

Bureau of Customs and Border Protection

CBP Decisions

(CBP Dec. 06–12)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR MARCH, 2006

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): none

European Union euro:

March 1, 2006	1.189900
March 2, 2006	1.200300
March 3, 2006	1.202800
March 4, 2006	1.202800
March 5, 2006	1.202800
March 6, 2006	1.200200
March 7, 2006	1.188800
March 8, 2006	1.191400
March 9, 2006	1.192000
March 10, 2006	1.188600
March 11, 2006	1.188600
March 12, 2006	1.188600
March 13, 2006	1.194200
March 14, 2006	1.202500
March 15, 2006	1.204500
March 16, 2006	1.215100
March 17, 2006	1.219700
March 18, 2006	1.219700
March 19, 2006	1.219700
March 20, 2006	1.216800
March 21, 2006	1.207900
March 22, 2006	1.209500
March 23, 2006	1.198400
March 24, 2006	1.203400
March 25, 2006	1.203400
March 26, 2006	1.203400

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly
list for March 2006 (continued):

European Union euro: (continued):

March 27, 2006	1.201500
March 28, 2006	1.207800
March 29, 2006	1.203000
March 30, 2006	1.213200
March 31, 2006	1.213900

South Korea won:

March 1, 2006	0.001030
March 2, 2006	0.001032
March 3, 2006	0.001030
March 4, 2006	0.001030
March 5, 2006	0.001030
March 6, 2006	0.001026
March 7, 2006	0.001024
March 8, 2006	0.001018
March 9, 2006	0.001019
March 10, 2006	0.001021
March 11, 2006	0.001021
March 12, 2006	0.001021
March 13, 2006	0.001020
March 14, 2006	0.001024
March 15, 2006	0.001026
March 16, 2006	0.001026
March 17, 2006	0.001030
March 18, 2006	0.001030
March 19, 2006	0.001030
March 20, 2006	0.001034
March 21, 2006	0.001033
March 22, 2006	0.001027
March 23, 2006	0.001026
March 24, 2006	0.001021
March 25, 2006	0.001021
March 26, 2006	0.001021
March 27, 2006	0.001025
March 28, 2006	0.001024
March 29, 2006	0.001026
March 30, 2006	0.001025
March 31, 2006	0.001029

Taiwan N.T. dollar:

March 1, 2006	0.030979
March 2, 2006	0.030960
March 3, 2006	0.030912
March 4, 2006	0.030912
March 5, 2006	0.030912
March 6, 2006	0.030836
March 7, 2006	0.030760
March 8, 2006	0.030750
March 9, 2006	0.030788
March 10, 2006	0.030798

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly
list for March 2006 (continued):

Taiwan N.T. dollar: (continued):

March 11, 2006	0.030798
March 12, 2006	0.030798
March 13, 2006	0.030769
March 14, 2006	0.030883
March 15, 2006	0.030912
March 16, 2006	0.030826
March 17, 2006	0.030883
March 18, 2006	0.030883
March 19, 2006	0.030883
March 20, 2006	0.030883
March 21, 2006	0.030807
March 22, 2006	0.030760
March 23, 2006	0.030703
March 24, 2006	0.030656
March 25, 2006	0.030656
March 26, 2006	0.030656
March 27, 2006	0.030713
March 28, 2006	0.030675
March 29, 2006	0.030722
March 30, 2006	0.030779
March 31, 2006	0.030845

Dated: April 1, 2006

MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.



(CBP Dec. 06–13)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR MARCH, 2006

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Decision 06–07 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): none

Brazil real

March 1, 2006	0.471698
March 2, 2006	0.473015

FOREIGN CURRENCIES—Variances from quarterly rates for March 2006 (continued):

Brazil real (continued):

March 3, 2006	0.471254
March 4, 2006	0.471254
March 5, 2006	0.471254
March 6, 2006	0.471921
March 7, 2006	0.461531
March 8, 2006	0.455934
March 9, 2006	0.461894
March 10, 2006	0.465441
March 11, 2006	0.465441
March 12, 2006	0.465441
March 13, 2006	0.469043
March 14, 2006	0.471009
March 15, 2006	0.470455
March 16, 2006	0.475511
March 17, 2006	0.471542
March 18, 2006	0.471542
March 19, 2006	0.471542
March 20, 2006	0.468406
March 21, 2006	0.463886
March 22, 2006	0.463092
March 23, 2006	0.464253
March 24, 2006	0.464684
March 25, 2006	0.464684
March 26, 2006	0.464684
March 27, 2006	0.454339
March 30, 2006	0.456413
March 31, 2006	0.460405

New Zealand dollar

March 10, 2006	0.641600
March 11, 2006	0.641600
March 12, 2006	0.641600
March 13, 2006	0.640800
March 14, 2006	0.638600
March 15, 2006	0.645000
March 16, 2006	0.637700
March 17, 2006	0.634200
March 18, 2006	0.634200
March 19, 2006	0.634200
March 20, 2006	0.625600
March 21, 2006	0.622500
March 22, 2006	0.628000
March 23, 2006	0.624100
March 24, 2006	0.611800
March 25, 2006	0.611800
March 26, 2006	0.611800
March 27, 2006	0.606300
March 28, 2006	0.603900
March 29, 2006	0.603500
March 30, 2006	0.610400
March 31, 2006	0.616400

FOREIGN CURRENCIES—Variances from quarterly rates for March 2006 (continued):

Thailand baht

March 2, 2006	0.025893
March 20, 2006	0.025840

Dated: April 3, 2006

MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.

4/3/06

LIQ-03-01-RR:OO:CI

RE: SECTION 159.34 CFR

SUBJECT: CERTIFIED RATES OF FOREIGN EXCHANGE: SECOND QUARTER, 2006

LISTED BELOW ARE THE BUYING RATES CERTIFIED FOR THE QUARTER TO THE SECRETARY OF THE TREASURY BY THE FEDERAL RESERVE BANK OF NEW YORK UNDER PROVISION OF 31 USC 5151. THESE QUARTERLY RATES ARE APPLICABLE THROUGHOUT THE QUARTER EXCEPT WHEN THE CERTIFIED DAILY RATES VARY BY 5% OR MORE. SUCH VARIANCES MAY BE OBTAINED BY CALLING (646) 733-3065 OR (646) 733-3057.

QUARTER BEGINNING April 3, 2006 AND
ENDING JUNE 30, 2006

COUNTRY	CURRENCY	U.S. DOLLARS
AUSTRALIA	DOLLAR.....	\$0.717700
BRAZIL.....	REAL.....	\$0.466636
CANADA.....	DOLLAR.....	\$0.853388
CHINA, P.R.....	YUAN	\$0.124673
DENMARK.....	KRONE.....	\$0.162475
HONG KONG	DOLLAR.....	\$0.128869
INDIA	RUPEE	\$0.022528
JAPAN.....	YEN	\$0.008488
MALAYSIA.....	RINGGIT	\$0.271606
MEXICO	PESO	\$0.092115
NEW ZEALAND.....	DOLLAR.....	\$0.614800
NORWAY.....	KRONE.....	\$0.153511
SINGAPORE	DOLLAR.....	\$0.618965
SOUTH AFRICA.....	RAND	\$0.163680
SRI LANKA.....	RUPEE	\$0.009751

COUNTRY	CURRENCY	U.S. DOLLARS
SWEDEN	KRONA	\$0.128899
SWITZERLAND	FRANC	\$0.766636
THAILAND	BAHT	\$0.025767
UNITED KINGDOM	POUND STERLING	\$1.738900
VENEZUELA	BOLIVAR	\$0.000466

MARGARET BLOM,
Acting Chief,
Customs Information Exchange.

General Notices

Notice of Cancellation of Customs Broker License

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

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses are cancelled without prejudice.

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
M.G. Otero Co., Inc.	12722	Los Angeles
Bernard M. Vas	4463	San Francisco
Dan Lofgren	22176	San Francisco
CCF International, Inc.	20340	Dallas
Alexander H. Foster	13498	Los Angeles
Exim Solutions, Inc.	21876	Los Angeles
Jose Astengo, Jr.	3954	San Francisco
Dominion International, Inc.	14096	Norfolk
Duty Refund Services	14364	Detroit
Pro-Log Services, Inc.	21068	Houston

DATED: April 13, 2006

JAYSON P. AHERN,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, April 24, 2006 (71 FR 21030)]

PROPOSED COLLECTION; COMMENT REQUEST**DEFERRAL OF DUTY ON LARGE YACHTS
IMPORTED FOR SALE**

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Deferral of Duty on Large Yachts Imported for Sale. 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 June 30, 2006.

ADDRESS: Direct all written comments to Tracey Denning, Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP 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: (1) 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) the annual costs burden to respondents or record keepers from the collection of information (a total capital startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Deferral of Duty on Large Yachts Imported for Sale

OMB Number: 1651-0080

Form Number: N/A

Abstract: Section 2406(a) of the Miscellaneous Trade and Technical Corrections Act of 1999 provides that an otherwise dutiable "large yacht" may be imported without the payment of duty if the yacht is imported with the intention to offer for sale at a boat show in the U.S.

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, and non-profit institutions

Estimated Number of Respondents: 100

Estimated Time Per Respondent: 1 hour

Estimated Total Annual Burden Hours: 100

Estimated Total Annualized Cost on the Public: N/A

Dated: April 24, 2006

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

[Published in the Federal Register, May 1, 2006 (71 FR 25599)]

**AUTOMATED COMMERCIAL ENVIRONMENT (ACE):
NATIONAL CUSTOMS AUTOMATION PROGRAM TEST OF
AUTOMATED TRUCK MANIFEST FOR TRUCK CARRIER
ACCOUNTS; DEPLOYMENT SCHEDULE**

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

ACTION: General Notice.

SUMMARY: The Bureau of Customs and Border Protection, in conjunction with the Department of Transportation, Federal Motor Carrier Safety Administration, is currently conducting a National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data. This document announces the next groups, or clusters, of ports to be deployed for this test.

DATES: The cluster of ports identified individually in this notice, deploying in the states of Texas and New Mexico, were deployed as of March 1, 2006. The cluster encompassing Laredo, Texas, and its bridges, is expected to deploy no earlier than April 5, 2006. A third cluster of ports, all in the State of California and also identified individually in this notice, are expected to deploy no earlier than May 1,

2006. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

FOR FURTHER INFORMATION CONTACT: Mr. James Swanson via e-mail at james.d.swanson@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data for truck carrier accounts was announced in a General Notice published in the **Federal Register** (69 FR 55167) on September 13, 2004. That notice stated that the test of the Automated Truck Manifest would be conducted in a phased approach, with primary deployment scheduled for no earlier than November 29, 2004. The document identified the ports of Blaine, Washington, and Buffalo, New York, as the original deployment sites.

The September 13, 2004, notice stated that subsequent deployment of the test would occur at Champlain, New York; Detroit, Michigan; Laredo, Texas; Otay Mesa, California; and Port Huron, Michigan, on dates to be announced. The notice stated that the Bureau of Customs and Border Protection (CBP) would announce the implementation and sequencing of truck manifest functionality at these ports as they occur and further stated that additional participants and ports would be selected throughout the duration of the test. The test is to be expanded eventually to include ACE Truck Carrier Account participants at all land border ports, and subsequent releases of ACE will include all modes of transportation.

Implementation of the Test

The test commenced in Blaine, Washington in December 2004, but not at Buffalo, New York. In light of experience with the implementation of the test in Blaine, Washington, CBP decided to change the implementation schedule and published a General Notice in the **Federal Register** (70 FR 30964) on May 31, 2005, announcing the changes.

As noted in the May 31, 2005, General Notice, CBP is phasing in the deployment of the Automated Truck Manifest test in clusters. In some instances, one site in the cluster is identified as the "model site" or "model port" for the cluster. This deployment strategy allows for more efficient equipment set-up, site checkouts, port briefings and central training.

The ports identified belonging to the first cluster announced in the May 31, 2005, notice included the original port of implementation: Blaine, Washington. Sumas, Washington, was designated as the model port. The other ports of deployment in the cluster included the following: Point Roberts, WA; Oroville, WA (including sub ports);

Boundary, WA; Danville, WA; Ferry, WA; Frontier, WA; Laurier, WA; Metaline Falls, WA; Nighthawk, WA; and Lynden, WA.

In a notice published in the **Federal Register** (70 FR 43892) on July 29, 2005, CBP announced that the test was being further deployed, in two clusters, at ports in the States of Arizona and North Dakota. CBP stated that the test would be deployed at the following ports in Arizona as of July 25, 2005: Douglas, AZ; Naco, AZ; Lukeville, AZ; Sasabe, AZ; and Nogales, AZ. Douglas, AZ was designated as the model port. The test was also to be deployed, according to information provided in the notice, at the following ports in North Dakota as of August 15, 2005: Pembina, ND; Neche, ND; Noyes, ND; Walhalla, ND; Maida, ND; Hannah, ND; Sarles, ND; and Hansboro, ND. Pembina, ND, was designated as the model port.

In a General Notice published in the **Federal Register** (70 FR 60096) on October 14, 2005, CBP announced that the test was to be further deployed in a cluster of ports, in the State of Michigan, no earlier than the dates indicated as follows (all in the year 2005): Windsor Tunnel, October 4; Barge Transport, October 5; Ambassador Bridge, October 7; Port Huron, October 14; Marine City, October 18; Algonac, October 18; and Sault St. Marie, October 28. No port in this cluster was designated as a "model port."

CBP next announced, in a General Notice published in the **Federal Register** (71 FR 3875) on January 24, 2006, two additional clusters of ports to be brought up for purposes of implementation of the test. These ports were all to be deployed no earlier than January 2006, in one cluster at Eagle Pass, Texas and Del Rio, Texas and in another cluster at the following ports: Brownsville, Texas; Pharr, Texas; Progresso, Texas; Rio Grande City, Texas; and Roma, Texas. No ports in these clusters were designated as "model ports."

NEW CLUSTERS

Through this notice, CBP announces the next clusters of ports. The test was deployed as of March 1, 2006 at the following ports in the States of Texas and New Mexico: El Paso, Texas; Presidio, Texas; Columbus, New Mexico; and Santa Teresa, New Mexico. A cluster encompassing Laredo, Texas, and its bridges, is expected to deploy no earlier than April 5, 2006. The cluster of ports in the State of California at which the test is expected to deploy no earlier than May 1, 2006, will consist of: Otay Mesa, California; Calexico, California; Andrade, California; Tecate, California; and San Luis, California. No port in any of the three new clusters has been designated as a "model port."

Previous NCAP Notices Not Concerning Deployment Schedules

On Monday, March 21, 2005, a General Notice was published in the **Federal Register** (70 FR 13514) announcing a modification to

the NCAP test to clarify that all relevant data elements are required to be submitted in the automated truck manifest submission. That notice did not announce any change to the deployment schedule and is not affected by publication of this notice. All requirements and aspects of the test, as set forth in the September 13, 2004 notice, as modified by the March 21, 2005 notice, continue to be applicable.

DATED: April 20, 2006

JAYSON P. AHERN,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, April 25, 2006 (71 FR 23941)]

19 CFR Parts 24 and 111

RIN 1505-AB62

USCBP-2006-0035

Fees for Certain Services

AGENCY: Customs and Border Protection, Homeland Security; Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the rules dealing with customs financial and accounting procedures by revising the fees charged for certain customs inspectional services under section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended. These revisions propose to exercise authority provided under recent changes in the pertinent statutory provisions.

DATES: Written comments must be received by May 24, 2006.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2006-0035.
- Mail: Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW (Mint Annex), Washington, D.C. 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during the regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW, 5th Floor, Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: For information concerning user fee policy and rates, contact Mr. Jerry Petty, Director, Cost Management Division, 1300 Pennsylvania Avenue NW, Room 4.5A Washington, DC 20229. Telephone: (202) 344-1317.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rule-making by submitting written data, views, or arguments on all aspects of the proposed rule. The Bureau of Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

CBP collects fees to pay for the costs incurred in providing customs services in connection with certain activities under the authority of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), as amended, codified at section 19 U.S.C. 58c.

On October 22, 2004, the President signed the American Jobs Creation Act of 2004 (Pub. L. 108-357). Section 892 of the American Jobs Creation Act amended 19 U.S.C. 58c to renew the fees provided under COBRA, which would have otherwise expired March 1, 2005, and to allow the Secretary of the Treasury to increase such fees by an amount not to exceed 10 percent in the period beginning fiscal year 2006 through the period for which fees are authorized by law. It is noted that the law specifically mentions the Secretary of the Trea-

surey, even though CBP is now a component of the Department of Homeland Security. Regulations concerning user fees, among other customs revenue functions, were retained by the Secretary of the Treasury pursuant to Treasury Department Order No. 100-16.

In accordance with the current statutory provisions, CBP is proposing to amend the regulations by increasing the fees for customs services provided in connection with (1) the arrival of certain commercial vessels, commercial trucks, railroad cars, private aircraft and private vessels, passengers aboard commercial aircraft and commercial vessels, and barges or other bulk carrier arrivals, (2) each item of dutiable mail for which a customs officer prepares documentation, and (3) annual customs brokers permits.

CBP is proposing to increase the fees by the amounts authorized so that they more accurately reflect the actual costs of providing the services for which they are charged. None of the user fees being raised in this package have been adjusted since their implementation in 1986. However, the costs incurred by CBP in performing certain customs inspection services have continued to grow because of higher volumes, greater varieties of cargo and increased security concerns which require inspections of individuals and conveyances entering the United States. As a result, CBP currently collects COBRA fees covering only thirty-two percent of the costs incurred by the agency. With this proposed increase, we estimate COBRA fees will generate an additional \$26 million annually. Approximately 84 percent of these fees come from individual travelers, which are categorized as individual user fees. As such, the impact on business will be minimal.

It must be noted that the proposed fee changes would only apply to customs inspection fees charged by CBP under COBRA and do not impact the administration of any other user fees charged by CBP. Certain user fees, by statute, have annual caps that were not included in the legislation authorizing these increases and, as such, the amount of the annual caps remain unchanged.

Discussion of changes

Following is a summary of the user fees affected and a description of customs services each fee covers.

Commercial Vessel User Fee (vessel of 100 net tons or more)

CBP inspects commercial vessels of 100 net tons or more arriving at ports of entry in the customs territory of the United States. Vessel owners or operators pay a user fee for each arrival, up to a calendar year maximum amount.

The current CBP user fee for each commercial vessel arrival is \$397 and a calendar year maximum of \$5,955. The current fee became effective in 1985 and has not been adjusted prior to this rule.

The user fee is proposed to be raised to \$437 per arrival while retaining the maximum of \$5,955 each calendar year.

User Fees for Commercial Trucks

CBP inspects commercial trucks arriving at all land ports in the customs territory of the United States. The United States Department of Agriculture (USDA) also assesses a commercial truck user fee for arrivals at certain land ports.

Commercial truck owners or operators can elect to pay a per arrival fee or pay a fee to cover the entire calendar year. The annual payment covers an unlimited number of entries during the calendar year. Upon payment of the annual fee, which includes both CBP and USDA user fees, the truck owner or operator receives a transponder to place on the truck windshield. This indicates that both the CBP and USDA user fees for the truck have been paid for that calendar year.

The current CBP commercial truck user fee is \$5.00 for each arrival and \$100 for the annual fee. The current fee became effective in 1985. This document proposes to raise the CBP user fee to \$5.50 for each arrival and \$100 for the calendar year fee.

An electronic transponder recently replaced the paper decal formerly used. Questions about the transponder should be directed to "Decal" Inquiries, National Finance Center, (317) 298-1245.

Railroad Car Passenger/Freight User Fee and Decal

CBP inspects railroad cars, carrying passengers or commercial freight, arriving at land ports in the customs territory of the United States. However, CBP does not assess a fee on empty railroad cars. There is a calendar year maximum that applies to railroad cars and a decal may be purchased for the entire calendar year.

The current user fee is \$7.50 for the arrival of each railroad car carrying passengers or commercial freight and \$100 for a decal that covers the calendar year. The current fee became effective in 1986. The fee is proposed to be raised to \$8.25 for the arrival of each railroad car carrying passengers or commercial freight and to \$100 for a decal for the calendar year.

Private Aircraft and Private Vessel Decal Fees

CBP inspects private aircraft and private vessels arriving in the customs territory of the United States. Owners and operators of both private aircraft and private vessels are required to purchase a decal each calendar year.

Those parties currently pay \$25 for all arrivals made during a calendar year by a private vessel or aircraft. The current fee became effective in 1985. This document proposes to raise the decal fee to \$27.50 for all arrivals made during a calendar year by a private vessel or aircraft.

User Fee Passenger Aboard a Commercial Aircraft

CBP inspects commercial airline passengers arriving at airports in the customs territory of the United States. Millions of travelers pass through U.S. airports daily. Our overall goal, keeping in mind airport security, is a timely, seamless inspection process that is integrated with the clearance processes of other Federal agencies with inspection responsibilities. Our joint goal is to enhance security and improve enforcement and regulatory processes in order that international air passengers are cleared through the entire Federal inspection process as quickly as possible without jeopardizing our security requirements.

Currently, the user fee for international airline passenger clearance is \$5.00 per passenger. The fee is proposed to be raised to \$5.50 per passenger.

User Fee Passenger Aboard a Commercial Vessel (Non-Exempt)

CBP inspects commercial vessel passengers arriving at ports in the customs territory of the United States. Our overall goal, keeping in mind port security, is a timely, seamless inspection process that is integrated with the clearance processes of other Federal agencies with inspection responsibilities. Our joint goal is to enhance security and improve enforcement and regulatory processes in order that commercial vessel passengers are cleared through the entire Federal inspection process as quickly as possible without jeopardizing our security requirements.

Currently, the user fee for commercial vessel passenger clearance is \$5.00 per passenger. The fee is proposed to be increased to \$5.50 per passenger.

Passenger Commercial Vessel User Fee (Canada, Mexico, territory or possession of the U.S., or adjacent island as defined in 8 U.S.C. 1101(b)(5))

CBP inspects commercial vessel passengers arriving at ports in the customs territory of the United States from Canada, Mexico, territory or possession of the U.S., or adjacent island as defined in the aforementioned statute.

Currently, the user fee for commercial vessel passenger processing relating to the above locations is \$1.75 per passenger. The current fee became effective in 1999. The fee is proposed to be increased to \$1.93 per passenger.

Dutiable Mail Entries User Fee

All international mail is subject to inspection by CBP; however, we assess a user fee only on packages and/or mail containing dutiable merchandise.

Currently, the user fee for dutiable mail is \$5.00 per item. The current fee became effective in 1985. The fee is proposed to be raised to \$5.50 per item.

Customs Broker Permits

Brokers are required to pay an annual fee to maintain their license for customs purposes. The fees are applicable for each district permit and each national permit held by an individual, partnership, association, or corporation. Currently, the user fee for a broker permit is \$125.00 per permit. The current fee became effective in 1985.

The fee is proposed to be raised to \$138.00 per permit.

Barges and other Bulk Carriers (from Canada or Mexico)

CBP inspects barges and other bulk carriers from Canada and Mexico. Currently, the user fee for barge and bulk carrier inspection is \$100 per arrival and a calendar year maximum of \$1,500. The current fee became effective in 1986. The fee is proposed to be raised to \$110 per arrival and a calendar year maximum of \$1,500.

New Fee Structure

Table 1 indicates the customs inspection user fees currently in effect and the proposed user fee rates.

TABLE 1.—SUMMARY OF NEW FEE RATES

Customs services	Current fees/ Annual cap	Proposed fees
Commercial Vessels	\$397.00/\$5,955	\$437.00/\$5,955
Commercial Trucks	\$5.00/\$100.00	\$5.50/\$100.00
Railroad Cars	\$7.50/\$100.00	\$8.25/\$100.00
Private Aircraft (Decal)	\$25.00	\$27.50
Private Vessel (Decal)	\$25.00	\$27.50
Commercial Aircraft Passenger	\$5.00	\$5.50
Commercial Vessel Passenger (Non-Exempt)	\$5.00	\$5.50
Commercial Vessel Passenger	\$1.75	\$1.93
Dutiable Mail	\$5.00	\$5.50
Broker Permit	\$125.00	\$138.00

Customs services	Current fees/ Annual cap	Proposed fees
Barges and other bulk carriers	\$100.00/\$1,500	\$110.00/\$1,500

Standard for Setting Fees

As noted above, Section 892 of the American Jobs Creation Act specifically gives the Secretary of the Treasury the authority to increase the COBRA fees by an amount not to exceed 10 percent in the period beginning fiscal year 2006 through the period for which fees are authorized by law. In addition, this provision requires that the amounts of fees charged (a) be reasonably related to the costs of providing customs services in connection with the activity or item for which the fee is charged, (b) may not exceed, in the aggregate, the amounts paid in that fiscal year for the costs incurred in providing customs services in connection with the activity or item for which the fee is charged, and (c) may not be collected except to the extent such fee will be expended to pay the costs incurred in providing customs services in connection with the activity or item for which the fee is charged.

Accordingly, CBP has compared the amounts of user fees charged and the corresponding costs incurred in providing customs services in connection with the activity or item for which the fee is charged to ensure that the fees accurately reflect the actual costs incurred in providing each service.

The fees are proposed to be increased by the amounts necessary to align them with the costs incurred by CBP in performing such services, subject to the 10 percent increase limit set by law.

Table 2 shows the collections received and obligations incurred by CBP, in Fiscal Year 2004, in performing customs inspectional services.

TABLE 2.—SUMMARY OF FEE COLLECTIONS AND OBLIGATIONS

Customs services	Fiscal Year 2004 Collection by type	Fiscal Year 2004 Obligation by type
Commercial Vessels	\$18,915,411	\$87,816,021
Commercial Trucks	\$18,576,419	\$224,047,446
Railroad Cars	\$7,737,910	\$27,052,069
Private Aircraft	\$755,390	\$32,908,142
Private Vessel	\$729,678	\$5,934,279
Commercial Aircraft Passenger	\$236,939,037	\$494,340,066

Customs services	Fiscal Year 2004 Collection by type	Fiscal Year 2004 Obligation by type
Commercial Vessel Passenger (Non-Exempt)	\$1,475,810	\$8,409,194
Commercial Vessel Passenger	\$12,431,417	\$13,276,642
Dutiable Mail	\$344,510	\$49,038,824
Broker Permit	\$494,170	\$10,858,344
*Barges and other bulk carriers	\$451,475	\$1,271,805

*Barge/Bulk Carrier obligations for Fiscal Year 2002

The Regulatory Flexibility Act

Based on the supplementary information set forth in the preceding section and as illustrated in Table 2 above, this proposed rule generally affects individuals and large commercial carriers. The proposed increase, if adopted, would only increase fees by 10 percent over the amounts currently paid by users of the customs services for which each fee is charged. The American Jobs Creation Act specifically provides that the Secretary of the Treasury shall charge fees that are reasonably related to these activities. Accordingly, CBP certifies that this proposed rule will not have a significant impact on a substantial number of small entities because the majority of fees will come from individual travelers into the United States. Therefore, it is not subject to the analysis provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*).

Executive Order 12866

For the same reasons stated above, the proposed amendments do not meet the criteria for a "significant regulatory action" as specified in E.O. 12866. Accordingly, a regulatory impact analysis is not required thereunder.

Signing Authority

This document is being issued in accordance with § 0.1(a) of Chapter I of Title 19, Code of Federal Regulations (19 CFR 0.1) pertaining to the exercise of authority to approve regulations in 19 CFR chapter I.

List of Subjects

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Fees, Finan-

cial and accounting procedures, Imports, Taxes, User fees.

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing.

Proposed Amendments to the Regulations

For the reasons stated in the preamble, parts 24 and 111 of the Customs and Border Protection Regulations (19 CFR parts 24 and 111) are proposed to be amended as follows:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 et seq.).

* * * * *

2. Amend § 24.22 as follows:

- a. In paragraph (b)(1)(i), the figure “\$397” is removed and, in its place, the figure “\$437” is added.
- b. In paragraph (b)(2)(i), the figure “\$100” is removed and, in its place, the figure “\$110” is added.
- c. In paragraph (c)(1), the figure “\$5” is removed and, in its place, the figure “\$5.50” is added.
- d. In paragraph (d)(1), the figure “\$7.50” is removed and, in its place, the figure “\$8.25” is added.
- e. In paragraph (e)(1), the figure “\$25” is removed and, in its place, the figure “\$27.50” is added.
- f. In paragraph (e)(2), the figure “\$25” is removed and, in its place, the figure “\$27.50” is added.
- g. In paragraph (f), the figure “\$5” is removed and, in its place, the figure “\$5.50” is added.
- h. In paragraph (g)(1)(i), the figure “\$5” is removed and, in its place, the figure “\$5.50” is added.
- i. In paragraph (g)(1)(ii), the figure “\$1.75” is removed and, in its place, the figure “\$1.93” is added.
- j. In the table under paragraph (g)(2),

in both columns headed "Fee status for arrival from SL", all the figures reading "\$1.75" are removed and, in their place, the figure "\$1.93" is added; and, in the column headed "Fee status for arrival from other than SL", all the figures reading "\$5" are removed and, in their place, the figure "\$5.50" is added.

- k. In paragraph (g)(5)(v), the figure "\$5" is removed and, in its place, the figure "\$5.50" is added; and, the figure "\$1.75" is removed and, in its place, the figure "\$1.93" is added.
- l. In paragraph (i)(7), the figure "\$5" is removed and, in its place, the figure "\$5.50" is added.
- m. In paragraph (i)(8), the figure "\$1.75" is removed and, in its place, the figure "\$1.93" is added.

PART 111—CUSTOMS BROKERS

3. The authority citation for Part 111 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202, (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

Section 111.96 also issued under 19 U.S.C. 58c; 31 U.S.C. 9701.

4. Section 111.19 is amended in paragraph (c) by removing all the figures reading "\$125" and adding in their place the figure "\$138".

5. Section 111.96 is amended in paragraph (c) by removing all the figures reading "\$125" and adding in their place the figure "\$138".

Approved: April 19, 2006

DEBORAH J. SPERO,
*Acting Commissioner,
Customs and Border Protection.*

TIMOTHY E. SKUD,
*Deputy Assistant,
Secretary of the Treasury.*

[Published in the Federal Register, April 24, 2006 (71 FR 20922)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.

Washington, DC, April 26, 2006,

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

Virginia L. Brown for SANDRA L. BELL,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

19 CFR PART 177

MODIFICATION AND REVOCATION OF RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF ALLIGATOR CLIPS

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

ACTION: Modification and revocation of ruling letters and revocation of treatment relating to tariff classification of alligator clips.

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 CBP is modifying one ruling and revoking another ruling relating to the classification of alligator clips under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), and is revoking any treatment CBP has previously accorded to substantially identical transactions. Notice of the proposed modification and revocation was published on March 15, 2006, in the Customs Bulletin. No comments were received in response to this notice.

EFFECTIVE DATE: This modification and revocation are effective for merchandise entered or withdrawn from warehouse for consumption on or after July 9, 2006.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification and Marking Branch (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 CBP 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 CBP 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 CBP to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to CBP's obligations, a notice was published on March 15, 2006, in the Customs Bulletin, Volume 40, Number 12, proposing to modify NY C81069, dated November 19, 1997, and to revoke NY F87872, dated June 30, 2000, both of which classified alligator and alligator-type clips as other electrical apparatus for making connections to or in electrical circuits, for a voltage not exceeding 1,000 V, in subheading 8536.90.8085, Harmonized Tariff Schedule of the United States (HTSUSA). No comments were received in response to this notice.

As stated in the proposed notice, this modification and revocation will cover any rulings on this merchandise which may exist but have not been specifically 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 have advised CBP during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment it previously accorded to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY C81069 and revoking NY F87872 to reflect the proper classification of this merchandise as terminals which are electrical apparatus for making connections to or in electrical circuits for a voltage not exceeding 1,000 V, in subheading 8536.90.4000, HTSUSA, in accordance with the analysis in HQ 968094 and HQ 968095, which are set forth as "Attachment A" and "Attachment B" to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment it previously accorded to substantially identical transactions.

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

DATED: April 21, 2006

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

Attachments



[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968094
April 21, 2006
CLA- RR:CTF:TCM 968094 JAS
CATEGORY: Classification
TARIFF NO.: 8536.90.4000

MR. MICHAEL J. HUEGEL
FASTENAL COMPANY
2001 Theurer Boulevard
Winona, MN 55987

RE: Alligator Clips; NY F87872 Revoked

DEAR MR. HUEGEL:

In NY F87872, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on June 30, 2000, an "alligator" type clip was found to be classifiable as other electrical apparatus for making connections to or in electrical circuits, for a voltage not exceeding 1,000 V, in subheading 8536.90.8085, Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

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 NY F87872 was published on March 15, 2006, in the Customs Bulletin, Volume 40, Number 12. No comments were received in response to this notice.

FACTS:

The "alligator" type clip was described in NY F87872 as an electrical clip, part number 0702083, used to make an electrical connection. One end is a receptacle for an electric wire and the other end, capable of opening via a built-in spring mechanism, attaches to an electrical device in order to complete a circuit. The intended service application or applications of the device is not indicated. It is noted that some alligator clips are merely mechanical devices for attaching one thing to another as, for example, affixing one's bib in the dentist's office. However, the ones in NY F87872 are for making electrical connections. Among other things, devices of this type are commonly used with electrostatic discharge systems (EDS), electrocardiogram (ECG) equipment and test and measurement (T&M) systems.

The HTSUS provisions under consideration are as follows:

8536 Electrical apparatus for switching or for protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes,) for a voltage not exceeding 1,000 V:

8536.90 Other apparatus:

8536.90.40 Terminals, electrical splices and electrical couplings; wafer probers

8536.90.80 Other

ISSUE:

Whether the "alligator" type clip, part 0702083, is a terminal of subheading 8536.90.40.

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 6 states, in part, that the classification of goods in the subheadings of a heading is to be according to the terms of those subheadings and any relative section and chapter notes and, by appropriate substitution of terms, to Rules 1 through 5, and that only subheadings at the same level are comparable.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the Harmonized System. CBP believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

In reviewing the classification of this merchandise, alligator or alligator-type clips qualify under heading 8536 as electrical apparatus for making connections to or in electrical circuits. However, it now appears the issue of whether they might be terminals of the type classifiable in subheading 8536.90.40, HTSUS, was not given sufficient consideration. As the term "terminal" is not defined in the HTSUS, nor described by any relevant EN, it is to be classified according to the common and commercial meaning of the

term, as derived from electronics dictionaries and dictionaries of scientific and technical terms, as well as other authoritative lexicons. Brown Boveri Corp. v. United States, 53 CCPA 19, 23, C.A.D. 870 (1966), and THK America, Inc. v. United States, 17 C.I.T. 1169, 837 F. Supp. 427 (Ct. Int'l Trade, decided November 1, 1993). Thus, if the alligator clips are found to be "terminals" for tariff purposes, subheading 8536.90.40, HTSUS, would more specifically describe the merchandise than subheading 8536.90.80, HTSUS, and would prevail over that provision.

First of all, it is only those alligator clips that are configured for electrical connection, that are at issue here. In this regard, The Modern Dictionary of Electronics, Seventh Edition, Rudolf F. Graf (Editor), defines the term *alligator clip* as a "spring loaded metal clip . . . used for making temporary electrical connections, generally at the end of a test lead on interconnection wire." The same source defines *terminal* as "1. A point of connection for two or more conductors in an electrical circuit. 2. A device attached to a conductor to facilitate connection with another conductor. Webster's New Universal Dictionary (Unabridged) defines *alligator clip* as "*Elect.* A type of terminal for making temporary electrical connections, consisting of a clip-like device . . ." The New Oxford American Dictionary (2d Edition), defines *terminal* as "n. 2 a point of connection for closing an electrical circuit." The Illustrated Dictionary of Electronics, Seventh Edition, Stan Gibilisco (Editor), defines *terminal* as "1. A connection point at . . . an intermediate point of a device, or a point at which a voltage is to be applied. 2. A metal tab or lug attached to the end of a lead for connection purposes." Finally, in considering the classification of "terminal blocks" for use in connecting telecommunication equipment circuits inside buildings, HQ 966674, dated March 23, 2004, cited the Merriam-Webster Online Dictionary in determining that a terminal was a device attached to the end of a wire or cable or to an electrical apparatus for convenience in making connections, and that terminal blocks secured two or more wires together to set up a circuit. The ruling concluded that when used with telecommunication equipment terminal blocks were devices for connecting electrical circuits together. These sources define devices that provide a connection between or in electrical circuits or systems that allows current or energy to be transferred.

Used with an EDS, one end of the alligator clip attaches an electrical lead wire to a wrist band worn by an assembler/technician with the other end attached to the serrated jaws which clip to the assembly table. Electrostatic energy the technician generates passes from him through the alligator clip to the table, then to ground, bypassing and preventing damage to the electrical components being assembled. An electrocardiogram is a test that records the electrical activity of the heart. In such uses, an electrical lead wire runs from one end of the alligator clip to the ECG machine while the other end attaches to a small tab electrode temporarily attached to the arms, legs and chest of the patient undergoing cardiac testing. The rate and regularity of heartbeats as well as the size and position of the heart's chambers, in the form of low level electrical impulses, passes through the lead wire via the alligator clip to the ECG monitor, thus completing the circuit and permitting the impulses to be viewed on a monitor. Finally, in T&M equipment, an electrical lead wire attaches from one end of the alligator clip to testing devices such as an oscilloscope or multimeter. The serrated jaws on the other end attach to a capacitor, transistor or semiconductor device. The electrical property being tested, in the form of low level impulses, trav-

els into the testing machine through the lead wire via the alligator clip. In each of these uses, the alligator clip functions to connect two systems together or to make connections in a circuit so that energy or current can flow from one to the other. We conclude, therefore, that alligator clips are within the common and commercial meaning of the term "terminal" as discussed above. Therefore, the alligator clips are classifiable as terminals, in subheading 8536.90.40, HTSUS.

HOLDING:

Under the authority of GRI 1 and GRI 6, the alligator clips, as described, are provided for in heading 8536 as electrical apparatus for making connections to or in electrical circuits. They are classifiable in subheading 8536.90.4000, HTSUSA.

EFFECT ON OTHER RULINGS:

NY F87872, dated June 30, 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.

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

[ATTACHMENT B]

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

HQ 968095

April 21, 2006

CLA-2 RR:CTF:TCM 968095 JAS

CATEGORY: Classification

TARIFF NO.: 8536.90.4000

MR. JIM REYNOLDS
JOHN A. STEER COMPANY
28 S. Second Street
Philadelphia, PA 19106

RE: Alligator Clips; NY C81069 Modified

DEAR MR. REYNOLDS:

In NY C81069, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on November 19, 1997, on behalf of National Refrigeration & Air Conditioning Products, Inc., a copper alligator clip (part 060CS) was found to be classifiable as other electrical apparatus for making connections to or in electrical circuits, for a voltage not exceeding 1,000 V, in subheading 8536.90.8085, Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

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. 103-82, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY C81069 was published on March 15, 2006, in the Customs Bulletin, Volume 40, Number 12. No comments were received in response to this notice. The clas-

sification of the 20 AMP test clip (part 027) and the rubber insulators (parts 062B/R and 029B/R) expressed in NY C81069 is not affected by this decision.

FACTS:

The alligator clip is not further described in NY C81069 nor is its intended service application or applications stated. It is noted that some alligator clips are merely mechanical clips for attaching one thing to another as, for example, for affixing one's bib in the dentist's office. However, the ones under consideration here are of base metal and have spring-loaded serrated jaws on one end and a female portal on the other end. In use, an electrical lead wire is plugged into the female portal and the serrated jaws clamped onto another device to provide a connection for electrical energy to pass through. Among other things, these devices are commonly used with electrostatic discharge systems (EDS), electrocardiogram (ECG) machines and test and measurement systems.

The HTSUS provisions under consideration are as follows:

- 8536** Electrical apparatus for switching or for protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes,) for a voltage not exceeding 1,000 V:
- 8536.90** Other apparatus:
- 8536.90.40** Terminals, electrical splices and electrical couplings; wafer probers
- 8536.90.80** Other

ISSUE:

Whether the copper alligator clip (part 060CS) is a terminal provided for in subheading 8536.90.40.

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 6 states, in part, that the classification of goods in the subheadings of a heading is to be according to the terms of those subheadings and any related section and chapter notes and, by appropriate substitution of terms, to Rules 1 through 5, and that only subheadings at the same level are comparable.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the Harmonized System. CBP believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

In reviewing the classification of this merchandise, alligator or alligator-type clips qualify under heading 8536 as electrical apparatus for making connections to or in electrical circuits. However, it now appears the issue of whether they might be terminals of the type classifiable in subheading

8536.90.40, HTSUS, was not given sufficient consideration. As the term "terminal" is not defined in the HTSUS, nor described by any relevant EN, it is to be classified according to the common and commercial meaning of the term, as derived from electronics dictionaries and dictionaries of scientific and technical terms, as well as other authoritative lexicons. Brown Boveri Corp. v. United States, 53 CCPA 19, 23, C.A.D. 870 (1966), and THK America, Inc. v. United States, 17 C.I.T. 1169, 837 F. Supp. 427 (Ct. Int'l Trade, decided November 1, 1993). Thus, if the alligator clips are found to be "terminals" for tariff purposes, subheading 8536.90.40, HTSUS, would more specifically describe the merchandise than subheading 8536.90.80, HTSUS, and would prevail over that provision.

First of all, it is only those alligator clips that are configured for electrical connection, that are at issue here. In this regard, The Modern Dictionary of Electronics, Seventh Edition, Rudolf F. Graf (Editor), defines the term *alligator clip* as a "spring loaded metal clip . . . used for making temporary electrical connections, generally at the end of a test lead on interconnection wire." The same source defines *terminal* as "1. A point of connection for two or more conductors in an electrical circuit. 2. A device attached to a conductor to facilitate connection with another conductor. Webster's New Universal Dictionary (Unabridged) defines *alligator clip* as "Elect. A type of terminal for making temporary electrical connections, consisting of a clip-like device . . ." The New Oxford American Dictionary (2d Edition), defines *terminal* as "n. 2 a point of connection for closing an electrical circuit." The Illustrated Dictionary of Electronics, Seventh Edition, Stan Gibilisco (Editor), defines *terminal* as "1. A connection point at . . . an intermediate point of a device, or a point at which a voltage is to be applied. 2. A metal tab or lug attached to the end of a lead for connection purposes." Finally, in considering the classification of "terminal blocks" for use in connecting telecommunication equipment circuits inside buildings, HQ 966674, dated March 23, 2004, cited the Merriam-Webster Online Dictionary in determining that a terminal was a device attached to the end of a wire or cable or to an electrical apparatus for convenience in making connections, and that terminal blocks secured two or more wires together to set up a circuit. The ruling concluded that when used with telecommunication equipment terminal blocks were devices for connecting electrical circuits together. These sources define devices that provide a connection between or in electrical circuits or systems that allows current or energy to be transferred.

Used with an EDS, one end of the alligator clip attaches an electrical lead wire to a wrist band worn by an assembler/technician with the other end attached to the serrated jaws which clip to the assembly table. Electrostatic energy the technician generates passes from him through the alligator clip to the table, then to ground, bypassing and preventing damage to the electrical components being assembled. An electrocardiogram is a test that records the electrical activity of the heart. In such uses, an electrical lead wire runs from one end of the alligator clip to the ECG machine while the other end attaches to a small tab electrode temporarily attached to the arms, legs and chest of the patient undergoing cardiac testing. The rate and regularity of heartbeats as well as the size and position of the heart's chambers, in the form of low level electrical impulses, passes through the lead wire via the alligator clip to the ECG monitor, thus completing the circuit and permitting the impulses to be viewed. Finally, in testing and measurement equipment, an electrical lead wire attaches from one end of the alliga-

tor clip to testing devices such as an oscilloscope or multimeter. The serrated jaws on the other end attach to a capacitor, transistor or semiconductor device. The electrical property being tested, in the form of low level impulses, travels into the testing machine through the lead wire via the alligator clip. In each of these uses, the alligator clip functions to connect two systems together or to make connections in a circuit so that energy or current can flow from one to the other. We conclude that alligator clips are within the common and commercial meaning of the term "terminal" as discussed above. Therefore, the alligator clips are classifiable as terminals, in subheading 8536.90.40, HTSUS.

HOLDING:

Under the authority of GRI 1 and GRI 6, the alligator clips, as described, are provided for in heading 8536 as electrical apparatus for making connections to or in electrical circuits. They are classifiable in subheading 8536.90.4000, HTSUSA.

EFFECT ON OTHER RULINGS:

NY C81069, dated November 19, 1997, is modified as to the alligator clips. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

19 CFR PART 177

REVOCACTION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF MACHINES FOR PRODUCING METAL-COATED GLASS DISCS CONTAINING DIGITALLY-ENCODED DATA

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

ACTION: Revocation of ruling letters and treatment relating to tariff classification of machines for producing metal-coated glass discs containing digitally-encoded data.

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 CBP is revoking three (3) rulings relating to the tariff classification of machines for producing metal-coated glass discs containing digitally-encoded data under the Harmonized Tariff Schedule of the United States (HTSUS), and revoking any treatment CBP has previously accorded to substantially identical transactions. Notice of the proposed revocations was published on March 8, 2006, in the Customs Bulletin. One comment was received in re-

sponse to this notice favoring CBP's proposal.

EFFECTIVE DATE: These revocations are effective for merchandise entered or withdrawn from warehouse for consumption on or after July 9, 2006.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification and Marking Branch (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 CBP 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 CBP 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 CBP to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to CBP's obligations, a notice was published on March 8, 2006, in the Customs Bulletin, Volume 40, Number 11, proposing to revoke HQ 962939, dated July 8, 1999, HQ 962354, dated July 23, 1999, and HQ 963997, dated April 13, 2001. These rulings classified laser beam recorders or code cutters, ion-type lasers which encode data in digital format onto a photoresist coating of glass substrates, as other optical appliances and instruments, not specified or included elsewhere, in subheading 9013.80.90, HTSUS. Two of the rulings classified merchandise found to qualify as a composite good under General Rule of Interpretation 3(b), HTSUS, in which the laser beam recorder was found to impart the essential character. One comment was received in response to this notice which favored CBP's proposed revocations.

As stated in the proposed notice, these revocations will cover any rulings on this merchandise which may exist but have not been specifically 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 have advised CBP during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment it previously accorded to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 962939, dated July 8, 1999, HQ 962354, dated July 23, 1999, and HQ 963997, dated April 13, 2001, to reflect the proper classification of laser beam recorders or code cutters in subheading 9010.50.60, HTSUS, as other apparatus and equipment for photographic laboratories, in accordance with the analysis in HQ 967965, HQ 967966 and HQ 967967, which are set forth as "Attachment A," "Attachment B," and "Attachment C," to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment it previously accorded to substantially identical transactions.

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

DATED: April 21, 2006

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

Attachments



[ATTACHMENT A]

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

HQ 967965
April 21, 2006
CLA- RR:CTF:TCM 967965 JAS
CATEGORY: Classification
TARIFF NO.: 9010.50.60

JOHN B. BREW, ESQ.
COLLIER, SHANNON SCOTT PLLC
3050 K Street NW
Washington, D.C. 20007-5108

RE: Automatic Mastering System; HQ 963997 Revoked

DEAR MR. BREW:

In HQ 963997, dated April 13, 2001, the AM 100 Automatic Mastering System, machinery for making metal-coated glass discs containing digitally-

encoded data, was held to be classifiable in subheading 9013.80.90, Harmonized Tariff Schedule of the United States (HTSUS), as other optical appliances and instruments, not specified or included elsewhere in [chapter 90].

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 963997 was published on March 8, 2006, in the Customs Bulletin, Volume 40, Number 11. One comment was received favoring the proposal.

FACTS:

As stated in HQ 963997, the AM 100 Mastering System (the AM 100) is a series of machines or components used to produce metal-coated glass discs containing digitally-encoded audio data. These discs will be further processed by separate machines into master discs called "stampers" which are then used in a separate process to mass-produce compact discs (CDs). The AM 100's description and method of operation, as contained in HQ 963997, are incorporated by reference in this decision. As noted therein, except for a programmable personal computer which controls the AM 100's operations, all of the components that comprise the AM 100 are within the same housing. This merchandise was stated to be similar in all material respects to in-line mastering systems of the type described in HQ 962354, dated July 23, 1999.

In a memorandum of law, dated September 29, 1999, and a submission, dated March 19, 2001, you made a number of factual and legal arguments in support of classification in heading 8520, HTSUS, as other sound recording apparatus. You noted that the laser beam method employed by the AM 100 is advanced technology substantially similar to groove type recording apparatus classified in heading 8520, this technology being recognized by a statistical breakout under subheading 8520.90.00 for optical disc recorders.

HQ 963997 noted, however, that Section XVI, Note 1(m), HTSUS, excludes from that section articles of chapter 90. Therefore, if the AM 100 is provided for in any heading of chapter 90 it is to be classified in that heading. For the reasons that follow, we believe that subheading 9010.50.60, HTSUS, other instruments and apparatus for photographic laboratories represents the correct classification for this merchandise.

The HTSUS provisions under consideration are as follows:

9010	Apparatus and equipment for photographic laboratories . . . , not specified or included elsewhere in [Chapter 90] . . . :
9010.50	Other apparatus and equipment for photographic . . . laboratories . . . :
9010.50.60	Other
	* * * *
9013	[l]asers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in [chapter 90]; parts and accessories thereof:
9013.20.00	Lasers, other than laser diodes

9013.80 Other devices, appliances and instruments:

9013.80.90 Other

ISSUE:

Whether the AM 100 is provided for in heading 9010, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined 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 3(b), HTSUS, states, in part, that composite goods consisting of different components shall be classified as if consisting of that component which gives the good its essential character.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

We reiterate the finding in HQ 963997 that the AM 100 is a composite good under GRI 3(b) and that the laser beam recorder component imparts the essential character to the whole. HQ 963997 concluded that the AM 100 was classifiable in subheading 9013.80.90, HTSUS, as other optical appliances and instruments, not specified or included in [chapter 90]. However, inasmuch as heading 9013 covers optical appliances and instruments not covered more specifically by another heading in chapter 90, the possible applicability of subheading 9010.50.60, HTSUS, other apparatus and equipment for photographic laboratories, must now be considered, with the focus being on whether the laser beam code cutter component of the AM 100 performs a “photographic” process for purposes of heading 9010. The commenter agrees that heading 9010 represents the correct classification and emphasizes the similarity in function between substantially similar merchandise - which incorporates a laser beam code cutter - and conventional cameras, i.e., both utilize and act on a substrate which is coated with a material that is sensitive to electromagnetic radiation or light, which must be developed chemically in order for an image to form, and which results in the formation of visible images.

In a different context, in *QMS, Inc. v. United States*, 19 CIT 551 (1995), on color ink sheet rolls for use in thermal transfer printers, the Court stated its broad interpretation of the term “photographic” as including a “process which permits the formation of visible images directly or indirectly by the action of light or other forms of radiation on sensitive surfaces.” Also, HQ 083123, dated December 18, 1989, examined the dictionary definition of the term “laboratory” for heading 9010 purposes, and accorded the term a broad interpretation. We do not necessarily view these references as controlling, but we do find them to be instructive.

The 9010 heading text includes as apparatus and equipment for photographic laboratories apparatus for the projection or drawing of circuit pat-

terns on sensitized semiconductor materials. The ENs for heading 9010, under (N), describe apparatus used to manufacture electronic integrated circuits, those used to expose circuit patterns onto a sensitized layer which has been applied to the surface of the semiconductor wafer. Direct write-on-wafer apparatus is among the types included. These use an automatic data processing (ADP) machine controlled "writing beam" (such as an electron beam (E-beam), ion beam or laser) to draw the circuit design directly on the sensitized layer, which has been applied to the surface of the semiconductor wafer, after the co-ordinate system of the apparatus has been properly aligned on the underlying patterns of the wafer. The EN under (N) ends with "All these apparatus produce the same end result. That is, an exposure pattern which matches the desired circuit pattern and which is produced on a sensitized material which can be developed much as a photographic film is developed."

Thus, consideration must be given to whether using a laser to expose patterns in the light-sensitive photoresist layer on a glass disc substrate raises a latent image in the photoresist so as to be considered a "photographic" process. The evidence indicates that focusing the laser's beam on the photoresist layer develops the digitally encoded data in the photoresist in a process that exposes the pattern as a latent image. Inasmuch as direct write-on-wafer apparatus, as described, is considered "photographic" for heading 9010 purposes, and functions in substantially the same manner as the laser beam recorder under consideration here, the laser beam recorder is likewise to be considered as performing a "photographic" process for heading 9010 purposes. Such a conclusion eliminates heading 9013 from consideration. This decision will apply only to mastering equipment incorporating laser beam recorders which encode digitally-formatted data onto the photoresist coating of the glass substrates.

HOLDING:

Under the authority of GRI 3(b), HTSUS, the AM 100 is to be classified as if consisting of the laser beam recorder which is provided for in heading 9010. The AM 100 is classifiable as other apparatus and equipment for photographic laboratories in subheading 9010.50.60, HTSUS.

EFFECT ON OTHER RULINGS:

HQ 963997, dated April 13, 2001, 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.

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

[ATTACHMENT B]

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

HQ 967966

April 21, 2006

CLA-2 RR:CTF:TCM 967966 JAS

CATEGORY: Classification

TARIFF NO.: 9010.50.60

DAVID NEWMAN
DIRECTOR, LAW DEPARTMENT
SONY ELECTRONICS INC.
123 Tice Boulevard
Woodcliff Lake, New Jersey 07675

RE: Sony Lean Integrated Mastering System; HQ 962354 Revoked

DEAR MR. NEWMAN:

In HQ 962354, dated July 23, 1999, the Sony Lean Integrated Mastering System-High Density (SLIM-HD), machinery for making metallized glass disc substrates, was held to be classifiable in subheading 9013.80.90, Harmonized Tariff Schedule of the United States (HTSUS), as other optical appliances and instruments, not specified or included elsewhere in [chapter 90].

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 962354 was published on March 8, 2006, in the Customs Bulletin, Volume 40, Number 11. Your comment favoring the proposed revocation was the only one received.

FACTS:

As stated in HQ 962354, the SLIM-HD is an in-line system consisting of four (4) components or machines that produce digitally-encoded metal coated glass discs that will be further processed into master discs called stampers. In a separate process, stampers are then used to mass-produce compact discs (CDs) and digital video discs (DVDs). The four components that comprise the SLIM-HD are within a glass or hard plastic enclosure to create positive air pressure and to eliminate dirt and other contaminants. One of the components in the SLIM-HD is a high density laser beam code "cutter" which utilizes a krypton or argon laser beam to burn or expose a pattern in a recording media or photoresist applied as a coating onto the glass disc substrate. It is this component on which we will focus. The description of the SLIM-HD and its method of operation, as stated in HQ 962354, are incorporated by reference in this decision.

The HTSUS provisions under consideration are as follows:

- 9010** Apparatus and equipment for photographic laboratories . . . , not specified or included elsewhere in [Chapter 90] . . . :
- 9010.50** Other apparatus and equipment for phographic . . . laboratories . . . :

9010.50.60 Other

* * * *

9013 [l]asers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in [chapter 90]; parts and accessories thereof:

9013.20.00 Lasers, other than laser diodes

9013.80 Other devices, appliances and instruments:

9013.80.90 Other

ISSUE:

Whether the laser beam code cutter component of the SLIM-HD is classified in heading 9010, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined 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 3(b), HTSUS, states, in part, that composite goods consisting of different components shall be classified as if consisting of that component which gives the good its essential character.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Relevant ENs state that for purposes of GRI 3 composite goods include, among other things, individual components attached to each other to form a practically inseparable whole, that are adapted one to the other and are mutually complementary, and together they form a whole which would not normally be offered for sale in separate parts. The SLIM-HD conforms to this description.

In letters dated June 11, 1998, and June 22, 1999, submitted in connection with the decision in HQ 962354, you argued that the SLIM-HD was a composite good under GRI 3(b), HTSUS, and that the laser beam code cutter imparted the essential character to the whole. You asserted classification in subheading 9010.50.60, HTSUS, as other apparatus and equipment for photographic laboratories, on the basis that laser beam code cutters perform a "photographic" process for purposes of heading 9010. Your comment essentially restates this claim and emphasizes the similarity in function between the SLIM-HD and conventional cameras, i.e., both utilize and act on a substrate which is coated with a material that is sensitive to electromagnetic radiation or light, which must be developed chemically in order for an image to form, and which results in the formation of visible images.

As previously stated, we agree that the SLIM-HD is a composite good under GRI 3(b), and that the laser beam code cutter component imparts the essential character to the whole. We have thoroughly reviewed your argu-

ments in support of classification in subheading 9010.50.60, HTSUS, and now find them to be compelling. Among those is your reference to QMS, Inc. v. United States, 19 CIT 551 (1995), on color ink sheet rolls for use in thermal transfer printers, where the Court stated its broad interpretation of the term “photographic” as including a “process which permits the formation of visible images directly or indirectly by the action of light or other forms of radiation on sensitive surfaces.” Also referenced was HQ 083123, dated December 18, 1989, which examined the dictionary definition of the term “laboratory” for heading 9010 purposes, and accorded the term a broad interpretation. We do not necessarily view these references as controlling, but we do find them to be instructive.

By its terms, heading 9013 does not include optical appliances and instruments that are specified or included elsewhere in chapter 90. The 9010 heading text includes as apparatus and equipment for photographic laboratories apparatus for the projection or drawing of circuit patterns on sensitized semiconductor materials. The ENs for heading 9010, under (N), describe apparatus used to manufacture electronic integrated circuits, those used to expose circuit patterns onto a sensitized layer which has been applied to the surface of the semiconductor wafer. Direct write-on-wafer apparatus is among the types included. These use an automatic data processing (ADP) machine controlled “writing beam” (such as an electron beam (E-beam), ion beam or laser) to draw the circuit design directly on the sensitized layer, which has been applied to the surface of the semiconductor wafer, after the co-ordinate system of the apparatus has been properly aligned on the underlying patterns of the wafer. The EN under (N) ends with “All these apparatus produce the same end result. That is, an exposure pattern which matches the desired circuit pattern and which is produced on a sensitized material which can be developed much as a photographic film is developed.”

Thus, consideration must be given to whether using a laser to expose patterns in the light-sensitive photoresist layer on a glass disc substrate raises a latent image in the photoresist so as to be considered a “photographic” process. The evidence indicates that focusing the laser’s beam on the photoresist layer develops the digitally encoded data in the photoresist in a process that exposes the pattern as a latent image. Inasmuch as direct write-on-wafer apparatus, as described, is considered “photographic” for heading 9010 purposes, and functions in substantially the same manner as the laser beam recorder under consideration here, the laser beam recorder is likewise considered as performing a “photographic” process for heading 9010 purposes. Such a conclusion eliminates heading 9013 from consideration. This decision will apply only to mastering equipment incorporating laser beam recorders which encode digitally-formatted data onto the photoresist coating of the glass substrates.

Parenthetically, you note that our statement in HQ 962354 that the laser beam code cutter was an optical appliance or instrument which does not contain significant electrical or mechanical features, and in which the optics clearly are not subsidiary is erroneous. This statement was extrapolated from HQ 962939, dated July 8, 1999, and HQ 956839, dated March 28, 1996, and was designed to explain why CBP believed that the laser beam recorder in HQ 962354 was within the terms “optical appliances” and “optical instruments” for heading 9013 purposes, pursuant to Chapter 90, Additional U.S. Note 3, HTSUS. However, in view of our conclusion that the laser beam code

cutter at issue here is provided for in heading 9010 and not in heading 9013, this statement is no longer relevant to the analysis, particularly inasmuch as HQ 962354 is revoked.

HOLDING:

Under the authority of GRI 3(b), HTSUS, the SLIM-HD is provided for in heading 9010. It is classifiable as other apparatus and equipment for photographic laboratories in subheading 9010.50.60, HTSUS.

EFFECT ON OTHER RULINGS:

HQ 962354, dated July 23, 1999, 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.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967967
April 21, 2006
CLA-2 RR:CTF:TCM 967967 JAS
CATEGORY: Classification
TARIFF NO.: 9010.50.60

MARK NEVILLE
KPMG PEAT MARWICK LLP
345 Park Avenue
New York, NY 10154

RE: Laser Beam Recorder, HQ 962939 Revoked

DEAR MR. NEVILLE:

In HQ 962939, dated July 8, 1999, issued to you on behalf of Panasonic Disc Services Corporation, a laser beam recorder or laser transfer machine was found to be classifiable in subheading 9013.80.90, Harmonized Tariff Schedule of the United States (HTSUS), as other optical instruments and apparatus, not specified or included elsewhere in [chapter 90].

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 962939 was published on March 8, 2006, in the Customs Bulletin, Volume 40, Number 11. One comment was received favoring the proposal.

FACTS:

As stated in HQ 962939, the laser beam recorder, together with other machines, comprised an in-line mastering system that produces encoded nickel discs called stampers, as an intermediate step in digital versatile disc (DVD) production. The laser beam recorder, also referred to as a laser transfer machine or laser encoder, is one component of an in-line mastering system, a

subgrouping of machines in the mastering line which produce glass discs called "masters." The description of the in-line mastering system and its method of operation, as stated in HQ 962939, are incorporated by reference in this decision. Our focus will be on the laser beam recorder which is separately classifiable.

The laser beam recorders in HQ 962939 consist of a laser, a signal processor, an optical modulator, recording optics, and a turning and sledding mechanism. The ion-type laser uses argon or krypton gas on a 413 nm wavelength to encode data in digital format onto the photoresist coating of the glass substrate. The signal processor converts the digital source data to the appropriate compact disc format and sends this data to the Acoustic-Optic Modulator (AOM). The AOM transforms the laser's continuous wave into a pulsed beam which exposes a pattern in the photoresist-coated glass that represents the digitally-formatted information. The recording optics direct the beam through a series of optical lenses that reduce the laser beam's diameter to the appropriate size to make the pits. Finally, the turning and sledding mechanism moves the glass disc into and out of position under the laser and spins the disc during the pit forming operation.

The HTSUS provisions under consideration are as follows:

- 9010** Apparatus and equipment for photographic . . . laboratories . . . , not specified or included elsewhere in [chapter 90]; . . . ; parts and accessories thereof:
- 9010.50** Other apparatus and equipment for photographic . . . laboratories; . . . :
- 9010.50.60** Other
- * * * *
- 9013** [l]asers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in [chapter 90]; parts and accessories thereof:
- 9013.20.00** Lasers, other than laser diodes
- 9013.80** Other devices, appliances and instruments:
- 9013.80.90** Other

ISSUE:

Whether the laser beam recorder is provided for in heading 9010.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined 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.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the Harmonized Sys-

tem. U. S. Customs and Border Protection (CBP) believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The subheading 9013.80.90, HTSUS, classification HQ 962939 reached was based, in large part, on a finding that the laser beam recorder was within the Chapter 90, Additional U.S. Rule of Interpretation 3, HTSUS, definition of the terms "optical appliances" and "optical instruments." It now appears that subheading 9010.50.60, HTSUS, other apparatus and equipment for photographic laboratories, was not sufficiently considered. The comment favoring classification in this subheading focused, in relevant part, on the similarities in function between laser beam recorders and conventional cameras, with which CBP is generally in agreement.

By its terms, heading 9013 does not include optical appliances and instruments that are specified or included elsewhere in chapter 90. The 9010 heading text includes as apparatus and equipment for photographic laboratories apparatus for the projection or drawing of circuit patterns on sensitized semiconductor materials. The ENs for heading 9010, under (N), describe apparatus used to manufacture electronic integrated circuits, those used to expose circuit patterns onto a sensitized layer which has been applied to the surface of the semiconductor wafer. Direct write-on-wafer apparatus is among the types included. These use an automatic data processing (ADP) machine controlled "writing beam" (such as an electron beam (E-beam), ion beam or laser) to draw the circuit design directly on the sensitized layer, which has been applied to the surface of the semiconductor wafer, after the co-ordinate system of the apparatus has been properly aligned on the underlying patterns of the wafer. The EN under (N) ends with "All these apparatus produce the same end result. That is, an exposure pattern which matches the desired circuit pattern and which is produced on a sensitized material which can be developed much as a photographic film is developed."

Thus, consideration must be given to whether using a laser to expose patterns in the light-sensitive photoresist layer on a glass disc substrate raises a latent image in the photoresist so as to be considered a "photographic" process. The evidence indicates that focusing the laser's beam on the photoresist layer develops the digitally encoded data in the photoresist in a process that exposes the pattern as a latent image. In the context of heading 3702, photographic film in rolls, the court stated its broad interpretation of the term "photographic" as including "a process which permits the formation of visible images directly or indirectly by the action of light or other forms of radiation on sensitive surfaces." See *OMS, Inc. v. United States*, 19 CIT 551 (1995). Inasmuch as direct write-on-wafer apparatus, as described, is considered "photographic" for heading 9010 purposes, and functions in substantially the same manner as the laser beam recorder under consideration here, the laser beam recorder is likewise to be considered as performing a "photographic" process for heading 9010 purposes. Such a conclusion eliminates heading 9013 from consideration. This decision will apply only to mastering equipment incorporating laser beam recorders which encode digitally-formatted data onto the photoresist coating of the glass substrates.

HOLDING:

Under the authority of GRI 1, HTSUS, the laser beam recorder, laser transfer machine or encoder is provided for in heading 9010. It is classifiable in subheading 9010.50.60, HTSUS.

EFFECT ON OTHER RULINGS:

HQ 962939, dated July 8, 1999, 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.

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

19 CFR PART 177**MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A METAL IMITATION LUNCH BOX**

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

ACTION: Notice of modification of tariff classification ruling letter and revocation of treatment relating to the classification of a metal imitation lunch box.

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 the Bureau of Customs and Border Protection (CBP) is modifying a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a metal imitation lunch box. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on November 23, 2005, in the *Customs Bulletin*, Volume 39, Number 48. No comments were submitted.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 9, 2006.

FOR FURTHER INFORMATION CONTACT: David Salkeld, Tariff Classification and Marking Branch, at (202) 572-8781.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as

amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice proposing to modify New York Ruling Letter (NY) L80711, dated December 1, 2004, was published on November 23, 2005, in the *Customs Bulletin*, Volume 39, Number 48. No comments were received in response to the notice. As stated in the notice of proposed modification, the notice covered any rulings on the 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 the notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY L80711, CBP classified the relevant merchandise under subheading 4202.19.0000, HTSUSA, which provides for "Trunks, suitcases, vanity cases, . . . and similar containers; . . . : Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels and similar containers: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY L80711, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in pro-

posed Headquarters Ruling Letter (HQ 967931) attached. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: April 21, 2006

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

Attachment

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

HQ 967931
April 21, 2006
CLA-2 RR:CTF:TCM 967931 DSS
CATEGORY: Classification
TARIFF NO.: 7326.90.1000

MS. DIANE FLOWERS
MGA ENTERTAINMENT
16340 Roscoe Blvd., #240
Van Nuys, CA 91406

RE: Bratz Babyz Chill-Out Lounge™ from China; metal imitation lunch box; NY L80711 Modified

DEAR MS. FLOWERS:

This letter is in reference to New York Ruling Letter (NY) L80711, dated December 1, 2004, which was issued to you on behalf of MGA Entertainment, Inc. (importer) by the Director, National Commodity Specialist Division, Bureau of Customs and Border Protection (CBP). The issue is the classification of a metal imitation lunch box that is part of the Bratz Babyz Chill-Out Lounge™ under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After reviewing NY L80711, we have determined that the classification of the metal imitation lunch box under sub-heading 4202.19.0000, HTSUSA, is incorrect.

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. 103-82, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY L80711 was published in the November 23, 2005, CUSTOMS BULLETIN, Volume 39, Number 48. No comments were received in response to this notice.

FACTS:

In NY L80711, we wrote:

You submitted a sample of a Bratz Babyz Chill-Out Lounge(identified as item number 296690. The item consists of a set of miniature plastic

toy furniture, appliances, a smoothie bar, bottles, etc. that is intended to simulate a lounge setting. The toys are packaged inside a metal carrying case that is of a kind similar to a lunch box and measures approximately 7-1/2 inches in height x 8 inches in length x 4 inches in depth. The carrying case has a hinged lid, a plastic carrying handle, and an illustrated depiction of a lounge on both of its long sides with the words "Chill-Out Lounge Bratz Babyz."

Although packaged together, the metal carrying case is not the normal or usual packing for the toys, nor is the metal carrying case itself a toy. Therefore, the toy set will be classified separately from the metal carrying case.

Your sample is being returned as you requested.

The applicable subheading for the toys will be 9503.70.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other toys, put up in sets or outfits, and parts and accessories thereof." The rate of duty will be Free.

The applicable subheading for the metal lunchbox will be 4202.19.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Trunks, suitcases, vanity cases . . . and similar containers . . . Other." The rate of duty will be 20 percent ad valorem.

Based upon a further review of this ruling and a sample provided by the importer, we now believe that the classification of the metal imitation lunch box is incorrect.

ISSUE:

Whether the instant metal imitation lunch box is classified under heading 4202, HTSUS, as a trunk, suitcase, or similar container, or under heading 7326, HTSUS, as an other article of base metal.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 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 not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the Harmonized System. The Bureau of Customs and Border Protection (CBP) believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration (2004) are as follows:

- 4202 Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly of mainly covered with such materials or with paper:
Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels and similar containers:
- 4202.19.00 Other.
- * * *
- 7326 Other articles of iron or steel:
- 7326.90 Other:
- 7326.90.10 Of tinplate.

Based upon further examination of the instant article and a review of our previous rulings, it has become apparent that the metal imitation lunch box does not fall under heading 4202, HTSUS.

Heading 4202, HTSUS, provides for the classification of:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly of mainly covered with such materials or with paper.

It is apparent the metal box in NY L80711 is not similar to the articles listed by name and similar containers in the first part of heading 4202, HTSUS, i.e., that aspect which precedes the semi-colon. It is not necessary to consider whether the instant box is listed in the second part of the heading because those articles must be made of specific materials; iron and steel are not enumerated materials.

The box is made of metal and is *prima facie* classified in heading 7326, HTSUS. EN 73.26 states in relevant part that heading 7326, HTSUS, includes:

- (3) Certain boxes and cases, e.g., tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02); botanists', etc., collection or specimen cases, trinket boxes; cosmetic or powder boxes or cases; cigarette cases, tobacco boxes, cachou boxes, etc. but **not in-**

cluding containers of **heading 73.10**, household containers (**heading 73.23**), nor ornaments (**heading 83.06**) [emphasis in original].

CBP has issued several rulings in which certain metal lunch boxes have been classified under heading 7326, HTSUS. *See, e.g.*, HQ 965063, dated April 12, 2002; HQ 965554, dated August 12, 2002; and HQ 965555, dated August 12, 2002.

It should be noted that the instant boxes contain a printed paperboard lining attached to the interior walls. A true lunch box does not normally have a paperboard interior and the interior edges are finished. However, similar to those boxes, the instant box is larger than trinket and casket boxes, but smaller than a tool box. It is not specially shaped, nor is it internally fitted. The possible uses of the container are similar to the anticipated use of the containers referenced in EN 73.26.

Based upon the information submitted, the instant imitation metal lunch box is sufficiently similar to other metal lunch boxes classified by CBP under heading 7326, HTSUS, to fall under heading 7326, HTSUS, as well. The box is reportedly made of tinplate. The instant tinplate imitation lunch box is classified under subheading 7326.90.10, HTSUS.

Based on the foregoing analysis, the metal imitation lunch box is classified separately from the toy set under subheading 7326.90.10, HTSUS. The classification of the other items in NY L80711 remains unchanged.

HOLDING:

At GRI 1, the instant metal imitation lunch box is provided for in heading 7326, HTSUSA. It is classified under subheading 7326.90.1000, HTSUSA, as "Other articles of iron or steel: Other: Of tinplate." The 2005 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY L80711 is MODIFIED in accordance with this decision. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

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

19 CFR PART 177

**MODIFICATION AND REVOCATION OF RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO TAR-
IFF CLASSIFICATION OF GLASS RODS/PREFORMS
USED TO MAKE OPTICAL FIBERS**

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

ACTION: Notice of modification of a ruling letter, revocation of another ruling letter and revocation of treatment relating to the tariff classification of glass rods/preforms used to make optical fibers under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) is modifying one ruling and revoking one ruling concerning the tariff classification of glass rods/preforms used to make optical fibers, and is revoking any treatment CBP has previously accorded to substantially identical transactions. Notice of the proposed modification and revocation was published on November 2, 2005, in Vol. 39, No. 45 of the *Customs Bulletin*. Two 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 July 9, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, Tariff Classification and Marking 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 concepts that emerged from the law are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to CBP's obligations, notice proposing to revoke Headquarters Ruling Letter ("HQ") 960948, dated September 11, 1998, and to modify HQ 964879, dated March 21, 2002, as they pertain to the classification of glass rods/preforms, was published on November 2, 2005, in Vol. 39, No. 45 of the *Customs Bulletin*. Two comments (one comment in favor of and one comment opposed to the proposed actions) were received in response to this notice.

As stated in the proposed notice, the modification and revocation actions will cover any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings other than those herein identified; no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's 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 importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

In HQ 960948, merchandise described as glass preforms used to make optical fiber were classified under subheading 7020.00.60, HTSUS, which provides for other articles of glass. In HQ 964879, merchandise described as glass rod or cane that was the precursor to the glass preforms was classified under subheading 7002.20.10, HTSUS, which provides for other unworked glass rods. In reaching these conclusions, we reasoned, on the basis of the ENs to heading 7002, HTSUS, and the court's analysis of the term "further worked" in *Winter-Wolff, Inc., v. United States*, 996 F. Supp.1258, 1264 (1998), that the articles in HQ 960948 were worked beyond the extent contemplated by heading 7002, HTSUS, and in HQ 964879, that the articles were not further worked according to a similar analysis. We have reconsidered those determinations and now consider the articles to result from a multi-stepped process of manufacture and classifiable as unworked glass rods under heading 7002, HTSUS, pursuant to the analysis in HQs 967058 and 967059 which are set forth as attachments to this document.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking HQ 960948 and modifying HQ 964879 as they pertain to the classification of glass cane, rods or preforms, and any other ruling not specifically

identified, to reflect the proper classification of the merchandise under subheading 7002.20.10, HTSUS, which provides for other unworked glass rods pursuant to the analysis set forth in HQs 967058 (revoking HQ 960948) and 967059 (modifying HQ 964879) (see "Attachment A" and "Attachment B", respectively, to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 21, 2006

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

Attachments



[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967058
April 21, 2006
CLA-2 RR:CTF:TCM 967058 AML
CATEGORY: Classification
TARIFF NO.: 7002.20.1000

MS. MARY E. GILL
LUCENT TECHNOLOGIES
GUILFORD CENTER 1 – 3A10
5420 Millstream Road
Greensboro, NC 27420

RE: Glass preforms used to create optical fibers; HQ 960948 revoked

DEAR MS. GILL:

This is in reference to Headquarters Ruling Letter ("HQ") 960948 issued to you on September 11, 1998, behalf of Lucent Technologies, Inc., regarding the classification of certain glass preforms under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). We have taken the opportunity to revisit the decision made in HQ 960948, as well as the rationale of that decision, and have determined that the conclusions reached therein are incorrect. This letter sets forth the correct classification of the glass preforms.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057, 2186 (1993)), notice of the proposed revocation was published on November 2, 2005, in Vol. 39, No. 45 of the *Customs Bulletin*. Two comments

were received in response to the notice. Your comment favored the revocation of HQ 960948 while the other comment opposed the revocation.

FACTS:

The glass preforms and their method of manufacture were described extensively in HQ 960948. The description of the manufacturing process described in HQ 960948 is incorporated by reference. In simplest terms, silica dioxide powder is deposited or accumulated and then sintered (defined below) to form a layered glass rod which, following importation, will be subjected to an intricate process to produce kilometers of hair-like optical fiber.

Based on the fact that the preforms at issue were created through a two-step process and reasoning that the articles were "further worked" for purposes of Chapter 70 of the HTSUS, we concluded in HQ 960948 that the preforms were classified under subheading 7020.00.60, HTSUS, which provides for other articles of glass, other.

ISSUE:

Whether the subject merchandise is classifiable under heading 7002, HTSUS, which provides for, *inter alia*, unworked glass rods, or heading 7020, HTSUS, which provides for other articles of glass.

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 states, in part that for legal purposes, classification shall be determined 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.

The HTSUS provisions under consideration are as follows:

7002 Glass in balls (other than microspheres of heading 7018), rods or tubes, unworked:

* * *

7002.20 Rods:

7002.20.10 Of fused quartz or other fused silica.

* * *

7020 Other articles of glass:

* * *

7020.00.60 Other.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise. Customs and Border Protection ("CBP") believes the ENs should always be consulted. See T.D. 89-80, published in the Federal Register August 23, 1989 (54 FR 35127, 35128).

CBP's classification of glass preforms has focused on the notes to Chapter 70 regarding whether, in the creation of the glass preforms, the articles are "worked" for tariff purposes. See HQ 964879, dated March 21, 2002. *See also* HQ 560660, dated April 9, 1999 and HQ 561774 dated January 29, 2001

(wherein Customs analyzed the optical fiber production process involving the articles in question vis-à-vis country of origin and substantial transformation determinations).

In HQ 960948, we stated in regard to the manufacture of preforms “a rod of the core soots [microscopic glass particles] is created in the first step of manufacture [emphasis added] [and] that rod is then “worked” by the addition to it of cladding soots that are fused onto it.” We now believe this is in error and this process is not “working” for tariff purposes.

While we acknowledged that the preforms are articles that result from a unique process of manufacture (*i.e.*, chemical vapor deposition), we did not distinguish between drawing and sintering in the manufacturing process. Generally speaking, “drawing” is a process in glass production in which molten or heated glass is shaped by pressing or drawing through rollers or other apparatus. The term “sinter” is defined as causing to become a coherent mass by heating without melting. Webster’s New Collegiate Dictionary, G & C Merriam Co., 1979, p. 1076. “Sintering” generally describes the process through which pure chemicals are accumulated and heated to remove impurities and form glass, such as the vapor axial deposition process, which is described at length in both HQ 960948 and HQ 964879 cited above. You essentially agree that sintering of silica soot is an essential process in the manufacture of rods of fused silica, and that sintering is not “working” of a previously existing product. You also agree that heading 7002, HTSUS, provides an *eo nomine* description for the product.

CBP has considered the concept of the working of glass in several rulings and has uniformly considered the process to have been performed on an extant article of glass, rather than during the process of creation or manufacture. In HQ 960274, dated October 9, 1997, we stated:

Chapter 70, Note 2(a), authorizes, but does not identify, processes to which glass can be subjected before the annealing stage that will not exclude it from heading 7003. However, certain ENs at p. 1015, include within heading 7006, glass of heading 7003 that is edge-worked or otherwise worked, and list as examples glass that has been ground, polished, rounded, notched, chamfered, beveled, profiled, etc. (Emphasis added). In our opinion, to accord proper deference to the mandate of Note 2(a), the polishing or rounding operations listed in the heading 7006 ENs must be limited to those which occur after the annealing stage.

We conclude based on our reexamination of the language above from Chapter 70, the relevant headings and ENs, that working of glass contemplates the mechanical or physical alteration of glass following the annealing stage. That is, the “working” of glass articles occurs after their creation. The manufacture of preforms is a process that requires multiple steps; the articles are not complete until the desired layers are created and the articles are sintered to form a pure, solid whole. Thus, we no longer consider the creation of preforms to be “working” for tariff purposes because the products are being formed into a glass rod from raw material during the vapor deposition process. This interpretation comports with the ENs to heading 7002, HTSUS.

The ENs to heading 7002, HTSUS, provide, in pertinent part, that:

This heading covers . . . [g]lass rods and tubing of various diameters, which are *generally obtained* by drawing (combined with blowing in the

case of tubing); they may be used for many purposes (*e.g.*, for chemical or industrial apparatus; in the textile industry; for further manufacture into thermometers, ampoules, electric or electronic bulbs and valves, or ornaments)[emphasis added].

* * *

Balls of this heading must be unworked; similarly rod and tubing must be unworked (*i.e.*, as obtained direct from the drawing process or merely cut into lengths the ends of which may have been simply smoothed).

The heading excludes balls, rod and tubing made into finished articles or parts of finished articles recognisable as such; these are classified under the appropriate heading (*e.g.*, heading 70.11, 70.17 or 7018, or Chapter 90). If worked, but not recognisable as being intended for a particular purpose, they fall in heading 70.20.

The General ENs to Chapter 70 list nine separate methods of glass manufacturing processes (casting, rolling, floating, moulding, blowing, drawing or extruding, pressing, lampworking, and cutting out) which “vary considerably.” None of these exemplars remotely describes or includes the vapor axial deposition process. To hold that the term “glass rod” is restricted to the traditional concept of ordinary glass produced via conventional means 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.” *Simmon 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 as quoted in HQ 964985, dated July 15, 2002. Although the preforms are not drawn, they are produced by vapor axial deposition and composed of silica. Nothing in either heading 7002 or the related legal or explanatory notes restricts classification thereunder to products that result from a one-step process of manufacture. We conclude that the subject preforms are rods of glass for classification purposes.

HOLDING:

The glass rods/preforms produced via vapor axial deposition are classified as unworked glass in rods under subheading 7002.20.1000, HTSUSA.

EFFECT ON OTHER RULINGS:

HQ 960948 is revoked. In accordance with 19 U.S.C. § 1625 (c)(2), this ruling will become effective sixty (60) days after its publication in the Customs Bulletin.

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

cc: National Commodity Specialist Division
NIS Bunin

[ATTACHMENT B]

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

HQ 967059

April 21, 2006

CLA-2 RR:CTF:TCM 967059 AML

CATEGORY: Classification**TARIFF NO.:** 7002.20.1000

MR. FREDERICK L. IKENSON
BLANK ROME, LLP
600 New Hampshire Avenue, NW
Washington, D.C. 20037

RE: Glass rod used to create optical fibers; HQ 964879 modified

DEAR MR. IKENSON:

This is in reference to Headquarters Ruling Letter (“HQ”) 964879, issued to you March 21, 2002, on behalf of Corning, Inc., regarding the tariff classification of certain glass rod under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”). We have reconsidered the rationale employed to reach the determination in HQ 964879. While this letter does not affect the classification in HQ 964879, it clarifies the factual predicates and sets forth the proper rationale for the classification decision made therein.

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 964879 was published on November 2, 2005, in Vol. 39, No. 45 of the *Customs Bulletin*. Two comments (one in favor and yours in opposition) were received in response to the notice.

FACTS:

We described at length the glass rods and their method of manufacture in HQ 964879. Essentially, layers of microscopic glass particles (silica and germania) called “soot” are deposited by gas flame or vapor chemical deposition onto a ceramic “target” rod to form a core. A protective layer of pure silica cladding material is added to protect the core from scratching and to reflect inward or contain within the core pulses of light passing through the glass core. The resulting article has a chalky consistency and is referred to as a “core preform.” The target or bait rod is removed to leave a solid silica-clad glass core which is then baked in an oven. This makes the core smaller and more dense and causes it to become clear. The core preform is then softened in an annealing furnace to permit drawing of the preform into an elongated rod of smaller diameter called a “cane.” The cane is cooled and then cut into various lengths. Based on these facts, analyses made in prior rulings, and reasoning that the articles were not “worked” for purposes of Chapter 70, HTSUSA, we concluded in HQ 964879 that the “cane” was classified under subheading 7002.20.10, HTSUSA, set forth below.

The comment in favor of the proposed actions expressed agreement with “the conclusions in the proposed revocation ruling that sintering of the silica soot is an essential process in the manufacture” of the subject goods and that “sintering is not ‘working’ of a previously existing product.” The commenter

opines that “working of glass contemplates the mechanical or physical alteration of glass following the annealing stage,” and that the preforms are properly classified as proposed, *eo nomine* as glass rods under heading 7002, HTSUS.

You provided extensive comments in opposition to the proposed actions. In sum, your opposition to the proposed actions contends that the glass preforms at issue, because of their method of manufacture and complexity, cannot be classified under heading 7002, HTSUS, and instead should remain classified under heading 7020, HTSUS. We summarize your comments concerning the proposed revocation and modification as follows:

1. You repeatedly emphasize that HQ 960948, which revoked NY B85983 (that classified preforms under 7002, HTSUS), “was issued after notice and comment by interested parties, and after thorough consideration by CBP of all facets of the classification issues presented.”
2. Your basic premise for opposing the proposed actions is that there is inadequate justification for classification of the preforms under heading 7002 and that “the entire record before CBP confirms that optical fiber preforms cannot fit under the provisions of [heading] 7002 [, HTSUS].”
3. The crux of your opposition is embodied by your description of the manufacturing process of preforms: “the manufacturing technology employed in the production process of preforms is such that sequential processes are followed, and these processes involve *first* the production of a glass rod – the core rod also known as “cane” or “seed”.”
4. You contend that “subsequent to the creation of the core rod, the rod is “worked” by adding to it a measured quantity of cladding glass (of a different refractive index.” You continue that “the central issue here is whether a core rod is created, and then a preform is obtained by processes which may be understood to constitute a working of that core rod.”
5. You contend that our conclusions that the final step of the preform manufacturing process occurs when the cladded layer is sintered (as part of the one of the vapor deposition processes) onto the core rod (or “cane” in your parlance) to create the preform are neither conclusive nor even relevant “to whether a core rod is being worked to yield a preform.”
6. You frame the ultimate issues to be these: “Does a glass rod exist when the core rod is formed? If so, is that rod subjected to any process of “working” to yield the imported article, the optical fiber preform?” Restated following your examination of various industry references to the articles at issue, you contend that “the issue turns on whether the addition of a glass cladding layer to that core rod constitutes the working of the core rod, such that the end result (the optical fiber preform) is comprised of a worked rod, thereby foreclosing classification under heading 7002.”
7. You advocate that the proposed modification of HQ 964879 contains statements that have no basis in law or fact and, further, that the determinations made therein are unsustainable and unjustified. You further advocate that our discussion of HQ 960274 (set forth below) evinces our misinterpretation of the headings, legal notes and explanatory notes to Chapter 70, HTSUS.

8. You elaborate in furtherance of your arguments concerning working of the core rods (“cane” in your parlance) “to the extent that CBP would analogize “annealing” with “sintering” or “consolidation”, it also follows that, under *Blakley Corp. v. United States*, 22 CIT 635, 15 F. Supp. 2d 865 (1998), a disqualifying “working” of the rod cannot be viewed only with respect to operations subsequent to the sintering of the cladding soots.”

9. You contend, via a discussion of various methods of working glass in Chapter 70 and the ENs thereto, that the addition of glass by means of vapor chemical deposition also constitutes “working” and thus, you conclude, the preforms fall to be classified under heading 7020, HTSUS.

10. We set forth other contentions in our discussion of your comments below.

ISSUE:

Whether the subject merchandise is classifiable under heading 7002, HTSUS, which provides for, *inter alia*, unworked glass rods, or heading 7020, HTSUS, which provides for other articles of glass.

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 states, in part that for legal purposes, classification shall be determined 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 6 provides that for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable.

The HTSUS provisions under consideration are as follows:

7002	Glass in balls (other than microspheres of heading 7018), rods or tubes, unworked:
	* * *
7002.20	Rods:
7002.20.10	Of fused quartz or other fused silica.
	* * *
7020	Other articles of glass:
	* * *
7020.00.60	Other.

Preliminarily, it is necessary to discuss the nature and function of optical fibers that the preforms are designed and used ultimately to produce. The form and function of the optical fibers that are drawn through a highly technical process from the preforms at issue influenced the classification determinations at issue. See the website howstuffworks.com, under the title “How Fiber Optics Work” wherein the form and function of optical fibers is described as follows:

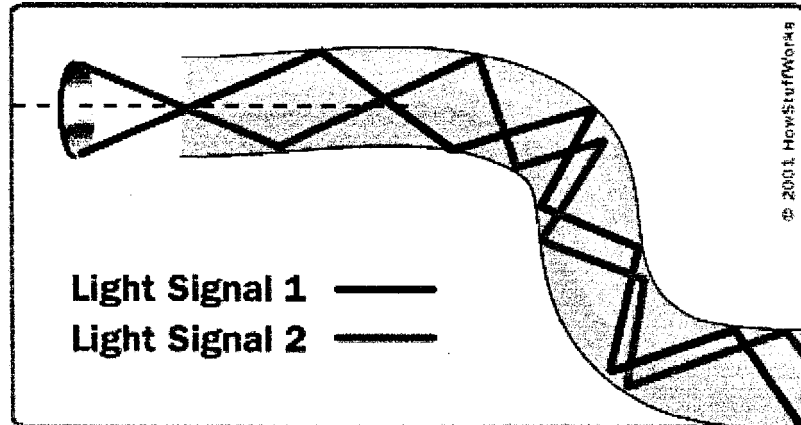
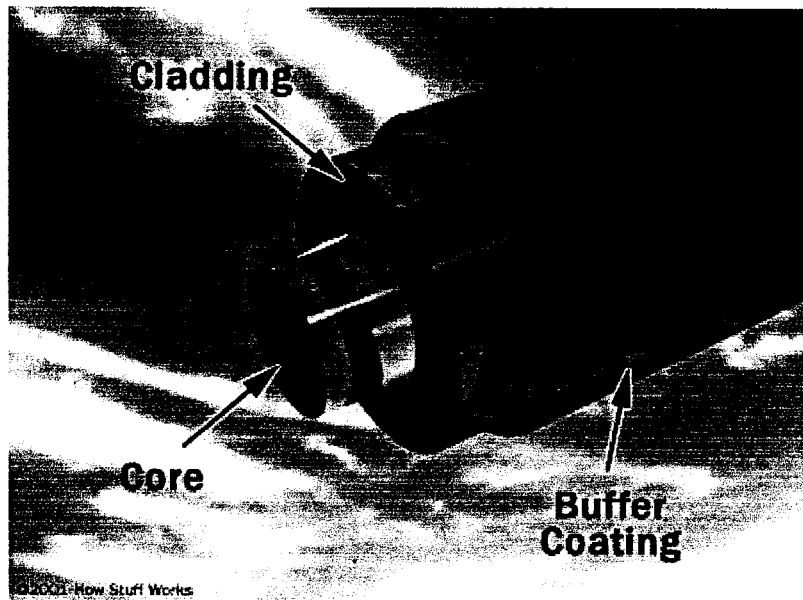


Diagram of total internal reflection in an optical fiber

The light in a fiber-optic cable travels through the core (hallway) by constantly bouncing from the cladding (mirror-lined walls), a principle called total internal reflection. Because the cladding does not absorb any light from the core, the light wave can travel great distances.

Fiber optics (optical fibers) are long, thin strands of very pure glass about the diameter of a human hair. They are arranged in bundles called **optical cables** and used to transmit light signals over long distances.



Parts of a single optical fiber

If you look closely at a single optical fiber, you will see that it has the following parts:

- **Core** - Thin glass center of the fiber where the light travels
- **Cladding** - Outer optical material surrounding the core that reflects the light back into the core
- **Buffer coating** - Plastic coating that protects the fiber from damage and moisture

From this and other industry sources¹ we conclude that the essential components of optical fibers are the core and cladding. That is, optical fiber cannot fulfill its intended function of transmitting light signals over long distances without the core being enclosed in a cladding layer that causes the light signal to remain concentrated for transmission through the core. It was with these factual predicates that we proposed modifying HQ 964879 relating to glass rod preforms. Both the relevant chapters and headings in the HTSUSA and the relevant CBP rulings acknowledge these forms and functions; we reexamined our classification of the preforms and their method of manufacture and decided to modify CBP's classification of the preforms.

The instant modification is based on the following analysis: preforms, upon importation, are glass rods of various sizes and dimensions that are composed of fused silica. While we readily acknowledge that the glass preforms are highly specialized and produced via a sophisticated method of manufacture, they are, being composed of fused silica and presented for importation in the form of a rod, *prima facie* classifiable within Chapter 70 as articles of glass and within Chapter 70 under heading 7002, HTSUSA, as glass rods. Heading 7020, HTSUSA, which provides for other articles of glass, is a so-called "basket" provision within Chapter 70, in which classification "is appropriate only when there is no tariff category that covers the merchandise more specifically." (*Apex Universal, Inc., v. United States*, 22 C.I.T. 465 (CIT 1998)). Therefore, in reexamining the classification of the preforms, we first addressed the competing provisions within the tariff. Only if classification under heading 7002, HTSUSA were precluded would we have addressed classification under heading 7020, HTSUSA.

We note with regard to your repeated contentions opposing the proposed modification of HQ 960948, which revoked NY B85983 (that classified preforms under 7002, HTSUS), that HQ 960948 "was issued after notice and comment by interested parties, and after thorough consideration by CBP of all facets of the classification issues presented. We note further in response to your statement that three comments from the industry were received during the notice and comment period preceding the issuance of HQ 960948 and that two of those comments, yourself and another prominent company, are the commenters regarding the instant action.

CBP's classification of glass preforms has focused on the notes to Chapter 70 regarding whether, in the creation of the glass preforms, the articles are "worked" for tariff purposes. See HQ 964879, dated March 21, 2002. See also HQ 560660, dated April 9, 1999 and HQ 561774 dated January 29, 2001

¹See also: praxair.com; globalmanufacture.net; corningcablesystems.com; optronics.gr/tutorials/how_the_fiber_is_made.htm; reaktor.ch.pw.edu.pl/~dybko/csrg/prepapers/dstadnik/fiber_technology.html; berktek.com; loti.bell.ac.uk/MathsPhysics/fibreman.htm; and www.spie.org/app/Publications/magazines/oerarchive/june/jun00/maurer.html.

(wherein Customs analyzed the optical fiber production process involving the articles in question vis-à-vis country of origin and substantial transformation determinations).

In HQ 960948, we stated in regard to the manufacture of preforms “a rod of the core soots [microscopic glass particles] is created in the first step of manufacture [emphasis added] [and] that rod is then “worked” by the addition to it of cladding soots that are fused onto it.” We now believe this is in error and this process is not “working” for tariff purposes. The preforms result from a two-part process of manufacture that results in a glass rod for tariff classification purposes. As we stated in HQ 561774, *supra*, the manufacturing process for preforms can be described as follows:

The fiber core is manufactured first by depositing layer after layer of microscopic glass particles called “soot” onto a ceramic target (bait) rod. This soot is a combination of both pure silica and an additive, Germania. The soot is formed by burning the appropriate chemical vapors in a gas flame. Once the core material is deposited, a layer of cladding material (pure silica) is added. This small amount of cladding material, upon consolidation, protects the core region from mechanical damage such as nicks and scratches, and from chemical contamination. The resulting object is a cylindrical porous structure with a chalky consistency called a “core preform.” Once the deposition process is completed, the bait rod is removed and the core preform is placed in an oven for consolidation. This process causes the chalky core preform to become both smaller and denser, and to become clear.

Additional cladding is added during the second stage of the manufacturing process, resulting in a completed preform.

While we acknowledged that the preforms are articles that result from a unique process of manufacture (*i.e.*, chemical vapor deposition), we did not distinguish between drawing and sintering in the manufacturing process. Generally speaking, “drawing” is a process in glass production in which molten or heated glass is shaped by pressing or drawing through rollers or other apparatus. The term “sinter” is defined as causing to become a coherent mass by heating without melting. Webster’s New Collegiate Dictionary, G & C Merriam Co., 1979, p. 1076. “Sintering” generally describes the process through which pure chemicals are accumulated and heated to remove impurities and form glass, such as the vapor axial deposition process, which is described at length in both HQ 960948 and HQ 964879 cited above.

You contend, concerning working of the core rods (“cane” in your parlance), that “to the extent that CBP would analogize “annealing” with “sintering” or “consolidation”, it also follows that, under *Blakley, supra*, a disqualifying “working” of the rod cannot be viewed only with respect to operations subsequent to the sintering of the cladding soots.”

Our analogizing of “annealing” with “sintering” or “consolidation” was undertaken with regard to steps in the various processes of manufacture rather than as physical manipulation of glass during manufacture. Our intent was to demonstrate our interpretation of the language of the tariff that distinguishes among the various types of “working” to which glass is subjected and compare those forms of working to the sequential or multi-step process of manufacture of the preforms.

Your fundamental position, *i.e.*, that the core or cane is further worked to create the preforms ignores both the necessary characteristics of optical fi-

ber and the “sequential” (see your opposition at pages 5, 6, 10) or multi-stepped manufacturing process. Your position that the core is worked further ignores the basic function of the ultimate product: the core of the optical fiber cannot transmit light signals as intended without the cladding layer to reflect the signals within the core. That is, a preform is not complete unless and until the cladding is sintered to the core.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise. Customs and Border Protection (“CBP”) believes the ENs should always be consulted. See T.D. 89–80, published in the Federal Register August 23, 1989 (54 FR 35127, 35128).

The ENs to heading 7002, HTSUS, provide, in pertinent part, that:

This heading covers . . . [g]lass rods and tubing of various diameters, which are *generally obtained* by drawing (combined with blowing in the case of tubing); they may be used for many purposes (*e.g.*, for chemical or industrial apparatus; in the textile industry; for further manufacture into thermometers, ampoules, electric or electronic bulbs and valves, or ornaments)[emphasis added].

* * *

Balls of this heading must be unworked; similarly rod and tubing must be unworked (*i.e.*, as obtained direct from the drawing process or merely cut into lengths the ends of which may have been simply smoothed).

The heading excludes balls, rod and tubing made into finished articles or parts of finished articles recognisable as such; these are classified under the appropriate heading (*e.g.*, heading 70.11, 70.17 or 7018, or Chapter 90). If worked, but not recognisable as being intended for a particular purpose, they fall in heading 70.20.

CBP has considered the concept of the working of glass in several rulings and has uniformly considered the process to have been performed on an extant article of glass, rather than during the process of creation or manufacture. In HQ 960274, dated October 9, 1997, we stated:

Chapter 70, Note 2(a), authorizes, but does not identify, processes to which glass can be subjected before the annealing stage that will not exclude it from heading 7003. However, certain ENs include within heading 7006, glass of heading 7003 that is edge-worked or otherwise worked, and list as examples glass that has been ground, polished, rounded, notched, chamfered, beveled, profiled, etc. In our opinion, to accord proper deference to the mandate of Note 2(a), the polishing or rounding operations listed in the heading 7006 ENs must be limited to those which occur after the annealing stage.

You contend that our inclusion of the language immediately above in the proposed modification ignores the edicts of *Blakley*. To the contrary, we discussed *Blakley* at length in HQ 964879 and are aware of its effect. As with the analogy of sintering and annealing discussed above, we cited the ruling and types of working set forth therein only as examples of types of working

to which articles of glass can possibly be subjected and considered at what point in the creation or existence of the articles (prior to, during or subsequent to manufacture) the acts of working took place.

Based on our reexamination of the language above from the relevant rulings, Chapter 70, the relevant headings and ENs, we conclude that working of glass contemplates the mechanical or physical alteration of glass following the annealing, or in this matter, its equivalent stage. That is, the “working” of glass articles occurs after their creation. The manufacture of preforms is a process that requires multiple steps; the articles are not complete until the desired cladding layer(s) are created and the articles are sintered to form a pure, solid whole. Thus, we no longer consider the creation of preforms to be “working” for tariff purposes because the products are being formed into a glass rod from raw material during the vapor deposition process. This interpretation comports with the ENs to heading 7002, HTSUS.

Both the “cane” and the preforms, composed of pure silica, are essentially components of the same product – the precursor to optical fiber. We consider our distinction between “cane” and “preforms” to have been overstated; the distinction appears to be unique to you and your client and commercially there appears to be no distinction made between preforms in various stages of manufacture. We no longer distinguish between “cane” and preforms for tariff classification purposes.

The General ENs to Chapter 70 list nine separate methods of glass manufacturing processes (casting, rolling, floating, moulding, blowing, drawing or extruding, pressing, lampworking, and cutting out) which “vary considerably.” None of these exemplars remotely describes or includes the vapor axial deposition process. To hold that the term “glass rod” is restricted to the traditional concept of ordinary glass produced via conventional means 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.” *Simmon 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 as quoted in HQ 964985, dated July 15, 2002. Although the preforms are not drawn, they are produced by vapor axial deposition and composed of silica. Nothing in either heading 7002 or the related legal or explanatory notes restricts classification thereunder to products that result from a one-step process of manufacture. We conclude that the subject preforms are rods of glass for classification purposes.

The record reflects that sintering of the silica soot is an essential process in the manufacture” of the subject goods and that “sintering is not ‘working’ of a previously existing product.” The working of glass contemplates the mechanical or physical alteration of glass following the annealing stage. This warrants the conclusion that the preforms are properly classified, *eo nomine*, as glass rods under heading 7002, HTSUS.

You oppose the proposed modification of HQ 964879 on the basis that the glass preforms at issue, because of their method of manufacture and complexity, cannot be classified under heading 7002, HTSUS, and instead should remain classified under heading 7020, HTSUS. This argument simply does not recognize the rationale adopted in the proposed ruling: a pre-

form is manufactured via a multi-step process that yields an admittedly complex precursor that will, following importation, and being subjected to a highly technical manufacturing process, yield kilometers of optical fiber.

At GRI 1, the preforms are glass rods. We have painstakingly considered the arguments made in opposition to the proposed action; nevertheless, we remain convinced that the preforms created by any of the vapor deposition processes should be, in their condition as imported, classified as glass rods under heading 7002, HTSUS.

HOLDING:

The glass rods/preforms produced via vapor deposition and used to create optical fiber are classifiable as unworked glass in rods under subheading 7002.20.1000, HTSUSA.

EFFECT ON OTHER RULINGS:

HQ 964879 is modified as described above but the classification determination made therein remains unchanged. In accordance with 19 U.S.C. §1625 (c)(2), this ruling will become effective sixty (60) days after its publication in the *Customs Bulletin*.

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

cc: National Commodity Specialist Division
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