

U.S. CUSTOMS AND BORDER PROTECTION

PROPOSED AND FINAL REVOCATIONS AND MODIFICATIONS

PUBLISHED ON DECEMBER 10, 2009, IN THE CUSTOMS BULLETIN

Tariff Classification & Marking Branch

(i) *Proposed Modifications and Revocations*

In the Customs Bulletin, dated December 10, 2009, CBP is proposing to modify or revoke certain rulings, and any treatment previously accorded by it to substantially identical transactions. Comments are due by January 10, 2009.

The following are summaries of the proposed actions:

Product: Plastic Placemats

Action: Revocation of NY N020433, dated December 20, 2007.

Current Classification: 3924.10.40, HTSUS, which provides for “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Tableware and kitchenware: Other.” **Duty:** 3.4% *ad valorem*.

Proposed Classification: 3924.90.10, HTSUS, which provides for “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Curtains and drapes, including panels and valances; napkins, table covers, mats, scarves, runners, doilies, centerpieces, antimacassars and furniture slipcovers; and like furnishings” **Duty:** 3.3% *ad valorem*.

Proposed Ruling: HQ H071105

Product: Pressure Mounted Safety Gate

Action: Modification of the classification of a pressure mounted gate that is the subject of NY L83194, dated April 4, 2005.

Current Classification: 3925.90.00, HTSUS, which provides for “Builders' ware of plastics, not elsewhere specified or included: Other...” **Duty:** 5.3% *ad valorem*.

Proposed Classification: 3924.90.56, HTSUS, which provides for “Tableware, kitchenware, other household articles and hygienic or toilet articles; of plastics: Other: Other...” **Duty:** 3.4% *ad valorem*.

Proposed Ruling: HQ HO45151

Product: Mass Flow Controller

Action: Revocation of NY R01762, dated April 26, 2005

Current Classification: 8481.80.9015, HTSUSA, which provides for “Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including

pressure-reducing valves and thermostatically controlled valves; parts thereof: Other appliances: Other: Regulator valves, self-operating, for controlling variables such as temperature, pressure, flow and liquid level..." **Duty:** 2% *ad valorem*.

Proposed Classification: 9032.89.6060, HTSUSA, which provides for "Automatic regulating or controlling instruments and apparatus; parts and accessories thereof: Other instruments and apparatus: Other: Other: Other: Flow and liquid level control instruments..." **Duty:** 1.7% *ad valorem*.

Proposed Ruling: HQ H028098

Product: LED modules

Action: Revocation of NY H87026 (January 28, 2002) and NY 816502 (December 19, 1995), modification of NY 817979 (January 26, 1997), and revocation of treatment.

Current Classification: Heading 8541.40.20 as "Light-Emitting Diodes: ... light-emitting diodes: Light-emitting diodes (LED's)." **Duty:** Free.

Proposed Classification: Heading 9405 as "Lamps ... not elsewhere provided or included ...: Other electric lamps and light fittings: Other." **Duty:** 3.9% *ad valorem*.

Proposed Rulings: HQ H024874, HQ H024876, & HQ H024878

Product: Ski Mittens

Action: Modification of NY N003928, dated December 29, 2006.

Current Classification: 6116.10.44, HTSUS, which provides for "Gloves, mittens and mitts, knitted or crocheted: impregnated, coated or covered with plastics or rubber: Other: Without fourchettes: cut and sewn from pre-existing machine-knit fabric that is impregnated, coated or covered with plastics or rubber: Other: Containing over 50% by weight of plastics or rubber." **Duty:** 9.9% *ad valorem*.

Proposed Classification: 6116.10.08, HTSUS, which provides for "Gloves, mittens and mitts, knitted or crocheted: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts."

Duty: 2.8% *ad valorem*.

Proposed Ruling: HQ H009365

Product: NAD, Lithium (CAS 64417-72-7)

Action: Modification of NY R03289, dated March 13, 2006

Current Classification: 2934.99.9000, HTSUS, which provides for "Nucleic acids and their salts, whether or not chemically defined; other heterocyclic compounds: Other: Other: Other: Other..." **Duty:** 6.5% *ad valorem*.

Proposed Classification: 2934.99.39, HTSUS, which provides for: "Nucleic acids and their salts, whether or not chemically defined; other heterocyclic compounds: Other: Other: Aromatic or modified aromatic: Other: Products described in additional U.S. note 3 to section VI." **Duty:** 6.5% *ad valorem*.

Proposed Ruling: HQ H009527

Product: Fan Shrouds

Action: Revocation of New York Ruling Letter (“NY”) N014061, dated July 25, 2007 and NY D88203, dated March 23, 1999 (Attachments “A” and “B”),

Current Classification: 8415.90.8045, HTSUSA, which provides for “Air conditioning machines, comprising a motor-driven fan and elements for changing temperature and humidity, including those machines in which the humidity cannot be separately regulated; parts thereof: Parts: Other” **Duty:** 1.4% *ad valorem* **and** 8708.91.7550, HTSUSA, which provides for “[p]arts and accessories of the motor vehicles of 8701 to 8705: Other parts and accessories: radiators and parts thereof: Parts: For other vehicles: Other” **Duty:** 2.5% *ad valorem*.

Proposed Classification: 8414.90.10, HTSUS, which provides for “Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof: Parts: Of fans (including blowers) and ventilating or recycling hoods: Other.” **Duty:** 4.7% *ad valorem*.

Proposed Rulings: HQ H027029 and HQ H029003.

Product: Piezoelectric Ceramic Crystals

Action: Revocation of NY N021072, dated December 28, 2007.

Current Classification: 6909.19.50, HTSUS, which provides for "Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods: Ceramic wares for laboratory, chemical or other technical uses: Other: Other.” **Duty:** 4% *ad valorem*.

Proposed Classification: 8541.60.00, HTSUS, which provides for “Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof: Mounted piezoelectric crystals” **Duty:** Free.

Proposed Ruling: HQ H025781

Product: Auxiliary vehicle heater units

Proposed Action: Revocation of NY 859202, dated January 18, 1991, and NY J88055, dated September 3, 2003.

Current Classification: Subheading 7322.90.00, HTSUS, as “Air heaters and hot air distributors (including distributors which can also distribute fresh or conditioned air), not electrically heated, incorporating a motor-driven fan or blower, and parts thereof, of iron or steel: Other, including parts.” **Duty:** Free.

Proposed Classification: Subheading 8419.50.50, HTSUS, as “Machinery, plant or laboratory equipment, whether or not electrically heated ... for the treatment of materials by a process involving a change in temperature such as heating: Heat exchange units: Other.” **Duty:** Free.

Proposed Rulings: HQ H065718 and HQ H065720

Product: Automatic Data Processing (“ADP”) Machine System

Action: Modification of HQ H027696, dated July 2, 2008

Current Determination: The ADP machine qualifies for duty free status, but the ADP system does not.

Proposed Determination: The entire ADP system will qualify for duty free status under General Note 12(u) and is exempt from the merchandise processing fee.

New Ruling: HQ H074136.

(ii) *Final Modifications and Revocations*

CBP informed the public that it is revoking or modifying certain rulings, and any treatment previously accorded by it to substantially identical transactions.

The following are summaries of the final actions:

Product: Electrically-Heated Throws and Seat Pads for Automotive Use

Action: Revocation of HQ 963001, dated July 22, 1999.

New Classification: 8516.79.00, HTSUS, which provides for “Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example. Hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof: Other electro-thermic appliances: Other...” **Duty:** 2.7% *ad valorem*.

New Ruling: HQ H062211

Product: Lawn Sweeper Bags

Action: Revocation of NY K87594, dated July 22, 2004.

New Classification: 8479.90.94, HTSUS, which provides for “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Parts: Other.” **Duty:** Free.

New Ruling: HQ H042584

Product: Sports gloves

Action: Modification of NY N042400, NY N042401, and NY N042402, dated November 14, 2008.

New Classification: Subheading 4203.21.60, HTSUS, as “Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Specially designed for use in sports: Ski or snowmobile gloves, mittens and mitts: Other” (**Duty:** 5.5% *ad valorem*); subheading 4203.21.80, HTSUS, as “Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Specially designed for use in sports: Other” (**Duty:** 4.9% *ad valorem*); and subheading

6116.93.08, HTSUS, as “Gloves, mittens and mitts, knitted or crocheted: Other: Of synthetic fibers: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts” (**Duty:** 2.8% *ad valorem*).

New ruling: HQ H055387

Product: Pellicles

Action: Revocation of NY I87349, dated October 29, 2002, and NY G888540, dated April 12, 2001.

New Classification: Subheading 8486.90.00, HTSUS, as “Machines and apparatus of a kind used solely or principally for the manufacture of ... semiconductor devices ...: Parts and accessories: Parts and accessories.” **Duty:** Free.

New Rulings: HQ 055635 and HQ 055636

Product: FC-77 Fluorinert

Action: Revocation of NY B89965, dated January 7, 1998.

New Classification: Subheading 3824.90.92, HTSUS, as “Chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other.” **Duty:** 5% *ad valorem*.

New Ruling: HQ H058796

Valuation and Special Programs Branch

CBP informed the public that it is revoking a ruling concerning the issue of whether certain commission payments are included in the appraised value of imported merchandise.

The following is a summary of the final action:

Action: Revocation of HQ H006588, dated December 17, 2007

Former Determination: In HQ H006588, CBP determined that the importer did not meet its burden of establishing that payments made to a purported buying agent constituted bona fide buying commissions because there was insufficient documentary evidence to establish the existence of a bona fide buying agency relationship. Consequently, the payments made to the alleged buying agent were included in transaction value as an addition to the price actually paid or payable

Current Determination: We have reconsidered our position in light of additional information that was made available regarding the control exercised by the importer/principal over the purported agent. The importer has also revised the buying agency agreement and a joint venture agreement relative to this matter. In light of the additional information, we consider the particular payments at issue to constitute bona fide buying commissions. As such, they are not included in transaction value as part of

the price actually paid or payable or as an addition thereto.