

Slip Op. 07-92

UNITED STATES COURT OF INTERNATIONAL TRADE

AGATEC CORP.,

Plaintiff,

v.

UNITED STATES,

Defendant.

Before: Richard W. Goldberg,
Senior Judge

Court No. 03-00165

OPINION

[Plaintiff's motion for summary judgment is denied, and defendant's motion for summary judgment is granted.]

Dated: June 6, 2007

Weiss Berzowski Brady LLP (Barry R. White) for Plaintiff Agatec Corp.

Peter D. Keisler, Assistant Attorney General; David M. Cohen, Director Barbara S. Williams, Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice (James A. Curley); Su-Jin Yoo, Office of Assistant Chief Counsel, Bureau of Customs and Border Protection, United States Department of Homeland Security, of counsel, for Defendant United States.

Goldberg, Senior Judge: This is a classification case brought by plaintiff Agatec Corp., a distributor of electrical levels and accessories manufactured by Agatec France, against defendant U.S. Customs and Border Protection ("Customs"). Before the Court are the parties' cross-motions for summary judgment under USCIT Rule 56.

I. BACKGROUND

On February 6, 2002, Agatec imported a shipment of two varieties of electrical laser levels, the A410S and the GAT120, along with several accessories. In its import documentation, Agatec classified the merchandise under subheading 9015.30.4000 of the Harmonized Tariff Schedule of the United States (2002) ("HTSUS"). Customs liquidated the merchandise on June 6, 2002 under subheading 9031.49.9000 of the HTSUS. Agatec timely protested Customs' classification. After Customs denied the protest, Agatec commenced this case pursuant to 19 U.S.C. § 1514(a) and 28 U.S.C. §§ 2631-37. The Court has jurisdiction under 28 U.S.C. § 1581(a).

II. RECORD CHARACTERISTICS OF THE IMPORTED PRODUCT

The A410S and GAT120 products at issue in this case emit horizontal or vertical beams of light allowing the user to find level and plumb. See Tawil Aff. ¶ 3; Def.'s Resp. Pl.'s Stat. "Undisputed" Facts 2-3. Both laser levels can be used only in one dimension. Kiss Decl. ¶ 7. Their maximum operational range is 1000 feet. Id. ¶ 7 (citing Pl.'s Ex. A (The Level of Excellence) (Agatec's product catalogue) at 6 & 8).

Both levels are usually mounted on a tripod, especially when it is helpful to give the laser some height off the ground. Tawil Aff. ¶ 7; Def.'s Resp. Pl.'s Stat. "Undisputed" Facts 9. The levels may work in tandem with a receiver which is mounted on

an excavator or grade rod to receive the level's beam. Tawil Aff. ¶ 7; Def.'s Resp. Pl.'s Stat. "Undisputed" Facts 9.

The A410S and GAT120 levels are used in construction projects for houses or small buildings, as well as landscaping for such structures. Kiss Decl. ¶¶ 6-7 & 9; Pl.'s Ex. C at 2 (instruction manual for GAT120 electronic level); Pl.'s Ex. D at 2 (instruction manual for A410S automatic laser). The instruction manual for the GAT120 level describes the product as "ideal for leveling applications in the construction industry." Pl.'s Ex. C at 2. It can be used for indoor and outdoor projects. Id. Agatec's product catalogue advertises the GAT120 as "[i]deal for contractors who work primarily in horizontal, but have occasional use for vertical alignment at short distances." Pl.'s Ex. A, at 6. The instruction manual for the A410S level describes the product as "an automatic visible laser that can be used for leveling, vertical alignment, plumbing and squaring. Applications include installing suspended ceilings, technical flooring, partitions and a variety of outdoor alignment work." Pl.'s Ex. D at 2. Notwithstanding its occasional outdoor applications, the A410S product was "designed with the interior contractor in mind," Pl.'s Ex. A at 13, and is used for "[i]nstalling and aligning tilt-up walls, partitions and window and door frames" as well as "[s]quaring walls, decks, and foundations." Id. at 8. In addition to the functionality described in the product catalogue and instruction manuals, Agatec president Gabriel Tawil states that with the help of a

receiver mounted on an excavator, "the laser precisely measures the distance above or below an established benchmark." Tawil Aff. ¶ 3.

Customs produced an affidavit of Richard Kiss, the Chief of Survey for the New York District of the Operations Division of the U.S. Army Corps of Engineers. Kiss describes the operability of these laser levels as one of "lower order surveying," which he defines in distinction to "higher order surveying." See id. ¶¶ 5-7. "Higher order survey" levels require great accuracy and operate in three dimensions. Kiss Decl. ¶¶ 5 & 7. The U.S. Army Corps of Engineers executes "higher order surveying" projects such as preparing land or hydrographic maps, establishing boundaries, preparing for the construction of major public works such as dams, highways or bridges, calculating the area of a piece of land, triangulating, or determining the height of objects above or below some horizontal reference level. See id. ¶ 5. Kiss lists representative "lower order surveying" applications as "smaller-scale foundation and landscaping work, and interior work such as finding level and plumb." Id. ¶ 9.

III. CONTESTED HTSUS HEADINGS

Agatec believes that both the GAT120 and the A410S laser levels are correctly classified under HTSUS 9015.30.4000. Customs classified the laser levels under HTSUS 9031.49.9000 and the parts and accessories under HTSUS 9031.90.5800.

HTSUS subheading 9015.30.4000 covers:

Surveying (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders; parts and accessories thereof:

...

Levels:

...

Electrical

HTSUS 9015.30.4000. By contrast, HTSUS subheading

9031.49.9000 covers:

Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof:

...

Other:

...

Other

Id. 9031.49.9000. HTSUS subheading 9031.90.5800 covers "parts and accessories . . . of other optical instruments and appliances, other than test benches" Id. 9031.90.5800.

IV. STANDARD OF REVIEW

"[S]ummary judgment is proper 'if the pleadings [and the discovery materials] show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56(c)) (alteration added).¹ "In ruling on cross-motions for summary judgment, the

¹ "When the Court's rules are materially the same as the [Federal Rules of Civil Procedure ("FRCP")], the Court has found it appropriate to consider decisions and commentary on the FRCP in interpreting its own rules." Former Employees of Tyco Elec.

court must determine if there exist any genuine issues of material fact and, if there are none, decide whether either party has demonstrated its entitlement to judgment as a matter of law." Am. Motorists Ins. Co. v. United States, 5 CIT 33, 36 (1983). The appropriate standard of review consists of two separate inquiries: (1) a de novo review of Customs' legal interpretations of the tariff headings, see 28 U.S.C. § 2640(a)(1); and (2) a non-deferential review of Customs' factual findings subject to a presumption of correctness in favor of Customs, see id. § 2639(a)(1). Cf. Universal Elec., Inc. v. United States, 112 F.3d 488, 493 (Fed. Cir. 1997) (holding that "as a practical matter" the presumption of correctness "has force only as to factual components" of a Customs classification decision).

V. DISCUSSION

A. *Is HQ 965484 Entitled to Judicial Deference?*

When reviewing a Customs classification, the Court is not bound by the authority of any Customs ruling or interpretation. However, where Customs has issued a thorough and logical ruling that reflects its expertise in administering its detailed statutory scheme and accords with its previous interpretations, such decision may "claim respect" in proportion to its persuasiveness under Skidmore v. Swift & Co., 323 U.S. 134

v. U.S. Dep't of Labor, 27 CIT 380, 385, 259 F. Supp. 2d 1246, 1251 (2003).

(1944). United States v. Mead Corp., 533 U.S. 218, 221 (2001); see id. at 235.

Here, Customs argues in favor of extending Skidmore deference to HQ 965484, a prior Customs classification ruling analyzing whether certain merchandise was a "surveying instrument" as understood by HTSUS heading 9015. In that ruling, Customs responded to a protest by TLZ, Inc., a company that had imported three varieties of "electro-mechanical pendulum-based leveling system" using a laser diode. HQ 965484 at 1. The laser diode is suspended on a pendulum and uses gravity to find true level. See id. All three items were utilized in construction projects to "align pipes, piers, and posts; square foundations, walls, decks, window frames and door frames; plumb walls, posts and door frames; set drainage grades; and furnish reference points for HVAC (heating, ventilation, air conditioning), lighting, sprinkler systems and skylights." Id. In short, TLZ's products were in some respects similar, though by no means identical, to Agatec's laser levels. Customs analyzed the relevant HTSUS headings and determined that TLZ's laser diodes were not described in HTSUS heading 9015. That determination rested on two alternative premises: (1) "protestant has not established that these goods are used for surveying or that they are surveyor's levels"; and (2) the goods "are within the exclusion of [Explanatory Note] 90.15" Id. at 2. The cited Explanatory Note suggested that "levels (air bubble type, etc.) used in building or constructional work" are not covered by

HTSUS heading 9015. The entirety of the agency's analysis of that issue is as follows:

We find that the [TMZ laser diodes] are within the exclusion of EN 90.15, excerpted above. The laser diode aids these goods in determining true level. Therefore, we find that they are not described in heading 9015, HTSUS.

Id.

Customs contends that the Court should defer to the HQ 965484's holding "that construction laser levels are classifiable under Heading 9031 and not Heading 9015" Def.'s Br. 17-18. The problem with that contention is that HQ 965484 says nothing of the sort. In sum, HQ 965484 contains a straightforward recitation of the statutory HTSUS text, as well as two factual findings: (1) that TLZ had failed to prove that their laser diodes were used in surveying and (2) that the TMZ laser diodes fell within the "construction levels" exclusion of the explanatory note.

It is inappropriate to apply Customs' findings in one highly fact-specific classification ruling to a different product. See Structural Indus., Inc. v. United States, 356 F.3d 1366, 1371 (Fed. Cir. 2004) ("[P]rior rulings with respect to similar but non-identical items are also of little value in assessing the correctness of the classification of a similar but not identical item."). The factual findings contained in HQ 965484 respect an import product that is similar, though by no means identical, to the A410S and GAT120 laser levels. No deference is therefore due to Customs' classification of the TLZ

laser diodes. On the other hand, if Customs is arguing that HQ 965484 articulates a broad principle that all construction levels – and not merely the TMZ laser diodes – are classifiable under heading 9031, HQ 965484 is hardly the sort of thorough and logical explanation to which a court may defer under Skidmore. Indeed, no fair reading of the ruling could countenance such an expansive interpretation. The agency's decision in that protest review remained focused squarely on the product at issue, and avoided generalized characterizations of construction levels. The Court finds that for purposes of this case HQ 965484 is not entitled to Skidmore deference.

B. Are Agatec's A410S and GAT120 Levels, Along with Their Accessories, Classifiable Under Heading 9031 of the HTSUS?

The U.S. Court of Appeals for the Federal Circuit's statement of law in Orlando Food Corp. v. United States applies equally to this case:

The proper classification of merchandise entering the United States is directed by the General Rules of Interpretation ("GRIs") of the HTSUS and the Additional United States Rules of Interpretation. The HTSUS scheme is organized by headings, each of which has one or more subheadings; the headings set forth general categories of merchandise, and the subheadings set forth a more particularized segregation of the goods within each [heading] category. At issue in this case are two headings of the HTSUS and their accompanying subheadings

140 F.3d 1437, 1439 (Fed. Cir. 1998). Under GRI 1, a court is to construe the competing headings to determine the heading under which the merchandise at issue is classifiable. See id. (citing GRI 1, HTSUS). The express terms of heading 9031 exclude any

imported merchandise that could be classified under heading 9015. See HTSUS 9031 (including measuring or checking instruments "not specified or included elsewhere in this chapter"). As such, the parties agree that the critical question in this case is whether heading 9015 applies to the merchandise.

The Federal Circuit has similarly provided guidance as to how courts should construe HTSUS language:

HTSUS terms are construed according to their common and commercial meanings, which are presumed to be the same absent contrary legislative intent. In construing a tariff term, the court may rely on its own understanding of the terms as well as upon lexicographic and scientific authorities. The court may also refer to the Explanatory Notes accompanying a tariff subheading. While these notes are not controlling legislative history, they are nonetheless intended to clarify the scope of HTSUS subheadings and to offer guidance in their interpretation.

Len-Ron Mfg. Co., Inc. v. United States, 334 F.3d 1304, 1309 (Fed. Cir. 2003) (citations omitted). In a case such as this, where the relevant tariff classification is controlled by use, Customs must classify the merchandise "in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use" Additional U.S. Rule of Interpretation 1. "Principal use" is the use that "exceeds any other single use." Lenox Collections v. United States, 20 CIT 194, 196 (1996) (quotation marks omitted).

Agatec argues that its laser levels are electrical "surveying" equipment. Agatec relies heavily on the 2002

decision Heli-Support v. United States, which contains a helpful discussion of prior judicial interpretations of HTSUS heading 9015. See Heli-Support, Inc. v. United States, 26 CIT 352 (2002). The imported product at issue in Heli-Support was a helicopter- or aircraft-mounted high precision instrument used to measure topography with a laser for later cartographic use. See id. at 353. The court stressed the broad scope of HTSUS heading 9015, noting that surveying includes more than "mere surface examinations" and was intended to include items that are not the traditional tools of a surveyor's trade. Id. at 355-56. Ultimately, the court held that the imported product was classifiable under heading 9015 and that the plaintiff's interpretation of heading 9015 to include only instruments "used in the practice and science of surveying by a surveyor" was incorrect. Id. at 356.

In finding that the imported instruments fell within the scope of heading 9015, the court drew on three dictionary definitions of the terms "survey" and "surveying." Surveying, according to the Columbia Encyclopedia (2d ed. 1950), is defined as "the science of finding the relative position on or near the earth's surface. Boundaries, areas, elevations, construction lines, and geographical or artificial features are determined by the measurement of horizontal and vertical distances and angles and by computations based in part on the principles of geometry and trigonometry." Id. Encyclopedia Americana (1953) defines "surveying" as

the science of determining the positions of points on the earth's surface for the purpose of making therefrom a graphic representation of the area. By the term earth's surface is meant all of the earth that can be explored – the bottoms of seas and rivers, and the interior of mines, as well as the more accessible portions. It includes the measurement of distances and angles and the determination of elevations.

Id. The court then quoted a third and final definition of "surveying" from Webster's Third New International Dictionary of the English Language (1981) ("Webster's"):

1. Survey: . . . 2: to determine and delineate the form, extent, and position of (as a tract of land, a coast, or a harbor) by taking linear and angular measurements and by applying the principles of geometry and trigonometry

2. Survey: . . . 3a: the process of surveying an area of land or water: the operation of finding and delineating the contour, dimensions, and position of any part of the earth's surface whether land or water (a topographic and hydrographic, of a locality) . . .

Id. at 355-56.

Consideration of the three definitions cited in Heli-Support results in a complicated picture. All three definitions would seem at first blush to accommodate Agatec's laser levels, which are capable of executing "precise[] measure[ments of] the distance above or below an established benchmark." Pl.'s Stat. Mat. Facts Not Dispute ¶ 4. Recalling, however, that use designations must be made on the basis of a product's principal use, see Lenox Collections, 20 CIT at 196, it is obvious that Agatec's laser levels are not "surveying" instruments and are therefore not classifiable under heading 9015. Nowhere in the laser levels' instruction manuals or catalogue product

descriptions does Agatec mention its levels' ability to measure distance. The laser levels themselves are incapable of spatial measurement; only with the help of a mounted receiver device, such as the MR80S, can they do so. See id. ¶¶ 4 & 17.

Still other infirmities undermine Agatec's attempt to fit its laser levels into the cited definitions. It is not enough that a product be able to measure distance precisely; all three definitions include additional definitional prerequisites. For example, they all invoke the "earth's surface" as a benchmark for the surveying measurements. The Columbia Encyclopedia refers to the measurement of distances and angles "on or near the earth's surface." Heli-Support 26 CIT at 355. Encyclopedia Americana requires that the measurements be made relative to the "earth's surface" itself. Id. Webster's refers to "delineating the contour, dimensions, and position of any part of the earth's surface." Id. Agatec's laser levels operate chiefly in a construction environment, and are not principally measuring positions relative to the earth's surface.²

² The Explanatory Note to heading 9015 provides explicitly that some instruments used in "constructional work" are included in heading 9015. It lists the varieties of instruments includable in heading 9015:

These are generally intended for use in the field, for example, in cartography (land or hydrographic maps); in the preparation of plans; for triangulation measurements; for calculating the area of a piece of land; in determining heights above or below some horizontal reference level; and for all similar measurements in constructional work (building roads, dams, bridges, etc.), in mining, in military operations, etc.

The A410S instruction manual lists its primary applications as "installing suspended ceilings, technical flooring, partitions and a variety of outdoor alignment work." Pl.'s Ex. D at 2. Indeed, the A410S is designed for use by interior construction contractors, see Pl.'s Ex. A at 13, a trade that is by definition involved in edifying spaces that are distinct from the earth's surface. The GAT120 level is "ideal for leveling applications in the construction industry." Pl.'s Ex. C at 2. Nowhere in the instruction manuals and the product catalogues is it suggested that the laser levels are used to measure the surface of the earth or determine the relative position of points to the earth's surface. Even the president's affidavit, which is the only evidence Agatec has produced referring to the measuring capabilities of the laser levels, stops short of describing such use as the principal use.³ Looking at all the record evidence, references to construction applications overshadow the sporadic

Explanatory Notes, Chapter 90.15, 1603 (2d ed. 1996). Read in context, the mention of "constructional work" refers back to the listed "similar measurements" that properly determine the scope of heading 9015. It is the nature of those "similar measurements" with which the Explanatory Note is concerned, and the reference to "constructional work" simply affirms that surveying work is not excludable from the ambit of heading 9015 on account of its being "constructional" in nature. It is not, as Agatec seems to suggest, an independent expansion of heading 9015 to cover all merchandise roughly analogous to surveying instruments that is used in the "constructional" industry.

³ Agatec's product catalogue has a separate section for "Construction/Surveying Equipment." See Pl.'s Ex. A at 1 (providing table of contents for product catalogue). Neither the GAT120 nor the A410S is included in that section. See id. at 20-22. Instead, both appear in the "General Construction" section. See id. at 6 & 8.

mentions of direct measurement of the earth's surface.

Measurements incident to man-made construction projects may be taken "near" the earth surface and therefore such measurements are not excludable for that reason from the Columbia Encyclopedia's definition. However, the Encyclopedia Americana and Webster's require the determination of positions of points on the earth's surface. As such, those definitions are not susceptible to a reading that would include Agatec's laser levels.⁴

Webster's reports an alternative definition of "survey" that does not refer to the earth's surface as a benchmark. "To survey" is defined as "to determine and delineate the form, extent, and position of . . . by taking linear and angular measurements and by applying the principles of geometry and trigonometry." Heli-Support, 26 CIT at 355. This definition does not require the measurements to be relative to the earth's surface. On the other hand, it requires the taking of linear and angular measurements and the application of geometric and trigonometric principles. Agatec's laser levels are capable of measuring in one dimension only and there is no evidence that they can measure angles. See Kiss Decl. ¶ 7; Pl.'s Resp. Def.'s

⁴ The Encyclopedia Americana definition also requires the surveying measurements to be made "for the purpose of making therefrom a graphic representation of the area." Heli-Support, 26 CIT at 355. Nowhere in the record is it suggested that Agatec's laser levels may be used in such a capacity. Furthermore, nowhere is it suggested that the targeted operators of Agatec's laser levels create graphic representations based on the measurements registered by the laser levels.

Stat. Mat. Facts Not Dispute ¶ 13. Moreover, Agatec has not adduced any evidence at all to establish how geometric or trigonometric principles may be applied to the data obtained from the laser levels' measurements to discern the form and the position of objects.

As a final note, the Court should address the Explanatory Note to heading 9015, invoked in support of both parties' arguments. The Explanatory Note explicitly includes instruments used "in determining heights above or below some horizontal reference level." Explanatory Notes, Chapter 90.15, at 1603. The Explanatory Note concludes with the following limitation: "This heading does not cover . . . [l]evels (air bubble type, etc.) used in building or construction work (e.g., by masons, carpenters or mechanics), and plumb-lines (heading 90.31)."⁵ Id. at 1604. The Explanatory Note, which of course in no way hems the Court's discretion to interpret the various headings, see Len-Ron Mfg., 334 F.3d at 1309, sets up a mutually exclusive set

⁵ Agatec also argues that the exclusionary clause of the Explanatory Note covers air bubble levels only. See Pl.'s Reply 10. On Agatec's reading, the exclusionary note differentiates between electrical levels (which are covered by heading 9015) and non-electrical levels (which are not). A quick glance at the text of the Explanatory Note suffices to demonstrate the incorrectness of that position. The parenthetical reads "air bubble type, etc." The use of "et cetera" (albeit complicated by the puzzling choice of "e.g." later in the same sentence) must mean that "air bubble type" levels are intended merely as an illustrative example of a level "used in building or construction work" rather than a further turn in the already labyrinthine classification apparatus of heading 9015. The relevant distinction, then, is between levels used in construction work and surveying instruments.

of categories: (1) instruments used in determining heights above or below a horizontal reference level and (2) instruments that are levels used in building or constructional work. As noted above, the A410S and GAT120 laser levels seem to fit both descriptions. The principal use of the products will control, and the record demonstrates that such use is apparently that of a level used in construction work. Thus, the Explanatory Note supports the Court's independent finding that the common dictionary meanings prevent a classification of the A410S and GAT120 laser levels under heading 9015 of the HTSUS.

C. If Agatec's A410S and GAT120 Levels Are Not Classifiable Under Heading 9015, Are They Classifiable under Heading 9031?

Heading 9031 includes "[m]easuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter" Heading 9031, HTSUS. "Checking" is the present participle of "check," which Webster's defines as "to inspect and ascertain the condition of esp. in order to determine if the condition is satisfactory" or to "investigate and ensure accuracy, authenticity, reliability, safety, or satisfactory performance of." Webster's 381. "Measuring" is the present participle of "measure," which Webster's defines as "to lay off, mark, or fix (a specified distance or extent) by making measurements" or "to appraise in comparison with something taken as a criterion." Id. 1400. The A410S and GAT120 laser levels are optical instruments that aid in leveling, alignment,

plumbing, and squaring for building and construction projects. See supra Part II at 3. In addition, they may measure distance in one dimension. See id. These functionalities obviously constitute measuring and checking as defined by Webster's and therefore classifiable under heading 9031.

Subheading 9031.49 includes those measuring or checking instruments that (1) are "other optical instruments and appliances" and (2) are not used for inspecting semiconductor wafers. See HTSUS 9031.49. The Explanatory Note to subheading 9031.49 provides that "[t]his subheading covers not only instruments and appliances which provide a direct aid or enhancement to human vision, but also other instruments and apparatus which function through the use of optical elements or processes." Explanatory Notes, Chapter 90.31, at 1658. The A410S and GAT120 laser levels utilize visible laser beams to aid human sight when aligning, plumbing, squaring, and leveling. They are therefore classifiable under heading 9031, subheading 49.

VI. CONCLUSION

After careful review of the record, the relevant HTSUS provisions, and the parties' thorough and thoughtful briefs, the Court finds that Customs has conclusively established that Agatec's A410S and GAT120 laser levels were properly classified under HTSUS 9031.49.9000. There remain no genuine issues of

material fact, and judgment shall be entered in favor of Customs
in this case.

/s/ Richard W. Goldberg
Richard W. Goldberg
Senior Judge

Dated: June 6, 2007
New York, New York

UNITED STATES COURT OF INTERNATIONAL TRADE

AGATEC CORP.,

Plaintiff,

v.

UNITED STATES,

Defendant.

Before: Richard W. Goldberg,
Senior Judge

Court No. 03-00165

JUDGMENT

Upon review of the parties' respective motions for summary judgment, and upon due deliberation, it is hereby

ORDERED that Plaintiff Agatec Corp.'s Motion for Summary Judgment is DENIED; and it is further

ORDERED that Defendant U.S. Customs and Border Protection's Motion for Summary Judgment is GRANTED; and it is further

ORDERED that judgment be entered in favor of Defendant United States Customs and Border Protection.

IT IS SO ORDERED

/s/ Richard W. Goldberg
Richard W. Goldberg
Senior Judge

Date: June 6, 2007
New York, New York