

HQ 957718  
April 5, 1995

CLA-2 R:C:M 957718 DWS

Category: Classification

TARIFF NO.: 8515.90.20 ADD/CVD (EN)

Ms. Barbara Scarborough  
Rogers & Brown Custom Brokers, Inc.  
P.O. Box 19005  
Charlotte, NC 28219

RE: Reconsideration of NY **899540**; Thoriated Tungsten Electrodes;  
Explanatory Notes 83.11 and 85.15; "The Fabricator"  
Periodical; Section XVI, Note 2; 8311.90-00 (EN)

Dear Ms. Scarborough:

This is in response to your letter of February 2, 1995, on behalf of World Wide Welding, Inc., to the Regional Commissioner of Customs, New York, requesting reconsideration of NY **899540**, dated July 6, 1994, concerning the classification of thoriated tungsten electrodes under the Harmonized Tariff Schedule of the United States (HTSUS). Your letter has been referred to this office for a response.

FACTS:

The merchandise consists of thoriated tungsten electrodes, which are imported with various amounts of tungsten as thoriated or 100 percent tungsten. The electrodes, which are cleaned or ground, vary in length and diameter. The submitted sample is two percent thoriated, cleaned, and measures 1/16 inch in diameter x 7 inches in length. You state that the electrodes are consumable and, depending on their usage, have a maximum life of ten hours. It is our understanding that the electrodes are not coated or cored with flux, and they are not of agglomerated base metal powder. It is also our understanding that the electrodes are used in the tungsten inert gas (TIG) welding process performed by arc welding machines.

The subheadings under consideration are as follows:

8311.90-00 (EN): [w]ire, rods, tubes, plates, electrodes and  
similar products of base metal or of metal  
carbides, coated or cored with flux material, of  
a kind used for soldering, brazing, welding or

deposition of metal or of metal carbides; wire and rods, of agglomerated base metal powder, used for metal spraying; base metal parts thereof: [o]ther, including parts.

Goods classifiable under this provision receive duty-free treatment.

8515.90-20 (EN): [e]lectric (including electrically heated gas), laser or other light or photon beam, ultrasonic, electron beam, magnetic pulse or plasma arc soldering, brazing or welding machines and apparatus, whether or not capable of cutting; electric machines and apparatus for hot spraying of metals or sintered metal carbides; parts thereof: [p]arts: [o]f welding machines and apparatus.

The general, column one rate of duty for goods classifiable under this provision is 1.9 percent ad valorem.

#### ISSUE:

Whether the thoriated tungsten electrodes are classifiable under subheading 8311.90-00 (EN), HTSUS, as electrodes of base metal or of metal carbides, coated or cored with flux material, of a kind used for welding, or under subheading 8515.90-20 (EN), HTSUS, as parts of welding machines.

#### LAW AND ANALYSIS:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

In NY **899540**, the thoriated tungsten electrodes were held to be classifiable under subheading 8515.90-20 (EN), HTSUS. It is your contention that they are classifiable under subheading 8311.90-00 (EN), HTSUS.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes, 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. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). In part, Explanatory Note 83.11 (p. 1127) states that:

[t]his heading covers wire, rods, tubes, plates, electrodes and similar products, of base metal or of metal carbides, of a kind used for soldering, brazing, welding or deposition of metal or of metal carbides, provided they are coated or cored with flux material; in the latter case, the outer part is usually composed of a tube or sometimes of a spirally wrapped strip. . . The materials used for coating or coring are the flux (e.g., zinc chloride, ammonium chloride, borax, quartz, resin or lanolin) which would otherwise have to be added separately during the soldering, brazing, welding or deposition process. The electrodes, etc., may also contain the additive metal in powder form. . .

In part, Explanatory Note 85.15 (p. 1356) states that:

#### PARTS

. . . These include, inter alia, soldering heads and tongs, electrode holders and metal contact electrodes (for example, contact points, rollers and jaws) as well as torch points and sets of nozzles for atomic hydrogen hand welding equipment.

The following, however, are excluded from this heading:

- (a) Consumable electrodes made of base metal or metal carbides (classified according to constituent material or in heading 83.11, as the case may be).

Tariff terms are construed in accordance with their common and commercial meaning. *Nippon Kogaku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

In the periodical "The Fabricator" (November 1994), there is an article entitled "Understanding TIG Welding" (p. 21). In part, the article states that:

[e]arly in 1943, Northrup Aircraft Company developed a new, fluxless welding process to weld magnesium in aircraft fabrication. This electric arc welding process used a nonconsumable tungsten electrode supplied with direct current (DC) welding in a protective, inert helium gas

shield. . . Today, [the process] is more commonly known as the gas tungsten arc welding (GTAW) process or the tungsten inert gas (**TIG**) welding process. **TIG** welding uses a nonconsumable electrode made of tungsten. Unlike some other arc welding processes, **TIG** welding does not have a transient arc caused by a consumable electrode. . .

Although you state that the merchandise is consumable, based upon the industry view that the tungsten electrode for use in **TIG** welding is nonconsumable, it is our position that the industry view is correct and the subject thoriated tungsten **electrodes** are not precluded from classification under subheading 8515.90-20 )(EN), as parts of welding machines.

It is also our position that the thoriated tungsten **electrodes**, based upon the description given under Explanatory Note 83.11 and an examination of the provided sample, are not coated or cored with flux material. Our position is supported by the above quoted article, which states that the **TIG** welding process is one which is fluxless. Therefore, because the description of the subject merchandise does not meet the terms of heading 8311, HTSUS, in accordance with GRI 1, they are precluded from classification under subheading 8311.90-20 (EN), HTSUS.

Section XVI, note 2, HTSUS, states that:

[s]ubject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of Heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of chapters 84 and 85 (other than Heading 8485 and 8548) are in all cases to be classified in their respective headings;
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of Heading 8479 or 8543) are to be classified with the machines of that kind. However, parts which are equally suitable for use principally with the goods of headings 8517 Heading 8525 to 8528 are to be classified in heading 8517;
- (c) All other parts are to be classified in Heading 8485 or 8548.

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Because the thoriated tungsten **electrodes** are not goods of any of the headings of chapters 84 or 85, HTSUS, section XVI, note 2(a), HTSUS, is inapplicable. However, because the **electrodes** are parts suitable for use solely or principally with arc welding machines, under section XVI, note 2(b), HTSUS, they are to be classifiable with those machines. Therefore, the merchandise is classifiable under subheading 8515.90-20 (EN), HTSUS.

**HOLDING:**

The thoriated tungsten **electrodes** are classifiable under subheading 8515.90-20 (EN), HTSUS, as parts of welding machines.

**EFFECT ON OTHER RULINGS:**

NY **899540** is affirmed.

Sincerely,

John Durant, Director  
Commercial Rulings Division