad valorem.

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

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

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

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965327 JAS
Category: Classification
Tariff No. 9027.50.40

JAMES L. SAWYER, ESQ.
KATTEN, MUCHIN ZAVIS ROSENMAN
*525 West Monroe Street, Suite 1600
Chicago, IL 60661-3693*

Re: NY 856065 Modified; Autospec System.

DEAR MR. SAWYER:

In NY 856065, which the Area (now Port) Director of Customs, New York, issued to a representative of ABB Process Automation, Inc., now ABB Automation, Inc., on September 24, 1990, the Autospec System, apparatus for inspecting the paper web for imperfections during the papermaking process, among other merchandise, was held to be classifiable in subheading 9031.40.00, Harmonized Tariff Schedule of the United States (HTSUS), as measuring or checking instruments, appliances and machines, n.s.i.e., other

optical instruments and appliances. We have reconsidered this classification and now believe that it is incorrect. In our reconsideration of NY 856065, initiated at your request, consideration was given to your submissions, dated November 21, 2001, and June 14, 2002.

Facts:

The merchandise at issue, identified in submitted literature as the ULMA NT Web Inspection System (the System), is apparatus for detecting and locating defects such as holes, dirt, scratches and wrinkles, in the web during the papermaking process. The ULMA NT Web Inspection System and the Autospec System, are believed to be substantially identical. The System consists of the following components: (1) lamps with reflectors, (2) multiple so-called smart cameras with charged coupled device (CCD) technology, (3) one or more image processing computers, and (4) a control panel/operator interface. As imported, these components are connected together by transmission devices and electric cables.

In operation, as the paper web moves continually over a framed conveyor, the lamps, positioned in the bottom of the frame, emit high-intensity light that reflects from or penetrates into the web, depending on its coated or uncoated applications (i.e., base stock, fine writing, printing, tissue, etc.). At the same time, the cameras positioned at the top of the frame detect variations in the intensity of the light, which the computers compare and analyze and, with analog to digital conversion, present as visual images of probable defects in the web. From these, the control operator can take appropriate corrective action.

In your submissions, you maintain that the components of the System constitute a functional unit within Section XVI, Note 4, HTSUS, and that subheading 9027.50.40, HTSUS, instruments and apparatus for physical and chemical analysis using optical radiations, represents the correct classification. Alternatively, you claim that the System is described in subheading 8419.90.20, HTSUS, as other parts of machinery and plant for making paper pulp, paper or paperboard. In support of the heading 9027, HTSUS, classification, you maintain that under General Rule of Interpretation 3(a), HTSUS, heading 9027 provides a more specific description for the Autospec System than does heading 9031, in that it analyzes reflected light as a form of physical analysis on the paper web. You also cite several rulings which classify apparatus incorporating both a light source and CCD camera technology in heading 9027, HTSUS.

The HTSUS provisions under consideration are as follows:

8419	Machinery, plant or laboratory equipment, whether or not electrically heated * * * for the treatment of materials by a process involving a change of temperature such as heating * * *:
8419.90.20 (now 89.10)	For making paper pulp, paper or paperboard
*	* * * * *
9027	Instruments and apparatus for physical or chemical analysis; * * * for measuring or checking quantities of heat, sound or light * * *:
9027.50	Other instruments and apparatus using optical radiations (ultra-violet, visible, infrared):
9027.50.40	Electrical
*	* * * * *
9031	Measuring or checking instruments, appliances and machines, n.s.i.e * * *:
9031.40.00 (now 49.90)	Other

Issue:

Whether the System is a good of heading 9027.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. Section XVI, Note 4, HTSUS, states, in part, that where machines interconnected by piping, by transmission devices, by electric cables or by other devices, are intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, the whole is to be classified in the heading appropriate to that function.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. *See* T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Initially, Section XVI, Note 1(m), HTSUS, excludes from that Section articles of Chapter 90. Therefore, if the System is described either by heading 9027 or by heading 9031, heading 8419 is eliminated from consideration. Moreover, because heading 9031 excludes measuring or checking instruments and appliances more specifically included provided for elsewhere, the issue is whether the System is provided for in heading 9027.

Relevant 9027 ENs describe, among other instruments and appliances, **photometers**, which are instruments for measuring the intensity of light. The System consists of a combination of machines, instruments and apparatus whose function essentially is to analyze variations and intensity of light projected onto moving paper web, these variables representing probable defects in the web. The System functions in substantially in the manner of instruments and apparatus of heading 9027. This classification is in accord with NY D88130, dated March 4, 1999, and NY G86132, dated January 26, 2002, both of which classified CCD cameras utilizing ultraviolet and visible radiations, together with computers, for performing analytic and diagnostic functions, in subheading 9027.50.40, HTSUS.

Holding:

Under the authority of GRI 1 and Section XVI, Note 4, HTSUS, the Autospec System is provided for in heading 9027. It is classifiable in subheading 9027.50.40, HTSUS. The appropriate software, in all cases, is separately classifiable. NY 856065, dated September 24, 1990, is modified accordingly.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CONCEPT OF FUNCTIONAL UNITS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification and revocation of ruling letters and revocation of treatment relating to tariff concept of functional units.

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 is modifying two (2) rulings and revoking two (2) other rulings, all relating to the tariff concept, under the Harmonized Tariff Schedule of the United States (HTSUS), of functional units, and whether functional units may be eligible for classification in heading 8479, HTSUS. In addition, Customs is revoking any treatment previously accorded to substantially identical transactions involving these tariff concepts. This notice applies as well to interpretative rulings identified in this document by control number only. Notice of the proposed modifications and revocations was published on June 5, 2002, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: These modifications and revocations are effective for merchandise entered or withdrawn from warehouse for consumption on or after September 30, 2002.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 572-8779.

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), 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 based on the premise 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 Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, 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 declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to Customs obligations, a notice was published on June 5, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 23, proposing to modify and/or revoke *HQ 087077*, *HQ 962105*, *HQ 963029* and *HQ 965123*, all relating to the tariff concept under the HTSUS of incomplete or unfinished functional units, and whether functional units may be classified in heading 8479, HTSUS. The notice also covered the following rulings involving the tariff concepts at issue: *HQ 958629*, *HQ 958641*, *HQ 961210*, *HQ 961441*, *HQ 962945*, *HQ 958577*, *HQ 960816*, *HQ 962659*, *HQ 960632*, and *NY G87193*. In addition, the notice proposed to clarify *HQ 950218*, *HQ 958914*, *HQ 957150*, and *NY E86072* and *NY H88170* with respect to statements contained therein concerning incomplete or unfinished functional units. Four (4) comments were received in response to this notice, all favoring Customs proposal. These comments will be discussed in the text of the rulings hereinafter cited.

Any party who has received an interpretative 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 Customs 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, Customs is revoking any treatment previously

accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying *HQ 087077*, dated March 27, 1991, to reflect the classification the merchandise to which it relates in subheading 9027.20.40, HTSUS. Customs is also modifying *HQ 962105*, dated April 22, 1999, to reflect the proper classification of the relevant merchandise in headings 8428 and 8515, HTSUS, as appropriate, and also to reflect the fact that goods qualifying as functional units, imported incomplete or unfinished, may be eligible for classification in heading 8479, HTSUS. In addition, Customs is revoking *HQ 965123*, dated February 27, 2002, to reflect the proper classification of the merchandise to which it relates in subheading 8418.61.00, HTSUS. Customs is also revoking *HQ 963029*, dated July 7, 2000, to reflect the proper classification of the relevant merchandise in provisions of headings 8428 and 8515, HTSUS, as appropriate. These modifications and revocations, and Customs current position on the classification principles at issue, are in accordance with the analysis in *HQ 965634*, *HQ 965635*, *HQ 965637* and *HQ 965638*, which are set forth as the Attachments to this document. As previously noted, the following rulings are also affected: *HQ 958629*, *HQ 958641*, *HQ 961210*, *HQ 961441*, *HQ 962945*, *HQ 958577*, *HQ 960816*, *HQ 962659*, *HQ 960632*, and *NY G87193*. In addition, *HQ 950218*, *HQ 958914*, *HQ 957150*, and *NY E86072* and *NY H88170* are clarified with respect to statements contained therein concerning incomplete or unfinished functional units.

As noted in Customs proposal, recipients of rulings either modified or revoked by this notice, other than the four (4) rulings specifically appearing as Attachments appended hereto, are invited to request new rulings on their specific facts, by writing to the Director, National Commodity Specialist Division, U.S. Customs Service, One Penn Plaza, 10th Floor, New York, NY 10119.

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded to substantially identical transac-

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

Dated: July 16, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 16, 2002.
CLA-2 RR:CR:GC 965634 JAS
Category: Classification
Tariff No. 9027.20.40

ROLAND L. SHRULL
MIDDLETON & SCHRULL
44 Mall Road, Suite 106
Burlington, MA 01803

Re: Chromatograph; Instruments and Apparatus for Physical or Chemical Analysis; *HQ* 087077 Modified.

DEAR MR. SHRULL:

In *HQ* 087077, issued to the District (now Port) Director of Customs, Boston, on March 27, 1991, as a response to Internal Advice 25/90, on behalf of VG Instruments, Inc., we held, among other things, that a chromatograph and a chromatography server, imported together, were separately classifiable, in headings 9027 and 8741, Harmonized Tariff Schedule of the United States (HTSUS), respectively. The ruling stated that without the automatic data processing (ADP) machine which receives digitally-formatted data from the server, the apparatus would qualify as an "unfinished functional unit" which is not sanctioned by any HTSUS legal note.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of *HQ* 087077 was published on June 5, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 23. Four (4) comments were received in response to that notice. All favored Customs proposal. These comments are substantially in accordance with the discussion in this ruling under LAW AND ANALYSIS.

Facts:

The merchandise in IA 25/90, the Chromatography Data Management System, consisted of a chromatography server, the chromatograph, used by chemists and others to analyze and measure the constituents in gases or liquids, and an automatic data processing (ADP) unit. The server was said to act as an interface between the chromatograph and the ADP unit by converting analog data received from the chromatograph into digital format, then transmitting that data to the ADP unit. The individual components were connected by electrical cables. Although *HQ* 087077 considered several proposed import configurations, the specific importation consisting of a chromatography server and a chromatograph without the ADP unit is at issue here. The ruling concluded that "because there are no HTSUS legal notes that provide for unfinished functional units" the server and chromatograph were to be classifiable separately. After a thorough review of the matter, we have determined that this is incorrect and no longer represents Customs position in the matter.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *;
8471.99.90 (now 90.00)	Other
*	*
*	*
*	*
9027	Instruments and apparatus for physical or chemical analysis * * *;
	instruments and apparatus for measuring or checking viscosity,
	porosity, expansion * * * or the like * * *;
9027.20	Chromatographs and electrophoresis instruments:
9027.20.40 (now 50)	Electrical

Issue:

Whether a chromatography server imported with a chromatograph, but without an automatic data processing (ADP) unit, is an incomplete or unfinished good that contributes to a clearly defined function described in heading 9027.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 2(b), HTSUS, extends the scope of a heading to include goods imported incomplete or unfinished provided that, as imported, the incomplete or unfinished good has the essential character of the complete or finished good.

Section XVI, Note 4, HTSUS, covers machines consisting of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapters 84 or 85. The whole, in such cases, is classified in the heading appropriate to that function. Chapter 90, Note 3, HTSUS, applies Note 4 to Section XVI, to goods of Chapter 90.

In the request for internal advice that resulted in *HQ 087077*, the inquirer contended that an importation of a chromatograph and server constituted a functional unit classifiable in subheading 9027.20.40, HTSUS. We rejected that classification on the basis that the ADP unit, missing in this case, was necessary to complete the functional unit.

By its terms, GRI 2(a), HTSUS, extends the scope of a 4-digit heading to include an article, whether assembled or unassembled, that is imported incomplete or unfinished. The imported article, however, must be found to have the essential character of the complete or unfinished good. Section XVI, Note 4, HTSUS, is the authority under GRI 1 for classifying a series of machines or components in a 4-digit heading describing a clearly defined function performed by the goods. Given the relationship between GRI 1 and GRI 2(a) in determining the scope of headings, it logically follows, in our opinion, that GRI 2(a) may also be applied to determine whether under GRI 1 a series of machines or components may qualify for classification under Section XVI, Note 4, even if imported incomplete or unfinished.

Under GRI 2(a), the factor or factors which determine essential character will vary with the goods. It may, for example, be determined by the nature of a component or components, their bulk, quantity, weight or value, or the role of a component or components in relation to the use of the good. It is the latter factor that is the most compelling in this case. The facts here establish that the chromatography server is significant because it integrates input signals, hence it eliminates high frequency noise and protects the integrity of the signals. In addition, if the host computer goes off-line, the server can direct data to alternate computers in the network, and if the entire system goes down, the server can store data until a suitable host computer can be found. Thus, no data is lost. Of course, the ADP unit is equally significant as it is the computer that processes and arranges the data into a usable format. However, it is the chromatograph that performs the actual analyzing and/or measuring function. The chromatograph is the very heart of the Chromatography Data Management System. For this reason, we conclude that an importation consisting of a chromatography server and a chromatograph represents the aggregate of distinctive component parts that establish the identity of the importation as apparatus performing the clearly defined function of chromatography described in heading 9027.

Holding:

Under the authority of GRI 2(a) and Section XVI, Note 4, HTSUS, as applied by Chapter 90, Note 3, HTSUS, a chromatography server and chromatograph, imported together,

constitute a functional unit, incomplete or unfinished, provided for in heading 9027. Actual classification is in subheading 9027.20.40, HTSUS.

Effect on Other Rulings:

HQ 087077, dated March 27, 1991, is modified as to this merchandise. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 16, 2002.
CLA-2 RR:CR:GC 965635 JAS
Category: Classification
Tariff No. 8418.61.00

Ms. NANCY PELLOWE
TECUMSEH PRODUCTS COMPANY
100 East Patterson Street
Tecumseh, MI 49286

Re: Condensing Unit and Vertical Receiver for Use in Refrigeration; *HQ* 965123 Revoked.

DEAR MS. PELLOWE:

In *HQ* 965123, which we issued to you on February 27, 2002, a condensing unit and a vertical receiver were held to be other parts of refrigerating or freezing equipment, in heading 8418, Harmonized Tariff Schedule of the United States (HTSUS), and a capacitor mounting bracket was held to be an article of iron or steel of heading 7326, HTSUS.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of *HQ* 965123 was published on June 5, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 23. Four (4) comments were received in response to that notice. All favored Customs proposal. These comments are substantially in accordance with the discussion in this ruling under LAW AND ANALYSIS.

Facts:

As stated in *HQ* 965123, the articles at issue are a condensing unit, identified as part 2B3142-1, a vertical receiver, identified as part 51080, and a capacitor mounting bracket, identified as part 57068-2. The condensing unit consists of a compressor, a finned coil-type condenser you describe as a heat exchanger, and a fan with motor, all mounted onto a common base. You indicate the unit is principally used in refrigeration applications. The vertical receiver is basically a shell with connections, whose purpose is to hold refrigerant for the condensing unit. The capacitor mounting bracket is of base metal and functions to attach a capacitor (a device which helps in starting or running the compressor) directly onto the compressor or elsewhere on the condensing unit, as the customer designates.

As imported, the condensing unit lacks an evaporator which you indicate is necessary to allow the apparatus to function as refrigeration equipment. After importation, the evaporator will be connected to the condensing unit by brazing tubes with or without fittings. Company guidelines state the distance between condensing unit and evaporator should not normally exceed 100 ft.

The HTSUS provisions under consideration are as follows:

8418	Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; * * * parts thereof:
	Other refrigerating or freezing equipment; * * *:
8418.61.00	Compression type units whose condensers are heat exchangers
	Parts:
8418.99.80	Other

Issue:

Whether the condensing unit, vertical receiver and capacitor mounting bracket, imported without an evaporator, constitute refrigerating or freezing equipment of heading 8418, HTSUS, or parts of such equipment under the same heading.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. Section XVI, Note 4, HTSUS, states in part that where a machine, including a combination of machines, consists of individual components, whether separate or interconnected by piping, by transmission devices, by electric cables or other devices, intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole is to be classified in the heading appropriate to that function.

In your ruling request of June 25, 2001, which resulted in *HQ* 965123, you requested classification in subheading 8418.61.00, HTSUS, as other refrigerating or freezing equipment, compression type units whose condensers are heat exchangers. You cited relevant 8418 ENs which, you indicated, stated that apparatus of heading 8418 included units comprising a compressor (with or without motor) and condenser mounted on a common base, whether or not complete with evaporator.

We rejected your claim on the basis that it involved application of the functional unit concept found in Section XVI, Note 4 which, we stated, is a classification at the GRI 1 level, and applies to finished or complete goods. Because the condensing unit lacked the evaporator necessary to its function as refrigerating equipment, the good, as imported, was considered incomplete or unfinished. We concluded that there is no legal authority to classify incomplete or unfinished goods as functional units. We have undertaken a thorough review of the matter and now conclude that this is incorrect and no longer represents Customs position on this issue.

By its terms, GRI 2(a), HTSUS, extends the scope of a 4-digit heading to include an article, whether assembled or unassembled, that is imported incomplete or unfinished. The imported article, however, must be found to have the essential character of the complete or unfinished good. Section XVI, Note 4, HTSUS, is the authority under GRI 1 for classifying a series of machines or components in a 4-digit heading describing a clearly defined function performed by the goods. Given the relationship between GRI 1 and GRI 2(a) in determining the scope of headings, it logically follows, in our opinion, that GRI 2(a) may also be applied to determine whether under GRI 1 a series of machines or components may qualify for classification under Section XVI, Note 4, even if imported incomplete or unfinished.

Under GRI 2(a), the factor or factors which determine essential character will vary with the goods. It may, for example, be determined by the nature of a component or components, their bulk, quantity, weight or value, or the role of a component or components in relation to the use of the good. It is the latter factor that is the most compelling in this case. The cited 8418 ENs establish that compression-type refrigerators are classified in heading 8418 if comprising a compressor (with or without motor) and condenser mounted on a common base, whether or not complete with evaporator. The evaporator will be connected to the condensing unit after importation by brazing tubes with or without fittings. Based on the cited ENs, we conclude that an importation consisting of a compressor with fan and motor, and a condenser together, in this case, with a vertical receiver to hold refrigerant and a capacitor mounting bracket, represents the aggregate of distinctive component parts that establish the identity of the goods as other refrigerating or freezing equipment of heading 8418. If imported separately, however, the capacitor mounting bracket would be classifiable in subheading 8418.99.80, HTSUS, in accordance with *NY* H82804, dated June 29, 2001.

Holding:

Under the authority of GRI 2(a) and Section XVI, Note 4, HTSUS, the condensing unit, part 2B3142-1, the vertical receiver, part 51080, and the capacitor mounting bracket, part 57068-2, are provided for in heading 8418. They are classifiable as other refrigeration or freezing equipment, compression-type units whose condensers are heat exchangers, in subheading 8418.61.00, HTSUS.

Effect on Other Rulings:

HQ 965123, dated February 27, 2002, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 16, 2002.
CLA-2 RR:CR:GC 965637 JAS
Category: Classification
Tariff No. Various

JAMES S. O'KELLY
BARNES, RICHARDSON & COLBURN
475 Park Avenue South
New York, NY 10016

Re: Dedicated Robot Systems; HQ 962105 Modified.

DEAR MR. O'KELLY:

In HQ 962105, issued to the Port Director, Milwaukee, on April 22, 1999, as a response to Internal Advice 16/98, initiated on behalf of ABB Flexible Automation, Inc., (ABB), certain industrial robot systems imported without end-of-arm tooling, among other articles, were held to be classifiable in headings 8479 and 8537, Harmonized Tariff Schedule of the United States (HTSUS), respectively.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of HQ 962105 was published on June 5, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 23. Four (4) comments, including one from you, were received in response to that notice. All favored Customs proposal. These comments are substantially in accordance with the discussion in this ruling under LAW AND ANALYSIS. The classification both of robot systems imported with end-of-arm tooling and work piece positioners expressed in I.A. 16/98 is not at issue here.

Facts:

As described in HQ 962105, the merchandise consists of numerous industrial robot systems, each consisting of a robot imported with a model S4C controller. The robots each consist of an articulated structure, similar to an arm, on a base with drilled bolt holes for attachment to a fixed surface. They have lifting capacities or load ratings from 5 kilograms (11 lbs.) to 1,200 kilograms (2460 lbs.). The robots are imported without end-of-arm tooling which dedicates them to a specific end-use service application, such as arc welding, material handling, assembling, spraying, deburring and glueing/sealing, among others. The S4C controllers are devices which utilize preprogrammed software that contains specific operating instructions for the robot's tooling. Each is stand-alone and floor mounted and is connected to its robot by power cables and signal connectors.

Issue:

Whether the robot systems, as described, imported without end-of-arm tooling, constitute functional units, incomplete or unfinished, under Section XVI, Note 4, HTSUS; whether any functional unit is eligible for classification in heading 8479, HTSUS.

The provisions under consideration are as follows:

8428	Other lifting, handling, loading or unloading machinery * * *
*	* * * *
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in [chapter 84] * * *
*	* * * *
8515	* * * magnetic pulse or plasma arc soldering, brazing or welding machines and apparatus, whether or not capable of cutting * * *
*	* * * *
8537	Boards, panels, consoles, desks, cabinets and other bases * * * for electric control or the distribution of electricity * * *:

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 2(a) in part extends the terms of a heading to include incomplete or unfinished articles provided that, at importation, they have the essential character of the complete or finished article.

Section XVI, Note 4, HTSUS, states that machines (including a combination of machines) consisting of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapters 84 or 85, then the whole falls to be classified in the heading appropriate to that function.

ABB originally contended that each robot system consisting of a robot and its process controller with task-specific software, imported without end-of-arm tooling, is not precluded from classification as a functional unit inasmuch as the components were *intended* to contribute together to a clearly defined function. Alternatively, ABB asserted that under GRI 3(b), HTSUS, each robot system is a composite good, and that the essential character of each is imparted by the process controller which dedicates the whole to the specific function performed by the end-of-arm tooling.

We rejected the first contention on the basis that “the classification of goods or apparatus as an incomplete or unfinished functional unit is not supported by any HTSUS legal note [or by the ENs].” However, we have undertaken a thorough review of the matter and now conclude that this is incorrect and no longer represents Customs position on this issue. By its terms, GRI 2(a), HTSUS, extends the scope of a 4-digit heading to include an article, whether assembled or unassembled, that is imported incomplete or unfinished. The imported article, however, must be found to have the essential character of the complete or unfinished good. Section XVI, Note 4, HTSUS, is the authority under GRI 1 for classifying a series of machines or components in a 4-digit heading describing a clearly defined function performed by the goods. Given the relationship between GRI 1 and GRI 2(a) in determining the scope of headings, it logically follows, in our opinion, that GRI 2(a) may also be applied to determine whether under GRI 1 a series of machines or components may qualify for classification under Section XVI, Note 4, even if imported incomplete or unfinished.

Under GRI 2(a), the factor or factors which determine essential character will vary with the goods. It may, for example, be determined by the nature of a component or components, their bulk, quantity, weight or value, or the role of a component or components in relation to the use of the good. It is the latter factor that is the most compelling in this case. The facts here establish that each articulated arm or manipulator is permanently configured for a particular service application by an erasable programmable read-only memory (EPROM) chip installed in the controller. In addition, it is indicated that the manipulator dedicated for material handling, for example, has a particular load rating that is suitable only for that service application. There are no generic or general-purpose robot systems; each is specially configured to perform one specific function. Further, the end-of-arm tooling represents a rather small percentage of the total value of the completed robot. Under the particular facts presented, we conclude that an importation consisting of an articulated arm or manipulator and process controller, in which the end use service application of the whole is clearly identifiable, represents the aggregate of distinctive component parts that establish the identity of the good as, for example, material handling machinery of heading 8428, HTSUS, or as electric welding machines or apparatus of heading 8515,

HTSUS, etc. This conclusion renders moot any issue of whether a robot system might be a composite good.

With respect to a robot system which, in accordance with this decision, would be classifiable as a functional unit, imported incomplete or unfinished, *HQ* 962105 stated on p. 5, “[W]e have consistently held that functional units cannot be classified in heading 8479, HTSUS, as that heading does not describe any machine by a clearly defined function.” This statement is incorrect and no longer represents Customs position on this issue. A fair and reasonable reading of Section XVI, Note 4, HTSUS, leads us to conclude that goods qualifying as functional units, incomplete or unfinished, are eligible for classification in heading 8479, HTSUS, provided it is the heading appropriate to the function performed by the whole, and the terms and conditions for classification in heading 8479 are satisfied.

Holding:

Under GRI 2(a) and Section XVI, Note 4, HTSUS, industrial robot systems, each consisting of a robot and a model S4C controller, the whole dedicated to a specific end use service application which is clearly identifiable, but imported without end-of-arm tooling, constitute functional units, classifiable in the heading appropriate to the function of the whole.

Effect on Other Rulings:

HQ 962105, dated, April 22, 1999, is modified to recognize both the tariff concept of incomplete or unfinished functional units, and the position that functional units are eligible for classification in heading 8479, HTSUS. In all cases, the preprogrammed software the S4C controller utilizes is classified in appropriate subheadings of heading 8524, in accordance with Chapter 85, Note 6, HTSUS.

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

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, July 16, 2002.
CLA-2 RR:CR:GC 965638 JAS
Category: Classification
Tariff No. 8428.90.00,
8515.21.00, and 8515.31.00

MR. PAUL S. ANDERSON
SONNENBERG & ANDERSON
333 West Wacker Dr., Suite 2070
Chicago, IL 60606

Re: Industrial Robots With Stand-Alone Controller but Without End-of-Arm Tooling;
HQ 963029 Revoked.

DEAR MR. ANDERSON:

In *HQ* 963029, issued to you on July 7, 2000, on behalf of Motoman, Inc., program controllers designated MRC, MRC II or XRC, and a programming or teaching pendant, were held to be a functional unit classifiable in a provision of heading 8537, Harmonized Tariff Schedule of the United States (HTSUS). The SK and SV series electrically controlled industrial robots, each consisting of an articulated arm or manipulator on a base, but without appropriate end-of-arm tooling, were held to be separately classifiable in heading 8479, HTSUS.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement

Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of *HQ* 963029 was published on June 5, 2002, in the *CUSTOMS BULLETIN*, Volume 36, Number 23. Four (4) comments were received in response to that notice. All favored Customs proposal. These comments are substantially in accordance with the discussion in this ruling under *LAW AND ANALYSIS*.

Facts:

The articles at issue are the SK and SV series electrically controlled industrial robots. Each consists of an articulated arm or manipulator on a base, a controller designated MRC, MRC II or XRC, and a programming or teaching pendant. Prior to importation, each robot is "configured," that is, a program of instructions to implement the robot's intended end use service application is burned onto a chip that becomes a permanent part of the controller, which is stand-alone and connected to the manipulator by electrical wiring or cables. The programming pendant is hand-held and attaches by cable to the controller. It functions as an input device that sends operating instructions in the form of signals which the controller interprets and uses to instruct the manipulator.

Although each robot series is best suited, in terms of size, payload capacity and power, for certain applications, the vast majority in this case are specified as being for arc welding, resistance welding, or for material handling. As imported, the robots lack welding guns, grippers or other end-of-arm tooling.

The HTSUS provisions under consideration are as follows:

8428	Other lifting, handling, loading or unloading machinery * * *:
8428.90.00	Other machinery
*	* * * *
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in [chapter 85] * * *:
8479.50.00	Industrial robots, not elsewhere specified or included
*	* * * *
8515	Electric * * * soldering, welding or brazing machines and apparatus * * *:
	Machines and apparatus for resistance welding of metal:
8515.21.00	Fully or partly automatic
*	* * * *
8537	* * * other bases * * * for electric control or the distribution of electricity:
8537.10	For a voltage not exceeding 1,000 V:
8537.10.90	Other

Issue:

Whether an articulated arm/manipulator, process controller and programming pendant imported together, but without end-of-arm tooling, constitutes a functional unit, imported incomplete or unfinished.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 2(a), HTSUS, extends the terms of a heading to include goods imported incomplete or unfinished provided that, as imported, the incomplete or unfinished article imparts the essential character to the complete or finished good.

Section XVI, Note 4, HTSUS, covers machines consisting of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapters 84 or 85. The whole, in such cases, is classified in the heading appropriate to that function.

In the ruling request that resulted in *HQ* 963029, you contended that each model in the industrial robot series, with its process controller and programming pendant, constituted an incomplete or unfinished article under General Rule of Interpretation (GRI) 2(a), HTSUS, having the essential character, in this case, of material handling machinery of

heading 8428, HTSUS, or of a welding machine of heading 8515, HTSUS. We rejected that contention on the basis that “the classification of goods or apparatus as an incomplete or unfinished functional unit is not supported by any HTSUS legal note [or by the ENs].” We have undertaken a thorough review of the matter and now conclude that this position is incorrect and no longer represents Customs position on this issue.

By its terms, GRI 2(a), HTSUS, extends the scope of a 4-digit heading to include an article, whether assembled or unassembled, that is imported incomplete or unfinished. The imported article, however, must be found to have the essential character of the complete or unfinished good. Section XVI, Note 4, HTSUS, is the authority under GRI 1 for classifying a series of machines or components in a 4-digit heading describing a clearly defined function performed by the goods. Given the relationship between GRI 1 and GRI 2(a) in determining the scope of headings, it logically follows, in our opinion, that GRI 2(a) may also be applied to determine whether under GRI 1 a series of machines or components may qualify for classification under Section XVI, Note 4, even if imported incomplete or unfinished.

Under GRI 2(a), the factor or factors which determine essential character will vary with the goods. It may, for example, be determined by the nature of a component or components, their bulk, quantity, weight or value, or the role of a component or components in relation to the use of the good. It is the latter factor that is the most compelling in this case. The facts here establish that each articulated arm or manipulator is permanently configured for a particular service application by an erasable programmable read-only memory (EPROM) chip installed in the controller. In addition, it is indicated that the manipulator dedicated for material handling has a particular load rating that is suitable only for that service application. Further, the end-of-arm tooling represents a rather small percentage of the total value of the completed robot. Under the particular facts presented, we conclude that an importation consisting of an articulated arm or manipulator and process controller with programming pendant, represents the aggregate of distinctive component parts that establish the identity of the good as material handling machinery of heading 8428 or as electric welding machines or apparatus of heading 8515, as appropriate.

Holding:

Under the authority of GRI 2(a) and Section XVI, Note 4, HTSUS, an articulated arm or manipulator imported with its configured process controller and programming pendant, constitute a functional unit provided for in headings 8428 and 8515. Actual classification is in subheading 8428.90.00, HTSUS, and in subheadings 8515.21.00 and 8515.31.00, HTSUS, as appropriate.

Effect on Other Rulings:

HQ 963029, dated July 7, 2000, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF SKATE SHOES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of skate shoes.

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 is revoking a ruling letter pertaining to the tariff classification of skate shoes under the Harmonized Tariff Schedule of the United States (HTSUS). Customs is also revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published on June 12, 2002, in Volume 36, Number 24, of the CUSTOMS BULLETIN. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Joe Shankle, Textiles Branch, (202) 572-8824.

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

Pursuant to Customs obligations, notice proposing to revoke New York Ruling Letter (NY) G85697, dated January 19, 2001, and to revoke

any treatment accorded to substantially identical merchandise was published in the June 12, 2002, CUSTOMS BULLETIN, Volume 36, Number 24. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs 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 Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions that is contrary to the position set forth in this notice. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In NY G85697, Customs classified a skate shoe consisting of what appears to be a traditional athletic shoe with a heavy sole, the heel portion of which is hollowed out in order to house a polyurethane wheel and wheel assembly, in subheading 9506.99.6080, HTSUSA, which provides, in pertinent part, for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports * * *: Other: Other: Other: Other." Based on our analysis of the scope of the terms of subheadings 9506.99.6080, HTSUSA, and 9506.70.20, HTSUSA, the Legal Notes, and the Explanatory Notes, the skate shoe of the type discussed herein, is classifiable under subheading 9506.70.20, HTSUSA, which provides for: "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Ice skates and roller skates, including skating boots with skates attached; parts and accessories thereof: Roller skates and parts and accessories thereof."

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY G85697, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter 964985 (Attached). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment

previously accorded by the Customs Service to substantially identical transactions that is contrary to the position set forth in this notice.

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

Dated: July 15, 2002.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 15, 2002.

CLA-2 RR:CR:TE 964985 JFS
Category: Classification
Tariff No. 9506.70.20

JANET A. FOREST, ESQ.
MILLER & CHEVALIER
655 Fifteenth Street, N.W.
Suite 900
Washington, DC 20005-5701

Re: Revocation of NY G85697, dated January 19, 2001; Classification of Skate Shoe; Chapter 95; Roller Skates.

DEAR MS. FOREST:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) G85697, issued on behalf of your client, Heeling Sports, Ltd., on January 19, 2001, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of skate shoes. After review of that ruling, it has been determined that the classification of the skate shoes in subheading 9506.99.6080, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY G85697.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY G85697 was published on June 12, 2002, in the CUSTOMS BULLETIN, *Volume 36, Number 24*. As explained in the notice, the period within which to submit comments on this proposal was until July 19, 2002. No comments were received in response to this notice.

Facts:

The article that is the subject of this revocation is a skate shoe. In NY G85697, it was classified in subheading 9506.99.6080, HTSUSA, which provides, in pertinent part, for: "Articles and equipment for general physical exercise, gymnastics, athletics, other sports * * *: Other: Other: Other: Other." The general column one rate of duty is 4 percent *ad valorem*.

The provided sample, termed a "heeling apparatus" and further identified as the Heelys™ skate shoe, consists of what appears to be a traditional athletic shoe with a heavy sole. The heel portion of the sole is hollowed out in order to house a polyurethane wheel and wheel assembly. The wheel extends approximately one half inch outward from the sole of the shoe and does not retract into the shoe. The wheel and wheel assembly are easily

removed. The Heelys™ skate shoes are used by the wearer by placing one foot in front of the other as if he/she were in full stride. The person's weight centers on the wheel of the rear skate shoe. The rear foot is angled so that the toe of the shoe does not come into contact with the ground. The front foot is also angled so that only the wheel is in contact with the ground. The rear wheel operates as the main rolling wheel and the front wheel provides balance and steering.

Issue:

Whether the Heelys™ skate shoe with one removable wheel in the heel of the shoe is classifiable under the provision for roller skates.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). 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 GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

The skate shoe has the attributes of a traditional roller skate and the attributes of an athletic shoe. Under a GRI analysis, it is, at times, necessary to determine whether the essential character of a good such as the skate shoe is imparted by the wheel or by the shoe. In this case, however, note 1(f) to chapter 64, and Note 1(g) to Chapter 95, render an essential character analysis unnecessary. In pertinent part, Note 1(f) to chapter 64, states that "This chapter does not cover toy footwear or skating boots with ice or roller skates attached. * * *" Note 1(g) to chapter 95 states, in pertinent part, that "This chapter does not cover: Sports footwear (other than skating boots with ice or roller skates attached) of chapter 64. * * *" Accordingly, if it is determined that the Heelys™ skate shoe is a roller skate for classification purposes, chapter 64 is precluded from consideration.

The central issue is whether the Heelys™ skate shoe is encompassed by the term "roller skates, including skating boots with skates attached." The definition of that term under the HTSUSA is uncertain. We find no clear definition in the Legal Notes and EN. Lexicographic sources define a "roller skate" as follows:

Merriam-Websters Collegiate Dictionary, defines a roller skate as "[a] shoe with a set of wheels attached for skating over a flat surface." Available at <http://www.m-w.com/cgi-bin/dictionary>. *Encarta* defines a roller skate as:

1. Set of wheels attached to shoe: a metal or plastic frame with wheels attached, usually one pair at the front and another at the back, fastened onto a shoe and used for skating.
2. Shoe for roller-skating: a specially designed shoe or boot to which a roller skate is attached.

Available at <http://dictionary.msn.com/find/> (May 1, 2002).

While these definitions generally contemplate skates with more than one wheel, they do not necessarily preclude the determination that a shoe with only one wheel can be considered a roller skate for tariff classification purposes. The idea for a roller skate with one wheel dates back at least as far as 1877. In an English patent application, dated June 13, 1877, the inventor describes his idea for a skate with one wheel as follows: "My invention relates to an improved construction of roller skates, wherein each skate is provided with a single wheel or roller placed in the axial line of the foot plate." Patent No. 2297. The accompanying diagram depicts a skate with only one wheel. Likewise, the protestant describes the Heelys™ skate shoe as a roller skate in a trademark application, dated June 2, 2000. The skate shoes were described as "Roller skates equipped with at least one roller used for walking, running and rolling." Application for Trademark Registration, Attorney Docket No.: 4261.15 (trademark application allowed, May 23, 2001, Serial. No. 75/962102). While one-wheeled roller skates may not have been actively manufactured and marketed on a grand scale, the idea has been around for many years.

Turning to the common and commercial meaning of the term "roller skate" we are aware that the production of the Heelys™ skate shoe is such a recent development in the sport of skating, that it may not have been contemplated when any of the usual authorities (legislative history, dictionaries, etc.) were created. That it may be associated with the eo

nomine provisions of subheading 9506.70.20, HTSUSA, is clear under several well settled tenets of Customs law: Eo nomine classification is not necessarily limited by the juxtaposition of descriptive words; an eo nomine designation will include all articles subsequently created which come within its scope. *Sears Roebuck & Co., v. United States*, 46 CCPA 79, C.A.D. 701 (1959); Eo nomine designation of a class will include all members of the class, as if provided by name, *Robert Bosch Corporation, et al v. United States*, 63 Cust.Ct. 187, C.D. 3895 (1969); and an eo nomine designation, without limitation will include all forms of the article. *T.M. Duche & Sons, Inc., et al v. United States*, 44 CCPA 60, C.A.D. 638 (1957).

The instant case is similar to that faced by Customs in Headquarters Ruling Letter (HQ) 086626, dated January 15, 1991, wherein Customs classified snowboards. At the time, the only tariff provision that came close to describing snowboards was the provision for skis. In ruling on the matter, Customs took note that the tariff is not set in time and that tariff provisions can encompass new articles that were not invented at the time of the drafting. Customs asked:

How then do we determine the classification of a new and novel article of commerce heretofore unknown under the current nomenclature? In particular, how do we determine whether that product is included under an existing nomenclature provision?

To help resolve the issue, Customs relied upon *FAG Bearings, Ltd. v. United States*, 9 CIT 227, 229 (1985), in which the Court stated that:

The basic requirement for classification of a new product such as these, under a given eo nomine heading is that the article possess an essential resemblance to the one named in the statute. If the essential character of the article is preserved or only incidentally altered, an unlimited eo nomine designation will include the goods.

Customs concluded that “although differences exist between snowboard skis and traditional alpine skis, they do not act as a bar to classification as other skis of subheading 9506.11.4000, HTSUSA.”

The major feature that a Heelys™ skate shoe has in common with a roller skate is that it is to be worn on a person’s foot to enable the wearer to roll by means of self-propulsion. In order to accomplish this, the Heelys™ skate shoe incorporates many of the same features of a traditional roller skate as well as the newer in-line skates. These features are, a heavy duty reinforced sole, a polyurethane wheel, an axle mechanism and ball bearings to provide a smooth and easy ride. Moreover, similar skills are required for “heeling” as are required for roller-skating. As when snowboards were first compared to traditional alpine snow-skis, Heelys™ skate shoes differ noticeably from traditional roller skates. However, they do possess an essential resemblance to roller skates, and the differences between the two should not act as a bar to their classification as roller skates of subheading 9506.70.20, HTSUSA.

Customs has consistently classified new and similar articles such as in-line skates in subheading 9506.70.20, HTSUSA. Customs has classified skate shoes containing a set of retractable wheels as roller skates. See NY C85189, dated March 11, 1998 (classifying as a roller skate a “Walk and Roll” shoe/skate that could be converted between a walking shoe and a skate by the retraction of one or two roller mechanisms); NY F81566, dated January 13, 2000 (classifying as a roller skate a leather shoe or boot with two holes in the rubber sole where a retractable skate mechanism was attached); and NY H83263, dated July 19, 2001 (classifying as a roller skate a sneaker-like article with front and rear wheel mechanisms that were retractable).

To hold that the term “roller skate” in marketing and sporting circles is restricted to the traditional concept of pairs of wheels, is to ignore an important function of the tariff schedule, namely to provide eo nomine classification for most of the articles in international trade. HQ 086626, dated January 15, 1991. “Tariff provisions should be open to the invention of new and different products.” *Id.* “Congress could not have intended to foreclose future innovations in [goods] from classification under the [eo nomine] provisions.” *Simon Omega, Inc. v. United States*, 83 Cust.Ct. 14, C.D. 4815 (1979). “To hold otherwise would result in the classification of any and every new product in the basket provisions of the nomenclature.” HQ 086626.

The instant skate shoe is classified in subheading 9506.70.20, HTSUSA, the provision for roller skates.

Holding:

NY G85697 is dated January 19, 2001, is hereby REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

The Heelys™ skate shoe is classified under subheading 9506.70.20, HTSUSA, which provides, for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Ice skates and roller skates, including skating boots with skates attached; parts and accessories thereof: Roller skates and parts and accessories thereof.” The general column one rate of duty is Free.

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

JOHN ELKINS,

(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTERS AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
HOME THEATER SOUND SYSTEMS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of three ruling letters and treatment relating to the tariff classification of home theater sound systems.

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 intends to revoke three ruling letters pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of home theater sound systems and to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before August 30, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW, Washington, D.C during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Commercial Rulings Division, (202) 572-8782.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke three ruling letters pertaining to the tariff classification of home theater systems. Although in this notice Customs is specifically referring to three rulings, NY G85405, PD C87740 and NY G88344, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the three identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise the Customs Service of substantially identical

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

In NY G85405 (December 27, 2000), set forth as "Attachment A" to this document, Customs found that a TSS-1 Home Theater Sound System was classified in subheading 8518.50.00, HTSUS, as an electric sound amplifier set.

In PD C87740 (May 29, 1998), set forth as "Attachment B" to this document, Customs found that a CinemaStation System amplifier and speaker system was classified in subheading 8518.29.80, HTSUS, as loudspeakers, whether or not mounted in their enclosures, other.

In NY G88344 (March 16, 2001), set forth as "Attachment C" to this document, Customs found that an Onkyo Model GXW-5.1 amplifier and speaker system was classified in subheading 8518.29.80, HTSUS, as loudspeakers, whether or not mounted in their enclosures, other.

Customs has reviewed the matter and determined that the correct classification of the amplifier and speaker systems is in subheading 8518.40.20, HTSUS, which provides for audio-frequency electric amplifiers, other.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY G85405, PD C87740, and NY G88344, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letters HQ 964940 (Attachment D), HQ 965762 (Attachment E) and HQ 965763 (Attachment F), respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: July 16, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 27, 2000.
CLA-2-85:RR:NC:MM:109 G85405
Category: Classification
Tariff No. 8518.50.0000

MR. DENNIS HECK
YAMAHA CORPORATION OF AMERICA
*6600 Orangethorpe Avenue
P.O. Box #6600
Buena Park, CA 90622-6600*

Re: The tariff classification of the Yamaha TSS-1 Home Theater Sound System from China.

DEAR MR. HECK:

In your letter dated December 8, 2000, you requested a tariff classification ruling.

The merchandise is described in your letter as the Yamaha TSS-1 Home Theater Sound System. It is designed to turn the PC, TV, DVD or Portable Stereo into a premium surround sound system.

The TSS-1 System consists of the following items:

- 1.) YST-SR601 Amplifier/Sound Processor Unit—This Amplifier/Processor unit has a 48-watt total power output and has built-in Dolby Digital, DTS and Dolby ProLogic decoding. It has an included AC/DC adapter.
- 2.) Subwoofer—There is one subwoofer containing a 5" speaker.
- 3.) Satellite Speakers—There are five (5) satellite speakers each containing a single 2" speaker.

The system is sold as a complete set.

The applicable subheading for the TSS-1 Home Theater Sound System will be 8518.50.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Electric sound amplifier sets." The rate of duty will be 4.9 percent ad valorem. The rate of duty will remain unchanged in 2001.

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 Linda M. Hackett at 212-637-7048.

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

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, May 29, 1998.
CLA-2-85:OFO:OM:B26 C87740
Tariff No. 8518.29.8000

MR. DENNIS HECK
*6600 Orangethorpe Avenue
P.O. Box 6600
Buena Park, CA 90622-6600*

Re: The tariff classification of AV-S7 CinemaStation from Malaysia.

DEAR MR. HECK:

In your letter dated May 7, 1998, you requested a tariff classification ruling for the Yamaha AV-S7 CinemaStation System.

The AV-S7 is designed to give high quality dynamic cinema like sound to the ordinary television set. It consists of a control center/speaker unit, subwoofer/200 watt power amplifier and four satellite speakers. The control center allows the user to command the various functions, such as, Cinema DSP, HiFi DSP and Dolby Pro Logic. The amplifier generates 200 watts of total power (50W goes to the subwoofer and 30W to each of the five speakers), and the speakers provide output dialog and other sounds.

The classification of merchandise within the Harmonized Tariff Schedule of the United States (HTSUS) is governed by the General Rules of Interpretation and any section, chapter and subchapter notes. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Section XVI note 4 provides that a combination of machines consisting of individual components intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or 85, is to be classified as a whole in the heading appropriate to that function. This function is provided by the speakers which produce cinema like surround sound.

The applicable subheading for the AV-S7 CinemaStation System will be 8518.29.8000, HTSUS, which provides for loudspeakers, whether or not mounted in their enclosures, other. The rate of duty will be 4.9 percent ad valorem.

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

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

JOYCE HENDERSON,
*Port Director,
Otay Mesa.*

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, March 16, 2001.
CLA-2-85:RR:NC:MM:109 G88344
Category: Classification
Tariff No. 8518.29.8000

MR. KENT SUNAKODA
IMPORT MANAGER
JAMES J. BOYLE & CO.
OCEAN IMPORT & EXPORT
2525 Corporate Place, #100
Monterey Park, CA 91754

Re: The tariff classification of Dolby digital/DTS 5.1ch theater speaker system (Model GXW-5.1) from Japan.

DEAR MR. SUNAKODA:

In your letter dated March 7, 2001, you requested a tariff classification ruling on behalf of Onkyo USA Corporation, Upper Saddle River, NJ 07458.

The merchandise is referred to in your letter as a Dolby digital/DTS 5.1ch theater speaker system (Model GXW-5.1). The system (Model GXW-5.1) is described as consisting of a subwoofer and five (5) satellite speakers. The speaker system can be connected to a stereo system, DVD player, Playstation, personal computer or television set. The subwoofer component has a built-in Dolby digital/DTS decoder and a 6-channel amplifier.

The Dolby digital/DTS 5.1ch theater speaker system (Model GXW-5.1) will be imported in boxes that will include 5 pc-18 gauge speaker cables, 1 pc-remote control (controls volume, input selection and settings), 2 pc-AAA batteries, 5 sets-speaker feet (small square stickers made of cork that are to be attached to the underside, four corners of each speaker unit), 5 sets-speaker holding nuts and an owner's manual.

The applicable subheading for the Dolby digital/DTS 5.1ch theater speaker system (Model GXW-5.1) will be 8518.29.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for Loudspeakers, whether or not mounted in their enclosures: Other: Other. The rate of duty will be 4.9 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Linda M. Hackett at 212-637-7048.

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

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 964940 KBR
Category: Classification
Tariff No. 8518.40.20

DENNIS HECK
YAMAHA CORPORATION OF AMERICA
6600 Orangethorpe Avenue
P.O. Box 6600
Buena Park, CA 90622-6600

Re: Reconsideration of NY G85405; Home Theater Sound System.

DEAR MR. HECK:

This is in reference to your letter dated March 6, 2002, in which you requested reconsideration of New York Ruling Letter (NY) G85405, issued to you by the Customs National Commodity Specialist Division, on December 27, 2000, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a home theater sound system. We have reviewed G85405 and have determined that the classification provided is incorrect.

Facts:

NY G85405 concerns the Yamaha TSS-1 Home Theater Sound System. The system consists of: a YST-SR601 amplifier/sound processor unit with 48 watt total power output and built-in Dolby Digital, DTS and Dolby Pro-Logic decoding, powered by an AC/DC adapter; a 5 inch subwoofer; and five satellite speakers each containing a single 2 inch speaker. The system is designed to turn a personal computer (PC), television, DVD or portable stereo into a "surround sound" system. All the components of the system are imported, and will be sold, in the same carton.

In NY G85405, it was determined that the home theater sound system was a electric sound amplifier set, classifiable under subheading 8518.50.00, HTSUS. Yamaha subsequently informed Customs that the home theater sound system did not contain a microphone. You believe that the home theater sound system should be classified under subheading 8518.40.20, HTSUS, as an audio-frequency electric amplifier. We have reviewed that ruling and determined that the classification of the home theater sound system is incorrect. This ruling sets forth the correct classification.

Issue:

What is the proper classification under the HTSUS of the subject home theater sound system?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. See T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8518	Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones, earphones and combined microphone/speaker sets; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof: Loudspeakers, whether or not mounted in their enclosures:
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8518.21	Single loudspeakers, mounted in the same enclosure
8518.22.00	Multiple loudspeakers, mounted in the same enclosure
8518.40	Audio-frequency electric amplifiers:
8518.40.20	Other
8518.50.00	Electric sound amplifier sets

The TSS-1 Home Theater Sound System is comprised of three components, the amplifier/sound processor, the subwoofer speaker, and the satellite speakers. EN 85.18(E) describes the term “electronic sound amplifier set” as consisting of three articles: a microphone, an audio-frequency amplifier, and loudspeakers. The home theater sound system does not contain a microphone. Therefore, we believe that classification of the instant goods in subheading 8518.50.00, HTSUS, is incorrect.

There is no disagreement that the home theater system under consideration, Yamaha TSS-1, is classified in heading 8518. The question is whether these goods form a set put up for retail sale. For the instant case, applying GRI 6 at the subheading level, two provisions at the same level of subdivision within heading 8518 describe the home theater sound system in part, amplifiers and loudspeakers. We turn to GRI 3(b) which states that when goods are *prima facie* classifiable under two or more (sub)headings, classification shall be effected as follows:

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

EN (X) for GRI 3(b), states that “[f]or the purposes of this Rule, the term ‘goods put up in sets for retail sale’ shall be taken to mean goods which:

(a) consist of at least two different articles which are, *prima facie*, classifiable in different headings * * *; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).”

Here, the TSS-1 Home Theater Sound System has multiple components of different subheadings; is packaged for the specific activity of providing a sound system for a television, DVD, PC, or portable stereo; and is packaged in one box for retail sale directly to the consumer without repacking. Therefore, it qualifies as a set pursuant to GRI 3(b). *See* HQ 085577 (January 10, 1990).

GRI 3(b) states that sets are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. Under EN (VIII) to GRI 3(b), the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Customs has taken the position that, in an essential character analysis for purposes of GRI 3(b), the role of the constituent materials or components in relation to the use of the goods is generally of primary importance, but the other factors listed in EN (VIII) for GRI 3(b) should also be considered, as applicable (*see, e.g.*, HQ 961095 dated July 20, 1998; HQ 962047 dated May 17, 1999).

The question is which component of the system provides the essential character to the set. The amplifier/sound processor is considered the “heart” of a home theater system. *See Howstuffworks.com*, “How Home Theater Works”, by Tom Harris. The amplifier/sound processor provides the power to drive the speakers and subwoofer. The amplifier/sound processor receives a signal from an input device such as a television or DVD player, interprets, decodes and amplifies the signal and sends it to the speakers, and is equipped for Dolby Digital, DTS and Dolby Pro-Logic inputs. It has a master volume control to determine the level of output the speakers produce.

However, the purpose of a home theater system is to provide the listener with a “movie theater” quality “surround sound”. The listener uses six speakers to receive sound as if that sound is occurring all around the room. The listener desires the vibrations provided by the subwoofer to get the “feel” of the action.

We find that the TSS-1 Home Theater Sound System does not have one essential character. Both the amplifier/sound processor and the speakers merit equal consideration. Therefore, pursuant to GRI 3(c), the TSS-1 Home Theater Sound System is classifiable

under the subheading which occurs last in numerical order, subheading 8518.40.20, HTSUS, as an audio-frequency electric amplifier, other.

Holding:

Pursuant to GRI 3(c), the TSS-1 Home Theater Sound System is classified in subheading 8518.40.20, HTSUS, an audio-frequency electric amplifier, other.

Effect on Other Rulings:

NY G85405, dated December 27, 2000, is REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective sixty (60) days after its final publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA-2 RR:CR:GC 965762 KBR
Category: Classification
Tariff No. 8518.40.20

DENNIS HECK
YAMAHA CORPORATION OF AMERICA
6600 Orangethorpe Avenue
P.O. Box 6600
Buena Park, CA 90622-6600

Re: Reconsideration of PD C87740; Home Theater Sound System.

DEAR MR. HECK:

This is in reference to Port Decision (PD) C87740, issued to you by the Port Director at Otay Mesa, on May 29, 1998, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a home theater sound system. We have reviewed C87740 and have determined that the classification provided is incorrect.

Facts:

PD C87740 concerns the Yamaha AV-S7 CinemaStation System. The system consists of a control center/center channel speaker unit, a subwoofer/200 watt power amplifier, and four satellite speakers. The control center allows the user to command the various functions, such as Cinema DSP, HiFi DSP, and Dolby Pro Logic. Although the control center/center channel speaker has the infra-red remote control receiver and LED indicator lights, the actual signal processor is located within the same cabinet as the amplifier and subwoofer. The amplifier generates 200 watts of total power, with 50 watts going to the subwoofer and 30 watts to each of the five speakers. The system is designed to turn a television into a "surround sound" system. All the components of the system are imported, and will be sold, in the same carton.

In PD C87740, it was determined that the home theater sound system was classifiable as loudspeakers, whether or not mounted in their enclosures, other, under subheading 8518.29.80, HTSUS. We have reviewed that ruling and determined that the classification of the home theater sound system is incorrect. This ruling sets forth the correct classification.

Issue:

What is the proper classification under the HTSUS of the subject home theater sound system?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic

detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8518	Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones, earphones and combined microphone/speaker sets; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof:
	Loudspeakers, whether or not mounted in their enclosures:
8518.21	Single loudspeakers, mounted in the same enclosure
8518.22.00	Multiple loudspeakers, mounted in the same enclosure
8518.40	Audio-frequency electric amplifiers:
8518.40.20	Other
8518.50.00	Electric sound amplifier sets

The AV-S7 CinemaStation System is comprised of three components, the control center/speaker unit, the subwoofer speaker/200 watt amplifier with signal processor, and the satellite speakers. EN 85.18(E) describes the term “electronic sound amplifier set” as consisting of three articles: a microphone, an audio-frequency amplifier, and loudspeakers. The home theater sound system does not contain a microphone. Therefore, we believe that classification of the instant goods in subheading 8518.50.00, HTSUS, is incorrect.

There is no disagreement that the home theater system under consideration, Yamaha AV-S7, is classified in heading 8518. The question is whether these goods form a set put up for retail sale. For the instant case, applying GRI 6 at the subheading level, two provisions at the same level of subdivision within heading 8518 describe the home theater sound system in part, amplifiers and loudspeakers. We turn to GRI 3(b) which states that when goods are *prima facie* classifiable under two or more (sub)headings, classification shall be effected as follows:

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

EN (X) for GRI 3(b), states that “[f]or the purposes of this Rule, the term ‘goods put up in sets for retail sale’ shall be taken to mean goods which:

(a) consist of at least two different articles which are, *prima facie*, classifiable in different headings * * *; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).”

Here, the AV-S7 CinemaStation System has multiple components of different subheadings; is packaged for the specific activity of providing a sound system for a television, and is packaged in one box for retail sale directly to the consumer without repacking. Therefore, it qualifies as a set pursuant to GRI 3(b). *See* HQ 085577 (January 10, 1990).

GRI 3(b) states that sets are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. Under EN (VIII) to GRI 3(b), the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Customs has taken the position that, in an essential character analysis for purposes of GRI 3(b), the role of the constituent materials or components in relation to the use of the goods is generally of primary importance, but the other factors listed in EN (VIII) for GRI 3(b) should also be considered, as applicable (*see, e.g.*, HQ 961095 dated July 20, 1998; HQ 962047 dated May 17, 1999).

The question is which component of the system provides the essential character to the set. The amplifier/sound processor is considered the "heart" of a home theater system. See *Howstuffworks.com*, "How Home Theater Works", by Tom Harris. The amplifier and signal processor provide the power to drive the speakers and subwoofer. The signal processor receives a signal from an input device such as a television, interprets, decodes and amplifies the signal and sends it to the speakers, and is equipped to decode Cinema DSP, HiFi DSP and Dolby Pro-Logic inputs.

However, the purpose of a home theater system is to provide the listener with a "movie theater" quality "surround sound". The listener uses five speakers to receive sound as if that sound is occurring all around the room. The listener desires the vibrations provided by the subwoofer to get the "feel" of the action.

We find that the AV-S7 CinemaStation System does not have one essential character. Both the amplifier and control center, and the speakers merit equal consideration. Therefore, pursuant to GRI 3(c), the AV-S7 CinemaStation System is classifiable under the subheading which occurs last in numerical order, subheading 8518.40.20, HTSUS, as an audio-frequency electric amplifier, other.

Holding:

Pursuant to GRI 3(c), the AV-S7 CinemaStation System is classified in subheading 8518.40.20, HTSUS, an audio-frequency electric amplifier, other.

Effect on Other Rulings:

PD C87740 dated May 29, 1998, is REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective sixty (60) days after its final publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965763 KBR
Category: Classification
Tariff No. 8518.40.20

MR. KENT SUNAKODA
IMPORT MANAGER
JAMES J. BOYLE & Co.
Ocean Import & Export 2525 Corporate Place, #100
Monterey Park, CA 91754

Re: Reconsideration of NY G88344; Home Theater Sound System.

DEAR MR. SUNAKODA:

This is in reference to a ruling, New York Ruling Letter (NY) G88344, issued to you on behalf of Onkyo USA Corporation, by the Customs National Commodity Specialist Division, on March 16, 2001, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a home theater sound system. We have reviewed G88344 and have determined that the classification provided is incorrect.

Facts:

NY G88344 concerns the Onkyo Dolby digital/DTS 5.1ch (Model GXW-5.1) home theater speaker system. The system consists of a subwoofer and five 10 watt amplified satellite speakers. The subwoofer has a built in Dolby digital/DTS decoder and a six channel signal processor and a 25 watt amplifier. The system is designed to turn a personal computer (PC), television, DVD or portable stereo into a "surround sound" system. All the components of the system are imported, and will be sold, in the same carton.

In NY G88344, it was determined that the home theater speaker system was classifiable as loudspeakers, whether or not mounted in their enclosures, other, other, under subheading 8518.29.80, HTSUS. We have reviewed that ruling and determined that the classification of the home theater speaker system is incorrect. This ruling sets forth the correct classification.

Issue:

What is the proper classification under the HTSUS of the subject home theater speaker system?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. See T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8518	Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones, earphones and combined microphone/speaker sets; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof: Loudspeakers, whether or not mounted in their enclosures:
8518.21	Single loudspeakers, mounted in the same enclosure
8518.22.00	Multiple loudspeakers, mounted in the same enclosure
8518.40	Audio-frequency electric amplifiers:
8518.40.20	Other
8518.50.00	Electric sound amplifier sets

The Model GXW-5.1 home theater speaker system is comprised of two components, the subwoofer speaker with the built in amplifier/sound processor, and the satellite speakers. EN 85.18(E) describes the term "electronic sound amplifier set" as consisting of three articles: a microphone, an audio-frequency amplifier, and loudspeakers. The home theater sound system does not contain a microphone. Therefore, we believe that classification of the instant goods in subheading 8518.50.00, HTSUS, is incorrect.

There is no disagreement that the home theater system under consideration, Model GXW-5.1, is classified in heading 8518. The question is whether these goods form a set put up for retail sale. For the instant case, applying GRI 6 at the subheading level, two provisions at the same level of subdivision within heading 8518 describe the home theater sound system in part, amplifiers and loudspeakers. We turn to GRI 3(b) which states that when goods are *prima facie* classifiable under two or more (sub)headings, classification shall be effected as follows:

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

EN (X) for GRI 3(b), states that "[f]or the purposes of this Rule, the term 'goods put up in sets for retail sale' shall be taken to mean goods which:

(a) consist of at least two different articles which are, *prima facie*, classifiable in different headings * * *; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards)."

Here, the Model GXW-5.1 home theater speaker system has multiple components of different subheadings; is packaged for the specific activity of providing a sound system for

a television, DVD, PC, or portable stereo; and is packaged in one box for retail sale directly to the consumer without repacking. Therefore, it qualifies as a set pursuant to GRI 3(b). See HQ 085577 (January 10, 1990).

GRI 3(b) states that sets are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. Under EN (VIII) to GRI 3(b), the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Customs has taken the position that, in an essential character analysis for purposes of GRI 3(b), the role of the constituent materials or components in relation to the use of the goods is generally of primary importance, but the other factors listed in EN (VIII) for GRI 3(b) should also be considered, as applicable (*see, e.g.*, HQ 961095 dated July 20, 1998; HQ 962047 dated May 17, 1999).

The question is which component of the system provides the essential character to the set. The amplifier/sound processor is considered the “heart” of a home theater system. See *Howstuffworks.com*, “How Home Theater Works”, by Tom Harris. The amplifier/sound processor provides the power to drive the speakers and subwoofer. The amplifier/sound processor receives a signal from an input device such as a television or DVD player, interprets, decodes and amplifies the signal and sends it to the speakers, and is equipped to decode Dolby Digital, DTS and Dolby Pro-Logic inputs. It has a master volume control to determine the level of output the speakers produce.

However, the purpose of a home theater system is to provide the listener with a “movie theater” quality “surround sound”. The listener uses 5 speakers to receive sound as if that sound is occurring all around the room. The listener desires the vibrations provided by the subwoofer to get the “feel” of the action.

We find that the Model GXW-5.1 home theater speaker system does not have one essential character. Both the amplifier/sound processor and the speakers merit equal consideration. Therefore, pursuant to GRI 3(c), the Model GXW-5.1 home theater speaker system is classifiable under the subheading which occurs last in numerical order, subheading 8518.40.20, HTSUS, as an audio-frequency electric amplifier, other.

Holding:

Pursuant to GRI 3(c), the Model GXW-5.1 home theater speaker system is classified in subheading 8518.40.20, HTSUS, an audio-frequency electric amplifier, other.

Effect on Other Rulings:

NY G88344, dated March 16, 2001, is REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective sixty (60) days after its final publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF THE “ENVIRASCAPE GLOWING TIERS
RELAXATION CANDLE FOUNTAIN”

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a ruling letter and revocation of treatment relating to the tariff classification of the “Envirascape Glowing Tiers Relaxation Candle Fountain” (hereinafter “Envirascape Fountain”) under the Harmonized Tariff Schedule of the United States (“HTSUS”).

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 intends to revoke a ruling and to revoke any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of the “Envirascape Fountain”. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before August 30, 2002.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings. Attention: Regulations Branch, 1300 Pennsylvania Avenue.N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW, Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich,
General Classification Branch: (202) 572–8776.

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 Customs to provide the public with improved information concerning the trade community’s responsi-

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke New York Ruling Letter (NY) H88127, dated February 20, 2002, which pertains to the tariff classification of the “Envirascape Fountain”. NY H88127 is set forth as “Attachment A” to this document.

Although in this notice Customs is specifically referring to one ruling, NY H88127, this notice covers any rulings on similar merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases; 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, other than the referenced rulings (see above), should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or Customs previous interpretation of the HTSUS or other relevant statutes. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer’s failure to advise Customs 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 his agents for importations of merchandise subsequent to this notice.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY H88127 as it pertains to the classification of the “Envirascape Fountain”, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 965521 (*see* “Attachment B” to this document).

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially

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

Dated: July 16, 2002.

MARVIN AMERNICK,
for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, February 20, 2002.
CLA-2-39:RR:NC:SP:222 H88127
Category: Classification
Tariff No. 3926.40.0000

MR. STEVE KUCHTA
KUEHNE & NAGEL, INC.
10 Exchange Place, 19th Floor
Jersey City, NJ 07302

Re: The tariff classification of a relaxation candle fountain from China.

DEAR MR. KUCHTA:

In your letter dated February 4, 2002, you requested a classification ruling.

The submitted sample is a Relaxation Candle Fountain identified as Model #WF-CAN21. It is a combination candle and fountain in one. This table top size fountain measures 7¾ inches tall x 9 inches wide x 10¼ inches in length. The candle fountain consists of 12 tea light scented candles, polished river rocks, four column shaped plastic candles, a plastic tray and a submersible pump with an electrical cord. The plastic column shaped candles each have cut-out circles in the top to hold the tea light candles. The rocks can be attractively arranged on the tray at the base and the submersible pump produces a soothing sound of flowing water. The plastic components impart the essential character to this item.

The sample is returned as you requested.

The applicable subheading for the Relaxation Candle Fountain, Model #WF-CAN21, will be 3926.40.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of plastics and articles of other materials of headings 3901 to 3914: statuettes and other ornamental articles. The rate of duty will be 5.3 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at 646-733-3023.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965521 AML
Category: Classification
Tariff No. 9602.00.40

MR. STEVE KUCHTA
KUEHNE & NAGEL, INC.
CORPORATE BRANCH
10 Exchange Place
19th Floor
Jersey City, NJ 07302

Re: Reconsideration of NY H88127; “Envirascape Glowing Tiers Relaxation Candle Fountain”.

DEAR MR. KUCHTA:

This is in reply to your letter of March 19, 2002, on behalf of HoMedics, Inc., requesting reconsideration of New York Ruling Letter (“NY”) H88127, dated February 20, 2002, concerning the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of the “Envirascape Glowing Tiers Relaxation Candle Fountain” (hereinafter “Envirascape”). NY H88127 classified the article under subheading 3926.40.00, HTSUS, which provides for other articles of plastic and articles of other materials of headings 3901 to 3914: statuettes and other ornamental articles. A sample and descriptive literature were provided for our consideration. We have reviewed NY H88127 and now believe the classification set forth is incorrect.

Facts:

The article was described in NY H88127 as follows:

The submitted sample is a Relaxation Candle Fountain identified as Model #WF-CAN21. It is a combination candle and fountain in one. This table top size fountain measures 7¾ inches tall x 9 inches wide x 10¼ inches in length. The candle fountain consists of 12 tea light scented candles, polished river rocks, four column shaped plastic candles, a plastic tray and a submersible pump with an electrical cord. The plastic shaped candles each have cutout circles in the top to hold the tea light candles. The rocks can be attractively arranged on the tray at the base and the submersible pump produces column a soothing sound of flowing water.

In the March 19, 2002 submission, you present a declaration from the manufacturer of the articles that states that the molded, column shaped candles (which we more aptly describe as a columnar “centerpiece” (that resembles relatively large, block candles that house the tea light candles and forms “steps” that redirect water from the pump)) consist of paraffin wax rather than plastic as was determined in NY H88127. Thus, you allege that the article is classifiable under subheading 9602.00.40, HTSUS, which provides for worked vegetable or mineral carving material and articles of these materials; molded or carved articles of wax, of stearin, of natural gums or natural resins, of modeling pastes, and other molded or carved articles, not elsewhere specified or included; worked, unhardened gelatin (except gelatin of heading 3503) and articles of unhardened gelatin: molded or carved articles of wax.

The Customs Laboratory analyzed the composition of the column shaped candleholder (the columnar “centerpiece” (that resembles relatively large, block candles that house the tea light candles and “steps” that redirect water from the pump) composed of paraffin wax)). Customs Laboratory Report No. NY20020430, dated May 31, 2002, concluded that “the sample, a yellow block with holes in the middle, is composed of paraffin wax.”

Issue:

What is the classification of the “Envirascape Glowing Tiers Relaxation Candle Fountain”?

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 ac-

ording to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. Customs believes the ENs should always be consulted. See T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

2517	Pebbles, gravel, broken or crushed stone, of a kind commonly used for concrete aggregates, for road metalling, or for railway or other ballast * * *.
2517.10.00	Pebbles, gravel, broken or crushed stone, of a kind commonly used for concrete aggregates, for road metalling, or for railway or other ballast * * *
*	* * * * *
3406	Candles, tapers and the like.
*	* * * * *
3926	Other articles of plastics * * *
3926.40.00	Statuettes and other ornamental articles.
*	* * * * *
8413	Pumps for liquids, whether or not fitted with a measuring device * * *
8413.70	Other centrifugal pumps:
8413.70.20	Other.
*	* * * * *
9602	Worked vegetable or mineral carving material and articles of these materials; molded or carved articles of wax, of stearin, of natural gums or natural resins, of modeling pastes, and other molded or carved articles, not elsewhere specified or included; worked, unhardened gelatin (except gelatin of heading 3503) and articles of unhardened gelatin:
9602.00.40	Molded or carved articles of wax.

We are unable to resolve the classification of the “Envirascape” fountain at GRI 1. GRI 2 is not applicable here except insofar as it provides that “[t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.”

GRI 3 provides as follows:

When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

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

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

EN (IX) to GRI 3(b) provides:

For purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, provided these components are adapted one to the other and are mutually comple-

mentary and that together they form a whole which would not normally be offered for sale in separate parts.

EN (VIII) to GRI 3(b) provides:

The factor which determines the essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Pursuant to GRI 3(a), the article is a composite good *prima facie* classifiable under more than a single heading, *i.e.*, headings 2517 (the unpolished rocks), 3406 (candle), 3926 (the plastic “bowl”), 8413 (the pump), and 9602, HTSUS (the columnar “centerpiece” (that resembles relatively large, block candles that house the tea light candles and “steps” that redirect water from the pump) composed of paraffin wax)).

As regards the essential character of the goods, we note several decisions by the Court of International Trade (CIT) which addressed “essential character” for purposes of GRI 3(b). *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed, 119 F.3d 969 (Fed. Cir. 1997), involved the classification of shower curtain sets, consisting of an outer textile curtain, inner plastic magnetic liner, and plastic hooks. The Court examined the role of the constituent materials in relation to the use of the goods and found that, although the relative value of the textile curtain was greater than that of the plastic liner, and that although the textile curtain also served protective, privacy and decorative functions, because of the fact that the plastic liner served the indispensable function of keeping water inside the shower, the plastic liner imparted the essential character upon the set. See also *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co. v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995), in which the Court also looked to the role of the constituent material in relation to the use of the goods to determine essential character.

The indispensable function of the “Envirascape” fountain is that of a decorative article. The article is intended to be and serves the role of a decoration, *i.e.*, it has no utilitarian value but is wholly ornamental. As such, we must determine which of its components imparts the essential character to the article as a whole.

We believe that neither the unpolished rocks nor the candle impart the essential character to the whole. The rocks appear to be ordinary—oblong shaped, smooth, of unremarkable quality or color. Their presence in the product is to diffuse or redirect the water that will be circulated. It is in this manner that the rocks “contribute” to the decorative role of the good, and we find that the presence of the rocks adds to the appearance and role of the whole without imparting the essential character to the article. Likewise, while the lit candles may draw attention to the article, their presence merely contributes to the appearance of the component good as a whole. Similarly, the tea light candles are ordinary in every respect. Thus, we conclude that neither the rocks nor the candles impart the essential character of the good and accordingly the article is not classifiable under heading 2517 or 3406, HTSUS.

Similarly, the electric pump does not impart the essential character of the article. The “Envirascape” fountain serves a decorative function without the pump, *e.g.*, when the pump is not functioning. The candles and rocks contained in the glass bowl also contribute to the overall appearance and character of the article. We do not believe that the sound of the water is sufficient or serves sufficient enough of a purpose to change our view as to the classification of the fountain. See HQ 964361, dated August 6, 2001, for a similar ruling on a “calming pond.”

Pursuant to GRI 3(b), we find that the molded, columnar “centerpiece” (that resembles relatively large, block candles that house the tea light candles and “steps” that redirect water from the pump) composed of paraffin wax imparts the essential character of the “Envirascape” fountain. Essential character has frequently been construed to mean the attribute that strongly marks or serves to distinguish what an article is. After a careful consideration of this issue, we determine that the “Envirascape” fountain is essentially a decorative article of paraffin wax. The wax mold holds the tea light candles and redirects the pumped water that comprise the focal points of the complete and functioning decoration. Accordingly, based upon our determination that the essential character of the “Envirascape” fountain is as an article of paraffin wax, we find that it is provided for under heading 9602, HTSUS.

Our determination is consistent with the following rulings concerning similar articles.

In HQ 958866 dated April 16, 1996, Customs found a copper tabletop water garden to be classified in subheading 8306.29.00, HTSUS, as: “*** statuettes and other ornaments, of base metal ***” The article there was described as follows: “*** a four leaf shaped copper fountain unit connected through copper ‘stems’ to a plastic water reservoir and pump powered by an electric cord and 3-pronged plug, a copper planter and a decorative rock package.

In NY F83276 dated March 15, 2000, Customs held the model CP-1 “calming pond” to be classified in subheading 3926.40.00, HTSUS as: “Other articles of plastics: *** Statuettes and other ornamental articles.” This classification was affirmed in HQ 964361, dated August 6, 2001. In NY E84043 dated July 27, 1999, Customs classified a decorative “calming pool” in subheading 3926.40.00, HTSUS, as: “Other articles of plastics *** Statuettes and other ornamental articles.”

In HQs 965163 and 965164, both dated August 6, 2001, a tabletop water fountain and an angel fountain, respectively, were classified pursuant to GRI 3(b). In both rulings it was the constituent material of the decorative article that was determined to impart the essential character to the articles.

Holding:

The “Envirascape” fountain is classified under subheading 9602.00.40, HTSUS, which provides for worked vegetable or mineral carving material and articles of these materials; molded or carved articles of wax, of stearin, of natural gums or natural resins, of modeling pastes, and other molded or carved articles, not elsewhere specified or included; worked, unhardened gelatin (except gelatin of heading 3503) and articles of unhardened gelatin: molded or carved articles of wax.

Effect on Other Rulings:

NY H88127 is revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF TREATMENT RELATING TO DRAWBACK ON STEEL TRIM, SCRAP AND WASTE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of treatment relating to drawback on steel trim, scrap and waste.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 USC § 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 intends to revoke the treatment allowing drawback on the export of steel trim, scrap and waste. Customs also proposes to revoke any treatment previously accorded by Customs to substantially identical transactions that is contrary to the position set forth in this notice. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before August 30, 2002.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations

Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Renee D'Antonio Chovanec, Duty and Refund Determination Branch: (202) 572-8795.

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

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, this notice advises interested parties that Customs intends to revoke the treatment allowing drawback on the export of steel trim, scrap and waste. This treatment may be, among other reasons, the result of the claimant's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to a drawback transaction of the same or similar merchandise, or the claimant's or Customs previous interpretation 19 USC § 1313(b). Any person with interests in drawback on substantially identical merchandise should advise Customs during this notice period. A drawback claimant's failure to advise Customs of drawback transactions involving substantially identical merchandise, may raise issues of reasonable care on the part of the claimant or its agents for drawback on this merchandise subsequent to the effective date of the final decision on this notice.

In *Precision Specialty Metals, Inc. v. United States* (182 F.Supp.2d 1314 (Ct. Intl. Trade 2001)) the Court found that Customs' payment of drawback on 69 drawback claims which included waste as the exported

merchandise to constitute a “treatment” within the meaning of 19 USC § 1625(c)(2) and Title 19, Part 177, Subpart A, § 177.9. Therefore the Court found it necessary for Customs to follow the procedures contained in 19 USC § 1625 in order for Customs to apply its long-held position that drawback is not payable on waste. Per T.D. 81-74, March 31, 1981, which superseded T.D. 80-227 (B), the general manufacturing drawback contract under 19 U.S.C. § 1313(b), Articles Manufactured Using Steel, no drawback is payable on any waste which results from the manufacturing operation.

Therefore, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. § 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical drawback transactions that are contrary to the position set forth in this notice, to reflect the proper application of T. D. 81-74 pursuant to the analysis set forth in proposed Headquarters Ruling Letters HQ 229473; HQ 229581; HQ 229582; HQ 229583; HQ 229584 (Attachments A-E). Before taking this action, consideration will be given to any written comments timely received.

Dated: July 16, 2002.

WILLIAM G. ROSOFF,
(for Myles Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
DRA-2-01 RR:CR:DR
Category: Drawback

ROBIN H. GILBERT, ESQ.
COLLIER, SHANNON, RILL & SCOTT
3050 K Street, NW
Washington, DC 20007

Re: *Precision Specialty Metals, Inc., v. United States*, 182 F.Supp.2d 1314 (Ct. Intl. Trade 2001) and Treasury Decision 81-74.

DEAR MS. GILBERT:

This is in regard to your client Precision Specialty Metals, Inc. Pursuant to the Court's opinion in *Precision Specialty Metals, Inc. v. United States*, (182 F.Supp.2d 1314 (Ct. Intl. Trade 2001)) and the requirements of 19 USC § 1625(c), this is to inform you of Customs revocation of a treatment accorded certain drawback transactions with regard to drawback per 19 USC § 1313(b). Specifically no drawback will be paid on any steel waste, scrap or strip.

Facts:

The claimant claimed drawback under the general ruling for steel (T.D. 81-74). The Customs drawback specialist processing the claims asked for evidence of export. The

claimant provided copies of bills of lading that referred to the export as “scrap steel for re-melting purposes only”, “steel scrap sabot”, and “stainless steel scrap”. Notwithstanding a ruling published as C.S.D. 80–137 which held that the exportation of steel scrap, a valuable waste, did not create eligibility for drawback, Customs liquidated 69 claims granting drawback. Upon discovering that error, Customs denied drawback on the remainder of the claims. The claimant sought judicial review. The court held that the liquidation of those claims was a treatment that could be revoked by Customs only by following the procedure set in 19 USC 1625.

Issue:

Whether the export of steel scrap or any other waste, valuable or valueless, results in entitlement to drawback?

Law and Analysis:

Section 1313(b) of the drawback law (19 USC 1313) provides for substitution of the merchandise used in the manufacture or production of the exported or destroyed article if the imported duty-paid merchandise and substituted merchandise are of the same kind and quality and if both the imported duty-paid merchandise and substituted merchandise are used in manufacture or production by the manufacturer or producer within three years from the date of receipt by the manufacturer or producer of the imported merchandise.

Customs has long held that drawback is not allowable on exports of waste (see, e.g., C.S.D. 80–137 and C.S.D. 82–127 (the former citing *Burgess Battery Co. v. United States*, 13 Cust. Ct. 37, C.D. 866 (1944), and the latter citing a 1932 Customs decision)). In *United States v. Dean Linseed-Oil Co.*, (87 Fed. 453 (2nd Cir. 1898), cert. den., 172 U.S. 647 (1898)), the Government argued that the petitioner was not entitled to any drawback “because oil cake is not a manufactured article, but is waste.” (*Id.* at 456.) The court did not dispute that such a defense would have been valid but held that it was not applicable since the Government had considered oil cake to be a manufactured article since 1861.

The court implicitly accepted the Government’s position that drawback was unavailable on the exportation of waste by distinguishing the linseed oil cake from tobacco scraps or tobacco clippings, which were held not to be manufactured articles by the U.S. Supreme Court in *Seeberger v. Castro*, (153 U.S. 32 (1894)). Customs has followed this position continuously for many years. See, e.g., C.S.D. 80–137, dated October 22, 1979, wherein Customs held that drawback is not allowable on exportation of valuable waste incurred in the manufacture of rolled steel coils.

The statutory terms “the use of imported merchandise” and “used in the manufacture or production” have been interpreted to exclude valuable waste from such use for nearly 100 years, as shown in *Dean Linseed-Oil* (supra, 87 Fed. 453). Waste which is recovered and which is valuable as waste cannot be said to be used in the manufacture or production of other articles under the relative value concept articulated by the Supreme Court in *National Lead Co. v. United States*, (252 U.S. 140, 144–145 (1920); see also 22 Op. Atty. Gen. 111, 113–114 (1898)).

Since 1936, Customs expressly required that the value of valuable waste be excluded from any manufacturing drawback claim. See T.D. 48490 (1936), which amended Article 1020 of the Customs Regulations of 1931. That regulatory provision has been present in each revision of the drawback regulations. See Article 1041, Customs Regulations of 1937; Section 22.4(a), Customs Regulations of 1943, as amended (1963 ed.) (19 CFR 22.4(a)) and Sections 191.22(a)(2) and 191.32(b), Customs Regulations (19 CFR 191.22(a)(2) and 191.32(b)) (1997 ed.). See also Article 962, Customs Regulations of 1923, which required an applicant for manufacturing drawback to state whether wastage was incurred in the process and the value of such waste.

In fact, the Customs Regulations provide that when waste results from a drawback manufacturing operation, the amount of drawback available may be affected. If the waste has value, drawback may only be claimed on the basis of the quantity of substituted merchandise appearing in the exported articles, or used in the exported articles, less valuable waste (see 19 CFR 191.22(a)(2)). Under the “appearing in” method, the portion of the imported merchandise resulting in waste would not appear in the exported article and, therefore, the effect would be to reduce the amount of drawback available. Under the “used in, less valuable waste” method, the quantity of imported merchandise used to produce the exported articles is reduced by an amount equal to the quantity of merchandise the value of the waste would replace (see 19 CFR 191.22(a)(2)).

Moreover, the general manufacturing drawback contract for steel is published as T.D. 81-74 and includes a portion titled "WASTE" which provides as follows:

The drawback claimant understands that **no drawback is payable on any waste which results from the manufacturing operation.** Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, the drawback claimant agrees to keep records to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, the drawback claimant agrees to keep records to establish that fact.

(emphasis added).

In distinguishing between byproducts (which are drawback eligible) and waste (which is not) when characterizing residual material from manufacturing or production, Customs has generally utilized the following information about the residual material:

1. The nature of the material of which the residue is composed.
2. The value of the residue as compared to the value of the principal product and the raw material.
3. The use to which the residue is put.
4. The classification of the residue under the tariff law, if imported.
5. Whether the residue is a commodity recognized in commerce.
6. Whether the residue must be subjected to some process to make it saleable.

(See, e.g., HQ 226184 (May 28, 1996).) This analysis of residual material is based on judicial interpretations. In *Patton v. United States*, (159 U.S. 500; 16 S. Ct. 89 (1895)), the Court stated that

[t]he prominent characteristic running through all these definitions [of waste] is that of refuse, or material that is not susceptible of being used for the ordinary purposes of manufacture. It does not presuppose that the article is absolutely worthless, but that it is unmerchantable, and used for purposes for which merchantable material of the same class is unsuitable.

(*Id.* at 503.) The Supreme Court in *Latimer v. United States*, 223 U.S. 501, 32 S. Ct. 242 (1912), also stated that

[t]he word [waste] as thus used generally refers to remnants and by-products of small value that have not the quality or utility either of the finished product or of the raw material.

(*Id.* at 504.)

These Supreme Court cases were cited and relied upon in *Mawer-Gulden-Annis (Inc.) v. United States*, (17 CCPA 270, T.D. 43689 (1929)) in which broken green olives, imported in casks in brine and used to make garnishing or sandwich material, were held not to be waste on the basis that the broken green olives "possess[ed] the same food qualities and some of the uses of whole pitted green olives" (17 CCPA at 272). See also, *Willits & Co. v. United States*, (11 Ct. Cust. App. 499, 501-502, T.D. 39657 (1923)), in which certain beef cracklings were held to be waste as material not susceptible of being used in the ordinary operations of a packing house, material not sought or purposely produced as a by-product in the industry, material not processed after it became a waste, and not possessing the characteristics of its original estate.

In distinguishing between valuable and valueless waste, Customs has basically been governed by whether the waste is a marketable product with more than a negligible value (see letters dated July 18, 1949, from the Acting Commissioner of Customs to the Collector, St. Louis, Missouri; May 8, 1952, from the Chief, Division of Drawbacks, Penalties, and Quotas to the Collector, New York, New York (abstracted as T.D. 52997-(B)); December 17, 1954, from the Chief, Division of Classification and Drawbacks, to the Collector, Cleveland, Ohio (abstracted as T.D. 3701-(F))). If the waste is a marketable product with more than a negligible value, the waste is valuable; if not, the waste is valueless.

Holding:

Based on the above court cases, Customs decisions, other precedent and T.D. 81-74, drawback will not be paid on steel scrap, trim or waste. The treatment allowing drawback on steel trim, scrap or waste is revoked.

MYLES HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

DRA-2-01 RR:CR:DR
Category: Drawback

ROBIN H. GILBERT, ESQ.
COLLIER, SHANNON, RILL & SCOTT
3050 K Street, NW
Washington, DC 20007

Re: *Precision Specialty Metals, Inc., v. United States*, 182 F.Supp.2d 1314 (Ct. Intl. Trade 2001) and Treasury Decision 81-74.

DEAR MS. GILBERT:

This is in regard to your client Ulbrich Stainless Steel. Pursuant to the Court's opinion in *Precision Specialty Metals, Inc. v. United States*, (182 F.Supp.2d 1314 (Ct. Intl. Trade 2001)) and the requirements of 19 USC § 1625(c), this is to inform you of Customs revocation of a treatment accorded certain drawback transactions with regard to drawback per 19 USC § 1313(b). Specifically no drawback will be paid on any steel waste, scrap or strip.

Facts:

The claimant claimed drawback under the general ruling for steel (T.D. 81-74). The Customs drawback specialist processing the claims asked for evidence of export. The claimant provided copies of bills of lading that referred to the export as "scrap steel for re-melting purposes only", "steel scrap sabot", and "stainless steel scrap". Notwithstanding a ruling published as C.S.D. 80-137 which held that the exportation of steel scrap, a valuable waste, did not create eligibility for drawback, Customs liquidated 69 claims granting drawback. Upon discovering that error, Customs denied drawback on the remainder of the claims. The claimant sought judicial review. The court held that the liquidation of those claims was a treatment that could be revoked by Customs only by following the procedure set in 19 USC 1625.

Issue:

Whether the export of steel scrap or any other waste, valuable or valueless, results in entitlement to drawback?

Law and Analysis:

Section 1313(b) of the drawback law (19 USC 1313) provides for substitution of the merchandise used in the manufacture or production of the exported or destroyed article if the imported duty-paid merchandise and substituted merchandise are of the same kind and quality and if both the imported duty-paid merchandise and substituted merchandise are used in manufacture or production by the manufacturer or producer within three years from the date of receipt by the manufacturer or producer of the imported merchandise.

Customs has long held that drawback is not allowable on exports of waste (see, e.g., C.S.D. 80-137 and C.S.D. 82-127 (the former citing *Burgess Battery Co. v. United States*, 13 Cust. Ct. 37, C.D. 866 (1944), and the latter citing a 1932 Customs decision)). In *United States v. Dean Linseed-Oil Co.*, (87 Fed. 453 (2nd Cir. 1898), cert. den., 172 U.S. 647 (1898)), the Government argued that the petitioner was not entitled to any drawback "because oil cake is not a manufactured article, but is waste." (*Id.* at 456.) The court did not dispute that such a defense would have been valid but held that it was not applicable since the Government had considered oil cake to be a manufactured article since 1861.

The court implicitly accepted the Government's position that drawback was unavailable on the exportation of waste by distinguishing the linseed oil cake from tobacco scraps or tobacco clippings, which were held not to be manufactured articles by the U.S. Supreme Court in *Seeberger v. Castro*, (153 U.S. 32 (1894)). Customs has followed this position continuously for many years. See, e.g., C.S.D. 80-137, dated October 22, 1979, wherein Customs held that drawback is not allowable on exportation of valuable waste incurred in the manufacture of rolled steel coils.

The statutory terms "the use of imported merchandise" and "used in the manufacture or production" have been interpreted to exclude valuable waste from such use for nearly 100 years, as shown in *Dean Linseed-Oil* (supra, 87 Fed. 453). Waste which is recovered

and which is valuable as waste cannot be said to be used in the manufacture or production of other articles under the relative value concept articulated by the Supreme Court in *National Lead Co. v. United States*, (252 U.S. 140, 144–145 (1920); see also 22 Op. Atty. Gen. 111, 113–114 (1898)).

Since 1936, Customs expressly required that the value of valuable waste be excluded from any manufacturing drawback claim. See T.D. 48490 (1936), which amended Article 1020 of the Customs Regulations of 1931. That regulatory provision has been present in each revision of the drawback regulations. See Article 1041, Customs Regulations of 1937; Section 22.4(a), Customs Regulations of 1943, as amended (1963 ed.) (19 CFR 22.4(a)) and Sections 191.22(a)(2) and 191.32(b), Customs Regulations (19 CFR 191.22(a)(2) and 191.32(b)) (1997 ed.). See also Article 962, Customs Regulations of 1923, which required an applicant for manufacturing drawback to state whether wastage was incurred in the process and the value of such waste.

In fact, the Customs Regulations provide that when waste results from a drawback manufacturing operation, the amount of drawback available may be affected. If the waste has value, drawback may only be claimed on the basis of the quantity of substituted merchandise appearing in the exported articles, or used in the exported articles, less valuable waste (see 19 CFR 191.22(a)(2)). Under the “appearing in” method, the portion of the imported merchandise resulting in waste would not appear in the exported article and, therefore, the effect would be to reduce the amount of drawback available. Under the “used in, less valuable waste” method, the quantity of imported merchandise used to produce the exported articles is reduced by an amount equal to the quantity of merchandise the value of the waste would replace (see 19 CFR 191.22(a)(2)).

Moreover, the general manufacturing drawback contract for steel is published as T.D. 81–74 and includes a portion titled “WASTE” which provides as follows:

The drawback claimant understands that **no drawback is payable on any waste which results from the manufacturing operation.** Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, the drawback claimant agrees to keep records to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, the drawback claimant agrees to keep records to establish that fact.

(emphasis added).

In distinguishing between byproducts (which are drawback eligible) and waste (which is not) when characterizing residual material from manufacturing or production, Customs has generally utilized the following information about the residual material:

1. The nature of the material of which the residue is composed.
2. The value of the residue as compared to the value of the principal product and the raw material.
3. The use to which the residue is put.
4. The classification of the residue under the tariff law, if imported.
5. Whether the residue is a commodity recognized in commerce.
6. Whether the residue must be subjected to some process to make it saleable.

(See, e.g., HQ 226184 (May 28, 1996).) This analysis of residual material is based on judicial interpretations. In *Patton v. United States*, (159 U.S. 500; 16 S. Ct. 89 (1895)), the Court stated that

[t]he prominent characteristic running through all these definitions [of waste] is that of refuse, or material that is not susceptible of being used for the ordinary purposes of manufacture. It does not presuppose that the article is absolutely worthless, but that it is unmerchantable, and used for purposes for which merchantable material of the same class is unsuitable.

(*Id.* at 503.) The Supreme Court in *Latimer v. United States*, 223 U.S. 501, 32 S. Ct. 242 (1912), also stated that

[t]he word [waste] as thus used generally refers to remnants and by-products of small value that have not the quality or utility either of the finished product or of the raw material.

(*Id.* at 504.)

These Supreme Court cases were cited and relied upon in *Mawer-Gulden-Annis (Inc.) v. United States*, (17 CCPA 270, T.D. 43689 (1929)) in which broken green olives, imported in casks in brine and used to make garnishing or sandwich material, were held not to be

waste on the basis that the broken green olives “possess[ed] the same food qualities and some of the uses of whole pitted green olives” (17 CCPA at 272). See also, *Willits & Co. v. United States*, (11 Ct. Cust. App. 499, 501–502, T.D. 39657 (1923)), in which certain beef cracklings were held to be waste as material not susceptible of being used in the ordinary operations of a packing house, material not sought or purposely produced as a by-product in the industry, material not processed after it became a waste, and not possessing the characteristics of its original estate.

In distinguishing between valuable and valueless waste, Customs has basically been governed by whether the waste is a marketable product with more than a negligible value (see letters dated July 18, 1949, from the Acting Commissioner of Customs to the Collector, St. Louis, Missouri; May 8, 1952, from the Chief, Division of Drawbacks, Penalties, and Quotas to the Collector, New York, New York (abstracted as T.D. 52997–(B)); December 17, 1954, from the Chief, Division of Classification and Drawbacks, to the Collector, Cleveland, Ohio (abstracted as T.D. 3701–(F))). If the waste is a marketable product with more than a negligible value, the waste is valuable; if not, the waste is valueless.

Holding:

Based on the above court cases, Customs decisions, other precedent and T.D. 81–74, drawback will not be paid on steel scrap, trim or waste. The treatment allowing drawback on steel trim, scrap or waste is revoked.

MYLES HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

DRA–2–01 RR:CR:DR
Category: Drawback

ROBIN H. GILBERT, ESQ.
COLLIER, SHANNON, RILL & SCOTT
3050 K Street, NW
Washington, DC 20007

Re: *Precision Specialty Metals, Inc., v. United States*, 182 F.Supp.2d 1314 (Ct. Intl. Trade 2001) and Treasury Decision 81–74.

DEAR Ms. GILBERT:

This is in regard to your client Joseph T. Ryerson & Son, Inc., (formerly Thypin Steel). Pursuant to the Court’s opinion in *Precision Specialty Metals, Inc. v. United States*, (182 F.Supp.2d 1314 (Ct. Intl. Trade 2001)) and the requirements of 19 USC § 1625(c), this is to inform you of Customs revocation of a treatment accorded certain drawback transactions with regard to drawback per 19 USC § 1313(b). Specifically no drawback will be paid on any steel waste, scrap or strip.

Facts:

The claimant claimed drawback under the general ruling for steel (T.D. 81–74). The Customs drawback specialist processing the claims asked for evidence of export. The claimant provided copies of bills of lading that referred to the export as “scrap steel for re-melting purposes only”, “steel scrap sabot”, and “stainless steel scrap”. Notwithstanding a ruling published as C.S.D. 80–137 which held that the exportation of steel scrap, a valuable waste, did not create eligibility for drawback, Customs liquidated 69 claims granting drawback. Upon discovering that error, Customs denied drawback on the remainder of the claims. The claimant sought judicial review. The court held that the liquidation of those claims was a treatment that could be revoked by Customs only by following the procedure set in 19 USC 1625.

Issue:

Whether the export of steel scrap or any other waste, valuable or valueless, results in entitlement to drawback?

Law and Analysis:

Section 1313(b) of the drawback law (19 USC 1313) provides for substitution of the merchandise used in the manufacture or production of the exported or destroyed article if the imported duty-paid merchandise and substituted merchandise are of the same kind and quality and if both the imported duty-paid merchandise and substituted merchandise are used in manufacture or production by the manufacturer or producer within three years from the date of receipt by the manufacturer or producer of the imported merchandise.

Customs has long held that drawback is not allowable on exports of waste (see, e.g., C.S.D. 80-137 and C.S.D. 82-127 (the former citing *Burgess Battery Co. v. United States*, 13 Cust. Ct. 37, C.D. 866 (1944), and the latter citing a 1932 Customs decision)). In *United States v. Dean Linseed-Oil Co.*, (87 Fed. 453 (2nd Cir. 1898), cert. den., 172 U.S. 647 (1898)), the Government argued that the petitioner was not entitled to any drawback “because oil cake is not a manufactured article, but is waste.” (*Id.* at 456.) The court did not dispute that such a defense would have been valid but held that it was not applicable since the Government had considered oil cake to be a manufactured article since 1861.

The court implicitly accepted the Government’s position that drawback was unavailable on the exportation of waste by distinguishing the linseed oil cake from tobacco scraps or tobacco clippings, which were held not to be manufactured articles by the U.S. Supreme Court in *Seeberger v. Castro*, (153 U.S. 32 (1894)). Customs has followed this position continuously for many years. See, e.g., C.S.D. 80-137, dated October 22, 1979, wherein Customs held that drawback is not allowable on exportation of valuable waste incurred in the manufacture of rolled steel coils.

The statutory terms “the use of imported merchandise” and “used in the manufacture or production” have been interpreted to exclude valuable waste from such use for nearly 100 years, as shown in *Dean Linseed-Oil* (supra, 87 Fed. 453). Waste which is recovered and which is valuable as waste cannot be said to be used in the manufacture or production of other articles under the relative value concept articulated by the Supreme Court in *National Lead Co. v. United States*, (252 U.S. 140, 144-145 (1920); see also 22 Op. Atty. Gen. 111, 113-114 (1898)).

Since 1936, Customs expressly required that the value of valuable waste be excluded from any manufacturing drawback claim. See T.D. 48490 (1936), which amended Article 1020 of the Customs Regulations of 1931. That regulatory provision has been present in each revision of the drawback regulations. See Article 1041, Customs Regulations of 1937; Section 22.4(a), Customs Regulations of 1943, as amended (1963 ed.) (19 CFR 22.4(a)) and Sections 191.22(a)(2) and 191.32(b), Customs Regulations (19 CFR 191.22(a)(2) and 191.32(b)) (1997 ed.). See also Article 962, Customs Regulations of 1923, which required an applicant for manufacturing drawback to state whether wastage was incurred in the process and the value of such waste.

In fact, the Customs Regulations provide that when waste results from a drawback manufacturing operation, the amount of drawback available may be affected. If the waste has value, drawback may only be claimed on the basis of the quantity of substituted merchandise appearing in the exported articles, or used in the exported articles, less valuable waste (see 19 CFR 191.22(a)(2)). Under the “appearing in” method, the portion of the imported merchandise resulting in waste would not appear in the exported article and, therefore, the effect would be to reduce the amount of drawback available. Under the “used in, less valuable waste” method, the quantity of imported merchandise used to produce the exported articles is reduced by an amount equal to the quantity of merchandise the value of the waste would replace (see 19 CFR 191.22(a)(2)).

Moreover, the general manufacturing drawback contract for steel is published as T.D. 81-74 and includes a portion titled “WASTE” which provides as follows:

The drawback claimant understands that **no drawback is payable on any waste which results from the manufacturing operation.** Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, the drawback claimant agrees to keep records to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported

articles. If no waste results, the drawback claimant agrees to keep records to establish that fact.

(emphasis added).

In distinguishing between byproducts (which are drawback eligible) and waste (which is not) when characterizing residual material from manufacturing or production, Customs has generally utilized the following information about the residual material:

1. The nature of the material of which the residue is composed.
2. The value of the residue as compared to the value of the principal product and the raw material.
3. The use to which the residue is put.
4. The classification of the residue under the tariff law, if imported.
5. Whether the residue is a commodity recognized in commerce.
6. Whether the residue must be subjected to some process to make it saleable.

(See, e.g., HQ 226184 (May 28, 1996).) This analysis of residual material is based on judicial interpretations. In *Patton v. United States*, (159 U.S. 500; 16 S. Ct. 89 (1895)), the Court stated that

[t]he prominent characteristic running through all these definitions [of waste] is that of refuse, or material that is not susceptible of being used for the ordinary purposes of manufacture. It does not presuppose that the article is absolutely worthless, but that it is unmerchantable, and used for purposes for which merchantable material of the same class is unsuitable.

(*Id.* at 503.) The Supreme Court in *Latimer v. United States*, 223 U.S. 501, 32 S. Ct. 242 (1912), also stated that

[t]he word [waste] as thus used generally refers to remnants and by-products of small value that have not the quality or utility either of the finished product or of the raw material.

(*Id.* at 504.)

These Supreme Court cases were cited and relied upon in *Mawer-Gulden-Annis (Inc.) v. United States*, (17 CCPA 270, T.D. 43689 (1929)) in which broken green olives, imported in casks in brine and used to make garnishing or sandwich material, were held not to be waste on the basis that the broken green olives “possess[ed] the same food qualities and some of the uses of whole pitted green olives” (17 CCPA at 272). See also, *Willits & Co. v. United States*, (11 Ct. Cust. App. 499, 501–502, T.D. 39657 (1923)), in which certain beef cracklings were held to be waste as material not susceptible of being used in the ordinary operations of a packing house, material not sought or purposely produced as a by-product in the industry, material not processed after it became a waste, and not possessing the characteristics of its original estate.

In distinguishing between valuable and valueless waste, Customs has basically been governed by whether the waste is a marketable product with more than a negligible value (see letters dated July 18, 1949, from the Acting Commissioner of Customs to the Collector, St. Louis, Missouri; May 8, 1952, from the Chief, Division of Drawbacks, Penalties, and Quotas to the Collector, New York, New York (abstracted as T.D. 52997–(B)); December 17, 1954, from the Chief, Division of Classification and Drawbacks, to the Collector, Cleveland, Ohio (abstracted as T.D. 3701–(F))). If the waste is a marketable product with more than a negligible value, the waste is valuable; if not, the waste is valueless.

Holding:

Based the above court cases, Customs decisions, other precedent and T.D. 81–74, drawback will not be paid on steel scrap, trim or waste. The treatment allowing drawback on steel trim, scrap or waste is revoked.

MYLES HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

DRA-2-01 RR:CR:DR
Category: Drawback

ROBIN H. GILBERT, ESQ.
COLLIER, SHANNON, RILL & SCOTT
3050 K Street, NW
Washington, DC 20007

Re: *Precision Specialty Metals, Inc., v. United States*, 182 F.Supp.2d 1314 (Ct. Intl. Trade 2001) and Treasury Decision 81-74.

DEAR MS. GILBERT:

This is in regard to your client Combined Metals of Chicago, LLC. Pursuant to the Court's opinion in *Precision Specialty Metals, Inc. v. United States*, (182 F.Supp.2d 1314 (Ct. Intl. Trade 2001)) and the requirements of 19 USC § 1625(c), this is to inform you of Customs revocation of a treatment accorded certain drawback transactions with regard to drawback per 19 USC § 1313(b). Specifically no drawback will be paid on any steel waste, scrap or strip.

Facts:

The claimant claimed drawback under the general ruling for steel (T.D. 81-74). The Customs drawback specialist processing the claims asked for evidence of export. The claimant provided copies of bills of lading that referred to the export as "scrap steel for re-melting purposes only", "steel scrap sabot", and "stainless steel scrap". Notwithstanding a ruling published as C.S.D. 80-137 which held that the exportation of steel scrap, a valuable waste, did not create eligibility for drawback, Customs liquidated 69 claims granting drawback. Upon discovering that error, Customs denied drawback on the remainder of the claims. The claimant sought judicial review. The court held that the liquidation of those claims was a treatment that could be revoked by Customs only by following the procedure set in 19 USC 1625.

Issue:

Whether the export of steel scrap or any other waste, valuable or valueless, results in entitlement to drawback?

Law and Analysis:

Section 1313(b) of the drawback law (19 USC 1313) provides for substitution of the merchandise used in the manufacture or production of the exported or destroyed article if the imported duty-paid merchandise and substituted merchandise are of the same kind and quality and if both the imported duty-paid merchandise and substituted merchandise are used in manufacture or production by the manufacturer or producer within three years from the date of receipt by the manufacturer or producer of the imported merchandise.

Customs has long held that drawback is not allowable on exports of waste (see, e.g., C.S.D. 80-137 and C.S.D. 82-127 (the former citing *Burgess Battery Co. v. United States*, 13 Cust. Ct. 37, C.D. 866 (1944), and the latter citing a 1932 Customs decision)). In *United States v. Dean Linseed-Oil Co.*, (87 Fed. 453 (2nd Cir. 1898), cert. den., 172 U.S. 647 (1898)), the Government argued that the petitioner was not entitled to any drawback "because oil cake is not a manufactured article, but is waste." (*Id.* at 456.) The court did not dispute that such a defense would have been valid but held that it was not applicable since the Government had considered oil cake to be a manufactured article since 1861.

The court implicitly accepted the Government's position that drawback was unavailable on the exportation of waste by distinguishing the linseed oil cake from tobacco scraps or tobacco clippings, which were held not to be manufactured articles by the U.S. Supreme Court in *Seeberger v. Castro*, (153 U.S. 32 (1894)). Customs has followed this position continuously for many years. See, e.g., C.S.D. 80-137, dated October 22, 1979, wherein Customs held that drawback is not allowable on exportation of valuable waste incurred in the manufacture of rolled steel coils.

The statutory terms "the use of imported merchandise" and "used in the manufacture or production" have been interpreted to exclude valuable waste from such use for nearly

100 years, as shown in *Dean Linseed-Oil* (supra, 87 Fed. 453). Waste which is recovered and which is valuable as waste cannot be said to be used in the manufacture or production of other articles under the relative value concept articulated by the Supreme Court in *National Lead Co. v. United States*, (252 U.S. 140, 144–145 (1920); see also 22 Op. Atty. Gen. 111, 113–114 (1898)).

Since 1936, Customs expressly required that the value of valuable waste be excluded from any manufacturing drawback claim. See T.D. 48490 (1936), which amended Article 1020 of the Customs Regulations of 1931. That regulatory provision has been present in each revision of the drawback regulations. See Article 1041, Customs Regulations of 1937; Section 22.4(a), Customs Regulations of 1943, as amended (1963 ed.) (19 CFR 22.4(a)) and Sections 191.22(a)(2) and 191.32(b), Customs Regulations (19 CFR 191.22(a)(2) and 191.32(b)) (1997 ed.). See also Article 962, Customs Regulations of 1923, which required an applicant for manufacturing drawback to state whether wastage was incurred in the process and the value of such waste.

In fact, the Customs Regulations provide that when waste results from a drawback manufacturing operation, the amount of drawback available may be affected. If the waste has value, drawback may only be claimed on the basis of the quantity of substituted merchandise appearing in the exported articles, or used in the exported articles, less valuable waste (see 19 CFR 191.22(a)(2)). Under the “appearing in” method, the portion of the imported merchandise resulting in waste would not appear in the exported article and, therefore, the effect would be to reduce the amount of drawback available. Under the “used in, less valuable waste” method, the quantity of imported merchandise used to produce the exported articles is reduced by an amount equal to the quantity of merchandise the value of the waste would replace (see 19 CFR 191.22(a)(2)).

Moreover, the general manufacturing drawback contract for steel is published as T.D. 81–74 and includes a portion titled “WASTE” which provides as follows:

The drawback claimant understands that **no drawback is payable on any waste which results from the manufacturing operation.** Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, the drawback claimant agrees to keep records to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, the drawback claimant agrees to keep records to establish that fact.

(emphasis added).

In distinguishing between byproducts (which are drawback eligible) and waste (which is not) when characterizing residual material from manufacturing or production, Customs has generally utilized the following information about the residual material:

1. The nature of the material of which the residue is composed.
2. The value of the residue as compared to the value of the principal product and the raw material.
3. The use to which the residue is put.
4. The classification of the residue under the tariff law, if imported.
5. Whether the residue is a commodity recognized in commerce.
6. Whether the residue must be subjected to some process to make it saleable.

(See, e.g., HQ 226184 (May 28, 1996).) This analysis of residual material is based on judicial interpretations. In *Patton v. United States*, (159 U.S. 500; 16 S. Ct. 89 (1895)), the Court stated that

[t]he prominent characteristic running through all these definitions [of waste] is that of refuse, or material that is not susceptible of being used for the ordinary purposes of manufacture. It does not presuppose that the article is absolutely worthless, but that it is unmerchantable, and used for purposes for which merchantable material of the same class is unsuitable.

(*Id.* at 503.) The Supreme Court in *Latimer v. United States*, 223 U.S. 501, 32 S. Ct. 242 (1912), also stated that

[t]he word [waste] as thus used generally refers to remnants and by-products of small value that have not the quality or utility either of the finished product or of the raw material.

(*Id.* at 504.)

These Supreme Court cases were cited and relied upon in *Mawer-Gulden-Annis (Inc.) v. United States*, (17 CCPA 270, T.D. 43689 (1929)) in which broken green olives, imported in

casks in brine and used to make garnishing or sandwich material, were held not to be waste on the basis that the broken green olives “possess[ed] the same food qualities and some of the uses of whole pitted green olives” (17 CCPA at 272). See also, *Willits & Co. v. United States*, (11 Ct. Cust. App. 499, 501–502, T.D. 39657 (1923)), in which certain beef cracklings were held to be waste as material not susceptible of being used in the ordinary operations of a packing house, material not sought or purposely produced as a by-product in the industry, material not processed after it became a waste, and not possessing the characteristics of its original estate.

In distinguishing between valuable and valueless waste, Customs has basically been governed by whether the waste is a marketable product with more than a negligible value (see letters dated July 18, 1949, from the Acting Commissioner of Customs to the Collector, St. Louis, Missouri; May 8, 1952, from the Chief, Division of Drawbacks, Penalties, and Quotas to the Collector, New York, New York (abstracted as T.D. 52997–(B)); December 17, 1954, from the Chief, Division of Classification and Drawbacks, to the Collector, Cleveland, Ohio (abstracted as T.D. 3701–(F))). If the waste is a marketable product with more than a negligible value, the waste is valuable; if not, the waste is valueless.

Holding:

Based the above court cases, Customs decisions, other precedent and T.D. 81–74, drawback will not be paid on steel scrap, trim or waste. The treatment allowing drawback on steel trim, scrap or waste is revoked.

MYLES HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.
DRA–2–01 RR:CR:DR
Category: Drawback

ROBIN H. GILBERT, ESQ.
COLLIER, SHANNON, RILL & SCOTT
3050 K Street, NW
Washington, DC 20007

Re: *Precision Specialty Metals, Inc., v. United States*, 182 F.Supp.2d 1314 (Ct. Intl. Trade 2001) and Treasury Decision 81–74.

DEAR MS. GILBERT:

This is in regard to your client Calstrip Industries, (formerly Calstrip Steel Corp.). Pursuant to the Court’s opinion in *Precision Specialty Metals, Inc. v. United States*, (182 F.Supp.2d 1314 (Ct. Intl. Trade 2001)) and the requirements of 19 USC § 1625(c), this is to inform you of Customs revocation of a treatment accorded certain drawback transactions with regard to drawback per 19 USC § 1313(b). Specifically no drawback will be paid on any steel waste, scrap or strip.

Facts:

The claimant claimed drawback under the general ruling for steel (T.D. 81–74). The Customs drawback specialist processing the claims asked for evidence of export. The claimant provided copies of bills of lading that referred to the export as “scrap steel for re-melting purposes only”, “steel scrap sabot”, and “stainless steel scrap”. Notwithstanding a ruling published as C.S.D. 80–137 which held that the exportation of steel scrap, a valuable waste, did not create eligibility for drawback, Customs liquidated 69 claims granting drawback. Upon discovering that error, Customs denied drawback on the remainder of the claims. The claimant sought judicial review. The court held that the liquidation of those claims was a treatment that could be revoked by Customs only by following the procedure set in 19 USC 1625.

Issue:

Whether the export of steel scrap or any other waste, valuable or valueless, results in entitlement to drawback?

Law and Analysis:

Section 1313(b) of the drawback law (19 USC 1313) provides for substitution of the merchandise used in the manufacture or production of the exported or destroyed article if the imported duty-paid merchandise and substituted merchandise are of the same kind and quality and if both the imported duty-paid merchandise and substituted merchandise are used in manufacture or production by the manufacturer or producer within three years from the date of receipt by the manufacturer or producer of the imported merchandise.

Customs has long held that drawback is not allowable on exports of waste (see, e.g., C.S.D. 80-137 and C.S.D. 82-127 (the former citing *Burgess Battery Co. v. United States*, 13 Cust. Ct. 37, C.D. 866 (1944), and the latter citing a 1932 Customs decision)). In *United States v. Dean Linseed-Oil Co.*, (87 Fed. 453 (2nd Cir. 1898), cert. den., 172 U.S. 647 (1898)), the Government argued that the petitioner was not entitled to any drawback "because oil cake is not a manufactured article, but is waste." (*Id.* at 456.) The court did not dispute that such a defense would have been valid but held that it was not applicable since the Government had considered oil cake to be a manufactured article since 1861.

The court implicitly accepted the Government's position that drawback was unavailable on the exportation of waste by distinguishing the linseed oil cake from tobacco scraps or tobacco clippings, which were held not to be manufactured articles by the U.S. Supreme Court in *Seeberger v. Castro*, (153 U.S. 32 (1894)). Customs has followed this position continuously for many years. See, e.g., C.S.D. 80-137, dated October 22, 1979, wherein Customs held that drawback is not allowable on exportation of valuable waste incurred in the manufacture of rolled steel coils.

The statutory terms "the use of imported merchandise" and "used in the manufacture or production" have been interpreted to exclude valuable waste from such use for nearly 100 years, as shown in *Dean Linseed-Oil* (supra, 87 Fed. 453). Waste which is recovered and which is valuable as waste cannot be said to be used in the manufacture or production of other articles under the relative value concept articulated by the Supreme Court in *National Lead Co. v. United States*, (252 U.S. 140, 144-145 (1920); see also 22 Op. Atty. Gen. 111, 113-114 (1898)).

Since 1936, Customs expressly required that the value of valuable waste be excluded from any manufacturing drawback claim. See T.D. 48490 (1936), which amended Article 1020 of the Customs Regulations of 1931. That regulatory provision has been present in each revision of the drawback regulations. See Article 1041, Customs Regulations of 1937; Section 22.4(a), Customs Regulations of 1943, as amended (1963 ed.) (19 CFR 22.4(a)) and Sections 191.22(a)(2) and 191.32(b), Customs Regulations (19 CFR 191.22(a)(2) and 191.32(b)) (1997 ed.). See also Article 962, Customs Regulations of 1923, which required an applicant for manufacturing drawback to state whether wastage was incurred in the process and the value of such waste.

In fact, the Customs Regulations provide that when waste results from a drawback manufacturing operation, the amount of drawback available may be affected. If the waste has value, drawback may only be claimed on the basis of the quantity of substituted merchandise appearing in the exported articles, or used in the exported articles, less valuable waste (see 19 CFR 191.22(a)(2)). Under the "appearing in" method, the portion of the imported merchandise resulting in waste would not appear in the exported article and, therefore, the effect would be to reduce the amount of drawback available. Under the "used in, less valuable waste" method, the quantity of imported merchandise used to produce the exported articles is reduced by an amount equal to the quantity of merchandise the value of the waste would replace (see 19 CFR 191.22(a)(2)).

Moreover, the general manufacturing drawback contract for steel is published as T.D. 81-74 and includes a portion titled "WASTE" which provides as follows:

The drawback claimant understands that **no drawback is payable on any waste which results from the manufacturing operation.** Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, the drawback claimant agrees to keep records to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported

articles. If no waste results, the drawback claimant agrees to keep records to establish that fact.

(emphasis added).

In distinguishing between byproducts (which are drawback eligible) and waste (which is not) when characterizing residual material from manufacturing or production, Customs has generally utilized the following information about the residual material:

1. The nature of the material of which the residue is composed.
2. The value of the residue as compared to the value of the principal product and the raw material.
3. The use to which the residue is put.
4. The classification of the residue under the tariff law, if imported.
5. Whether the residue is a commodity recognized in commerce.
6. Whether the residue must be subjected to some process to make it saleable.

(See, e.g., HQ 226184 (May 28, 1996).) This analysis of residual material is based on judicial interpretations. In *Patton v. United States*, (159 U.S. 500; 16 S. Ct. 89 (1895)), the Court stated that

[t]he prominent characteristic running through all these definitions [of waste] is that of refuse, or material that is not susceptible of being used for the ordinary purposes of manufacture. It does not presuppose that the article is absolutely worthless, but that it is unmerchantable, and used for purposes for which merchantable material of the same class is unsuitable.

(*Id.* at 503.) The Supreme Court in *Latimer v. United States*, 223 U.S. 501, 32 S. Ct. 242 (1912), also stated that

[t]he word [waste] as thus used generally refers to remnants and by-products of small value that have not the quality or utility either of the finished product or of the raw material.

(*Id.* at 504.)

These Supreme Court cases were cited and relied upon in *Mawer-Gulden-Annis (Inc.) v. United States*, (17 CCPA 270, T.D. 43689 (1929)) in which broken green olives, imported in casks in brine and used to make garnishing or sandwich material, were held not to be waste on the basis that the broken green olives “possess[ed] the same food qualities and some of the uses of whole pitted green olives” (17 CCPA at 272). See also, *Willits & Co. v. United States*, (11 Ct. Cust. App. 499, 501–502, T.D. 39657 (1923)), in which certain beef cracklings were held to be waste as material not susceptible of being used in the ordinary operations of a packing house, material not sought or purposely produced as a by-product in the industry, material not processed after it became a waste, and not possessing the characteristics of its original estate.

In distinguishing between valuable and valueless waste, Customs has basically been governed by whether the waste is a marketable product with more than a negligible value (see letters dated July 18, 1949, from the Acting Commissioner of Customs to the Collector, St. Louis, Missouri; May 8, 1952, from the Chief, Division of Drawbacks, Penalties, and Quotas to the Collector, New York, New York (abstracted as T.D. 52997–(B)); December 17, 1954, from the Chief, Division of Classification and Drawbacks, to the Collector, Cleveland, Ohio (abstracted as T.D. 3701–(F))). If the waste is a marketable product with more than a negligible value, the waste is valuable; if not, the waste is valueless.

Holding:

Based the above court cases, Customs decisions, other precedent and T.D. 81–74, drawback will not be paid on steel scrap, trim or waste. The treatment allowing drawback on steel trim, scrap or waste is revoked.

MYLES HARMON,
Acting Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO
CLASSIFICATION OF MALTITOL SWEETENED WHITE
CHOCOLATE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of ruling letter and revocation of treatment relating to the classification of maltitol sweetened white chocolate.

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 intends to modify a ruling letter pertaining to the tariff classification of maltitol sweetened white chocolate and revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before August 30, 2002.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at 202-572-8768.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202-572-8778.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

quirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of maltitol sweetened white chocolate. Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NY) H84179, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

In NY H84179, dated August 21, 2001, among other items, the classification of a product commonly referred to as maltitol sweetened white chocolate was determined to be in heading 1704.90.3550, HTSUS, which provides for sugar confectionery (including white chocolate), not containing cocoa: other: confections of sweetmeats ready for consumption: other: other * * * put up for retail sale: other. This ruling letter is set forth in "Attachment A" to this document. Since the issuance of that ruling, Customs has had a chance to review the classification of this merchandise and has determined that the classification is in error. The maltitol sweetened white chocolate is not a sugar confectionery and should be classified as a food preparation not elsewhere specified or included, based on its use and ingredient composition. However, Customs lacks

sufficient information about its use and ingredients to determine whether the article is a product of heading 1901, HTSUS, a food preparation of headings 0401 to 0404, or a product of heading 2106, HTSUS, a food preparation not elsewhere specified or included. This notice revokes the classification of maltitol sweetened white chocolate provided in NY H84179 and invites the importer to provide the information needed to properly classify the product should such classification still be desired.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to modify NY H84179, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 965466 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: July 17, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, August 21, 2002.
CLA-2-18:RR:NC:SP:232 H84179
Category: Classification
Tariff No. 1704.90.3550,
1806.32.9000, and 1806.90.9019

MR. NORMAN ELISBERG
LAFAYETTE SHIPPING COMPANY
*2425B 3rd Street
Fort Lee, NJ 07024-4051*

Re: The tariff classification of Confectionery from Belgium.

DEAR MR. ELISBERG:

In your letter dated July 30, 2001, on behalf of Sugar Free Bars, LLC. of Midland Park, New Jersey, you requested a tariff classification ruling.

You submitted samples with your request. The subject merchandise is a variety of sugar free chocolate bars and confections. One type is a 42-gram milk chocolate bar; 5 inches long by 1 inch wide by ½ inch deep and individually wrapped for retail sale. They are scored to enable breaking them into six segments. The sample labels indicate that these bars contain 41.6 percent maltitol, 24.1 percent cocoa butter, 22.3 percent milk powder, 11.6 percent cocoa liquor, and traces of lecithin, vanilla, and flavors such as mint, peanut, and raspberry.

Another product line includes 100-gram bars, 6 inches wide by 3 inches high by 3/8 inch thick, also individually wrapped for retail sale. These bars come in 3 flavors. They are scored to enable breaking them into twenty-four small pieces. According to the product labels, the milk chocolate bar is said to contain maltitol, cocoa butter, milk powder, cocoa liquor, lecithin, and vanilla. The dark chocolate bar is said to contain cocoa liquor, maltitol, cocoa butter, lecithin, and vanilla. The white chocolate bar is stated to consist of maltitol, cocoa butter, milk powder, lecithin, and vanilla.

The next item is a 130 gram boxed assortment of chocolates. These are described as containing maltitol, cocoa butter, milk powder, cocoa liquor, hazelnuts, vegetable fat, lecithin, vanilla, and flavors such as coffee, cointreau, and mandarin napoleon.

The applicable subheading for the white chocolate bar will be 1704.90.3550, Harmonized Tariff Schedule of the United States (HTS), which provides for Sugar confectionery (including white chocolate), not containing cocoa: Other: Confections or sweetmeats ready for consumption: Other: Other * * * Put up for retail sale: Other. The rate of duty will be 5.6 percent ad valorem.

The applicable subheading for the remaining chocolate bars will be 1806.32.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for Chocolate and other food preparations containing cocoa: Other, in blocks, slabs or bars: Not filled: Other: Other. The rate of duty will be 6 percent ad valorem.

The applicable subheading for the boxed candy will be 1806.90.9019, Harmonized Tariff Schedule of the United States (HTS), which provides for Chocolate and other food preparations containing cocoa: Other: Other: Other * * * Confectionery: Other. The rate of duty will be 6 percent ad valorem.

The Food and Drug Administration may impose additional requirements on these products. You may contact the FDA at:

Food and Drug Administration
Implementation and Compliance Branch
HFF 314, 200 C Street, SW
Washington, D.C. 20204
(202) 205-5321

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides, in general, that all articles of foreign origin imported into the United States must be legibly, conspicuously, and permanently marked to indicate the English name of the country of origin to an ultimate purchaser in the United States. The implementing regulations to 19 U.S.C. 1304 are set forth in Part 134, Customs Regulations (19 CFR Part 134). The samples you have submitted do not appear to be properly marked with the country of origin. You may wish to discuss the matter of country of origin marking with the Customs import specialist at the proposed port of entry.

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 John Maria at (212) 637-7059.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965466ptl
Category: Classification
Tariff No. 1901/2106

MR. NORMAN ELISBERG
LAFAYETTE SHIPPING COMPANY
2425B 3rd Street
Fort Lee, NJ 07024-4051

Re: Maltitol Sweetened White Chocolate, NY H84179 modified.

DEAR MR. ELISBERG:

This is in reference to New York Ruling Letter (NY) H84179, issued to you on August 21, 2002, by the Director, National Commodity Specialist Division, New York, on behalf of Sugar Free Bars, LLC., in which a variety of sugar free chocolate bars and confections were classified under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed that ruling and determined that the classification provided for the maltitol sweetened white chocolate bar is incorrect for the reasons stated below. However, because we lack sufficient information regarding the products use and ingredients, we are unable to determine whether the correct classification of the product. Should the importer desire a ruling on this product, a new ruling request setting forth all relevant facts about the product may be submitted to the Director, National Commodity Specialist Division, U.S. Customs, Attn: CIE/Ruling Request, One Penn Plaza, 10th Floor, New York, NY 10119. This letter does not effect classification of other products in NY H84179.

Facts:

The according to the available information, the subject product is a 100-gram bar, 6 inches wide by 3 inches high and 3/8 inch thick, individually wrapped for retail sale. The ingredients of the white chocolate bar are stated to consist of maltitol, cocoa butter, milk powder, lecithin, and vanilla. IN NY H84179, this product was classified in subheading 1704.90.3550, HTSUS, which provides for sugar confectionery (including white chocolate), not containing cocoa: other: confections or sweetmeats ready for consumption: other: other * * * put up for retail sale: other.

Issue:

What is the classification of maltitol sweetened white chocolate bars?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

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

The HTSUS headings under consideration are as follows:

1704	Sugar confectionery (including white chocolate), not containing cocoa:
1704.90	Other:
	Confections or sweetmeats ready for consumption:
1704.90.35	Other:
	Put up for retail sale:
1704.90.3550	Other
1901	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight

of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:

2106 Food preparations not elsewhere specified or included.

Heading 1704 provides for sugar confectionery (including white chocolate), not containing cocoa. The ENs state that “This heading covers most of the sugar preparations which are marketed in a solid or semi-solid form, generally suitable for immediate consumption and collectively referred to as **sweetmeats, confectionery** or **candies**. The white chocolate is sold in a bar form, individually wrapped for retail sale and immediate consumption. However, it is not a sugar confectionery. The product contains maltitol instead of sugar.

The types of products which are considered to be sugars of Chapter 17 are described in the General Note to the ENs of Chapter 17: “This Chapter covers not only sugars as such (e.g., sucrose, lactose, maltose, glucose and fructose), but also sugar syrups, artificial honey, caramel, molasses resulting from the extraction or refining of sugar and sugar confectionery. Solid sugar and molasses of this Chapter may contain added flavouring or colouring matter.”

According to the website of the Calorie Control Council (www.caloriecontrol.org), “Maltitol is a reduced calorie buk [sic] sweetner [sic] with sugar-like taste and sweetness. * * * Maltitol is a member of a family of bulk sweetener known as polyols or sugar alcohols. * * * Maltitol is made by the hydrogenation of maltose which is obtained from starch. Like other polyols, it does not brown or caramelize as do sugars.” The website states that maltitol is useful because it does not promote tooth decay, it is useful in the manufacture of sucrose-free chocolate, and may be useful for people with diabetes.” Maltitol is classified under subheading 2950.49.4000, HTSUS, which provides for Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives: other polyhydric alcohols * * * other: polyhydric alcohols derived from sugars * * * other.

The ENs to heading 17.04 list types of products which are excluded from the heading. Paragraph (d) provides, in relevant part, as follows:

“(d) Sweets, gums and the like (for diabetics, in particular) containing synthetic sweetening agents (e.g., sorbitol) instead of sugar, * * *”

Because the maltitol sweetened white chocolate bars do not contain sugar, they cannot be classified in Chapter 17. Possible alternative headings for the product is heading 1901, HTSUS, which provides for food preparations of headings 0401 to 0404, and heading 2106, HTSUS, which provides for food preparations not elsewhere specified or included. Classification of the product will depend on the relative weights of each ingredient and, in particular, the relative quantities of milk powder and cocoa butter.

Should the importer desire a binding ruling on the maltitol sweetened white chocolate bars, a ruling request containing all necessary information should be submitted to the Director, National Commodity Specialist Division, U.S. Customs, Attn: CIE/Ruling Request, One Penn Plaza, 10th Floor, New York, NY 10119.

Holding:

NY H84179, dated August 21, 2001, is modified with regard to the classification of maltitol sweetened white chocolate bars.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.