

# U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY  
19 CFR PARTS 12, 102, 141, 144, 146, and 163

CBP Dec. 11-09

USCBP-2005-0009

RIN 1515-AD57 (FORMERLY RIN 1505-AB60)

## COUNTRY OF ORIGIN OF TEXTILE AND APPAREL PRODUCTS; CORRECTION

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

**ACTION:** Final rule; correction.

**SUMMARY:** Customs and Border Protection (CBP) published in the **Federal Register** of March 17, 2011, a document which adopted as a final rule, with some changes, interim amendments to the CBP regulations to revise, update, and consolidate the regulatory provisions relating to the country of origin of textile and apparel products. The final rule document contained two errors in the Background portion of the document. The first error concerns an inadvertent reference to imported “antique Persian carpets” in an example prepared by CBP. Because carpets of Iranian-origin are currently prohibited from importation into the United States, the example should not have referenced Persian antique carpets. The example is changed to reflect a non-prohibited article—a Turkish antique carpet. The second error consists of an outdated Internet address that was provided by CBP relating to certain instructions for the completion of CBP Form 7501. This document corrects these two errors.

**DATES:** Effective on March 24, 2011.

**FOR FURTHER INFORMATION CONTACT:** Roberts Abels, Textile Operations, Office of International Trade, (202) 863-6503.

**SUPPLEMENTARY INFORMATION:** CBP published a final rule document in the **Federal Register** of March 17, 2011 (76 FR 14575), concerning the country of origin of textile and apparel

products. The Background portion of the document included two errors: (1) an inadvertent reference to “Persian” carpets instead of “Turkish” carpets in an example provided by CBP; and (2) an outdated Internet address concerning certain instructions for the completion of CBP Form 7501. This document corrects these two errors.

In rule FR Doc. 2011–6253 published on March 17, 2011 (76 FR 14575), make the following corrections:

(1) On page 14579, in the first column, remove the word “Persian” in the first bullet point and add in its place the word “Turkish”;

(2) On page 14581, in the second column, remove the parenthetical Internet address and add in its place the Internet address “([http://www.cbp.gov/linkhandler/cgov/trade/trade\\_programs/entry\\_summary/cbp7501/7501\\_instruction.ctt/7501\\_instruction.doc](http://www.cbp.gov/linkhandler/cgov/trade/trade_programs/entry_summary/cbp7501/7501_instruction.ctt/7501_instruction.doc))”.

Dated: March 18, 2011

HAROLD M. SINGER

*Director,*

*Regulations and Disclosure Law Division  
U.S. Customs and Border Protection*

[Published in the Federal Register, March 24, 2011 (76 FR 16531)]



## GENERAL NOTICE

### 19 C.F.R. PART 177

#### **Proposed Modification of a Ruling and Proposed Modification of Treatment Relating to the Classification of Certain Heater/Diffusers**

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

**ACTION:** Notice of proposed modification of a ruling letter and proposed modification of treatment relating to the classification of certain heater/diffusers, and request for comments.

**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) intends to modify a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain heater/diffusers. Similarly, CBP proposes to modify any

treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

**DATES:** Comments must be received on or before May 13, 2011.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Commercial and Trade Facilitation Division, Valuation and Special Programs Branch, 799 9<sup>th</sup> Street, N.W., Seventh Floor, Washington D.C. 20229-1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Barbara G. Kunzinger, Valuation and Special Programs Branch, at (202) 325-0359.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify a ruling letter relating to the tariff classification of certain heater/diffusers. Although in this

notice CBP is specifically referring to the modification of New York Ruling Letter (NY) N077738, dated October 28, 2009 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N077738, dated October 28, 2009, CBP determined that an electric room fragrance heater/diffuser that was imported from China, upon which duty was paid, then exported to Mexico for packing in retail sets with a scent bulb, was not eligible for duty-free treatment under 9801.00.20, HTSUS, upon reimportation because the heater/diffuser and scent bulb together were classified as an unassembled, single article of commerce. Based on our recent review of NY N077738, we have concluded that this determination is incorrect. Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to modify NY N077738 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper 9801.00.20, HTSUS, eligibility pursuant to the analysis set forth in HQ H090975 (Attachment B). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to modify any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: March 14, 2011

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

Attachments

## [ATTACHMENT A]

NY N077738

October 28, 2009

CLA-2-85:OT:RR:NC:N1:102

CATEGORY: Classification

TARIFF NO.: 8516.79.0000; 8516.90.9000

MR. MICHAEL T. SHOR  
ARNOLD & POTTER LLP  
555 TWELFTH STREET, NW  
WASHINGTON, DC 20004-1206

RE: The tariff classification of an electric scent heater/diffuser from China

DEAR MR. SHOR:

In your letter dated September 24, 2009 you requested a tariff classification ruling on behalf of your clients Jeyes Limited and Jeyes, Inc.

The article in question is described as a plug-in electric room fragrance heater/diffuser you plan to import from China, pay duty, and then re-export to Mexico for packaging in retail sets with dedicated, replaceable scent bulbs filled with scented oil. You inquire as to the classification of the heater/diffuser when imported from China.

The heater/diffuser is an electrothermic device incorporating an electric heating element that heats scented oil within a scent bulb. The scent bulb is designed to attach directly to and is dedicated for use with the heater/diffuser.

The applicable subheading for the electric heater/diffuser, whether presented with or without a scent bulb, will be 8516.79.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other electrothermic appliances. The rate of duty will be 2.7 percent ad valorem.

The applicable subheading for the scent bulb, when presented separately, will be 8516.90.9000, HTSUS, which provides for other parts electrothermic appliances. The rate of duty will be 3.9 percent ad valorem.

You also inquire as to the applicability of subheading 9801.00.2000, HTSUS, to the heater/diffuser. In support of your belief that the heater/diffuser is eligible for duty-free treatment under subheading 9801.00.2000, HTSUS, upon re-importation into the United States after being packaged together with a scent bulb in Mexico you cite Headquarters *ruling* 964960.

Subheading 9801.00.2000, HTSUS, provides for duty-free treatment for articles, previously imported, with respect to which the duty was paid upon such previous importation or which were previously free of duty pursuant to the Caribbean Basin Economic Recovery Act or Title V of the Trade Act of 1974, if (1) re-imported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad, after having been exported under lease or similar use agreements, and (2) re-imported by or for the account of the person who imported it into, and exported it from, the United States.

In the instant case, the article imported from Mexico is not simply a heater/diffuser, but rather a complete, albeit unassembled, electrothermic appliance comprised of a heater/diffuser and a scent bulb. Unlike the sheets and pillowcases considered in Headquarters *ruling* 964960, the appliance here, as a whole, does not meet the "previously imported" requirement of HTSUS subheading 9801.00200. We find no authority under relevant law to

constructively separate the heater/diffuser from the scent bulb for the purpose of determining its tariff treatment. Once packaged together in Mexico, the heater/diffuser and scent bulb become a single article of commerce, classifiable by operation of General Rule of Interpretation 2(a) in subheading 8516.79.0000, HTSUS, as an unassembled electrothermic appliance. Accordingly, the heater/diffuser is not separately eligible for treatment under subheading 9801.00.2000, HTSUS.

Since we find that the heater/diffuser is not eligible for treatment under HTSUS subheading 9801.2000, questions raised regarding the appropriate country of origin marking if the heater/diffuser is separately entered are moot.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth T. Brock at (646) 733-3009.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H090975  
OT:RR:CTF:VS H090975 BGK  
CATEGORY: Classification

MICHAEL T. SHOR  
ARNOLD & PORTER LLP  
555 TWELFTH STREET, NW  
WASHINGTON, DC 20004-1206

RE: Modification of NY N077738; Tariff Classification and Eligibility for Duty-free Treatment under Subheading 9801.00.20, HTSUS, for Certain Heater/Diffusers

DEAR MR. SHOR:

This letter concerns New York Ruling Letter (NY) N077738, issued to you on October 28, 2009, on behalf of your clients Jeyes Limited and Jeyes, Inc. by the National Commodity Specialist Division, U.S. Customs and Border Protection (CBP). At issue in the ruling was the tariff classification of certain heater/diffusers and their eligibility for duty-free treatment under subheading 9801.00.20, Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered that ruling and found it to be incorrect as it relates to our finding that the heater/diffusers were not eligible for duty-free treatment. As we agree with your classification of the diffusers under subheading 9801.00.20, we will also address your other questions in your September 24, 2009 ruling request.

## FACTS:

The merchandise was described in NY N077738, in relevant part, as follows:

The article in question is described as a plug-in electric room fragrance heater/diffuser you plan to import from China, pay duty, and then re-export to Mexico for packaging in retail sets with dedicated, replaceable scent bulbs filled with scented oil. . . . The heater/diffuser is an electrothermic device incorporating an electric heating element that heats scented oil within a scent bulb. The scent bulb is designed to attach directly to and is dedicated for use with the heater/diffuser.

Considering the provisions of subheading 9801.00.20, HTSUS, CBP found that the packaging with the scent bulb in Mexico created a “complete, albeit unassembled, electrothermic appliance. . .” which would not meet the “previously imported” requirement of subheading 9801.00.20, HTSUS. It was found that the heater/diffuser would not be separately eligible for treatment under subheading 9801.00.20, HTSUS.

## ISSUES:

- I. Whether the heater/diffuser is eligible for duty-free treatment under subheading 9801.00.20, HTSUS, upon re-importation from Mexico.
- II. What is the tariff classification of the scent bulb if the heater diffuser is entered under subheading 9801.00.20, HTSUS?
- III. What are the applicable marking requirements for the heater/diffuser and the scent bulb?



## LAW AND ANALYSIS:

I. The eligibility of the heater diffuser for duty-free treatment under subheading 9801.00.20, HTSUS, upon re-importation from Mexico:

Subheading 9801.00.20, HTSUS, provides duty-free treatment for:

Articles, previously imported, with respect to which the duty was paid upon such previous importation or which were previously free of duty pursuant to the Caribbean Basin Economic Recovery Act or Title V of the Trade Act of 1974, if (1) reimported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad, after having been exported under lease or similar use agreements, and (2) reimported by or for the account of the person who imported it into, and exported it from the United States.

The heater/diffuser in this case will be imported by Jeyes into the U.S. from China. Duty will be paid upon importation into the U.S., and then the heater/diffusers will be exported to Mexico to be packaged with a scent bulb and reimported.

NY N077738 held that because the scent bulb and heater/diffuser are classifiable as one complete, unassembled article of commerce upon importation into the U.S., the heater diffuser would not meet the “previously imported” requirement of subheading 9801.00.20, HTSUS. NY N077738 considered Headquarters Ruling Letter (HRL) 964960, dated September 4, 2002, where sheets and pillowcases were imported from Pakistan into the U.S., exported to Mexico to become part of a bed in a bag set, and then reimported under subheading 9801.00.20, HTSUS. NY N077738 distinguished HRL 964960 on the ground that the scent bulb and heater/diffuser, when packaged together, create a complete, unassembled article of commerce classifiable under one HTSUS number under General Rule of Interpretation (GRI) 2(a), whereas the pieces in the bed in a bag set each remained separate articles of commerce prima facie classifiable under different HTSUS headings under GRI 3(b) as a set. We note that HRL 964960 did not consider the classification of the sheets and pillowcases as part of a set in determining that they were eligible for subheading 9801.00.20, HTSUS, treatment. Instead, relying on HRL 560511, dated November 18, 1997, it was determined that mere packaging of the sheets and pillowcases into the set was not an advancement in value or improvement in condition.

In HRL 560511, Gerber imported bibs into the U.S. from China and then exported them to the Dominican Republic to be packaged with onesies and reimported. These goods were not considered a set, and were classified separately. The focus of the inquiry with regard to whether the bibs would be eligible for subheading 9801.00.20, HTSUS, treatment turned on whether the bibs met the requirements of subheading 9801.00.20, HTSUS, not their classification with respect to the onesies. It was determined that the bibs were eligible for subheading 9801.00.20, HTSUS, treatment upon reimportation into the U.S because “Customs does not consider merely packaging a good for retail sale as an advancement in value or improvement in condition.” HRL 560511 (citing *John v. Carr & Son, Inc.*, 69 Cust. Ct. 78, C.D. 43377 (1972), *aff’d*, 61 CCPA 52, C.A.D. 1118 (1974)).

Similarly, batteries imported from Singapore, exported to Canada for packaging and reimported were held to be eligible for subheading 9801.00.20, HTSUS, treatment in HRL H016586, dated October 15, 2007. This case was



also decided on the principle that repackaging will not affect eligibility for subheading 9801.00.20, HTSUS, treatment. All these cases analyzed the eligibility of the articles for subheading 9801.00.20, HTSUS, treatment without regard to the classification of the goods or their packaging with other items.

The requirements of subheading 9801.00.20 are similar to those of subheading 9801.00.10, HTSUS,<sup>1</sup> the predecessor of which, item 800.00, Tariff Schedule of the United States (TSUS), was examined in *Superscope, Inc. v. United States*, 727 F. Supp. 629 (CIT 1989). In *Superscope*, glass panels manufactured in the U.S. were exported to New Zealand, packaged with the remaining components of unassembled cabinets, for which the glass would serve as doors or lids, and reimported into the U.S. *Superscope*, 727 F. Supp. at 630. The court held that “since the glass panels were not ‘advanced in value or improved in condition. . . while abroad,’ but were merely repacked, they are entitled to duty free entry under item 800.00 TSUS.” *Id.* at 632 (discussing *John v. Carr & Son*). The Court of International Trade reasoned that “strict construction of item 800.00, TSUS, would frustrate what seems to be the fundamental legislative policy embodied in that item.” *Id.* at 633. The court also stressed throughout the opinion that the mere sorting and repackaging of goods should not preclude goods from being classified under item 800.00, TSUS. *See id.* at 632–634. As subheading 9801.00.20, HTSUS, and subheading 9801.00.10, HTSUS, contain similar requirements, particularly “without having been advanced in value or improved in condition”, the reasoning given by the court in *Superscope*, should apply to goods being reimported under subheading 9801.00.20, HTSUS, the same as it would for American goods returned under subheading 9801.00.10, HTSUS.

The *Superscope* Court also discussed Headnote 1 to schedule 8, TSUS, (now U.S. Note 1, Subchapter 1, Chapter 98, HTSUS), which provides as follows:

The provisions of this chapter are not subject to the rule of relative specificity in general rule of interpretation 3(a). Any article which is described in any provision in this chapter is classifiable in said provision if the conditions and requirements thereof and of any applicable regulations are met.

U.S. Note 1, Chapter 98, HTSUS (2010). Therefore, although *Superscope* involved a complete, unassembled, single article of commerce, the court determined that articles that meet the requirements of the provision would be afforded treatment under the provision, without regard to the classification of the article or articles.

In this case, like in *Superscope* and the above mentioned rulings, the heater/diffusers are merely repackaged with the scent bulbs in Mexico. While, like in *Superscope*, they are being repacked with other articles to create a complete, unassembled article, this alone will not preclude the application of subheading 9801.00.20, HTSUS. As long as the requirements of subheading 9801.00.20, HTSUS, are met, the classification of the repack-

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<sup>1</sup> “Products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad.” Subheading 9801.00.10, HTSUS.

aged heater/diffuser and scent bulb will not affect the heater/diffuser's eligibility for subheading 9801.00.20, HTSUS, treatment. Also, as emphasized by *Superscope* and the above rulings, "Customs does not consider merely packaging a good for retail sale as an advancement in value or improvement in condition." HRL 560511. The heater/diffusers are being reimported without having been advanced in value or improved in condition while abroad.

Subheading 9801.00.20, HTSUS, also requires that the articles be exported under a lease or similar use agreement. You state that there will be a written agreement between Jeyes and Jeyes Mexico, pursuant to which Jeyes will retain ownership of the diffuser at all times. You have provided a copy of the agreement.

In HRL 560511 it was found that the bibs were exported under a similar use agreement, for purposes of subheading 9801.00.20, HTSUS, as Gerber retained ownership throughout the process. As in HRL 560511, Jeyes will retain ownership of the heater/diffusers at all times. Therefore we find they are exported under a similar use agreement for purposes of subheading 9801.00.20, HTSUS.

In addition, subheading 9801.00.20, HTSUS, requires that the same party, who originally imported and exported the article to and from the U.S., reimport the article, or that the article is reimported on their behalf. In this case, Jeyes retains ownership of the articles throughout the whole process, and is the party importing, exporting, and reimporting the heater/diffusers.

Therefore, we find that the heater/diffusers are eligible for duty-free treatment under subheading 9801.00.20, HTSUS, upon reimportation into the U.S. after exportation for repackaging in Mexico.

## II. The tariff classification of the scent bulb:

In NY N077738, CBP stated that the scent bulb would be classified, if presented separately, under subheading 8516.90.90, HTSUS. Further, under GRI 2(a), once packaged with the heater/diffuser, NY N077738 found that the classification is subheading 8516.79.00, HTSUS. The fact that the heater/diffuser is eligible for treatment under subheading 9801.00.20, HTSUS, does not change this determination. Therefore, as stated in NY N077738, the scent bulb will be classified under subheading 8516.79.00, HTSUS.

## III. Marking Requirements for the heater/diffuser and scent bulb:

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

Section 134.1(b) of the Customs Regulations, defines "Country of origin" as: the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to

render such other country the “country of origin” within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Section 134.1(j) provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a “good of a NAFTA country” as “an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.” As the heater/diffuser is being imported from Mexico, the NAFTA Marking Rules must be applied.

The NAFTA Marking Rules are set forth in 19 C.F.R. Part 102. Section 102.11(a) contains the “General rules” for determining country of origin:

- (a) The country of origin of a good is the country in which:
  - (1) The good is wholly obtained or produced;
  - (2) The good is produced exclusively from domestic materials; or
  - (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

The heater/diffuser and scent bulb packaged together in Mexico have different countries of origin, therefore, they cannot be considered wholly obtained or produced, nor produced exclusively from domestic materials. In such circumstances, section 102.11(a)(3) is applied next. Under section 102.11(a)(3), the country of origin of a good is the country in which each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20, Customs Regulations (19 C.F.R. § 102.20). However, section 102.17, Customs Regulations (19 C.F.R. § 102.17), states that a foreign material shall not be considered to have undergone an applicable change in tariff classification by reason of simple packing, repacking or retail packaging without more than minor processing. In the present case, the facts presented indicate that the Mexican operations on the heater/diffuser consist only of retail packaging.

In such circumstances, the next step in the hierarchy is section 102.11(b), Customs Regulations (19 C.F.R. § 102.11(b)). That section states:

- (b) Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:
  - (1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good....

19 C.F.R. § 102.11(b).

As described above, the heater/diffuser and scent bulb are not classified as a set under the HTSUS. Section 102.18(b)(1), Customs Regulations (19 C.F.R. § 102.18(b)(1)), provides that for purposes of applying section 102.11, only those domestic and foreign materials “that are classified in a tariff provision from which a change in tariff classification is not allowed under the section 102.20 specific rule or requirements applicable to the good” shall be taken into consideration in determining the parts or materials that determine the essential character of the good. Moreover, section 102.18(b)(2), Customs

Regulations (19 C.F.R. § 102.18(b)(2)), states that for purposes of determining which material imparts the essential character to a good, various factors may be examined depending upon the type of good involved. Those factors may include, but are not be limited to, the nature of the material (such as its bulk, quantity or value) and the role the material plays relative to the good's use.

In applying the above factors we first note that the heater/diffuser is the component that controls the release of the fragrance from the scent bulb. The purpose of the two components together is to release a fragrance into a room. CBP is of the opinion that the heater/diffuser represents the essential character of the article. Therefore, the country of origin of the complete, unassembled article of commerce consisting of the heater/diffuser and scent bulb is China, the country of origin of the heater/diffuser. *See* HRL 560352, dated October 23, 1997. Therefore, your proposal to mark the package, "Diffuser Made in China; Fragrance Made in Mexico" is inappropriate. Rather, the packaging should be marked "Made in China."

**HOLDING:**

The portion of NY N077738 relating to the classification of the heater/diffusers under subheading 8516.79.00, HTSUS, remains the same. The heater/diffuser is eligible for duty-free treatment under subheading 9801.00.20, HTSUS, when returned to the United States. The scent bulb remains classified in subheading 8516.79.00, HTSUS, as an unassembled electrothermic device, when packaged with the heater/diffuser, even though the heater/diffuser is eligible for treatment under Chapter 98, HTSUS. Pursuant to 19 C.F.R. § 102.11(b), the country of origin is China, and the packaging should be marked as such.

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

**EFFECT ON OTHER RULINGS:**

NY N077738 is modified. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

*Sincerely,*

MYLES B. HARMON,

*Director,*

*Commercial Trade and Facilitation Division*

## GENERAL NOTICE

### 19 C.F.R. PART 177

#### **Proposed Modification of Two Ruling Letters and Proposed Revocation of Treatment Relating to the Classification of Certain Screen-Printed Men's Shirts and Certain Girl's Pullovers**

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

**ACTION:** Notice of proposed modification of two ruling letters and proposed revocation of treatment relating to the classification of certain screen-printed men's shirts and of certain screen-printed girl's pullovers.

**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) intends to modify two ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain screen-printed men's shirts and of certain screen-printed girl's pullovers. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

**DATES:** Comments must be received on or before May 13, 2011.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9<sup>th</sup> Street, N.W., Fifth Floor, Washington, D.C. 20229-1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Heather K. Pinnock, Valuation and Special Programs Branch, at (202) 325-0034.

**SUPPLEMENTARY INFORMATION:****Background**

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”) became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify two ruling letters relating to the tariff classification of certain men’s shirts and certain girl’s pullovers. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) N041522 dated November 14, 2008 (Attachment A), and Headquarters Ruling Letter (HQ) H047557, dated September 21, 2009 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. § 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical

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

In NY N041522, CBP found that certain screen-printed men's knit garments were eligible for a partial duty exemption under subheading 9802.00.90, HTSUS. In HQ H047557, we found that certain screen-printed girl's pullovers were ineligible for a partial duty exemption under subheading 9802.00.80, HTSUS. Based on our recent review of NY N041522 and HQ H047557, we have concluded that these determinations are incorrect. Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to modify NY N041522 and HQ H047557 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 proposed Headquarters Ruling Letters HQ H125795 (Attachment C) and HQ H113355 (Attachment D). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: March 14, 2011

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



## [ATTACHMENT A]

**N041522**

November 14, 2008

CLA-2-61:OT:RR:NC:WA:356

CATEGORY: Classification

TARIFF NO.: 6109.10.0027; 6109.90.1049;  
9802.00.90

MS. RACHAEL GODING, ESQ.  
INTERNATIONAL AUTOMATED BROKERS, INC.  
1655 ST. ANDREWS COVE  
SAN DIEGO, CA 92154

RE: The tariff classification and eligibility for partial duty exemption under subheading 9802.00.90, HTSUS, for certain men's knit garments.

DEAR MS. GODING:

In your letter dated October 9, 2008, which was submitted on behalf of Aquasea, Inc., and in subsequent correspondence dated October 31, 2008, you requested a tariff classification ruling concerning the eligibility under 9802.00.90, Harmonized Tariff Schedule of the United States (HTSUS), for certain men's knit garments that will be imported into the United States.

The submitted samples, identified as Styles AA1, IM1 and ID1, are men's knit garments that are similar to T-shirts. Styles AA1, IM1, and ID1 have a rib knit mitered V-neckline; short, hemmed sleeves; a screen print design on the right, rear shoulder; a small woven fabric label sewn to the lower portion of the front panel; and a straight, hemmed bottom. You state that the weight of the jersey knit fabric used in the construction of these garments ranges from 135 to 190 grams per square meter.

Style AA1 is constructed from 100% cotton fabric. The applicable subheading for Style AA1 will be 6109.10.0027, Harmonized Tariff Schedule of the United States (HTSUS), which provides for T-shirts, singlets, tank tops, and similar garments, knitted or crocheted: of cotton: men's or boys': other. The rate of duty is 16.5% ad valorem.

Style ID1 is constructed from 50% cotton, 50 % polyester fabric. Following Section XI, note 2 (A), if no textile material predominates by weight, the garment is classifiable in the heading that occurs last in numerical order among those which equally merit consideration. Consequently, the applicable subheading for Style ID1 will be 6109.90.1049, Harmonized Tariff Schedule of the United States (HTSUS), which provides for T-shirts, singlets, tank tops, and similar garments, knitted or crocheted: of other textile materials: of man-made fibers: men's or boys': other. The rate of duty is 32% ad valorem. At the time of entry, Customs may verify the actual fiber content of Style ID1. If the fiber content differs from that indicated in your letter, the tariff classification may change from the information indicated above.

Style IM1 is constructed from 50% polyester, 37% cotton, 13% rayon fabric. The applicable subheading for Style IM1 will be 6109.90.1049, Harmonized Tariff Schedule of the United States (HTSUS), which provides for T-shirts,

singlets, tank tops, and similar garments, knitted or crocheted: of other textile materials: of man-made fibers: men's or boys': other. The rate of duty is 32% ad valorem.

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

Style AA1 falls within textile category designation 338. Styles ID1 and IM1 fall within textile category designation 638. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries.

Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at [www.cbp.gov](http://www.cbp.gov). For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at [otexa.ita.doc.gov](http://otexa.ita.doc.gov).

You inquire whether the garments are eligible for preferential duty treatment under 9802.00.90. You state that foreign yarn will be knit into fabric in the United States and the fabric will be dyed and cut into component parts in the United States. The cut-to-shape component parts will then be shipped to Mexico where they will be sewn into garments and screen printed prior to return to the United States. You state that the screen printing process involves the application of ink to the fabric through a steel, polyester or nylon screen which is placed over the garment.

You have provided a sample of the assembled garment prior to screen printing and a sample of the screen printed garment as returned from Mexico. As requested, your samples will be returned.

HTSUS 9802.00.90 provides for: Textile and apparel goods assembled in Mexico in which all fabric components were wholly formed and cut in the United States, provided that such fabric components, in whole or in part, (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process; provided that goods classifiable in chapters 61, 62 or 63 may have been subject to bleaching, garment dyeing, stone-washing, acid-washing or perma-pressing after assembly as provided for herein.

The application of the screen print design to the back panel of Styles AA1, IM1 and ID1 is not an operation incidental to the assembly process. Any significant treatment whose primary purpose is the physical improvement of a component precludes the application of the exemption under HTSUS subheading 9802.00.90. Screen printing is such a process. However, subheading

9802.00.90, HTSUS, requires only that the fabric components, “*in whole or in part*” (emphasis added) satisfy the three conditions identified in this provision under (a), (b) or (c). Therefore, since the screen printing operation is only applied to a single component, the back panel, the screen printing will not preclude the remainder of the garment, which otherwise satisfies the conditions and requirements of subheading 9802.00.90, HTSUS, from receiving the benefits of this tariff provision, provided that all the documentary requirements are met. The information substantiating 9802.00.90, HTSUS, must be submitted at the time of entry.

You have not stated the origin of the small, woven brand label that is sewn to the bottom of the front panel. However, this label is considered a finding and trimming and, if of foreign origin, would not disqualify the garment from eligibility under 9802.00.90, HTSUS, assuming that the label does not exceed 25% of the cost of the components of the garment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). A copy of this ruling letter or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding this ruling, contact National Import Specialist Mary Ryan at 646-733-3271.

*Sincerely,*

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

## [ATTACHMENT B]

HQ H047557

September 21, 2009

CLA-2: RR:CTF:TCM H047557 KSH

CATEGORY: Classification

TARIFF NO.: 6110.20.2079

PORT DIRECTOR  
U.S. CUSTOMS AND BORDER PROTECTION  
9777 VIA DE LA AMISTAD  
SAN DIEGO, CA 92154

RE: Application for Further Review of Protest 2506-08-100047; screen printed girls' cotton knit pullover

DEAR PORT DIRECTOR:

This is in reply to your correspondence forwarding Application for Further Review of Protest (AFR) 2506-08-100047, filed by William Gould, on behalf of his client, California Concepts, Inc.

## FACTS:

The merchandise at issue is identified as Style 258X548M. It is a girls' 100% cotton knit pullover which features screen-printing of a butterfly on the front body. The fabric used to produce the pullover was produced outside the territory of a NAFTA party. It was imported into the United States where protestant states it was cut into components and exported to Mexico. In Mexico, protestant states the components were sewn and assembled, screen-printed and packaged. The finished pullovers were exported to the United States.

The protest is against Customs and Border Protection's (CBP) denial of duty free treatment under the North American Free Trade Agreement (NAFTA). On January 13, 2007, protestant entered the merchandise subject to this protest duty-free in subheading 9999.00.60, of the Harmonized Tariff Schedule of the United States (HTSUS), as goods described in Additional U.S. Note 3(b) to Section XI, HTSUS. On June 21, 2007, a CBP Form 28, Request for Information was issued seeking information to verify the applicability of the Tariff Preference Level (TPL) under Section XI, Additional U.S. Note 3(b). No response was received. A second CBP Form 28 was issued on October 7, 2007, requesting sewing and cutting tickets. On November 7, 2007, a final Notice of Action was issued denying the claim for TPL. On January 25, 2008, the merchandise was liquidated in subheading 6110.20.2079, HTSUS, which provides for girls' knit pullovers. On July 23, 2008, protestant filed a protest and application for further review against the denial of the claim for TPL. Protestant's AFR request was approved.

## ISSUE:

Whether the pullovers are eligible for the NAFTA TPL under Additional U.S. Note 3(b) to Section XI.

Whether the pullovers are eligible for a duty allowance under subheading 9802.00.80, HTSUS, when returned to the U.S. LAW AND ANALYSIS: Initially, we note that the matter is protestable under 19 U.S.C. §1514(a)(2) as a decision on the duty rate. The protest was timely filed within 180 days of

liquidation of the entry made on January 13, 2007. (Miscellaneous Trade and Technical Corrections Act of 2004, Pub.L. 108-429, § 2103(2)(B)(ii), (iii) (codified as amended at 19 U.S.C. § 1514(c)(3) (2006)).

Further review of the protest is warranted pursuant to 19 CFR §§174.24(b) and 174.25 as the protest is alleged to be inconsistent with a ruling of the Commissioner of Customs or his designee, or with a decision made at any port with respect to the same or substantially similar merchandise. Specifically, protestant cites to Headquarters Ruling Letter (HQ) 967594, dated June 24, 2005.

The North American Free Trade Agreement Implementation Act (Public Law 103-182, 107 Stat. 2057) was enacted on December 8, 1993. The law implemented the provisions of the NAFTA. Within the NAFTA were provisions referred to as “tariff preference levels” that allow the importation of non-originating textile and apparel goods that meet specified production requirements within the NAFTA parties. These TPLs are implemented in the additional U.S. notes to Section XI of the HTSUS and are limited in the amount of goods that may utilize the TPLs.

Subheading 9999.00.60, HTSUS, is listed under Special Statistical Reporting Numbers as follows:

TEXTILE AND APPAREL GOODS FROM CANADA OR MEXICO The following provisions must be utilized in reporting textile and apparel goods imported from Canada or from Mexico under the terms of additional U.S. notes 3, 4 and 5 to section XI of the tariff schedule; and the goods described in these provisions must be reported in terms of their square meter equivalent, determined in accordance with such additional U.S. notes:

\* \* \*

Imports of textile and apparel goods from Mexico under additional U.S. notes 3 (other than subdivision (c)), 4 and 5 to section XI:

Goods described in additional U.S. note 3(b) to section XI, except as provided in subdivisions (d) and (e) of such note:

9999.00.60 Cotton or man-made fiber apparel.

Additional U.S. Note 3(b) to Section XI, HTSUS, provides as follows:

The rate of duty in the “Special” subcolumn of rates of duty column 1 followed by the symbol “MX” in parentheses shall apply to imports from Mexico, up to the annual quantities specified in subdivisions (g)(i) of this note, of apparel goods provided for in chapters 61 and 62 that are both cut (or knit to shape) and sewn or otherwise assembled in the territory of a NAFTA party from fabric or yarn produced or obtained outside the territory of one of the NAFTA parties.

In the instant matter a Request for Information was issued on June 21, 2007 and on October 7, 2007 to verify the applicability of the claim for TPL. The claim for TPL was denied based on protestant’s failure to respond.

Protestant states it did not respond to the notices because it was in the process of closing its operations. Specifically protestant states that all of its employees handling imports were terminated in April 2007. Its last order was shipped in July 2007, it vacated its premises in August 2007, and states that it did not receive mail for a period of six months after vacating the premises.

The procedure for initiating a NAFTA origin verification is set forth in 19 C.F.R. §181.72. It provides that CBP may deny preferential treatment where a producer of a material fails to respond to an initial and follow up questionnaire.

The failure of the producer to provide the information requested by CBP after the verification is a proper basis for CBP to take action on the information available to it. Moreover, the evidence submitted in conjunction with the instant protest and AFR merely contains cutting summaries which do not provide enough information to ensure that the garments were cut in a NAFTA country. Further, the Import Pedimento indicates that the merchandise was entered as a pullover in heading 6110, HTSUS, rather than as parts of garments in heading 6117, HTSUS. Based on the totality of the evidence, the claims for NAFTA TPL were properly denied.

The ruling Protestant cites, HQ 967594, is inapplicable to the facts presented herein insofar as it concerned the proper interpretation of the phrase “both cut (or knit to shape) and sewn or otherwise assembled in the territory of a NAFTA party” for purposes of Additional U.S. Note 3(b) to Section XI, HTSUS. The sole issue presented here, however, is the sufficiency of the evidence presented.

Alternatively, protestant requests that the entry be liquidated in subheading 9802.00.80, HTSUS, as U.S. made components assembled abroad.

Subheading 9802.00.80, HTSUS, provides a partial duty exemption for: [a]rticles, except goods of heading 9802.00.90 and goods imported under provisions of subchapter XIX of this chapter and goods imported under provisions of subchapter XX, assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating and painting.

All three requirements of subheading 9802.00.80, HTSUS, must be satisfied before a component may receive a duty allowance. An article entered under this tariff provision is subject to duty upon the full cost or value of the imported assembled article, less the cost or value of the U.S. components assembled therein, upon compliance with the documentary requirements of section 10.24, CBP Regulations (19 CFR 10.24). Section 10.14(a), CBP Regulations (19 CFR 10.14(a)), states in part that: [t]he components must be in condition ready for assembly without further fabrication at the time of their exportation from the United States to qualify for the exemption. Components will not lose their entitlement to the exemption by being subjected to operations incidental to the assembly either before, during, or after their assembly with other components. Section 10.16(a), CBP Regulations (19 CFR 10.16(a)), provides that the assembly operation performed abroad may consist of any method used to join or fit together solid components, such as welding, soldering, riveting, force fitting, gluing, lamination, sewing, or the use of fasteners.

Operations incidental to the assembly process are not considered further fabrication operations, as they are of a minor nature and cannot always be

provided for in advance of the assembly operations. *See* 19 CFR 10.16(a). However, any significant process, operation or treatment whose primary purpose is the fabrication, completion, physical or chemical improvement of a component precludes the application of the exemption under subheading 9802.00.80, HTSUS, to that component. *See* 19 CFR 10.16(c). Screen-printing after assembly is considered to be an operation that advances the value, and therefore, the garments would not qualify for a reduced rate under HTS 9802.00.80. *See* HQ 559691, dated August 30, 1996. The pullovers would be dutiable upon the full appraised value of the garments.

**HOLDING:**

The pullovers are not eligible for the NAFTA TPL under Additional U.S. Note 3(b) to Section XI.

The pullovers are not eligible for a duty allowance under subheading 9802.00.80, HTSUS, when returned to the U.S. Since the rate of duty under the classification indicated above is the same as the liquidated rate, you are instructed to deny the protest in full.

In accordance with Sections IV and VI of the CBP Protest/Petition Processing Handbook (HB 3500-08A, December 2007, pp. 24 and 26), you are to mail this decision, together with the CBP Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to mailing the decision. Sixty days from the date of the decision Regulations and Rulings of the Office of International Trade will make the decision available to CBP personnel, and to the public on the CBP Home Page on the World Wide Web at [www.cbp.gov](http://www.cbp.gov), by means of the Freedom of Information Act, and other methods of public distribution.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



## [ATTACHMENT C]

HQ H125795  
CLA-2 OT:RR:CTF:VS H125795 HkP  
CATEGORY: Classification

RACHAEL GODING, ESQ.  
INTERNATIONAL AUTOMATED BROKERS, INC.  
1655 ST. ANDREWS COVE  
SAN DIEGO, CA 92154

RE: Modification of NY N041522; Tariff Classification and Eligibility for a Partial Duty Exemption under subheading 9802.00.80, HTSUS, for certain Men's Knit Garments

DEAR MS. GODING:

This letter concerns New York Ruling Letter (NY) N041522, issued to you on November 14, 2008, on behalf of your client Aquasea, Inc., by the National Commodity Specialist Division, U.S. Customs and Border Protection (CBP). At issue in that ruling was the tariff classification of certain men's knit garments and their eligibility for a partial duty exemption under subheading 9802.00.90, Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered that ruling and found that it is incorrect as it relates to our finding that the men's garments were eligible for a partial duty exemption.

FACTS:

The merchandise was described in NY N041522, in relevant part, as follows:

The submitted samples, identified as Styles AA1, IM1 and ID1, are men's knit garments that are similar to T-shirts. Styles AA1, IM1 and ID1 have a rib knit mitered V-neckline; short, hemmed sleeves; a screen print design on the right rear shoulder; a small woven fabric label sewn into the lower portion of the front panel; and a straight, hemmed bottom. . . .

. . . .

You state that foreign yarn will be knit into fabric in the United States and the fabric will be dyed and cut into component parts in the United States. The cut-to-shape component parts will then be shipped to Mexico where they will be sewn into garments and screen printed prior to return to the United States. . . .

Considering the provisions of subheading 9802.00.90, HTSUS, CBP found that the application of the screen print design was not an operation incidental to the assembly process. Nonetheless, as the screen printing was only performed on a single component of the shirts, their back panel, CBP held that the printing operation would not preclude "the remainder of the garment" which otherwise satisfied the requirements of subheading 9802.00.90, HTSUS, from receiving a partial duty exemption under the provision. However, we now note that subheading 9802.00.90, HTSUS, only provides for full exemptions from customs duties.

ISSUE:

Whether the screen printed men's shirts imported from Mexico are eligible to be exempt from customs duty under subheading 9802.00.90, HTSUS.

## LAW AND ANALYSIS:

Subheading 9802.00.90, HTSUS, provides a duty exemption for:

Textile and apparel goods, assembled in Mexico in which all fabric components were wholly formed and cut in the United States, provided that such fabric components, in whole or in part, (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process; provided that goods classifiable in chapters 61, 62 or 63 may have been subject to bleaching, garment dyeing, stone-washing, acid-washing or perma-pressing after assembly as provided for herein.

Because all the components of the shirts were wholly formed and cut in the U.S. and assembled in Mexico, they need not fully satisfy the requirements of subheading 9802.00.90, HTSUS, in order to gain a full duty exemption. Subheading 9802.00.90, HTSUS, requires only that the textile and apparel goods described in the subheading “in whole or in part” satisfy the requirements of parts (a), (b), and (c) of the tariff provision. Consequently, while the application of the screen print design to one component of the shirts is not an operation incidental to the assembly process, that operation will not preclude the shirts which otherwise satisfy the conditions of the subheading, from receiving the benefit of this tariff provision. *See* 19 C.F.R. 10.16(b), (c). *See also* HQ 560201 (May 14, 1998).

## HOLDING:

The men’s knit garments described in this ruling are eligible for a full duty exemption under subheading 9802.00.90, HTSUS, when returned to the United States.

## EFFECT OF OTHER RULINGS:

NY N041522 is modified with respect to the eligibility of the shirts for a full duty exemption under subheading 9802.00.90, HTSUS. The tariff classification of the shirts is unchanged.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## [ATTACHMENT D]

HQ H113355  
CLA-2 OT:RR:CTF:VS H113355 HkP  
CATEGORY: Classification

PORT DIRECTOR  
PORT OF SAN DIEGO  
U.S. CUSTOMS AND BORDER PROTECTION  
9777 VIA DE LA AMISTAD  
SAN DIEGO, CA 92154

RE: Modification of HQ H047557; Application for Further Review of Protest No. 2506-08-100047; Screen-printed girls' cotton knit pullovers; Subheading 9802.00.80, HTSUS

DEAR PORT DIRECTOR:

This letter concerns Headquarters Ruling Letter (HQ) H047557, issued to you on September 21, 2009, in response to the Application for Further Review of Protest no. 2506-08-100047, filed on behalf of California Concepts, Inc. We have reviewed HQ H047557 and found it to be incorrect as it relates to the denial of a partial duty exemption under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS), for the merchandise described in that ruling. Our decision in HQ H047557 concerning the applicability of subheading 9999.00.60, HTSUS, is not affected by the instant ruling.

We note that under *San Francisco Newspaper Printing Co. v. United States*, 9 Ct. Int'l Trade 517, 620 F. Supp. 738 (1985), the decision on the merchandise which was the subject of Protest 2506-08-100047 was final on both the protestant and U.S. Customs and Border Protection (CBP). Therefore, while we may review the law and analysis of HQ H047557, any decision taken herein would not impact the entries subject to that ruling.

FACTS:

The relevant facts, as set forth in HQ H047557, are as follows:

The merchandise at issue is identified as style 258X548M. It is a girls' 100% cotton knit pullover which features screen-printing of a butterfly on the front body. The fabric used to produce the pullover was produced outside the territory of a NAFTA Party. It was imported into the United States where protestant states it was cut into components and exported to Mexico. In Mexico, protestant stated the components were sewn and assembled, screen-printed and packaged. The finished pullovers were exported to the United States.

CBP found the screen-printing done in Mexico to be an operation that advanced the value of the garments, such that the garments in their entirety would not qualify for a partial duty exemption under subheading 9802.00.80, HTSUS.

ISSUE:

Whether the girls' cotton knit pullovers assembled and screen-printed in Mexico are eligible for a partial duty exemption under subheading 9802.00.80, HTSUS.

## LAW AND ANALYSIS:

Subheading 9802.00.80, HTSUS, provides a partial duty exemption for:

Articles ... assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating and painting[.]

All three requirements of subheading 9802.00.80, HTSUS, must be satisfied before a component may receive a duty allowance. An article entered under this tariff provision is subject to duty upon the full appraised value of the imported assembled article, less the cost or value of the U.S. components assembled therein, upon compliance with the documentation requirements of section 10.24, CBP Regulations.

Section 10.14(a), CBP Regulations (19 C.F.R. § 10.14(a)), states in part that:

The components must be in condition ready for assembly without further fabrication at the time of their exportation from the United States to qualify for the exemption. Components will not lose their entitlement to the exemption by being subjected to operations incidental to the assembly either before, during, or after their assembly with other components.

Section 10.16(a), CBP Regulations (19 C.F.R. § 10.16(a)), provides that the assembly operation performed abroad may consist of any method used to join or fit together solid components, such as welding, soldering, riveting, force fitting, gluing, lamination, sewing, or the use of fasteners.

Operations incidental to the assembly process are not considered further fabrication operations, as they are of a minor nature and cannot always be provided for in advance of the assembly operations. *See* 19 C.F.R. § 10.16(a). However, any significant process, operation or treatment whose primary purpose is the fabrication, completion, physical or chemical improvement of a component precludes the application of the exemption under subheading 9802.00.80, HTSUS, to that component. *See* 19 C.F.R. § 10.16(c).

In HQ H047557, we found that the screen-printing of the garments in Mexico, after they were assembled there, was an operation that advanced the value of the garments. Therefore, no components of the garments qualified for a partial duty exemption under subheading 9802.00.80, HTSUS. We concluded that the pullovers, in their entirety, would be dutiable upon the full appraised value of the garments.

Subheading 9802.00.80, HTSUS, requires only that “articles ... assembled abroad *in whole or in part* of fabricated components, the product of the United States” satisfy the three conditions identified in the provision under (a), (b), and (c) (emphasis added). Therefore, the further fabrication, i.e., screen-printing, of one of the components would not preclude the remainder of the garment which otherwise satisfies the requirements of subheading 9802.00.80, HTSUS, from receiving a partial duty exemption under this tariff provision. *See* HQ 560201 (May 14, 1998).

**HOLDING:**

The components of the pullovers that have not been advanced in value by screen-printing are eligible for a partial duty exemption under subheading 9802.00.80, HTSUS, when returned to the United States. The screen-printed component is not eligible for a partial duty exemption under this provision.

**EFFECT ON OTHER RULINGS:**

HQ H047557, dated September 21, 2009, is hereby modified with respect to the eligibility of the pullovers for a partial duty exemption under subheading 9802.00.80, HTSUS. The ineligibility of the pullovers for the NAFTA Trade Preference Level under Additional U.S. Note 3(b) to Section XI is unchanged.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**GENERAL NOTICE****19 C.F.R. PART 177****Proposed Revocation of a Ruling Letter and Proposed Revocation of Treatment Relating To The Country Of Origin Marking For Certain Fishing Line**

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

**ACTION:** Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the country of origin marking for monofilament fishing line, and request for comments.

**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) intends to revoke a ruling letter relating to the country of origin marking of certain monofilament fishing line. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

**DATES:** Comments must be received on or before May 13, 2011.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Commercial and Trade Facilitation Division, Valuation and Special Programs Branch, 799 9<sup>th</sup> Street, N.W., Seventh Floor, Washington D.C. 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Barbara Kunzinger, Valuation and Special Programs Branch, at (202) 325–0359.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter relating to the country of origin marking of certain monofilament fishing line. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) G81433, dated September 14, 2000 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY G80871, dated August 29, 2000, CBP determined that monofilament fishing line imported into Mexico from Germany underwent the applicable tariff shift before importation into the United States allowing it to qualify as an originating good under the North



American Free Trade Agreement, pursuant to General Note 12(t), Harmonized Tariff Schedule of the United States (HTSUS). The country of origin of the same goods was addressed in NY G81433, dated September 14, 2000. In NY G81433, (Attachment A), CBP determined that Germany was the appropriate country of origin for marking purposes, under the NAFTA Marking Rules, because the fishing line did not undergo the applicable tariff shift set out in 19 C.F.R. § 102.20. Based on our recent review of NY G80871 and NY G81433, we have concluded that the determination in NY G81433 is incorrect. Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to revoke NY G81433 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper country of origin marking pursuant to the analysis set forth in HQ H086568 (Attachment B). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: March 14, 2011

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

Attachments

## [ATTACHMENT A]

NY G81433

September 14, 2000

MAR:RR:NC:2:224 G81433

CATEGORY: Marking

JACK ALSUP  
ALSUP & ALSUP, INC.  
P.O. BOX 1251  
DEL RIO TX 78841

RE: NAFTA; Article 509; Country of origin marking for fishing line; 19 CFR 102.20; 19 CFR 102.11; 19 CFR Part 134

DEAR MR. ALSUP:

This is in response to your letter dated August 4, 2000, on behalf of your client, Plastic Lures, Inc., requesting a ruling on the country of origin marking requirements for finished spools of monofilament fishing line.

#### Facts

On behalf of your client, you have submitted a sample of retail packaged fishing line. The retail consumer spool contains 402 meters of .350mm diameter monofilament line. Synthetic monofilament line is manufactured in Germany from nylon and other polyamides. The monofilament line is exported to Mexico in bulk packed spools ranging in length from 32,000 meters to 87,000 meters of line per spool and the bulk rolls are respooled on to smaller retail consumer spools holding anywhere from 324 meters to 450 meters of line. The consumer spools are then packaged in Mexico for retail sale and imported to the United States.

#### Country of Origin Marking

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

Section 134.1(b), of the Customs Regulations defines the term “country of origin” as:

the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the ‘country of origin’ within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added).

Section 134.1(j) of the regulations provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the U.S. as determined under the NAFTA Marking Rules.

Part 102, Customs Regulations (19 CFR Part 102), sets forth the “NAFTA Marking Rules.” Section 102.11, Customs Regulations sets forth the required hierarchy for determining the country of origin for marking purposes. Section 102.11(a) states that “the country of origin of a good is the country in which:

The good is wholly obtained or produced; The good is produced exclusively from domestic materials; or Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.” “Foreign material” is defined in section 102.1(e) as “a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced.” In the situation here, the imported fishing line is neither “wholly obtained or produced,” nor “produced exclusively from domestic (Mexican) materials.” Therefore, for purposes of determining the origin of the imported good, we must look next to section 102.11(a)(3). Under this rule, the country of origin is the country in which “each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20\*\*\*.” When imported into Mexico the monofilament line, bulk spooled and not yet made up into fishing line for tariff purposes, is classified in subheading 5404.10 of the Harmonized Tariff Schedule of the United States (HTSUS), based on the information available. The finished line, put up and packaged for retail sale, is classified in heading 9507.90, HTSUS. *See New York Ruling G80871* dated August 29, 2000.

The applicable tariff shift rule found in section 102.20(s), Section XX, Chapter 95 provides as follows:

9507.90....A change to subheading 9507.90 from any other subheading, except from heading 5004 through 5006, subheading 5402.10 through 5402.49, subheading 5406.10 through 5406.20, or heading 5603 or 5404.

Thus, the German-produced monofilament line that is transported to Mexico to be made up into fishing line ready for retail sale does not undergo the applicable tariff shift or change in classification set out in section 102.20(s). The rule specifically precludes a tariff shift where monofilament line is processed into made-up fishing line. As a result, a country of origin determination cannot be made under section 102.11(a)(3). Furthermore, since the foreign material is merely packaged for importation without more than minor processing, it will not be considered to have met the applicable change in tariff classification set out in 19 CFR 102.20. *See* 19 CFR 102.17.

Since no country of origin determination could be made applying section 102.11(a), the analysis continues with section 102.11(b) of the hierarchical rules which instructs us to examine the article’s essential character to determine its country of origin. Section 102.11(b) holds:

Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:

The country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good, or (2) If the material that imparts the essential character of the good is fungible, has been

commingled, and direct physical identification of the origin of the commingled material is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the Appendix to Part 181 of the Customs Regulations.

The imported article is not described in the Harmonized System as a set, nor is it classified as a set pursuant to General Rule of Interpretation 3. Thus, section 102.11(c) is not applicable. Further, section 102.11(b)(2) is not applicable to the circumstances. In consequence, the rule that must be applied to determine the country of origin of the imported article is section 102.11(b)(1).

In determining the “essential character” of the finished fishing line, section 102.18(b)(2) of the regulations provides as follows:

For purposes of applying 102.11, only domestic and foreign materials (including self-produced materials) that are classified in a tariff provision from which a change in tariff classification is not allowed in the rule for the good set out in 102.20 shall be taken into consideration in determining the essential character of the good.

In this case, the line material does not undergo the applicable tariff shift. Therefore, applying section 102.11(b)(1) to the facts of this case, we find that the single material that imparts the essential character of the finished fishing line article is the line. Since the origin of this component does not change as a result of the processing performed in Mexico under section 102.20(s), as explained above, the country of origin of the imported fishing line for marking purposes is the country of origin of the monofilament line when imported into Mexico. The retail packaged fishing line is a product of Germany pursuant to the NAFTA Marking Rules. Accordingly, the country of origin marking is required to indicate Germany as the country of origin of the imported spools of fishing line.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Tom McKenna at 212.637.7015.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H086568  
OT:RR:CTF:VS H086568 BGK  
Category: Marking

JACK ALSUP  
ALSUP & ALSUP, INC.  
P.O. BOX 1251  
DEL RIO, TEXAS 78841

Re: Revocation of NY G81433; Country of origin marking for monofilament fishing line

DEAR MR. ALSUP:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) G81433, issued to you on September 14, 2000, on behalf of your client, Plastic Lures, Inc., concerning the country of origin marking of monofilament fishing line. In NY G81433, CBP determined that the country of origin, under the NAFTA Marking Rules, should be Germany. We have reviewed that ruling and found it to be in error. Therefore, this ruling modifies NY G81433.

**FACTS:**

The merchandise at issue is described in NY G80871, dated August 29, 2000, issued to you prior to NY G81433:

Your letter indicates that synthetic monofilament line made from nylon and other polyamides with various line diameters ranging from .1mm to .5mm is produced in Germany and imported into Mexico in bulk spools ranging in length from 32000 meters to about 87000 meters of line per spool. In Mexico, the bulk rolls of monofilament are respooled on to smaller retail consumer spools holding anywhere from 324 meters of line to 450 meters of line. These consumer spools are then packaged for retail sale and imported to the United States. In their condition as imported, the monofilament line spools are made up into fishing lines and put up and packaged for sale at retail as recreational fishing line.

The fishing line, when imported into Mexico from Germany, is classified under subheading 5404.10 of the Harmonized Tariff Schedule of the United States (HTSUS). When imported into the U.S., the fishing line is classified under subheading 9507.90.20, HTSUS. NY G80871 determined that the monofilament fishing line imported from Mexico was eligible for NAFTA treatment.

**ISSUE:**

What is the proper country of origin marking for the monofilament fishing line?

**LAW AND ANALYSIS:**

As determined in NY G80871, the monofilament fishing line was eligible for NAFTA preferential tariff treatment when imported into the U.S. In NY G80871, CBP determined that the fishing line met the applicable tariff shift

requirement of HTSUS General Note 12(t), Chapter 95, Rule 10 to be considered a “[good] originating in the territory of a NAFTA party”, as defined in General Note 12(b).

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

Section 134.1(b) of the regulations, defines “Country of origin” as:

the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

19 C.F.R. § 134.1(b). Section 134.1(j) provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a “good of a NAFTA country” as “an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.” As provided in section 134.45(a)(2), “[a] good of a NAFTA country may be marked with the name of the country of origin in English, French, or Spanish.”

The NAFTA Marking Rules are set forth in 19 C.F.R. Part 102. Section 102.11(a) contains the “General rules” for determining country of origin:

- (a) The country of origin of a good is the country in which:
- (3) The good is wholly obtained or produced;
- (4) The good is produced exclusively from domestic materials; or
- (5) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

In this situation, the fishing line is neither wholly obtained nor produced in Mexico, nor is it exclusively produced from Mexican materials. Therefore, section 102.11(a)(3) is the next rule to consider in order to determine the country of origin. The tariff shift rule for subheading 9507.90.20, HTSUS, the classification of the fishing line upon importation into the U.S., is listed in section 102.20 as “A change to subheading 9507.90 from any other subheading, except heading 5004 through 5006, 5404, 5406, or 5603, or from subheading 5402.11 through 5402.49.” 19 C.F.R. § 102.20 (emphasis added). The fishing line is imported into Mexico under heading 5404, HTSUS, and therefore does not satisfy the requisite tariff shift rule.

Accordingly, 19 C.F.R. § 102.11(b) of the hierarchical rules must be applied, which provides that:

Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:

- (1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character of the good, or
- (2) If the material that imparts the essential character of the good is fungible, has been commingled, and direct physical identification of the origin of the commingled material is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the appendix to part 181 of [the Customs Regulations].

Here, we find that the monofilament fishing line imparts the essential character of the packaged retail fishing line. The country of origin of the monofilament fishing line is Germany.

However, section 102.19(a) contains a “NAFTA preference override”.

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

19 C.F.R. § 102.19(a). As determined in NY G80871, the fishing line is an originating good under section 181.1(q). Additionally, the fishing line is not a good of a single NAFTA country under section 102.11(a) or (b) or section 102.21. As such, the fishing line may be a product of Mexico under the “NAFTA preference override” if it undergoes more than “minor processing.”

“Minor processing” is defined by 19 C.F.R. § 102.1(m), in part, as:

- . . .
- (4) Trimming, filing or cutting off small amounts of excess materials; [or]
- . . .
- (6) Putting up in measured doses, packing, repacking, packaging, repackaging;
- . . .

Here, while cutting occurs, it is not the type of cutting described in paragraph (4). 19 C.F.R. § 102.1(m)(4) refers to cutting off small amount of excess materials, while here, bulk rolls are being cut to size to create the retail fishing line. The retail lines are being created, not trimmed. Therefore, paragraph (4) is not controlling. Also, because the bulk rolls are being cut to size and respooled before being packaged, the operations go beyond those described in paragraph (6) as well. The retail fishing line is not just sorted into smaller amounts and packaged, as described in 19 C.F.R. § 102.1(m)(6); it is cut to size from bulk rolls and respooled before packaging.

We note that in Headquarters Ruling Letter (HRL) 966892, it was held that cutting sutures to length and packaging them was not enough to create a change in the country of origin, taking into account section 102.21, the textile and apparel rules of origin and section 102.17. Section 102.17(c) provides that an applicable change in tariff classification set forth in section 102.20 or section 102.21 shall not have been met by “simple packing, repacking or retail



packaging without more than minor processing.” We note that unlike this case, HRL 966892 did not involve the NAFTA eligibility of the goods at issue. Further in this case, the bulk rolls of the monofilament fishing line are cut to retail size, and the lines are respooled before packaging.

Accordingly, we find that the fishing line undergoes more than minor processing in Mexico. Pursuant to section 102.19(a), the fishing line is a product of Mexico.

**HOLDING:**

As the monofilament fishing line is a NAFTA originating good of Mexico under General Note 12(t), Chapter 95, Rule 10, HTSUS, the country of origin of the fishing line is Mexico for purposes of the marking requirements.

**EFFECT ON OTHER RULINGS:**

NY G81433, dated September 14, 2000, is hereby REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial Trade and Facilitation Division*

**MODIFICATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF CERTAIN BBQ SHAKE  
SEASONING**

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

**ACTION:** Notice of modification of one ruling letter and revocation of treatment relating to the tariff classification of certain BBQ Shake seasoning.

**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 (CPB) is modifying one ruling letter relating to the tariff classification of certain BBQ Shake seasoning under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 44, No. 24, on June 9, 2010. No comments were received in response to the notice.

**EFFECTIVE DATE:** The action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 13, 2011.

**FOR FURTHER INFORMATION CONTACT:** Alaina Van Horn, Intellectual Property Rights and Restricted Merchandise Branch: (202) 325–0083.

**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 commu-

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 44, No. 24, on June 9, 2010, proposing to modify New York Ruling Letter (NY) M83880, HTSUS, and specifically, under subheading 2103.90.8000, HTSUS, which provides for "mixed condiments and mixed seasonings . . . other . . . other . . . other." No comments were received in response to the notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision on the merchandise subject to this notice should have advised CBP during the comment period.

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY M83880, and any other ruling not specifically identified, to reflect the tariff classification analysis of this merchandise under subheading 2103.90.7400 and 2103.90.7800, HTSUS, the in- and over-quota provisions for mixed condiments and mixed seasonings described in additional U.S. note 3 to chapter 21, pursuant to the analysis set forth in Headquarters Ruling Letter H030205, which is attached to this document. Additionally, pursuant to 19 U.S.C. §1695(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions.

In accordance with 19 U.S.C. §1695(c), this ruling will become

effective 60 days after publication in the *Customs Bulletin*.

Dated: March 16, 2011

IEVA K. O'ROURKE

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H030205

March 16, 2011

CLA-2 OT:RR:CTFD:TCM H030205 AvH

CATEGORY: CLASSIFICATION

TARIFF NO.:

MR. SHACHAR GAT  
SHONFELD'S USA, INC.  
3100 S. SUSAN STREET  
SANTA ANA, CA 92704

RE: Classification of BBQ Shake Seasoning from China; Modification of NY M83880

DEAR MR. GAT:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling letter (NY) M83880, issued to you on June 28, 2006. In NY M83880, we determined that BBQ Shake seasoning was classified under subheading 2103.90.8000, of the Harmonized Tariff Schedule of the United States (HTSUS), as "mixed condiments and mixed seasonings . . . other . . . other . . . other." CBP has determined that NY M83880 is incorrect.

Notice of the proposed action was published in the *Customs Bulletin*, Vol. 44, No. 24, on June 9, 2010. No comments were received in response to the notice.

**FACTS:**

NY M83880 concerned item no. BBQ-218995, which was comprised of a 250 ml bottle of BBQ Marinade sauce, two small metal shakers containing a BBQ Shake seasoning, and a metal rack. However, only the BBQ Shake seasoning is at issue in this reconsideration.

The BBQ Shake seasoning was described in NY M83880 as follows:

The BBQ Shake seasoning is a dry mix consisting of 30 percent salt, 30 percent sugar, 20 percent paprika, 10 percent red chili flake, 5 percent black pepper corn, 5 percent mustard seed, and less than 1 percent coloring, put up in a metalized pouch.

**ISSUE:**

Is the BBQ Shake seasoning classifiable under subheading 2103.90.8000, HTSUS, or subheading 2103.90.7400 and 2103.90.7800, the in- and over-quota provisions for mixed condiments and mixed seasonings described in additional U.S. note 3 to chapter 21?

**LAW AND ANALYSIS:**

Classifications 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 at any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) represent the official interpretation of the Harmonized System

at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI. The EN's, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings.

The HTSUS provisions under consideration in this case are as follows:

**2103** Sauces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard:

\* \* \*

**2103.90** Other:

\* \* \*

Other:

Mixed condiments and mixed seasonings:  
Mixed condiments and mixed seasonings  
described in additional U.S. note 3 to  
this chapter

\* \* \*

**2103.90.74**

Described in additional U.S. note  
4 to this chapter and entered  
pursuant to its provisions

**2103.90.78**

Other

**2103.90.80**

Other

The subject BBQ Shake seasoning was originally classified under subheading 2103.90.8000, HTSUS, as “mixed condiments and mixed seasonings . . . other . . . other . . . other.” Subheading 2103.90.7400 is the in-quota provision and 2103.90.7800 is the over-quota provisions for mixed condiments and mixed seasonings described in additional U.S. note 3 to chapter 21. This means that if the goods meet the description provided for in note 3, the goods will be classified in 2103.90.7400 or 2103.90.7800, depending on whether the quota provided for in additional note 4 has been filled. Additional U.S. note 3 describes “mixed condiments and mixed seasonings” as

. . . articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, except (a) articles not principally of crystalline structure or not in dry amorphous form, prepared for marketing to the ultimate consumer in the identical form and package in which imported . . .

The BBQ Shake seasoning meets the description provided for in additional U.S. note 3. It is a mixed condiment or seasoning containing over 10 percent by dry weight of cane or beet sugar, and although prepared for marketing to the ultimate consumer (i.e. retail packed), the seasoning is in powder or granular state. The “retail packing” exception provided for in the note is directed to products *not* in dry amorphous form.

Goods are to be classified under the heading that most specifically describes them. Subheadings 2103.90.7400 and 2103.90.7800 more specifically describe the BBQ Shake seasoning than 2103.90.8000, which provides for “other” mixed condiments and seasonings. Accordingly, the applicable subheading for this product is 2103.90.7400 and 2103.90.7800, the in- and

over-quota provisions for mixed condiments and mixed seasonings described in additional U.S. note 3 to chapter 21.

### **HOLDING**

Pursuant to GRI 1, the BBQ Shake seasoning is classified in subheading 2103.90.7400 and 2103.90.7800, HTSUS, which provide for the in- and over-quota provisions for mixed condiments and mixed seasonings described in additional U.S. note 3 to chapter 21. The general column one duty rate is 7.5 percent *ad valorem*.

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

### **EFFECT ON OTHER RULINGS**

NY M83880, dated June 23, 2006, is hereby MODIFIED.

In accordance with 19 U.S.C. §1695(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

IEVA K. O'ROURKE  
*for*

MYLES HARMON,  
*Director*  
*Commercial and Trade Facilitation Division*



**REVOCATION OF RULING LETTER AND  
REVOCATION OF TREATMENT RELATING  
TO THE TARIFF CLASSIFICATION OF ETHEPHON  
(2-CHLOROETHYLPHOSPHONIC ACID, CAS-16672-87-0)  
73.81% TECHNICAL AND ETHEPHRON 65% MUP FROM  
CHINA**

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

**ACTION:** Notice of revocation of a ruling letter and revocation of treatment relating to tariff classification of Ethephon (2-Chloroethylphosphonic acid, CAS-16672-87-0) 73.81% Technical and Ethephon 65% MUP from China.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of Ethephon (2-Chloroethylphosphonic acid, CAS-16672-87-0) 73.81% Technical and Ethephon 65% MUP from China under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 44, No. 14, on March 31, 2010. One comment was received in response to the notice, supporting the revocation.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 13, 2011.

**FOR FURTHER INFORMATION CONTACT:** Tamar Anolic, Tariff Classification and Marking Branch: (202) 325-0036.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary

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

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI, this notice advises interested parties that CBP is modifying a ruling letter relating to the tariff classification of Ethephon (2-Chloroethylphosphonic acid, CAS-16672-87-0) 73.81% Technical and Ethephon 65% MUP from China. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) N046978, dated December 24, 2008, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N046978 in order to reflect the proper classification of Ethephon (2-Chloroethylphosphonic acid, CAS-16672-87-0) 73.81% Technical and Ethephon 65% MUP from China according to the analysis contained in Headquarters Ruling Letter (HQ) H064895, which is attached to

this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 15, 2011

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

**Attachment**

HQ H064895

March 15, 2011

**CLA-2 OT:RR:CTF:TCM** HQ H064895 TNA**CATEGORY:** Classification**TARIFF NO.:** 2931.00.90

SUSAN PARKER

ARYSTA LIFESCIENCE N.A.

15401 WESTON PARKWAY, SUITE 150

CARY, NC 27513

**RE:** Revocation of NY N046978; Classification of Ethephon (2-Chloroethylphosphonic acid, CAS-16672-87-0) 73.81% Technical and Ethephon 65% MUP from China

DEAR MS. PARKER:

This letter is in reference to New York Ruling Letter (“NY”) N046978, issued to Arysta Lifescience N.A. (“Arysta”) on December 24, 2008, concerning the tariff classification of Ethephon. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 3808.93.50, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Herbicides, anti-sprouting products and plant-growth regulators: Other: Other.” We have reviewed NY N046978 and found it to be in error. For the reasons set forth below, we hereby revoke NY N046978.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify HQ 963264 was published on March 31, 2010, in Volume 44, Number 14, of the *Customs Bulletin*. CBP received one comment in response to this notice.

**FACTS:**

The merchandise at issue in NY N046978 is two different formulations of ethephon, a name approved by the American National Standards Institute for 2-Chloroethylenephosphonic acid, a plant-growth regulator/ethylene releaser. The first product, Ethephon 73.81% Technical, consists of approximately 74% ethephon, 17% water, and 9% impurities. The second product at issue, Ethephon 65% MUP, consists of approximately 65% ethephon, 28% water, and 7% impurities.

In NY N046978, dated December 24, 2008, CBP classified both types of ethephon under subheading 3808.93.50, HTSUS, as: “Herbicides, anti-sprouting products and plant-growth regulators: Other: Other,” noting that the Environmental Protection Agency’s (“EPA”) label for the Ethephon Technical listed 26.19% inert ingredients, and the EPA label for the Ethephon MUP listed 35% inert ingredients.

In its request for reconsideration, Arysta has now submitted evidence as to the nature of the inert ingredients. EPA Registered Ethephon end-use formulations are between 3.9% and 55.4%. EPA regulations allow up to 55.4% Ethephon in end use products. *See, e.g.*, 40 C.F.R. 180.300; <http://www.epa.gov/opprrd1/REDS/0382.pdf> at 19.

**ISSUE:**

Whether ethephon formulations with 65% and 73.8% ethephon, respectively, are classifiable under subheading 3808.93.50, HTSUS, as “herbicides,

anti-sprouting products and plant-growth regulators,” or under subheading 2931.00.90, HTSUS, as “other organo-inorganic compounds”?

### LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The HTSUS provisions under consideration are as follows:

2931.00 Other organo-inorganic compounds:

Other:

2931.00.90

Other

\* \* \* \* \*

3808 Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers):

Other:

3808.93

Herbicides, anti-sprouting products and plant-growth regulators:

Other:

3808.93.50

Other

Chapter 29 Note 1 reads, in pertinent part:

Except where the context otherwise requires, the headings of this Chapter apply only to:

- (a) Separate chemically defined organic compounds, whether or not containing impurities; . . .
- (d) Products mentioned in (a), (b) or (c) above dissolved in water

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Part A of the General Explanatory Notes to Chapter 29, defines, in relevant part, a “separate chemically defined compound” as:

[a] substance which consists of one molecular species (e.g., covalent or ionic) whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram . . .

Separate chemically defined compounds containing other substances deliberately added during or after their manufacture (including purification) are excluded from this Chapter.

The separate chemically defined compounds of this Chapter may contain impurities (Note 1(a))....

The term “impurities” applies exclusively to substances whose presence in the single chemical compound results solely and directly from the manufacturing process (including purification). These substances may result from any of the factors involved in the process and are principally the following:

- (a) Unconverted starting materials.
- (b) Impurities present in the starting materials
- (c) Reagents used in the manufacturing process (including purification)
- (d) By-products

It should be noted, however, that such substances are **not** in all cases regarded as “impurities” permitted under Note 1(a). When such substances are deliberately left in the product with a view to rendering it particularly suitable for specific use rather than for general use, they are **not** regarded as permissible impurities. . . .

The separately chemically defined compounds of this chapter may be **dissolved in water**.

The EN for heading 2931 states, in pertinent part:

Organo-phosphorus compounds: these are organic compounds containing at least one phosphorous atom linked directly to a carbon atom.

The EN for heading 3808 states, in pertinent part:

This Chapter covers a large number of chemical and related products. It does not cover separate chemically defined elements or compounds (usually classified in Chapter 28 or 29), with the exception of the following. . . .

(2) Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant growth regulators, disinfectants and similar products, put up as described in heading 3808.

These products are classified here in the following cases only:

(1) When they are put up in packings (such as metal containers or paperboard cartons) for retail sale as disinfectants, insecticides, etc., or in such forms (e.g., in balls, strings of balls, tablets or plates) that there can be no doubt that they will normally be sold by retail.

Products put up in these ways may or may not be mixtures. The unmixed products are mainly chemically defined products which would otherwise fall in Chapter 29, e.g., naphthalene, or 1,4-dichlorobenzene.

(2) When they have the character of preparations, whatever the presentation (e.g., as liquids, washes or powders). . . .

Intermediate preparations, requiring further compounding to produce the ready-for-use insecticides, fungicides, disinfectants, etc., are also classified here, provided they already possess insecticidal, fungicidal, etc., properties. . . .

In NY N046978, CBP classified the subject merchandise under heading 3808, HTSUS, as plant growth regulators based on the product's EPA label, which listed a significant percentage of inert ingredients in the merchandise. Under the General Explanatory Notes to heading 3808, HTSUS, intermediate preparations that require further compounding to produce insecticides,

fungicides, disinfectants, etc., that are ready to be used are classified under heading 3808, HTSUS, as long as they already possess insecticidal, fungicidal properties. “Only Ethephon not mixed with inerts would be classifiable in Chapter 29. The presence of inerts gives both products the characteristics of preparations,” and such intermediate preparations “are classifiable in heading 3808,” HTSUS, the opinion stated.

In its request for reconsideration, however, Arysta submits that the EPA label was misleading in that the ingredients it listed as “inert” are actually manufacturing impurities and water rather than ingredients purposely added to the ethephon. The company’s recently submitted EPA Confidential Statement of Formula supports this contention. Furthermore, Arysta asserts that both products at issue are labeled for “formulation into end-use plant growth regulators.” As imported, the products contain concentrations of ethephon that are higher than the concentration the EPA allows in plant growth inhibitors. As a result, they are too concentrated to be used as plant growth regulators.

In light of this new information, CBP reexamines whether the merchandise should be classified under heading 3808, HTSUS, or under heading 2931, HTSUS. Chapter 38 Note 1(a) states that in order to be classifiable in its imported condition in heading 3808, the merchandise must be put up in forms or packings for retail sale or as preparations or articles. Examples from prior CBP rulings that have been classified according to this guidance are insecticide in the form of a chalk packaged for resale in a clear plastic bag and “House Fly Traps” designed for insect control, packaged for retail sale, and consisting of a small fold-up house motif and a glue board of light cardboard construction, coated on one side with a “glue” adhesive material consisting of styrene copolymer, hydrocarbon resin, and paraffin oil. *See, e.g.,* HQ 088109 and HQ 563064. In the present case, Arysta’s products are not preparations because the inert ingredients are actually impurities.

In the present case, Ethephon is a separately defined chemical compound with the chemical name of 2-chloroethylphosphonic acid, consisting of carbon, hydrogen, chlorine, oxygen, and phosphorus in a constant ratio and with a definite structural formula. The inert ingredients are not intentionally added but rather are unintended results of the manufacturing process. These impurities were not deliberately left in to render the product particularly suitable for specific use. The separately defined chemical compounds, as defined in general EN, are then dissolved in water. Therefore, the merchandise meets the terms of Chapter 29, note 1(a) and (d) and the general EN thereto. Additionally, the chemical structure of the ethephon includes a phosphorous atom directly linked to a carbon atom. Therefore, the substance meets the terms of heading 2931, HTSUS.

As a result, CBP finds that Arysta’s Ethephon plant growth regulators are classified under subheading 2931.00.90, HTSUS, the provision for “other organo-inorganic compounds: other: other.” The applicable duty rate will be 3.7% *ad valorem*. However, special legislative provision 9902.24.73 applies to both products; as a result, the subject merchandise that is imported on or before December 31, 2009, is duty-free.

The one comment CBP received in response to the proposed revocation of NY N046978 regarded the applicability of this revocation to entries that were liquidated, and protests that were denied, in accordance with NY N046978. In response, we note that this revocation affects future transactions only.



Under *San Francisco Newspaper Printing Co. v. United States*, 9 CIT 517, 620 F. Supp. 738 (1985), the liquidation of the entries covering the merchandise which was the subject of protests about which the commenter inquires was final on both the protestant and CBP. Therefore, this ruling has no effect on those entries. See *San Francisco Newspaper Printing Co. v. United States*, 9 C.I.T. 517; 620 F. Supp. 738; 1985 Ct. Intl. Trade LEXIS 1525.

**HOLDING:**

Under the authority of GRI 1, Arysta's Ethepon (2-Chloroethylphosphonic acid, CAS-16672-87-0) 73.81% Technical and Ethepon 65% MUP from China are provided for in subheading 2931.00.90, HTSUS, the provision for "other organo-inorganic compounds: other: other." The applicable duty rate is normally 3.7% *ad valorem*. However, special legislative provision 9902.24.73 applied to both products; as a result, the subject merchandise that was imported on or before December 31, 2009 is duty-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 internet at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY N046978, dated December 24, 2008, is REVOKED.

*Sincerely,*

ALLYSON MATTANAH

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## 19 CFR PART 177

### **Notice of Modification of Ruling Letter Concerning the Tariff Classification of Pressure-Mounted Safety Gates and Revocation of Treatment**

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

**ACTION:** Notice of modification of ruling letter relating to the classification of pressure-mounted safety gates and revocation of treatment.

**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 letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of pressure-mounted safety gates. CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed modification was published on December 10, 2009, in the Customs Bulletin, Vol. 43, No. 50. No comments were received in response to the notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 13, 2011.

**FOR FURTHER INFORMATION CONTACT:** Dwayne S. Rawlings, Tariff Classification and Marking Branch, at (202) 325–0092.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is modifying one ruling letter relating to the tariff classification and NAFTA eligibility of pressure-mounted safety gates. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) L83194, dated April 4, 2005, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

In NY L83194, CBP determined the NAFTA eligibility of certain pressure-mounted safety gates and classified them in heading 3925, HTSUS, specifically subheading 3925.90.00 as "Builder's ware of plastics. Not elsewhere specified or included: Other." It is now CBP's position that the pressure-mounted safety gates are classified in heading 3924, HTSUS, specifically under subheading 3924.90.56, HTSUS (2011), which provides for "Tableware, kitchenware, other household articles and hygienic or toilet articles; of plastics: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY L83194 and any other ruling not specifically identified to reflect the proper tariff classification of the pressure-mounted safety gates, pursuant to the analysis set forth in the attached Headquarters Ruling Letter (HQ) H045151. CBP is also revoking any treatment previously accorded by it to substantially identical transactions.

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

Dated: March 23, 2011

IEVA K. O'ROURKE

*For*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ HO45151

**March 23, 2011****CLA-2 OT:RR:CTF:TCMHO45151 DSR****CATEGORY:** Classification**TARIFF NO.:** 3924.90.5600

JOHN F. MALDONADO  
EVENFLO COMPANY, INC.  
DIRECTOR, GLOBAL LOGISTICS AND DISTRIBUTION  
225 BYERS RD.  
MIAMISBURG, OH 45342

**RE:** Modification of NY L83194, dated April 4, 2005; subheading 3924.90.56, HTSUS; the tariff classification of pressure-mounted safety gates

DEAR MR. MALDONADO:

This letter is in response to a request for reconsideration dated April 27, 2009, made on behalf of Evenflo Company, Inc. (hereinafter “Evenflo”), of New York Ruling letter (NY) L83194, issued to Evenflo by U.S. Customs and Border Protection (CBP) on April 4, 2005.

The issues addressed by this ruling originated in a request for a ruling made by Evenflo Logistics on February 24, 2005, pertaining to the tariff classification and NAFTA eligibility of certain safety gates. The resulting ruling NY L83194 classified the safety gates, identified as “Position and Lock’ memory fit pressure gate(s), style 202,” under subheading 3925.90.00, of the Harmonized Tariff Schedule of the United States (HTSUS) (1995) as “Builder’s ware of plastics, not elsewhere specified or included: Other.”

CBP has reviewed the tariff classification of the subject safety gate and determined that the cited ruling is in error. Therefore, NY L83194 is modified for the reasons set forth in this ruling. This modification is made only with regard to the applicable tariff classification of the subject safety gates, and the determination made in NY L83194 with regard to whether the safety gates qualify for preferential treatment under NAFTA remains unchanged.

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 Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification was published on December 10, 2009, in the *Customs Bulletin*, Vol. 43, No. 50. No comments were received in response to the proposed action.

#### **FACTS:**

In NY L83194, the subject merchandise was identified as the “Position and Lock’ memory fit pressure gate, style 202.” The ruling describes the product as a pressure gate that mounts into openings without hardware. It consists of two sliding panels composed of plastic mesh in a wood frame. A divided wood bar with notches and a locking clamp runs across the center of the panels and holds the gate in its desired position. It was determined that the essential character of the article was imparted by the plastic mesh gate. The gate was classified in subheading 3925.90.00, HTSUS (1995), as “Builder’s ware of plastics. Not elsewhere specified or included: Other.” It is your

contention that the articles at issue are properly classified under heading 3924, HTSUS, which provides for, in relevant part, “other household articles . . . of plastics.”

### ISSUE:

Whether a pressure-mounted safety gate made up of plastic mesh in a wood frame that mounts without hardware is classified under heading 3924, HTSUS (2011), as “other household articles . . . of plastics,” or under heading 3925, HTSUS (2011),<sup>1</sup> as “builder’s ware of plastics.”

### LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

Commencing classification of the subject safety gate, in accordance with the dictates of GRI 1, the article in issue is not provided for *eo nomine*, that is by name, in any heading. CBP must therefore look to GRI 2 to classify the instant merchandise. GRI 2 is not beneficial in classifying the subject safety gate because the gate does not constitute an incomplete, unfinished, unassembled or disassembled article that is addressed in GRI 2 (a). The safety gate is composed of wood and plastic, and is, in accordance with GRI 2(b), a good “consisting of more than one material.” Goods consisting of more than one material that cannot be classified pursuant to GRI 1 or GRI 2 are to be classified according to GRI 3.

GRI 3, which covers composite goods consisting of different materials, states as follows:

When ... for any ... reason, goods are *prima facie* classifiable under two or more headings, classification shall be effected as follows:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

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<sup>1</sup> All further analysis of the HTSUS provisions under consideration (not cited to in relation to past CBP rulings) refers to those provisions contained in the 2011 edition of the HTSUS.

The instant gate constitutes a composite good consisting of different materials, therefore we must consult GRI 3 to ascertain its HTSUS classification. The article meets the definition of a composite article because it is partially described in two headings, 3924 (as an article of plastic) and 4421 (as an “other article of wood”), and GRI 3(a) governs the classification of composite goods. GRI 3(a) provides that when classification of goods is under two or more headings “the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in ... composite goods ... those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.” Inasmuch as we cannot determine a classification under GRI 3 (a), we turn to GRI 3 (b), which states that the safety gate must be classified as if it consisted of the material that gives the gate its essential character. The Explanatory Note (EN) to GRI 3 states as follows regarding the concept of “essential character” under GRI 3(b):

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

Here, the subject gate’s plastic mesh is indispensable to the primary use and purpose of the gate, which is to prevent children or pets from passing through it. Without the mesh, the gate’s frame would be superfluous. Therefore, the plastic mesh imparts its essential character.

We now determine which HTSUS heading applicable to articles of plastic covers the subject safety gate. The relevant HTSUS provisions under consideration state the following:

**3924** Tableware, kitchenware, other household articles and hygienic or toilet articles; of plastics:

\* \* \*

**3924.90** Other:

**3924.90.56** Other.

\* \* \* \*

**3925** Builders’ ware of plastics, not elsewhere specified or included:

\* \* \*

**3925.90.00** Other.

\* \* \*

The Harmonized Commodity Description and Coding System ENs constitute the official interpretation of the Harmonized System. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80. The EN to 39.25 notes that the heading applies only to the articles mentioned in Note 11 of Chapter 39 and sub-Note 11(e) lists “[b]alconies, balustrades, fencing, gates, and similar barriers.”

In Headquarters ruling HQ 957260, dated April 4, 1995, we classified a plastic-framed safety gate capable of being permanently installed, or



pressure-mounted, as “builder’s ware of plastic” under subheading 3925.90.56, HTSUS (1995). In reaching that conclusion, we explained that it is distinguished from pressure-mounted safety gates because it could be permanently installed in the desired area by mounting hardware, as follows:

Although pressure mounted safety gates are most often temporarily mounted and would be in the nature of other household articles in heading 3924, HTSUSA, the subject is distinguishable from those gates. The factor that causes it to be distinguishable from other pressure gates is the fact that it is designed so that it can be temporarily or permanently installed in the desired area through the use of the rail sockets, swing gate hardware, screws or adhesive. When so installed the Supergate III is used in the same manner as any other gate provided for in Legal Note 11(e) to Chapter 39, HTSUSA. Further, when used as a swing gate it is very similar to a door which can also be easily removed by taking out the hinge pins. We believe that a plastic safety gate purchaser might opt for the instant gate over other similar articles because of its installation capabilities and have accordingly concluded that it is similar to other items that may be installed in a house and removed without difficulty.

Furthermore, in Headquarters ruling 089159, dated August 7, 1991, we noted the following:

The issue of whether certain ... household articles of plastics ... are classified in Heading 3924, HTSUSA, as household articles or in Heading 3925, HTSUSA, as builders’ ware was covered during the Third Session of the Harmonized System Committee, which was conducted in Brussels on March 9, 1989. It was the opinion of the Secretariat and the Committee that Heading 3924, HTSUSA, does not include articles designed for fixing to or setting in the wall.

We determined that this was consistent with CBP’s view that certain articles of plastic designed for permanent installation are classified in heading 3925, HTSUS, as “builders’ ware of plastics.” See also HQ 089833, dated October 2, 1991 (molded plastic organizer that incorporates an adhesive to ensure a secure fit is intended for permanent installation and thus classifiable under heading 3925, HTSUS, as opposed to 3924, HTSUS). Thus, in order for the subject gate to fall within heading 3925, HTSUS, the gate would need to be capable of permanent installation in or on walls.

In your reconsideration request, you have described the subject safety gate as “strictly a memory-fit pressure gate, not a hardware installed swing gate.” You have not provided a sample to this office, but the marketing materials provided to this office clearly include the notations “Pressure mount · no tools required” and “No hardware required.” The website that markets the gate states that it “[p]ressure mounts securely without hardware.” See <http://evenflo.com/product.aspx?id=71&pfid=148>. “While an importer’s catalogs and advertisements are not dispositive in determining the correct classification of goods under the HTSUS, they are certainly probative of the way the importer viewed the merchandise and of the market the importer was trying to reach.” *THK America, Inc. v. United States*, 17 C.I.T. 1169, 1175; 837 F. Supp. 427, 433 (1993) (citing *Marubeni America Corp. v. United States*, 17 C.I.T. 360, 368; 821 F. Supp. 1521, 1528 (1993)). Therefore, while the subject gate performs the same function as a gate, it is not capable of permanent installation and is not classifiable in heading 3925, HTSUS.

The EN to 39.24 explains that the heading covers, among other things, “other household articles ... of plastics,” and explicitly excludes those articles that are capable of permanent installation. CBP has consistently classified safety gates that are not capable of being permanently installed as “... other household articles.” See NY M85234, August 15, 2006, (pressure-mounted safety gate with essential character of steel classified in heading 7323, HTSUS, as “table, kitchen or other household articles and parts thereof, of iron or steel . . .”); NY J89558, October 29, 2003 (pressure-mounted safety gate with essential character of metal mesh classified in heading 7323, HTSUS, as “table, kitchen or other household articles and parts thereof, of iron or steel . . .”); NY B85275 May 22, 1997 (portable safety gate made of plastic-coated steel classified in heading 7323, HTSUS as “table, kitchen or other household articles and parts thereof, of iron or steel. . .”).

As discussed earlier, the essential character of the subject gate is that of plastic and, because the gate is not capable of permanent installation, the applicable heading for the gate would be heading 3924, HTSUS, “tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics.” Specifically, it is classified in subheading 3924.90.56, HTSUS, as “... other household articles of plastics: Other: Other.”

#### **HOLDING:**

By application of GRI 3, the subject merchandise identified as the “Position and Lock’ memory fit pressure gate, style 202” is classifiable under heading 3924, HTSUS. Specifically, it is classifiable under subheading 3924.90.56, HTSUS, which provides for “Tableware, kitchenware, other household articles and hygienic or toilet articles; of plastics: Other: Other.” The column one, general rate of duty is 3.4 percent *ad valorem*. Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

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

NY L83194, dated April 4, 2005, is hereby modified with respect to the classification of the Position and Lock memory fit pressure gate, style 202.

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

*Sincerely,*

IEVA K. O’ROURKE

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**AGENCY INFORMATION COLLECTION ACTIVITIES:****Application for Waiver of Passport and/or Visa (Form I-193)**

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

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0107.

**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 Application for Waiver of Passport and/or Visa (Form I-193). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13).

**DATES:** Written comments should be received on or before May 31, 2011, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9<sup>th</sup> Street, NW, 5<sup>th</sup> Floor, Washington, DC. 20229-1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9<sup>th</sup> Street, NW, 5<sup>th</sup> Floor, Washington, DC. 20229-1177, at 202-325-0265.

**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). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) 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:** Application for Waiver of Passport and/or Visa

**OMB Number:** 1651-0107

**Form Number:** CBP Form I-193

**Abstract:** The data collected on CBP Form I-193, Application for Waiver of Passport and/or Visa, is used by CBP to determine an applicant's eligibility to enter the United States under 8 CFR parts 211.1(b)(3) and 212.1(g). This form is filed by aliens who wish to waive the documentary requirements for passports and/or visas due to an unforeseen emergency such as an expired passport, or a lost, stolen, or forgotten passport or permanent resident card. This information collected on CBP Form I-193 is authorized by Section 212(a)(7)(B) of the Immigration and Nationality Act. This form is accessible at [http://forms.cbp.gov/pdf/CBP\\_Form\\_i193.pdf](http://forms.cbp.gov/pdf/CBP_Form_i193.pdf)

**Current Actions:** CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

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

**Affected Public:** Individuals

**Estimated Number of Respondents:** 25,000

**Estimated Number of Responses per Respondent:** 1

**Estimated Number of Total Annual Responses:** 25,000

**Estimated Time per Response:** 10 minutes

**Estimated Total Annual Burden Hours:** 4,150

**Estimated Total Annual Cost:** \$14,625,000

Dated: March 24, 2011

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

[Published in the Federal Register, March 29, 2011 (76 FR 17426)]

## AGENCY INFORMATION COLLECTION ACTIVITIES:

### Entry of Articles for Exhibition

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

**ACTION:** 30-Day notice and request for comments; Extension of an existing information collection: 1651-0037.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Entry of Articles for Exhibition (19 CFR 147.11(c)). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 4929) on January 27, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before April 28, 2011.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-5806.

**SUPPLEMENTARY INFORMATION:**

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

**Title:** Entry of Articles for Exhibition

**OMB Number:** 1651-0037

**Form Number:** None

**Abstract:** Goods entered for exhibit at fairs, or for constructing, installing, or maintaining foreign exhibits at a fair may be free of duty under 19 U.S.C. 1752. In order to substantiate that goods qualify for duty-free treatment, the consignee of the merchandise must provide information about the imported goods, which is specified in 19 CFR 147.11(c).

**Current Actions:** CBP proposes to extend the expiration date of this information collection with a change to the burden hours based on updated estimates. There is no change to the information being collected.

**Type of Review:** Extension (with change)

**Affected Public:** Businesses

**Estimated Number of Respondents:** 50

**Estimated Number of Responses per Respondent:** 50

**Estimated Number of Total Annual Responses:** 2,500

**Estimated Time per Response:** 20 minutes

**Estimated Total Annual Burden Hours:** 832

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9<sup>th</sup> Street, NW, 5<sup>th</sup> Floor, Washington, DC. 20229-1177, at 202-325-0265.

Dated: March 24, 2011

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

[Published in the Federal Register, March 29, 2011 (76 FR 17425)]

