

U.S. Customs and Border Protection



19 CFR PART 177

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A PRINTED ARTWORK FROM CHINA

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

ACTION: Notice of modification of one ruling letter and of revocation of treatment relating to the tariff classification of a printed artwork 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 modifying one ruling letter concerning tariff classification of a printed artwork 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. 50, No. 25, on June 22, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 21, 2016.

FOR FURTHER INFORMATION CONTACT: George Aduhene, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0184.

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) (“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 public 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. 50, No. 25, on June 22, 2016, proposing to modify one ruling letter pertaining to the tariff classification of a printed artwork from China. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N260772, dated January 29, 2015, as well as 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 one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 notice.

In NY N260772, CBP classified a printed artwork from China, identified by item number 61957101D, in heading 4911, HTSUS, specifically in subheading 4911.91.2020, HTSUSA, which provides for “Other printed matter, including printed pictures and photographs:

Other: Pictures, designs and photographs: Printed not over 20 years at time of importation: Other: Lithographs on paper or paperboard: Not over 0.51 mm in thickness: Posters.” NY N260772 also classified four other products which were identified as item number 2917969, item number 42386101D, item number kc-2014-shine, and item number 0412080C. CBP has reviewed NY N260772 and has determined the ruling letter to be in error with respect to item number 61957101D. The classification of the four other products remains unmodified. It is now CBP’s position that the printed artwork from China, identified as item number 61957101D, is properly classified, by operation of GRI 1, in heading 4911, HTSUS, specifically in sub-heading 4911.91.2040, HTSUSA, which provides for “Other printed matter, including printed pictures and photographs: Other: Pictures, designs and photographs: Printed not over 20 years at time of importation: Other: Lithographs on paper or paperboard: Not over 0.51 mm in thickness: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N260772 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H265036, set forth as Attachment “A” to this notice. 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: August 03, 2016

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H265036

August 03, 2016

CLA-2 OT:RR:CTF:TCM H265036 GA

CATEGORY: Classification

TARIFF NO.: 4911.91.2040

Ms. SHIRLEY SCHMIDT

TRADE AND PRODUCT COMPLIANCE MANAGER

PIER 1 IMPORTS

100 PIER 1 PLACE

LEVEL 11

FORT WORTH, TX 76102

RE: Modification of NY N260772; Classification of a printed artwork from China

DEAR Ms. SCHMIDT:

This letter concerns New York Ruling Letter (NY) N260772, dated January 29, 2015, issued to Pier 1 Imports concerning the classification of a printed artwork from China under the Harmonized Tariff Schedule of the United States (HTSUS). In N260772, U.S. Customs and Border Protection (CBP) classified a picture with a lattice design identified as item number 61957101D in subheading 4911.91.2020, HTSUSA, which provides for "Other printed matter, including printed pictures and photographs: Other: Pictures, designs and photographs: Printed not over 20 years at time of importation: Other: Lithographs on paper or paperboard: Not over 0.51 mm in thickness: Posters." CBP also classified a wall art identified as item number 2917969 and a printed picture with a multi colored design and the words "Imagination is more important than knowledge" identified as item number 42386101D in subheading 4911.99.6000, HTSUSA, which provides for "Other printed matter, including printed pictures and photographs: Other: Other: Other: Printed on paper in whole or in part by a lithographic process." Furthermore, CBP also classified a wall art identified as item number kc-2014-shine and a printed picture with a black and green design and the word "Inspire" printed at the bottom, identified as item number 0412-080C in subheading 4911.99.8000, HTSUSA, which provides for "Other printed matter, including printed pictures and photographs: Other: Other: Other: Other."

We have reviewed NY N260772 and find the portion that relates to the classification of item number 61957101D to be in error. The classification of item number 2917969, item number 42386101D, item number kc-2014-shine, and item number 0412-080C remains unmodified. For the reasons set forth below, we hereby modify N260772.

On June 22, 2016, 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 of the proposed action was published in the *Customs Bulletin* Vol. 50, No. 25. No comments were received in response to this notice.

FACTS:

In NY N260772, CBP described the subject merchandise as follows:

Item number 61957101D is a picture with a lattice design. The lattice design is lithographically printed on paper that is .25mm thick. The paper is then glued to a 1.25mm medium-density fiberboard surface (MDF) and

coated with acrylic gel to give it a textured appearance. The item measures approximately 11.88 inches in width by 1.25 inches in diameter by 11.88 in height

ISSUE:

What is the proper classification of the printed artwork from China?

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.

The HTSUS provisions under considerations are as follows:

4911	Other printed matter, including printed pictures and photographs: Other:
4911.91	Pictures, designs and photographs: Printed not over 20 years at time of importation: Other:
	Lithographs on paper or paperboard:
4911.91.20	Not over 0.51 mm in Thickness. . .
4911.91.2020	Posters:
4911.91.2040	Other:
* * * * *	* * * * *

Heading 4911, HTSUS, provides for other printed matter including printed pictures and photographs. This heading includes pictures and photographs printed by lithography. There is no dispute that the instant merchandise is classifiable under subheading 4911.91, HTSUS. However, importer disagrees with CBP with the 10 digit level tariff which classifies the merchandise as a “poster” under subheading 4911.91.2020, HTSUSA. The instant merchandise does not appear to fit the meaning of a “poster.” The *Meriam-Webster* dictionary defines a “poster” as “a bill or placard for posting often in a public place; especially: one that is decorative or pictorial,” or “a sheet bearing an announcement for posting in a public place.” <http://www.merriam-webster.com/dictionary/posters>

The paper with the printed lithograph is not over 0.51 mm in thickness and the printed lattice design is permanently mounted onto a wooden board (medium-density fiberboard surface) that is 1.25 inches in thickness. The subject merchandise is not a “poster,” under subheading 4911.91.2020, HTSUSA. Therefore, it is properly provided for under subheading 4911.91.2040, HTSUSA.

HOLDING:

By application of GRIs 1 and 6, we find that the picture with a lattice design identified as item number 61957101D is classified in subheading 4911.91.2040, HTSUSA, which provides for “Other printed matter, including printed pictures and photographs: Other: Pictures, designs and photographs: Printed not over 20 years at time of importation: Other: Lithographs on paper or paperboard: Not over 0.51 mm in thickness: Other.” The duty rate is “Free.”

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*.

EFFECT ON OTHER RULINGS:

NY N260772, dated January 29, 2015 is hereby MODIFIED.

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division


19 CFR PART 177**REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO COUNTRY
OF ORIGIN MARKING OF BICYCLES**

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to the country of origin marking of bicycles.

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 one ruling letter concerning the country of origin marking of bicycles. 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. 50, No. 20, on May 18, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 21, 2016.

FOR FURTHER INFORMATION CONTACT: George Aduhene, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, at (202) 325-0184.

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) (“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 public 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. 50, No. 20, on May 18, 2016, proposing to revoke one ruling letter pertaining to the country of origin marking of bicycles. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N269994, dated November 20, 2015, as well as 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 one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 imports of merchandise subsequent to the effective date of this notice.

In NY N269994, CBP determined that the imported components (namely frames) were similar to HQ H253522 and, would be substantially transformed into complete and finished bicycles at Kent's South Carolina facility. However, the facts of H253522 were misinterpreted and misapplied in N269994. In H253522, the bicycle frames were manufactured in the United States (South Carolina) and combined with imported and domestic parts into a complete bicycle. In contrast, in N269994, the imported bicycle components (namely frames) will be manufactured in an unspecified country and imported into the United States to be assembled with other components into a complete and finished bicycle.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N269994 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H273304, set forth as an attachment to this notice. 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: August 11, 2016

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

HQ H273304

August 11, 2016
CLA-02 OT:RR:CTF:TCM H273304 GA
CATEGORY: Marking

MS. LINDSAY B. MEYER
PARTNER, VENABLE LLP
575 SEVENTH STREET, NW
WASHINGTON, DC 20004

RE: Revocation of N269994 (November 20, 2015); Country of Origin Marking of Imported Bicycle Components Assembled into Bicycles in United States

DEAR MS. MEYER:

This is in reference to New York Ruling Letter (“NY”) N269994, dated November 20, 2015, issued to you on behalf of your client Kent International, Inc. (“Kent”) regarding the country of origin marking of imported bicycle components.

We have had an opportunity to review NY N269994 and now believe the ruling to be incorrect for the reasons explained below. This ruling also provides the correct marking determination for the imported bicycle components assembled into bicycles in the United States.

On May 18, 2016, 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 of the proposed action was published in the *Custom Bulletin* Vol. 50, No. 20. No comments were received in response to this notice.

FACTS:

In NY N269994, Customs and Border Protection (“CBP”) considered Kent’s production of bicycles in its facility in South Carolina. Kent imports numerous bicycle parts which are manufactured abroad (namely frames) and assembles them into complete and finished bicycles. In N269994, CBP found that as in a similar case involving the same importer (“Kent”), HQ H253522, dated February 5, 2015, the bicycle components manufactured abroad were assembled into complete and finished bicycles at Kent’s South Carolina facility, and therefore the county of origin of the complete bicycle was the United States.

ISSUE:

What are the country of origin marking requirements for the imported bicycle components (namely frames)?

LAW AND ANALYSIS:

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 United States 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), Customs Regulations (19 CFR 134.1(b)), defines “country of origin” as:

[T]he country of manufacture, production, or growth of any article of foreign origin entering the United States. 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 the meaning of this part; however, for a good of a North America Free Trade Agreement (NAFTA) country, the NAFTA Marking Rules determine the country of origin.

A substantial transformation occurs when an article emerges from a process with a new name, character or use different from that possessed by the article prior to processing. A substantial transformation will not result from a minor manufacturing or combining process that leaves the identity of the article intact. *See United States v. Gibson Thomsen Co*, 27 CCPA 267 (1940) and *National Juice Products Association v. United States*, 628 F. Supp. 978 (Ct. Int’l Trade 1986).

Section 134.35(a), CBP Regulations (19 C.F.R §134.35(a)), states:

Articles other than goods of a NAFTA country. An article used in the United States in manufacture which results in an article having a name, character, or use differing from that of the imported article, will be within the principle of the decision in the case of *United States v. Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98). Under this principle, the manufacturer or processor in the United States who converts or combines the imported article into a different article will be considered the “ultimate purchaser” of the imported article within the contemplation of section 304(a), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)), and the article shall be excepted from marking. The outermost containers of the imported articles shall be marked in accord with this part.

In NY N269994, CBP determined that the imported components (namely frames) were similar to HQ H253522 and, would be substantially transformed into complete and finished bicycles at Kent’s South Carolina facility. However, the facts of H253522 were misinterpreted and misapplied in N269994. In H253522, the bicycle frames were manufactured in the United States (South Carolina) and combined with imported and domestic parts into a complete bicycle. In contrast, in N269994, the imported bicycle components (namely frames) will be manufactured in an unspecified country and imported into the United States to be assembled with other components into a complete and finished bicycle.

In HQ 734478, dated June 14, 1993, CBP ruled that bicycle frames imported from Taiwan, which were assembled with other components to make complete bicycles were not substantially transformed. In that ruling, CBP noted that the bicycle frame is the most costly component and is one of the essential components of the bicycle (if not the most essential component) imparting the bicycle with its overall shape, size and character. In this instance, frames made in an unspecified country are assembled with the other components of the bicycles in the United States to make the complete and finished bicycles. Because the bicycle is assembled in the United States and one of the bicycle’s essential components, the frame, is made outside of the United States, we find that the country of origin of the bicycle would be imparted by the frame. Accordingly, the bicycle must be marked to indicate the country of origin of the frame.

HOLDING:

Based on the facts provided, imported bicycle frames are not substantially transformed into new and different articles of U.S. origin when assembled with other bicycle components in the United States to make a complete and finished bicycle. Accordingly, the bicycle must be marked to indicate the country of origin of the frame.

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, NY N269994, dated November 20, 2015, is hereby REVOKED.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

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**PROPOSED REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF FOCACCIA**

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

ACTION: Notice of proposed revocation of one ruling letter, and revocation of treatment relating to the tariff classification of focaccia.

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 one ruling letter concerning tariff classification of focaccia under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATES: Comments must be received on or before October 21, 2016.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 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: Parisa J. Ghazi, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0272.

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) (“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 public 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 proposing to revoke one ruling letter pertaining to the tariff classification of focaccia. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) J89472, dated October 14, 2003 (Attachment A), 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 one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in 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 J89472, CBP classified focaccia in heading 1905, HTSUS, specifically in subheading 1905.90.9090, HTSUSA, which provides for "Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products: Other: Other." CBP has reviewed NY J89472 and has determined the ruling letter to be in error. It is now CBP's position that focaccia is properly classified, by operation of GRIs 1 and 6, in heading 1905, HTSUS, specifically in subheading 1905.90.1049, HTSUSA, which provides for "Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products: Other: Bread, pastry, cakes, biscuits and similar baked products, and puddings, whether or not containing chocolate, fruit, nuts or confectionary: Frozen: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY J89472 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H269056, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: August 26, 2016

JACINTO JUAREZ
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY J89472
October 14, 2003
CLA-2-19:RR:NC:2:228 J89472
CATEGORY: Classification
TARIFF NO.: 1905.90.9090

MS. ALESSANDRA GRASSO
FORNI & FATTORIE USA, LLC
1275 VALLEY BROOK AVENUE
LYNDHURST, NJ 07071

RE: The tariff classification of focaccia from Italy

DEAR MS. GRASSO:

In your letter dated September 30, 2003 you requested a tariff classification ruling.

Descriptive literature accompanied your letter. Primoforno brand focaccia consists of a fully-baked, circular or rectangular-shaped flat bread base topped with vegetables. The focaccia will be imported frozen, packed in plastic film bags containing from 110 to 500 grams, net weight.

The applicable subheading for the focaccia will be 1905.90.9090, Harmonized Tariff Schedule of the United States (HTS), which provides for bread, pastry, cakes, biscuits and other bakers' wares...other...other...other. The rate of duty will be 4.5 percent ad valorem.

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 Stanley Hopard at 646-733-3029.

Sincerely,

ROBERT B. SWIERUPSKI
Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H269056
CLA-2 OT:RR:CTF:TCM H269056 PJG
CATEGORY: Classification
TARIFF NO.: 1905.90.1049

Ms. ALESSANDRA GRASSO
FORNI & FATTORIE USA, LLC
1275 VALLEY BROOK AVENUE
LYNDHURST, NEW JERSEY 07071

RE: Revocation of NY J89472; tariff classification of focaccia from Italy

DEAR Ms. GRASSO:

On October 14, 2003, U.S. Customs and Border Protection (“CBP”) issued to you New York Ruling Letter (“NY”) J89472. The ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of focaccia from Italy. We have since reviewed NY J89472 and determined it to be in error. Accordingly, NY J89472 is revoked.

FACTS:

In NY J89472, the focaccia was described as follows:

Primoformo brand focaccia consists of a fully-baked, circular or rectangular-shaped flat bread base topped with vegetables. The focaccia will be imported frozen, packed in plastic film bags containing from 110 to 500 grams, net weight.

In NY J89472, CBP classified the focaccia under subheading 1905.90.9090, HTSUSA, which provides for “Bread, pastry, cakes, biscuits and other bakers’ wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products: Other: Other.”

ISSUE:

Whether the subject focaccia topped with vegetables is classifiable as a bread of subheading 1905.90.10, HTSUS, or in subheading 1905.90.90, HTSUS, as an other product.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) 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 GRIs may then be applied.

The 2016 HTSUS provisions under consideration are as follows:

1905 Bread, pastry, cakes, biscuits and other bakers’ wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:

* * *

1905.90	Other:
1905.90.10	Bread, pastry, cakes, biscuits and similar baked products, and puddings, whether or not containing chocolate, fruit, nuts or confectionary
	Frozen:
	* * *
1905.90.1049	Other
1905.90.90	Other
	* * *
1905.90.9090	Other

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).

The EN to 19.05 states, in pertinent part:

(A) Bread, pastry, cakes, biscuits and other bakers’ wares, whether or not containing cocoa.

This heading covers all bakers’ wares. The most common ingredients of such wares are cereal flours, leavens and salt but they may also contain other ingredients such as: gluten, starch, flour of leguminous vegetables, malt extract or milk, seeds such as poppy, caraway or anise, sugar, honey, eggs, fats, cheese, fruit, cocoa in any proportion, meat, fish, bakery “improvers”, etc. Bakery “improvers” serve mainly to facilitate the working of the dough, hasten fermentation, improve the characteristics and appearance of the products and give them better keeping qualities. The products of this heading may also be obtained from a dough based on flour, meal or powder of potatoes.

The classification dispute at the eight-digit level is whether focaccia bread that is topped with vegetables is classified as a bread of subheading 1905.90.10, HTSUS.

The Oxford English Dictionary defines “focaccia” as “[a] type of flat Italian bread made with yeast sprinkled with olive oil and salt, and frequently flavoured with herbs, onions, etc.” “focaccia, n.” *OED Online*. June 2016. Oxford University Press. <http://www.oed.com/view/Entry/249434?redirectedFrom=focaccia> (accessed August 16, 2016).

Moreover, in accordance with EN 19.05(A), goods of heading 1905, HTSUS, may contain other ingredients. Accordingly, we find that the subject merchandise, which is a frozen bread topped with vegetables, is described by subheading 1905.90.1049, HTSUSA, which provides for “Bread, pastry, cakes, biscuits and other bakers’ wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products: Other: Bread, pastry, cakes, biscuits and similar baked products, and puddings, whether or not containing chocolate, fruit, nuts or confectionary: Frozen: Other.”

HOLDING:

Under the authority of GRIs 1 and 6 the focaccia topped with vegetables is classified in heading 1905, HTSUS, specifically in subheading 1905.90.1049, HTSUSA, as “Bread, pastry, cakes, biscuits and other bakers’ wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products: Other: Bread, pastry, cakes, biscuits and similar baked products, and puddings, whether or not containing chocolate, fruit, nuts or confectionary: Frozen: Other.” The 2016 column one, general rate of duty is Free.

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

EFFECT ON OTHER RULINGS:

NY J89472, dated October 14, 2003, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

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**REVOCATION OF TWO RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A ROLLING PULLMAN
CASE, BACKPACKS, A TOTE BAG, AND AN INSULATED
LUNCH BAG**

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

ACTION: Notice of revocation of two ruling letters and of revocation of treatment relating to the tariff classification of a rolling pullman case, backpacks, a tote bag, and an insulated lunch bag.

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 New York Ruling Letters (NY) M82559, dated May 2, 2006, and M84189, dated June 16, 2006, concerning the tariff classification of a rolling pullman case, backpacks, a tote bag, and an insulated lunch bag 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. 50, No. 27, on July 06, 2016. No comments were received in response to that notice.

DATES: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 21, 2016.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0024.

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) (“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 public 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. 50, No. 27, on July 06, 2016, proposing to revoke two ruling letters pertaining to the tariff classification of a rolling pullman case, backpacks, a tote bag, and an insulated lunch bag. As stated in the proposed notice, this action will cover New York Ruling Letters (NY) M82559, dated May 2, 2006, and M84189, dated June 16, 2006, as well as 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 two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 notice.

In NY M82559 and NY M84189, CBP classified a rolling pullman case, backpacks, a tote bag, and an insulated lunch bag in heading 4202, HTSUS, specifically in subheadings 4202.12.80, HTSUS (rolling bag), 4202.92.08, HTSUS (insulated lunch bag), and 4202.92.30, HTSUS (backpacks and tote bag), as bags with an outer surface of textile materials. CBP has reviewed NY M82559 and NY M84189 and has determined the ruling letters to be in error. It is now CBP's position that the rolling pullman case, backpacks, a tote bag, and an insulated lunch bag are properly classified, by operation of GRI 1s, 3(b) and 6, in heading 4202, HTSUS, specifically in subheadings 4202.12.20, HTSUS (rolling pullman case), 4202.92.10, HTSUS (insulated lunch bag), and 4202.92.45, HTSUS (backpacks and tote bag), as bags with an outer surface of other than textile materials.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY M82559 and NY M84189 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H275674, set forth as an attachment to this notice. 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: August 17, 2016

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H275674

August 17, 2016

CLA-2 OT:RR:CTF:TCM H275674 CkG

CATEGORY: Classification

TARIFF NO.: 4202.12.20, 4202.92.10, 4202.92.45

DESPINA KEEGAN

DESPINDA KEEGAN, LLC

ONE PENN PLAZA, STE 3600

NEW YORK, NY 10119

Re: Revocation of NY M82559 and NY M84189; classification of a rolling pullman case, backpacks, a tote bag, and an insulated lunch bag.

DEAR Ms. KEEGAN:

This is in reference to New York Ruling Letter (NY) M82559, issued to you on dated May 2, 2006, and NY M84189, issued to CVS pharmacy on June 16, 2006, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a rolling pullman case, two backpacks, a tote bag and an insulated lunch bag.

We have reconsidered these decisions. For the reasons set forth below, we have determined that the classification of the bags in question in subheadings 4202.12.80, HTSUS (rolling bag), 4202.92.08, HTSUS (insulated lunch bag), and 4202.92.30, HTSUS (backpacks and tote bag) was incorrect.

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 revoke NY M82559 and NY M84189 was published on July 06, 2016, in Volume 50, Number 27 of the Customs Bulletin. No comments were received in response to this notice.

FACTS:

In NY M82559, the subject merchandise was described as follows:

You submitted a sample of a rolling (trolley) pullman case that has a telescopic handle and wheels and is designed to contain clothing and other personal effects during travel. It is manufactured with an exterior surface of nylon and a front panel of PVC sheeting with a printed design of Dora The Explorer. The case measures approximately 11" W x 14.5" H x 3.5" D. A zipper secures it.

You provided descriptive literature of a backpack. You state that it is a child's backpack manufactured with an exterior surface of polyester man-made fiber textile material with a front panel of polyvinyl chloride (PVC) plastic sheeting with a Tinkerbell themed depiction. The backpack measures approximately 11" W x 14.5" H x 5.5" D. The top of the bag is secured with a zipper.

You provided descriptive literature of a tote bag. You state that it is child's open top tote bag constructed of an exterior surface of nylon with a front panel of PVC sheeting depicting the SpongeBob Nickelodeon licensed character.

In NY M84189, the subject merchandise is described as follows:

The insulated lunch bag is designed to carry food and/or beverage. It is manufactured with an exterior surface of 100% polyester man-made fiber textile material with a front panel of polyvinyl chloride (PVC) plastic

sheeting with a “Cars”[©] themed depiction. The bag measures approximately 10” W x 7¾” H x 4” D. The bag has a carrying handle on top and is secured by means of a zippered closure on three sides of the bag.

The backpack is manufactured with an exterior surface of polyester man-made fiber textile material with a front panel of polyvinyl chloride (PVC) plastic sheeting with a “Cars”[©] themed depiction. The backpack measures approximately 12” W x 15” H x 3” D. The top and sides of the bag are secured with a zipper.

ISSUE:

Whether the essential character of the instant bags is imparted by the textile material or by the plastic sheeting on the outer surface.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6. GRI 6, HTSUS, requires that the GRI’s be applied at the subheading level on the understanding that only subheadings at the same level are comparable. The GRI’s apply in the same manner when comparing subheadings within a heading.

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

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers:

4202.12: With outer surface of plastics or of textile materials:

4202.12.20: With outer surface of plastics...

With outer surface of textile materials:

4202.12.80: Other...

Other:

4202.92: With outer surface of sheeting of plastic or of textile materials:

Insulated food or beverage bags:

With outer surface of textile materials:

4202.92.08: Other

4202.92.10: Other . . .

Travel, sports and similar bags:

With outer surface of textile materials:

4202.92.30: Other...

4202.92.45: Other...

* * * * *

In NY M82559 and NY M84189, CBP classified a rolling case, a tote bag, two backpacks and an insulated lunch bag in subheadings 4202.12.80, 4202.92.08, and 4202.92.30, HTSUS, as bags with an outer surface of textile materials. The instant bags all have an exterior surface comprised mostly of textile materials and a front panel of plastic sheeting featuring a cartoon character or theme.

There is no dispute that the instant bags are classified in heading 4202, HTSUS, as insulated food or beverage bags. The issue arises at the subheading level, which requires the application of GRI 6. GRI 6 requires that the GRI's be applied at the subheading level on the understanding that only subheadings at the same level are comparable.

At the eight-digit subheading level, the issue is whether the instant bags have an outer surface of textile or non-textile material. Because the instant bags have outer panels of both textile and plastic, classification is determined by application of GRI 3.

GRI 3 states:

When by application of [GRI] 2(b) or for any other 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 . . . , 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 . . . 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.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

The subheadings covering the instant bags refer only to part of the materials or components contained therein. Therefore, under GRI 3(a), these subheadings must be regarded as equally specific in relation to the article, and the article must be classified as if it consisted of the material or component which gives it its essential character, pursuant to GRI 3(b).

The "essential character" of an article is "that which is indispensable to the structure, core or condition of the article, i.e., what it is." *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int'l Trade 2005). EN VIII to GRI 3(b) explains that "[t]he 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 the constituent material in relation to the use of the goods." The classification of the instant bags will thus turn on which component imparts the essential character to the whole.

CBP has generally determined that the material comprising the bulk of the

exterior surface area of a bag imparts the essential character. *See e.g.*, HQ 962817, dated January 14, 2002 (“Customs believes that the four panels with an outer surface of plastic impart the essential character. These panels comprise the bulk of the outer surface of the bag. We also note that the material of these four panels is thicker and more rigid than the material used for the two side panels. Thus, we believe that these panels contribute significantly to the shape or form of the bag. Lastly, we note that when the bag is “collapsed” for storage, only the top and bottom panels (with an outer surface of plastic) are visible”); HQ H025873, dated September 3, 2010 (classifying a cooler bag in accordance with the majority of the exterior surface area). However, the plastic front panel of an insulated food or beverage bag might impart the essential character to the whole in cases where the style of the front panel significantly outweighs the remaining factors. *See e.g.*, HQ H088427, dated May 29, 2015.

In NY M82559 and NY M84189, CBP held that the essential character of the bags in question was determined by the textile material which comprised the majority of the external surface area of the bags, even though the plastic front panels featured visually appealing designs such as cartoon characters. However, as noted in HQ H088427, the relative external surface area is not the only factor in the classification of such bags. In this case, the plastic front panels of the instant bags feature the popular cartoon characters Dora the Explorer, Tinkerbell, and Spongebob, and characters from the Cars movie. These bags have an immediate visual appeal that is geared towards children, a particularly demanding and vociferous group of customers who are not likely to concern themselves with the composition, cost, sturdiness, or durability of a bag as opposed to the appeal of the design and the specific character represented. Unlike HQ H088427, HQ H025873, or HQ 962817, where the visual appearance of the front panel of the bags differed only in minor respects from the remainder of the exterior, the plastic front panel of the instant bags is clearly distinct and given the factors discussed above, is likely to play a significant role in the decision to purchase and use the bag.

This conclusion is consistent with past rulings wherein CBP has determined that the essential character of similar bags was determined by a plastic front panel with a similarly appealing design. *See e.g.*, HQ 964768, dated April 26, 2001 (backpack featuring the “Pooh” and “Tigger” characters on the front); NY N261757, dated March 19, 2015 (insulated cooler bag featuring Darth Vader on the front panel); NY N237048, dated February 06, 2013 (tote bag featuring several Disney Princesses on the front).

HOLDING:

By application of GRI 1, GRI 3(b) and GRI 6, the rolling Pullman case is classified in heading 4202, HTSUS, specifically subheading 4202.12.20, HTSUS, which provides for “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and

similar containers: With outer surface of plastics or of textile materials: With outer surface of plastics.” The 2016, column one, general rate of duty is 20% *ad valorem*.

By application of GRI 1, GRI 3(b) and GRI 6, the insulated lunch bag is classified in heading 4202, HTSUS, specifically subheading 4202.92.10, HTSUS, which provides for “Trunks,...and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Insulated food or beverage bags: Other.” The 2016, column one, general rate of duty is 3.4% *ad valorem*.

The backpacks and tote bag are classified in heading 4202, specifically subheading 4202.92.45, HTSUS, which provides for “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers...: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: Other.” The 2016 column one, general rate of duty is 20% *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 online at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY M82559, dated May 2, 2006, and NY M84189, dated June 16, 2006, are 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,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

REVOCATION OF FOUR RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF PLANT MOVERS

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

ACTION: Notice of revocation of four ruling letters and of revocation of treatment relating to the tariff classification of plant movers.

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 Modern-

ization) 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 New York Ruling Letters (NY) N024680, dated March 19, 2008; NY N024678, dated March 19, 2008; NY N012582, dated June 14, 2007; and NY N012026, dated June 4, 2007, concerning the tariff classification of plant movers 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. 50, No. 25, on June 22, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 21, 2016.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0024.

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) (“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 public 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. 50, No. 25, on June 22, 2016, proposing to revoke four ruling letters pertaining to the tariff classification of plant movers. As stated in the proposed notice, this action will cover New York Ruling Letters (NY) N024680, dated March 19, 2008; NY N024678, dated March 19, 2008; NY N012582, dated June 14, 2007; and NY N012026, dated June 4, 2007, as well as 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 four identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 notice.

In NY N024680, NY N024678, NY N012582, and NY N012026, CBP classified various plant movers in heading 8716, HTSUS, specifically in subheading 8716.80.50, HTSUS, which provides for "Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof: Other vehicles: Other." CBP has reviewed NY N024680, NY N024678, NY N012582, and NY N012026 and has determined the ruling letters to be in error. It is now CBP's position that the subject plant movers are properly classified, by operation of GRI 1, in heading 9403, HTSUS, specifically in subheading 9403.20.00, HTSUS, which provides for "Other furniture and parts thereof: Other metal furniture."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N024680, NY N024678, NY N012582, and NY N012026, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H271824, set forth as an attachment to this notice. 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: August 19, 2016

JACINTO JUAREZ
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H271824

August 19, 2016

CLA-2 OT:RR:CTF:TCM H271824 CkG

CATEGORY: Classification

TARIFF NO: 9403.20.00

TROY D. CRAGO
IMPORT SPECIALIST
ATICO INTERNATIONAL USA, INC.
501 SOUTH ANDREWS AVENUE
FT. LAUDERDALE, FL 33301-2831

RE: Revocation of NY N024680, NY N024678, NY N012582, and NY N012026; tariff classification of cast iron plant mover

DEAR MR. CRAGO:

This is in reference to New York Ruling Letter (NY) N024680, dated March 19, 2008, concerning the classification of a “cast iron pot mover.” In NY N024680, CBP classified the Cast Iron Pot Mover in heading 8716, HTSUS, as a non-mechanically propelled vehicle. Since the issuance of that ruling, Customs and Border Protection (CBP) has reviewed the classification and has determined that the cited ruling is in error. We hereby revoke NY N024680, as well as three other rulings classifying substantially similar articles in heading 8716, HTSUS: NY N024678, dated March 19, 2008; NY N012582, dated June 14, 2007; and NY N012026, dated June 4, 2007.

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 revoke NY N024680, NY N024678, NY N012582, and NY N012026 was published on June 22, 2016, in Volume 50, Number 25 of the Customs Bulletin. No comments were received in response to this notice.

FACTS:

In NY N024680, the article in question was described as follows:

The item under consideration is a wheeled mover used to facilitate the movement of a potted plant. You have identified the item as a Cast Iron Pot Mover (Item # A026BA00102).

The Cast Iron Pot Mover is approximately 10 inches in diameter and uses three plastic wheels set in a triangular shape along the bottom.

ISSUE:

Whether the instant cast iron plant mover is classified in heading 8716, HTSUS, as “other vehicles, not mechanically propelled”, or in heading 9403, HTSUS, as “other furniture.”

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The HTSUS provisions under consideration are as follows:

- 8716: Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof:
- 8716.80: Other vehicles:
- 8716.80.50: Other...
- 9403: Other furniture and parts thereof:
- 9403.20.00: Other metal furniture...

* * * *

Note 2 to Chapter 94 provides as follows:

2. The articles (other than parts) referred to in headings 94.01 to 94.03 are to be classified in those headings only if they are designed for placing on the floor or ground.

* * * *

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff 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).

The EN to heading 8716 provides, in pertinent part, as follows:

This heading covers a group of **non-mechanically** propelled vehicles (**other than** those of the preceding headings) equipped with one or more wheels and constructed for the transport of goods or persons. It also includes non-mechanical vehicles not fitted with wheels (e.g., sledges, special sleds running on timber trackways).

The vehicles of this heading are designed to be towed by other vehicles (tractors, lorries, trucks, motorcycles, bicycles, etc.), to be pushed or pulled by hand, to be pushed by foot or to be drawn by animals.

The heading includes:

...

(B) **Hand- or foot-propelled vehicles.**

This group includes:

...

(2) Wheelbarrows, luggage-trucks, hopper-trucks and tipping-trucks.

(3) Food carts, buffet movers (**other than** the type falling in **heading 94.03**), of a kind used in railway stations.

(4) Hand-carts, e.g., for waste disposal

...

This heading does not cover:

...

(b) Small wheeled-containers (e.g., wheeled-baskets) of basketwork, metal, etc., not incorporating a chassis, of a kind used in shops (classification according to their constituent material).

The General EN to Chapter 94 provides, in relevant part, as follows:

For the purposes of this Chapter, the term “furniture” means:

- (A) Any “movable” articles (not included under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafés, restaurants, laboratories, hospitals, dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category...

Headings 94.01 to 94.03 cover articles of furniture of any material (wood, osier, bamboo, cane, plastics, base metals, glass, leather, stone, ceramics, etc.). Such furniture remains in these headings whether or not stuffed or covered, with worked or unworked surfaces, carved, inlaid, decoratively painted, fitted with mirrors or other glass fittings, or on castors, etc.

EN 94.03 provides, in relevant part, as follows:

This heading covers furniture and parts thereof, not covered by the previous headings. It includes furniture for general use (e.g., cupboards, show-cases, tables, telephone stands, writing-desks, escritoirs, book-cases, and other shelved furniture (including single shelves presented with supports for fixing them to the wall), etc.), and also furniture for special uses.

The heading includes furnitures for:

- (1) **Private dwellings, hotels, etc.**, such as: cabinets, linen chests, bread chests, log chests; chests of drawers, tallboys; pedestals, plant stands; dressing-tables; pedestal tables; wardrobes, linen presses; hall stands, umbrella stands; side-boards, dressers, cupboards; food-safes; bedside tables; beds (including wardrobe beds, camp-beds, folding beds, cots, etc.); needlework tables; stools and foot-stools (whether or not rocking) designed to rest the feet, fire screens; draught-screens; pedestal ashtrays; music cabinets, music stands or desks; play-pens; serving movers (whether or not fitted with a hot plate)

* * * *

In NY N024680, CBP classified a “cast iron pot mover” used to store, display and move potted plants in heading 8716, HTSUS. Heading 8716, HTSUS, provides for “other vehicles, not mechanically propelled”. The Explanatory Note to heading 8716 clarifies that this heading includes vehicles designed to be pushed or pulled by hand or feet, such as wheelbarrows, food carts and buffet movers (other than the type falling in heading 94.03), of a kind used in railway stations, and hand carts.

Unlike the exemplars listed in EN 87.16 however, the instant plant mover is not principally designed for the transport of goods or persons. The plant mover is designed primarily for the storage and display of articles (plants), and home décor. Although the mover clearly aids in the transport of any

article placed on its surface, the mover has no means of securing any articles being transported, and without any handle, it is difficult to manoeuvre. Thus, it is impractical to use the mover primarily for the transport of goods. Additionally, unlike the exemplars listed in the EN 87.16, the mover lacks any kind of chassis or frame. As such, it falls outside the scope of heading 8716, HTSUS (as indicated by the exclusion of carts having the character of furniture of heading 9403, HTSUS, from item (B)(3) in the 87.16 EN).

CBP has classified similar items as articles of furniture of heading 9403, HTSUS, in past rulings. *See e.g.*, NY N087856, dated December 23, 2009; NY 895256, dated March 10, 1994. The General EN to Chapter 94 defines “furniture” as “any ‘movable’ articles (not included under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings...). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.”

As a movable article designed for placing on the floor or ground to equip private dwellings, the instant article meets the definition of furniture laid out in the General EN to Chapter 94. Furthermore, as noted in the Explanatory Note for heading 9403, HTSUS, “furniture” of this heading includes a number of similar items, such as plant and music stands, and serving movers. Like a plant stand, the plant mover is a platform for display of potted plants. Unlike a typical plant stand, it is not stationary and lacks a base or leg. However, we consider the mover to be *ejusdem generis* with plant stands—like a plant stand, and like furniture in general, it has both a decorative and utilitarian function—it is an ornate decorative platform which holds and displays a plant and allows the plant to be easily moved around. Thus, the instant plant mover is classified in heading 9403, HTSUS.

HOLDING:

By application of GRI 1, the cast iron pot mover is classified in heading 9403, HTSUS, and is specifically provided for in subheading 9403.20.00, HTSUS, which provides for “Other furniture and parts thereof: Other metal furniture.” The 2016, column one, general rate of duty is Free.

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

EFFECT ON OTHER RULINGS:

NY N024680, NY N024678, NY N012582, and NY N012026, are 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,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177**REVOCAION OF FOUR RULING LETTERS AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF THERMAL TRANSFER
RIBBONS**

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

ACTION: Notice of revocation of four ruling letters and revocation of treatment relating to the tariff classification of thermal transfer ribbons.

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 four ruling letters concerning tariff classification of thermal transfer ribbons 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. 50, No. 27, on July 6, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 21, 2016.

FOR FURTHER INFORMATION CONTACT: George Aduhene, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, at (202) 325–0184.

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) (“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 public 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. 50, No. 27, on July 6, 2016, proposing to revoke four ruling letters pertaining to the tariff classification of thermal transfer ribbons. As stated in the proposed notice, this action will cover Headquarters Ruling Letter ("HQ") HQ 958899, dated February 14, 1996; HQ 958572, dated February 5, 1996; New York Ruling Letter ("NY") NY 814940, dated September 28, 1995; and NY 814940, dated September 28, 1995, as well as 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 four identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 notice.

In HQ 958899, HQ 958572, NY 814940, NY 814490, CBP classified thermal transfer ribbons in heading 9612, HTSUS, specifically in subheading 9216.10.10, HTSUS, which provides for "Typewriter or similar ribbons, inked or otherwise prepared for giving impressions, whether or not on spools or in cartridges; ink pads, whether or not inked, with or without boxes: Ribbons: Measuring less than 30 mm in width, permanently put up in plastic or metal cartridges (whether or not containing spools) of a kind used in typewriters, automatic data processing or other machines" and specifically in subheading

9612.10.90, HTSUS, which provides for “Typewriter or similar ribbons, inked or otherwise prepared for giving impressions, whether or not on spools or in cartridges; ink pads, whether or not inked, with or without boxes: Ribbons: Other,” respectively. CBP has reviewed HQ 958899, HQ 958572, NY 814940, and NY 814490 and has determined the ruling letters to be incorrect. It is now CBP’s position that the thermal transfer ribbons are properly classified, by operation of GRIs 1 (Note 2(b) to Section XVI) and 6, in heading 8443, HTSUS, specifically in subheading 8443.99.25, HTSUS, which provides for “Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof: Parts and accessories: Other: Parts and accessories of printers: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ 958899, HQ 958572, NY 814940, and NY 814490 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) HQ 252683, set forth as an attachment to this notice. 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: August 17, 2016

GREG CONNOR
For

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H262583

August 17, 2016

CLA-2 OT:RR:CTF:TCM H262583 GA

CATEGORY: Classification

TARIFF NO.: 8443.99.25

MR. MICHAEL DAVIS
ALPS ELECTRIC (USA) INC
3553 NORTH FIRST STREET
SAN JOSE, CA 95134 -1898

RE: Revocation of HQ 958572, HQ 958899, NY 814940, NY 814490; Classification of thermal transfer ribbon

DEAR MR. DAVIS:

This is in reference to Headquarters Ruling Letter (“HQ”) 958572, dated February 5, 1996, HQ 958899, dated February 14, 1996, New York Ruling Letter (“NY”) 814940, dated September 28, 1995, and NY 814490, dated September 28, 1995, concerning the tariff classification of thermal transfer ribbons, under the Harmonized Tariff Schedule of the United States (“HTSUS”). In HQ 958899 (which modified HQ 958572), U.S. Customs and Border Protection (“CBP”) determined that tape cassette cartridges are classifiable under subheading 9612.10.10, HTSUS, which provides for “Typewriter or similar ribbons, inked or otherwise prepared for giving impressions, whether or not on spools or in cartridges; ink pads, whether or not inked, with or without boxes: Ribbons: Measuring less than 30 mm in width, permanently put up in plastic or metal cartridges (whether or not containing pools) of a kind used in typewriters, automatic data processing or other machines.”

In addition, in NY 814940 and NY 814490, CBP also classified ink ribbon in subheading 9612.10.90, HTSUS, which provides for “Typewriter or similar ribbons, inked or otherwise prepared for giving impressions, whether or not on spools or in cartridges; ink pads, whether or not inked, with or without boxes: Ribbons: Other.” We have reviewed HQ 958572, HQ 958899, NY 814940, and NY 814490 and find them to be incorrect. For the reasons set forth below, we hereby revoke HQ 958572, HQ 958899, NY 814940, and NY 814490.

On July 6, 2016, 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 of the proposed action was published in the *Customs Bulletin* Vol. 50, No. 27. No comments were received in response to this notice.

FACTS:

In HQ 958572 and HQ 958899, the subject merchandise was described follows:

Various tape cassette cartridges for use with the P-Touch lettering machines which produce adhesive labels from 3/8 to 1/2 inches in width.¹

In NY 814940 and NY 814490, the subject merchandise was described as follows:

¹ Although we have been unable to access the background files from HQ 958572 or HQ 958899, we are under the impression that P-Touch lettering machines are thermal label printers.

The merchandise under consideration involves a model MTM32 ink ribbon cartridge that is designed for use with a standard thermal printer for desktop computer users. It also includes the spooled ink ribbon itself which is constructed of polyethylene terephthalate.

The model MTM32 ribbon cartridge consists of a plastic cartridge (polystyrene) that is approximately eight inches in length and two inches in height. The cartridge houses a plastic ribbon on a spool, approximately 1/2 inch in width, that is inked and otherwise prepared for giving impressions.

The ink ribbon (M22190-02) is basically a plastic inked ribbon (polyethylene terephthalate) approximately 1/2 inch in width that is on a plastic spool. This ribbon becomes a part of the ribbon cartridge.

ISSUE:

Whether the thermal transfer ribbons are classified in heading 9612, HTSUS, as typewriter or similar ribbons, or in heading 8443, HTSUS, as parts of printing machinery.

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.

The HTSUS provisions under consideration are as follows:

- | | |
|------|--|
| 8443 | Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof: |
| 9612 | Typewriter or similar ribbons, inked or otherwise prepared for giving impressions whether or not on spools or in cartridges; ink pads, whether or not inked, with or without boxes: |

Legal Note 1(q) to Section XVI, HTSUS, provides that:

Typewriter or similar ribbons, whether or not on spools or in cartridges (classified according to their constituent material, or in heading 9612 if inked or otherwise prepared for giving impressions).

Legal Note 2 to Section XVI, HTSUS, provides, in relevant part:

Subject 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 chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 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 or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;
- (c) All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.

* * * *

Note 1(q) to Section XVI, HTSUS, provides: “Typewriter or similar ribbons, whether or not on spools or in cartridges (classified according to their constituent material, or in heading 9612 if inked or otherwise prepared for giving impressions).” Accordingly, if the subject merchandise is *prima facie* classifiable under heading 9612, HTSUS, it is excluded from classification under Section XVI. In *QMS, Inc., v. United States*, 19 C.I.T. 551; 17 Int’l Trade Rep. (BNA) 1510; 1995 Ct. Intl. Trade LEXIS 104; SLIP OP. 95–65 (Ct. Int’l Trade 1995), the court examined the classification of color ink sheet rolls (“ISRs”), also known as thermal transfer ribbons in the trade. See *QMS, Inc., v. United States*, 19 C.I.T. 551, 552 (“*QMS*”). These ISRs were specially designed solely for use in color thermal transfer printers that were used to print graphics with automatic data processing equipment. The printers could not function as intended without color ISRs. *Id.* at 551. In their condition as imported, the ISRs consisted of a thin polymer (i.e., plastic) film to which paraffin wax pigments (or “inks”) in varying color configurations (i.e., yellow, magenta, cyan, and black) had been applied. *Id.* at 551. The ISRs varied in size, depending on the color thermal transfer printers for which they are specially designed. They were between 228 and 325 millimeters in width, between 105 and 297 meters in length, and between 50 and 74 millimeters in diameter when tightly wound around a reinforced cardboard core. *Id.* at 551–552.

The court first considered classification in heading 9612, HTSUS, as typewriters or similar ribbons, and found that the subject ISRs could not be classified there because of the differences in physical characteristics and printing processes between ISRS and typewriter ribbons. *Id.* at 556. The court reasoned that typewriter ribbons are typically narrow while the ISRs were wide. *Id.* at 559. The court also noted that when typewriter ribbons are used, the ink is transferred to paper by impression which occurs when the ribbon is directly impacted by a mechanical striker. Thus, the court stated that the purpose of such ribbons is to serve as a medium for printing on paper by impression from impact, not the general purpose of printing. *Id.* at 559–560. By contrast, the court found that the purpose of the ISRs was to serve as a medium for the printing of graphic images on paper by use of heat. In the thermal printing process, pigmented wax is never transferred to the paper by means of impact. *Id.* at 560. As a result, the court found that the subject ISRs could not be classified in heading 9612, HTSUS.

Like in *QMS* in the present case, the subject thermal transfer ribbons also cannot be classified as typewriter ribbons of heading 9612, HTSUS, because they too are not similar enough to typewriter ribbons to be classified there. As

in the case of *QMS* they also function as a medium for printing images onto various media by way of heat. This is in contrast to typewriter ribbon, which functions by transferring an image by way of impact. As a result, the subject thermal transfer ribbons cannot be classified in heading 9612, HTSUS, and classification under Section XVI can be considered. *See also* HQ H245899, dated July 23, 2014.

The term “part” is not defined in the HTSUS. In the absence of a statutory definition, the courts have fashioned two distinct but reconcilable tests for determining whether a particular item qualifies as a “part” for tariff classification purposes. *Bauerhin Techs. Ltd. Pshp. v. United States*, 110 F.3d 774, 779 (Fed. Cir. 1997). Under the test initially promulgated in *United States v. Willoughby Camera Stores, Inc.* (“Willoughby”), 21 C.C.P.A. 322, 324 (1933), an imported item qualifies as a part only if can be described as an “integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” *Bauerhin*, 110 F.3d at 779. Pursuant to the test set forth in *United States v. Pompeo*, 43 C.C.P.A. 9, 14 (1955), a good is a “part” if it is “dedicated solely for use” with a particular article and, “when applied to that use...meets the *Willoughby* test.” *Bauerhin*, 110 F.3d at 779 (citing *Pompeo*, 43 C.C.P.A. at 14); *Ludvig Svensson, Inc. v. United States*, 63 F. Supp. 2d 1171, 1178 (Ct. Int’l Trade 1999) (holding that a purported part must satisfy both the *Willoughby* and *Pompeo* tests).

Here, the subject thermal transfer ribbons meet the definition of “parts” as defined by the courts because they are integral part of a printing machine without which the machine could not function. Because they do not fall under the scope of a single heading of Section XVI as goods unto themselves per Note 2(a) to Section XVI, *supra*, the subject thermal transfer ribbons are properly classified under heading 8443, HTSUS, as parts of printers by operation of Note 2(b) to Section XVI.

HOLDING:

By application of GRIs 1 (Note 2(b) to Section XVI) and 6, the thermal transfer ribbons are classified in heading 8443, HTSUS, specifically in sub-heading 8443.99.25, HTSUS, which provides for “Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof: Parts and accessories: Other: Parts and accessories of printers: Other.” The general column one rate of duty is “Free.”

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.

EFFECT ON OTHER RULINGS:

HQ 958572, dated February 5, 1996, HQ 958899, dated February 14, 1996, NY 814940, dated September 28, 1995, and NY 814490, dated September 28, 1995 are hereby REVOKED.

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



19 CFR PART 177

**REVOCAION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF PORTABLE LIGHT TOWERS**

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

ACTION: Notice of revocation of one ruling letter, and of revocation of treatment relating to the tariff classification of portable light towers.

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 one ruling letter concerning tariff classification of portable light towers 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. 50, No. 27, on July 6, 2016. No comment were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 21, 2016.

FOR FURTHER INFORMATION CONTACT: Parisa J. Ghazi, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0272.

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) (“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 public 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. 50, No. 27, on July 6, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of portable light towers. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N026470, dated May 2, 2008, as well as 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 one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 notice.

In NY N026470, CBP classified portable light towers in heading 9405, HTSUS, specifically in subheading 9405.40.60, HTSUS, which provides for “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included: Other electric lamps and lighting fittings: Of base metal: Other.” CBP has reviewed NY N026470 and has determined the ruling letter to be in error. It is now CBP’s position that portable light towers are properly classified, by operation of GRIs 1, 3(b), and 6 in heading 8502, HTSUS, specifically in subheading 8502.11.00, HTSUS, which provides for “Electric generating sets and rotary converters: Generating sets with compression-ignition internal combustion piston engines (diesel or semi-diesel engines): Of an output not exceeding 75 kVA.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N026470 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H270400, set forth as an attachment to this notice. 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: August 17, 2016

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H270400

August 17, 2016

CLA-2 OT:RR:CTF:TCM H270400 PJG

CATEGORY: Classification

TARIFF NO.: 8502.11.00

KASEY TWHIG

ALLMAND BROTHERS, INC.

P.O. BOX 888

HOLDREGE, NE 68949

RE: Revocation of NY N026470; tariff classification of portable light towers

DEAR MS. TWHIG:

On May 2, 2008, U.S. Customs and Border Protection (“CBP”) issued Allmand Brothers, Inc. New York Ruling Letter (“NY”) N026470. The ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of a portable light tower. We have reconsidered NY N026470 and found it to be in error.

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, of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), notice of the proposed action was published on July 6, 2016, in Volume 50, Number 27, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

In NY N026470, the subject portable light towers were described as follows:

The Night-Lite Pro™ NL6/NL8 and Maxi-Lite® ML6/ML8 (*sic*) are four portable light towers designed for providing light to open spaces and jobsites. They consist of diesel powered generators with fuel tanks mounted onto a metal chassis with a trailer hitch and two automotive type wheels, and a telescopic tower with a cluster of lighting fixtures with high output flood lights. The telescopic towers are constructed of galvanized steel with either a manual, electric or hydraulic system for raising the cluster of lights depending on the options ordered. The Allmand light towers are manufactured with all necessary lighting in a self powered portable system capable of being towed by a motor vehicle to various locations, and feature adjustable outriggers for securing the system at the desired location during use.

Additionally, according to the product specifications found in www.allmand.com, the Maxi-Lite® ML 6/ML 8 models include metal halide lamps and two 120 VAC and one 240 VAC convenience outlets that can be used to power other machinery. Moreover, the Maxi-Lite® ML 6 generators have a 6 kilowatt (“kW”) output of power and the Maxi-Lite® ML 8 generators have an 8 kW output of power.

The Night-Lite Pro™ NL6/NL8 models include metal halide lamps and one 120 VAC duplex GFCI convenience outlet that can be used to power other machinery. Moreover, the Night-Lite Pro™ NL6 generators have a 6 kW output of power and the Night-Lite Pro™ NL8 generators have an 8 kW output of power.

ISSUE:

Whether the subject portable light towers are classifiable in heading 8502, HTSUS, as electric generating sets, or in heading 9405, HTSUS, as lamps.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) 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 GRIs may then be applied.

The 2016 HTSUS provisions under consideration are as follows:

8502	Electric generating sets and rotary converters:
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:

GRI 3 states, in relevant part:

When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

- ...
- (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 the criterion is applicable.
- ...

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).

EN to GRI 3(b) states, in pertinent part:

RULE 3 (b)

- (VIII) 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.
- (IX) For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components,

provided these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

* * *

EN to 85.02 states, in pertinent part:

- (I) The expression “generating sets” applies to the combination of an electric generator and any prime mover **other than an electric motor** (e.g., hydraulic turbines, steam turbines, wind engines, reciprocating steam engines, internal combustion engines). Generating sets consisting of the generator and its prime mover which are mounted (or designed to be mounted) together as one unit or on a common base (see the General Explanatory Note to Section XVI), are classified here **provided** they are presented together (even if packed separately for convenience of transport).

The portable light towers consist of diesel powered electric generators mounted onto a metal chassis and a telescopic tower with high output flood lights. Heading 8502, HTSUS, provides for “Electric generating sets and rotary converters.” We find that the diesel powered electric generators components of the portable light towers at issue are described as electric “generating sets” because they include a combination of an electric generator and a diesel engine mounted together on a metal chassis. *See* EN 85.02. Similarly, heading 9405, HTSUS provides for “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included.” We find that the high output flood light components are described by heading 9405, HTSUS, as lamps. As such, the portable light towers are not specifically provided for in any one heading.

GRI 2(b) states in relevant part that “[t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.” GRI 3(a) states that, “[w]hen, by application of rule 2(b) or for any other 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.”

Pursuant to GRI 3(b) “[w]hen, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows: (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.”

EN (IX) to GRI 3(b) states that “composite goods” means goods made up of different components wherein the components are attached to each other to form a practically inseparable whole and goods with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not nor-

mally be offered for sale in separate parts. The portable light towers are made up of different components – diesel powered electric generators and high output flood lights. The diesel powered electric generators and their mounted light towers form an inseparable whole given that they are attached to each other. Moreover, they are mutually complementary in that the generators provide power to the lights and the lights illuminate open spaces and jobsites. Finally, they are not normally offered for sale in separate parts. As such, the portable light towers are composite goods that must be classified using GRI 3(b).

The EN (VIII) to GRI 3(b) provides that when performing an essential character analysis the factors that should be considered are the bulk, quantity, weight or value, or the role of a constituent material in relation to the use of the goods. There have been several court decisions on “essential character” for purposes of classification under GRI 3(b). See *Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1337–1338 (Ct. Int’l Trade 2005); and *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278, 1295–1356 (Ct. Int’l Trade 2006), *aff’d* 491 F.3d 1334 (Fed. Cir. 2007). “[E]ssential character is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Home Depot USA, Inc.*, 427 F. Supp. 2d at 1293 (quoting *A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971)). In particular, in *Home Depot USA, Inc.*, the court stated “[a]n essential character inquiry requires a fact intensive analysis.” *Id.* at 1284. Therefore, a case-by-case determination on essential character is warranted in this situation.

Applying the essential character analysis to the merchandise at issue, we find that the electric generators constitute the bulk of the subject merchandise and provide the source of energy to the flood lights. Given that the purpose of the subject merchandise is to provide light to open spaces and jobsites using the energy provided by the generators, and to provide energy to other machinery using the convenience outlets that are located on the generators, we find that the generators are indispensable to the article as a whole. Without the generators, the portable lamps are inoperable. We find that the diesel powered electric generators are the components that provide the essential character.

Accordingly, the subject merchandise is classified in heading 8502, HTSUS. Considering the power output of the diesel powered generators, which ranges from 6 kW to 8 kW, the merchandise is specifically classified under subheading 8502.11.00, HTSUS, as “Electric generating sets and rotary converters: Generating sets with compression-ignition internal combustion piston engines (diesel or semi-diesel engines): Of an output not exceeding 75 kVA.”

HOLDING:

Under the authority of GRIs 1, 3(b), and 6 the portable light towers are classified in heading 8502, HTSUS, specifically in subheading 8502.11.00, HTSUS, which provides for “Electric generating sets and rotary converters: Generating sets with compression-ignition internal combustion piston engines (diesel or semi-diesel engines): Of an output not exceeding 75 kVA.” The 2016 column one, general rate of duty is 2.5 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 on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N026470, dated May 2, 2008, is REVOKED.

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

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177

**REVOCAION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CAST IRON RING
CARRIERS**

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

ACTION: Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of cast iron ring carriers.

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 one ruling letter concerning tariff classification of cast iron ring carriers 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. 50, No. 23, on June 8, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 21, 2016.

FOR FURTHER INFORMATION CONTACT: Laurance W. Frierson, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0371.

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) (“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 public 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. 50, No. 23, on June 8, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of cast iron ring carriers. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N073512, dated September 24, 2009, as well as 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 one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 notice.

In NY N073512, determined that the ring carriers (also referred to as “inserts”) were classified as finished parts suitable for use solely or principally with the engines of heading 8407 or 8408, HTSUS, under subheading 8409.91.50, HTSUS, which provides for “Parts suitable for use solely or principally with the engines of heading 8407 or 8408: Other: Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines): Other: For vehicles of subheading 8701.20, or heading 8702, 8703, or 8704: Other.” CBP has reviewed NY N073512 and has determined the ruling letter to be in error. It is now CBP’s position that the ring carriers are properly classified, by operation of GRI 1, in heading 8409, HTSUS, specifically in subheading 8409.91.10, HTSUS, which provides for “Parts suitable for use solely or principally with the engines of heading 8407 or 8408: Other: Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines): Cast-iron parts, not advanced beyond cleaning and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N073512 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H100675, set forth as an attachment to this notice. 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: August 17, 2016

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H100675

August 17, 2016

CLA-2 OT:RR:CTF:TCM H100675 IOR/LWF

CATEGORY: Classification

TARIFF NO.: 8409.91.10

DANIEL J. GLUCK
 SIMON GLUCK KANE LLP
 ONE PENN PLAZA
 250 WEST 34TH STREET, SUITE 4615
 NEW YORK, NY 10119

RE: Request for Reconsideration of New York Ruling Letter N073512; Classification of cast iron ring carriers, also known as inserts, for use in spark-ignition engine pistons

DEAR MR. GLUCK:

On September 24, 2009, U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letter (“NY”) N073512 to you on behalf of Karl Schmidt Unisia (“KUS”), classifying cast iron ring carriers, also known as inserts, for use in spark-ignition engine pistons (“ring carriers”) under sub-heading 8409.91.50, of the Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Parts suitable for use solely or principally with the engines of heading 8407 or 8408: Other: Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines): Other: For vehicles of subheading 8701.20, or heading 8702,8703 or 8704: Other.” CBP has been provided additional information regarding the pre and post-importation processing of the subject ring carriers. Accordingly, we have reviewed NY N073512 and find it to be incorrect for the reasons set forth below.

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 of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 23, on June 23, 2016. No comments were received in response to the notice.

FACTS:

The subject ring carriers are round in shape, smooth and machine finished on all sides. They are imported with or without ledges depending on the type of piston with which the item is designed to be used. In ruling letter NY N073512, CBP described the subject merchandise as follows:

The item under consideration has been identified as a ring carrier specifically designed to be installed on the “Marathon Engine.” The Marathon Engine is a unique, long life, spark ignition engine designed to be run continuously for long periods of time.¹ You state in your request that the Marathon Engine can run “24 hours a day, 7 days a week, for 4,000 continuous hours.”

You state that this ring carrier is made of cast iron with the following metallurgical profile:

¹ KUS, in its original ruling request, stated that the Marathon engine is specifically designed to drive a combined heat and power generator set.

- Carbon 2.2–3.0%
- Silicon 1.5–2.5%
- Manganese 0.8–1.5%
- Nickel 13.5–17.0%
- Phosphorus ≤0.1
- Sulfur <0.1
- Chromium 1.0–1.6%
- Copper 5.0–7.0%
- Iron Remainder (68–75.8%)

The ring carrier has an outer diameter of approximately 80mm, an inner diameter of 60mm and a thickness of 5mm.

The ring carrier is designed to be incorporated as part of the piston, and is used in the casting process. Prior to installation the ring carrier will be heat treated and bead blasted, which are not considered to be major finishing operations.

* * * * *

Additionally, in Protest No. 3901–09–100819, filed June 5, 2009, KUS provided a detailed description of a substantially similar ring carrier identified as the “Ni-resist ring carrier.”² Via email dated January 6, 2016, you have confirmed that the following description of the manufacture and pre-impotation processing of the Ni-resist ring carrier, originally submitted in support of Protest No. 3901–09–100819, is equally applicable to the subject Marathon engine ring carrier:

The piston ring carriers are cast by pouring the liquid ni-resist alloy into a centrifugal casting machine. The casted circular tubes are subjected only to turning in a lathe until it meets a rough estimation of the specific outside dimension. Once the circular tubes are allowed to cool, the cast iron “tubes” are then sliced into rings to the proper size. The rings are then cleaned and packaged for shipping. The turning, cooling, slicing and cleaning of the piston ring carriers are processes and operations that are all integral to the casting process; with each operation designed to prepare the piston ring carriers to ultimately allow the piston ring carrier to be cast with the piston casting mold. Any “machining” or cleaning is done so as to allow the piston ring carrier to locate itself and to fit within the piston casting mold, the finishing machinery.

The carriers are not machined other than to remove excess material in order to obtain a rough final outside dimension per print specifications.

CBP received a letter dated October 14, 2009 from your office on behalf of your client KUS in support of Protest No. 3901–09–100819. In that letter you stated that the decision in ruling letter NY N073512 involving the subject

² CBP notes that Protest No. 3901–09–100819 concerned the classification of ring carriers for diesel engines, which are not described by the terms of subheading 8409.91, HTSUS, as parts “suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines).”

ring carriers (also referred to as “inserts” within the trade industry) was incorrect and that you intended to appeal that ruling. In your submission dated October 14, 2009, you described the post-importation finishing treatment of the imported “inserts” as follows:

After importation, the cast iron inserts are heat treated and then shot blasted. However more is done to the insert. The heat treatment and shot blasting operations prepare the cast iron inserts for the *first* significant post-importation operation, the process of *alfinization*. Alfinization is a process that prepares the cast iron inserts for bonding to the base piston alloy. In the alfinization process, the cast iron insert is completely submerged into a temperature-controlled, aluminum-silicon bath for a prescribed period of time. In the aluminum-silicon bath, aluminum atoms diffuse into the surface of the cast iron and **completely change the surface composition, microstructure and properties of the cast iron insert**. The newly-formed intermetallic alloy is necessary for the manufacture of the piston. This iron-aluminum alloy serves as a “glue” that enable the cast iron insert to fasten itself to the base piston alloy, thus creating a strong metallurgical bond. Without this metallurgical bond that results from the alfinization process, the cast iron insert cannot be bonded to or locate itself in its essential position in the piston, nor will it withstand the extreme conditions within the engine.

The *second* significant post-importation operation that the cast iron inserts must undergo is the *final machining process*. As KUS is largely responsible for piston design, one of the most critical design features on the piston is the shape of the top groove on the cast iron inserts, which is machined at KUS’ domestic facility, post-importation. In high-pressure engines, the top ring groove is located within the cast iron insert. [Footnote omitted]. The geometry of the top ring groove on the cast iron insert is critical for the combustion process which is measured by emission types and levels, oil- consumption and blow-by. The top ring groove must support the critical top ring, which is responsible for generating the high cylinder pressures immediately prior to combustion. Without the proper geometry and the specific grooving and finishing of the cast iron insert, which is different for every engine, the cast iron inserts are useless.

When the cast iron insert undergoes the final machining process, an average of 50% of the cast iron insert is removed in the process. In other words, only 50% of the cast iron insert remains from the original imported cast iron insert. (Emphasis original).

The term “ring carrier” or “piston ring carrier” is used loosely within the industry. However, the articles are truly “cast iron inserts” upon importation and then become ring carriers after the articles are processed through heat treating, shot blasting, alfinization and then finally machined to the specific size necessary to be cast with the piston.

* * * * *

KUS therefore asserts that as imported, the cast iron inserts are not advanced beyond cleaning and machining, as described in the text of sub-

headings 8404.91.10 or 8409.99.10, HTSUS. Our own review indicates that as imported, the inserts are in the necessary round shape and finished by machining on all sides. They are imported with and without inner “ledges” depending on the characteristics of the piston for which they are designed to be used, as well as the characteristics of the mold for said pistons.

ISSUE:

Whether cast iron ring carriers, also known as inserts, for use in spark-ignition engine pistons are classifiable under subheading 8409.91.10, HTSUS, as cast iron parts not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery, or under subheading 8409.91.99, HTSUS, as other parts.³

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.

GRI 6 provides that the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only those subheadings at the same level are comparable.

The 2016 HTSUS provisions under consideration are as follows:

8409	Parts suitable for use solely or principally with the engines of heading 8407 or 8408: Other:
8409.91	Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines):
8409.91.10	Cast-iron parts, not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery Other:
8409.91.99	Other

* * * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding or 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)

³ In ruling letter NY N073512, the merchandise was incorrectly classified in subheading 8409.91.50, HTSUS which provides for parts for vehicles. The merchandise is for heat and power generator sets, which would not have been classifiable as parts for vehicles.

There is no dispute that by application of GRI 1, the subject ring carriers are classified in heading 8409, HTSUS, which provides for: "Parts suitable for use solely or principally with engines of heading 8407 or 8408." There is also no dispute that the subject parts are classified in subheading 8409.91, HTSUS, as parts "suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines). At issue is classification at the eight-digit level by application of GRI 6. Specifically, resolution of this matter rests upon whether the subject merchandise is advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery.

According to the pre-importation processing description, the turning and cooling operations are integral to the casting process, and the slicing and cleaning of the piston ring carriers are processes and operations that at most, prepare and permit the piston ring carriers to be cast with the piston casting mold, the finishing machinery. *See* ruling letter HQ 954989, dated September 28, 1993, which found that processing integral to the casting process did not constitute an advancement beyond cleaning for the purposes of subheading 8409.99.10, HTSUS. Consequently, while the description of the post-importation processing operation does not indicate whether the merchandise, as imported, was advanced beyond what is permitted in subheading 8409.91.10, HTSUS, those post-importation processes and finishing machinery descriptions are relevant to the classification determination of the ring carriers.

Upon examination of the condition of the ring carriers at the time of importation and the subsequent post-importation processes performed on the merchandise, CBP finds that the imported articles were not advanced beyond cleaning, and they were machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery. Accordingly, the ring carriers are fully described by the terms of subheading 8409.91.10, HTSUS, and are therefore classifiable in subheading 8409.91.10, by application of GRI 6 and GRI 1.

HOLDING:

By application of GRI 1, the ring carriers are classified under heading 8409, HTSUS. Specifically, by application of GRI 6 and GRI 1, they are classified in subheading 8409.91.10, HTSUS, which provides for "Parts suitable for use solely or principally with engines of heading 8407 or 8408: Other: Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines): Cast-iron parts, not advanced beyond cleaning and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery." The 2016 column one, general rate of duty is Free.

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

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, NY N073512, dated September 24, 2009, is hereby **REVOKED**.

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



19 CFR PART 177

**REVOCAION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF GRADUATED
COMPRESSION HOSIERY**

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

ACTION: Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of graduated compression hosiery.

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 one ruling letter concerning tariff classification of graduated compression hosiery 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. 50, No. 18, on May 4, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 21, 2016.

FOR FURTHER INFORMATION CONTACT: Laurance W. Frierson, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0371.

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) (“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 public 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. 50, No. 18, on May 4, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of graduated compression hosiery. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N235286, dated December 7, 2012, as well as 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 one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 notice.

In NY N235286, CBP classified two styles of graduated compression hosiery under heading 6115, HTSUS, specifically in subheading 6115.30.90, HTSUS, which provides for “Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted: Other women’s full-length or knee-length hosiery, measuring per single yarn less than 67 decitex: Other.” CBP has reviewed ruling letter NY N235286 and has determined the ruling letter to be in error. It is now CBP’s position that the two styles of graduated compression hosiery are properly classified, by operation of GRIs 6 and 1, in heading 6115, HTSUS, specifically in subheading 6115.10.05, HTSUS, which provides for “Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted: Graduated compression hosiery (for example, stockings for varicose veins): Surgical panty hose and surgical stockings with graduated compression for orthopedic treatment.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N235286 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H237738, set forth as an attachment to this notice. 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: August 17, 2016

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H237738

August 17, 2016

CLA-2 OT:RR:CTF:TCM H237738 LWF

CATEGORY: Classification

TARIFF NO.: 6115.10.05

MR. JOHN PETERSON
NEVILLE PETERSON LLP
17 STATE STREET, 19TH FLOOR
NEW YORK, NY 10004

RE: Revocation of New York Ruling (NY) N235286, dated December 7, 2012; tariff classification of graduated compression hosiery

DEAR MR. PETERSON:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) N235286, issued to Total Vein Systems, Inc. (“Total Vein”) on December 7, 2012, concerning the tariff classification of under the Harmonized Tariff Schedule of the United States (HTSUS) of certain graduated compression hosiery. In ruling letter NY N235286, CBP classified two styles of Total Vein graduated compression hosiery under subheading 6115.30.90, HTSUS, which provides for “Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted: Other women’s full-length or knee-length hosiery, measuring per single yarn less than 67 decitex: Other.” In response to Total Vein’s request, dated January 8, 2013, that CBP reconsider ruling letter NY N235286, CBP has reviewed the ruling letter and determined it to be in error. Accordingly, for the reasons set forth below, CBP is revoking ruling letter NY N235286.

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 of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 18, on May 4, 2016. No comments were received in response to the notice.

FACTS:

The Total Vein graduated compression hosiery consists of two styles of stockings, the thigh-length “Surgeon’s Choice” stocking and the calf-length “Boost” stocking. Both styles of hosiery provide graduated compression in the range of 20–30 or 30–40 mm of mercury (mm HG), with the strongest compression being applied to the foot and ankle area, and gradually decreasing as the stocking rises up the leg. The graduated compression is designed to help push blood out of the legs and feet by compressing surface veins to increase arterial pressure, thereby causing more blood to return back towards the heart.

The Total Vein graduated compression hosiery is prescribed by physicians to prevent or treat venous disorders of the legs and feet, including blood clots (deep vein thrombosis), varicose veins, and lymphedema. The hosiery is sold on the Internet and in medical and surgical supply stores, where trained personnel use detailed measurements of a patient’s leg to properly fit the stockings and socks. The hosiery is not sold in ordinary retail or fashion retail outlets.

ISSUE:

Whether the Total Vein “Surgeon’s Choice” and “Boost”-style graduated compression hosiery are classified under subheading 6115.10, HTSUS, as graduated compression hosiery, or under subheading 6115.30, HTSUS, as other women’s full-length or knee-length hosiery, measuring per single yarn less than 67 decitex.

LAW AND ANALYSIS:

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

Heading 6115, HTSUS, provides, in pertinent part, as follows:

- 6115 Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted:
- 6115.10 Graduated compression hosiery (for example, stockings for varicose veins):
- 6115.10.05 Surgical panty hose and surgical stockings with graduated compression for orthopedic treatment
Other graduated compression panty hose and tights:
- 6115.10.10 Of synthetic fibers (659)
[...]
Other graduated compression hosiery
[...]
- 6115.10.40 Of synthetic fibers (632)
[...]
- 6115.30 Other women’s full-length or knee-length hosiery, measuring per single yarn less than 67 decitex:
[...]
- 6115.30.90 Other

* * * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the proper classification of merchandise. It is CBP’s practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed Reg. 35127, 35128 (August 23, 1989).

EN 61.15, HS, provides, in pertinent part, that:

This heading covers the following knitted or crocheted goods, without distinction between those for women or girls and those for men or boys:

- (1) Panty hose and tights designed to cover the feet and legs (hose) and the lower part of the body up to the waist (panty), including those without feet.
- (2) Stockings and socks (including ankle-socks).
- (3) Under stockings, used mainly as a protection against the cold.
- (4) Graduated compression hosiery, e.g., stockings for varicose veins.
- (5) Sockettes intended to protect the feet or toes of stockings from friction or wear.
- (6) Footwear without an outer sole glued, sewn or otherwise affixed or applied to the upper, other than babies' booties.

[...]

Subheading Explanatory Note.

Subheading 6115.10

For the purposes of subheading 6115.10, "graduated compression hosiery" means hosiery in which the compression is greatest at the ankle and reduces gradually along its length up the leg, so that blood flow is encouraged.

* * * * *

As an initial matter, this office notes that Total Vein's request for reconsideration of ruling letter NY N235286 concerns the tariff classification of certain graduated compression hosiery under the subheadings of heading 6115, HTSUS. Accordingly, there is no dispute that the instant merchandise is fully described by the terms of heading 6115, HTSUS, which provides, in pertinent part, for "Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins)." Therefore, because this matter requires a determination as to the proper classification of merchandise among the subheadings of the same heading, GRI 6 applies.¹

Specifically, Total Vein asserts that in ruling letter NY N235286, CBP erroneously classified the "Surgeon's Choice" and "Boost"-style graduated compression hosiery under subheading 6115.30.90, HTSUS, as women's full-length or knee-length hosiery. Total Vein therefor seeks revocation of NY N235286 and advocates for the classification of its merchandise under subheading 6115.10, HTSUS, as "graduated compression hosiery (for example, stockings for varicose veins)."

In this case, a good indication of the meaning of "graduated compression hosiery" can be obtained from the Explanatory Notes to heading 61.15, HS. The ENs to subheading 6115.10, HS, describe "graduated compression hosiery" as articles of hosiery in which the compression is greatest at the ankle and reduces gradually along its length up the leg, so that blood flow is

¹ GRI 6 states that, "For legal purposes, the classification of goods in the subheadings of a subheading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires."

encouraged. Subheading EN 6115.10, HS. Additionally, the U.S. National Library of Medicine at the National Institutes of Health (NIH) describes “compression stockings” as physician-prescribed hosiery used to treat leg aches and swelling and, to a lesser extent, blood clots after surgery or injury. See *Compression Stockings*, U.S. National Library of Medicine (May 12, 2015), <http://www.nlm.nih.gov/medlineplus/ency/patientinstructions/000597.htm>.

In accord with the meaning of “graduated compression hosiery” provided by the ENs to heading 61.15, HS, CBP observes that the Total Vein “Surgeon’s Choice” and “Boost”-style graduated compression hosiery are provided for *eo nomine* by the text of subheading 6115.10, HTSUS, as “Graduated compression hosiery (for example, stockings for varicose veins).” Specifically, the Total Vein merchandise consists of two styles of physician-prescribed hosiery that provide graduated compression (at levels of 30–40 or 20–30 mm Hg) to treat venous disorders in the legs and feet, including blood clots (deep vein thrombosis), varicose veins, and lymphedema.

In classifying the Total Vein graduated compression hosiery under subheading 6115.10, HTSUS, this office notes that CBP has previously examined similar classification matters, and has found that compression strength and the use of physician prescriptions are important considerations in determining whether an article of graduated compression hosiery can be properly described as a “surgical stocking with graduated compression for orthopedic treatment” of subheadings 6115.10.05. See, e.g., Headquarters Ruling Letter (HQ) 959399, dated December 16, 1996; and HQ 963517, dated January 2, 2002. In ruling letter HQ 963517, for example, CBP determined that certain graduated compression pantyhose and stockings were properly described as “surgical” hosiery heading 6115, HTSUS, because the articles were primarily prescribed by a physician, and were specially fitted to the patient by certified healthcare personnel.²

By contrast, CBP has consistently held that non-prescription graduated compression hosiery—identified by comparatively low compression strengths and suitable for purchase without specialty fitting—are not classifiable as “surgical” hosiery. For example, in HQ 959399, dated December 16, 1996, CBP rejected the classification of various styles of graduated compression panty hose and stockings as “surgical compression stockings for orthopedic purposes, other than stockings merely for the treatment of varicose veins,” because the merchandise supplied less than 30 mm Hg of compression, was available for purchase without prescription or specialty fitting, and was more “fashionable” than articles properly classified as surgical compression stockings. See HQ 959399, dated December 16, 1996.

Similarly, in HQ 963517, discussed *supra*, CBP drew a clear distinction between physician-prescribed, “surgical” hosiery with graduated compression

² In ruling letter HQ H963517, CBP described amendments to the HTSUS in 1992 that transferred surgical stockings and pantyhose with graduated compression out of heading 9021, HTSUS, and into the newly created *eo nomine* subheadings of heading 6115, HTSUS, which provide for “surgical” hosiery. Moreover, following the 1992 amendments to the HTSUS, CBP has consistently described certain compression pantyhose and stockings with minimum compression measurements of 30 mm Hg, as surgical hosiery of heading 6115, HTSUS. See HQ 959399, dated December 16, 1996; NY B87014, dated August 6, 1997; NY B81996, dated February 24, 1997; NY E82160, dated June 10, 1999; NY E82592, dated June 11, 1999; NY E82593, dated June 11, 1999; NY E82594, dated June 11, 1999; NY E82595, dated June 11, 1999; NY E82596, dated June 11, 1999; and NY F80388, dated December 28, 1999.

sion for orthopedic treatment, as compared to non-prescription, anti-embolism stockings designed to equalize blood pressure along the leg of a non-ambulatory patient. There, CBP declined to identify the anti-embolism stockings as “surgical stockings with graduated compression” for the threshold reason that the anti-embolism stockings did not feature graduated compression; however, CBP notably observed that the anti-embolism stockings were nonetheless distinguishable from surgical stockings, because the anti-embolism stockings were available for purchase without a physician prescription and provided significantly less compression as compared to surgical pantyhose and stockings.³ See HQ 963517, dated January 2, 2002.

Consistent with the analysis set forth in prior CBP ruling letters distinguishing “surgical stockings” of subheading 6115.10.05, HTSUS, from “other graduated compression panty hose and tights,” CBP finds that the Total Vein “Surgeon’s Choice” and “Boost”-style graduated compression hosiery are substantially similar to merchandise previously classified by CBP as “surgical panty hose and surgical stockings with graduated compression for orthopedic treatment.” Specifically, the “Surgeon’s Choice” and “Boost” hosiery are prescribed by physicians to prevent or treat venous disorders of the legs and feet, including blood clots (deep vein thrombosis), varicose veins, and lymphedema. The hosiery provide graduated compression in the range of 20–30 or 30–40 mm of mercury (mm HG), and are designed to help push blood out of the legs and feet by compressing surface veins to increase arterial pressure. Moreover, CBP observes that the “Surgeon’s Choice” and “Boost” hosiery are sold in medical and surgical supply stores, where trained personnel use detailed measurements of a patient’s leg to properly fit the stockings and socks.

Upon consideration of the channels of sale, use, and therapeutic effectiveness of the “Surgeon’s Choice” and “Boost”-style graduated compression hosiery, CBP finds that the hosiery share the commercial identity of “surgical stockings with graduated compression for orthopedic treatment” and are substantially similar to other “surgical” graduated compression stockings previously classified by CBP. See, e.g., ruling letter HQ 963517. Consequently, the Total Vein graduated compression hosiery is properly classified as graduated compression hosiery of subheading 6115.10, HTSUS, and specifically, in subheading 6115.10.05, which provides, in relevant part, for “surgical stockings with graduated compression for orthopedic treatment.”

HOLDING:

By application of GRIs 6 and 1, the “Surgeon’s Choice” and “Boost”-style graduated compression hosiery are classified under heading 6115, HTSUS, specifically subheading 6115.10.05, which provides for “Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted: Graduated compression hosiery (for example, stockings

³ CBP has also ruled that surgical compression hosiery of subheading 6115.10.05, HTSUS, does not include certain graduated compression hosiery marketed to and worn by athletes. In ruling letter NY N118186, dated August 30, 2010, CBP classified certain knee-length, graduated compression socks for athletes in subheading 6115.30.90, HTSUS, as hosiery other than surgical hosiery, drawing a distinction between the athletic compression socks and surgical compression hosiery that “are prescribed by physicians for the treatment of venous diseases and other serious conditions such as reversible and irreversible lymphedema and severe post-thrombotic treatment.”

for varicose veins): Surgical panty hose and surgical stockings with graduated compression for orthopedic treatment.” The 2016 column one, general rate of duty is *free*.

EFFECT ON OTHER RULINGS:

In accordance with the analysis set forth above, ruling letter NY N235286, dated December 7, 2012, is hereby **REVOKED**.

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177

**REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERTAIN ARTICLES OF
FOOTWEAR**

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

ACTION: Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of certain articles of footwear.

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 one ruling letter concerning tariff classification of certain articles of footwear 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. 50, No. 10, on March 9, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 21, 2016.

FOR FURTHER INFORMATION CONTACT: Laurance W. Frierson, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0371.

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) (“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 public 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. 50, No. 10, on March 9, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of certain articles of footwear. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N239002, dated March 29, 2013, as well as 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 one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transac-

tions should have advised CBP during the comment 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 notice.

In ruling letter NY N239002, CBP determined that the Nike USA, Inc. (Nike) "Studio Wrap Pack," which consists of several articles of footwear and related accessories for the practice of yoga and other exercise activities, was not classifiable pursuant to General Rule of Interpretation (GRI) 3(b), as "goods put up in sets for retail sale." Accordingly, CBP ruled that the articles contained in the Studio Wrap Pack should be separately classified, by application of GRI 1, under their respective HTSUS headings. CBP has reviewed NY N239002 and has determined the ruling letter to be in error. It is now CBP's position that the Studio Wrap Pack is properly classified, by application of GRI 3, under heading 6404, HTSUS, which provides for, "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N239002 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H241428, set forth as an attachment to this notice. 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: August 17, 2016

GREG CONNOR
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H241428

August 17, 2016
CLA-2 OT:RR:CTF:TCM H241428 LWF
CATEGORY: Classification
TARIFF NO.: 6404.19.39

MR. LARS-ERIK A. HJELM
AKIN GUMP STRAUSS HAUER & FELD LLP
1333 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20036-1564

RE: Revocation of New York Ruling Letter N239002, dated March 29, 2013;
tariff classification of the Nike Studio Wrap Pack

DEAR MR. HJELM:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) N239002, issued to your client, Nike USA, Inc. (“Nike”) on March 29, 2013, concerning the tariff classification of a collection of footwear articles contained in Nike’s “Studio Wrap Pack” (Item #324734). In ruling letter NY N239002, CBP determined that the Studio Wrap Pack was not classifiable as “goods put up in sets for retail sale,” pursuant to General Rule of Interpretation (GRI) 3 (b), and concluded that the component articles of the Studio Wrap Pack should be separately classified, pursuant to GRI 1, in their respective headings. Upon your request, dated April 30, 2013, CBP has reviewed NY N239002 and finds the ruling to be in error. Accordingly, for the reasons set forth below, CBP is revoking ruling letter NY N239002.

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 of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 10, on March 9, 2016. No comments were received in response to the notice.

FACTS:

In ruling letter NY N239002, CBP described the Nike Studio Wrap Pack, Model No. 324734, as a collection of articles put up for sale together to provide a consumer with foot protection and traction during exercise activities. The Studio Wrap Pack is imported in a condition suitable for sale directly to users without repacking, and each Studio Wrap Pack consists of the following individual articles:

1 Pair of Foot Wraps: Each Foot Wrap is constructed of strips of knit textile that has been laminated with polyurethane cellular rubber. The strips are sewn together in a shape that wraps around the heel, lower ankle, and foot, while leaving the toes exposed. Synthetic traction dots are attached to the bottom of Foot Wrap, along slip soles that cover the heel and midfoot areas of the foot. The Foot Wraps account for 43.4% of the Studio Wrap Pack total cost.



*Nike Studio Wrap Pack,
the "Foot Wrap,"*

The Foot Wraps are designed to provide a near-barefoot experience during exercise activities such as yoga, pilates, and barre, while also delivering foot protection and traction on studio and gym floor surfaces. The Foot Wrap is also intended to be worn in combination with the Strap and is designed to fit inside the slip-on Flats, allowing a user to travel to and from the studio or gym while wearing the Foot Wrap. However, as the Foot Wrap does not possess an outer sole or toe coverings, it would be impractical to wear the Foot Wrap outside, without the combined use of the Flats.

Nike states in its February 25, 2013 tariff classification ruling request that it intends to sell the Foot Wrap as part of the Studio Wrap Pack, and in the future, separately with the Straps.

2 Straps: Each Strap consists of a cellular rubber ribbon that is designed to be wrapped over the Foot Wrap and around the ankle. The Strap provides additional support to the foot and ankle and accessorizes the Foot Wrap's fashion appearance. Use of the Straps with the Foot Wraps is optional.



Nike Studio Wrap Pack, the Foot Wrap with a tied "Strap" around the foot and ankle

1 Pair of slip-on Flats: The slip-on Flats consist of a textile-majority upper with a rubber/plastic outer sole. The Flats have no closure devices and are designed to be worn over the Foot Wraps or separately, without the Foot Wraps, in combination with the removable Insoles. Nike states that the Flats account for 32% of the Studio Wrap pack's total cost.



Nike Studio Wrap Pack, the "Flat," worn over a Foot Wrap with tied Strap

2 Insoles: The removable Insoles are designed to be optionally inserted into the Flats and are constructed of textile-covered foam. A consumer, when not wearing the Foot Wraps, can insert the Insoles into the Flats for additional cushioning while walking.

1 Mesh Bag : The Mesh Bag is constructed of synthetic fibers and is large enough to hold the Foot Wraps and Straps. It is designed to provide the

consumer with a protective bag in which to launder the Foot Wraps and Straps. The design of the Mesh Bag allows water and detergent to rinse and clean the Foot Wraps and Straps, while simultaneously protecting the items from damage during the washing cycle.

* * * * *

ISSUE:

Whether the Nike Studio Wrap Pack is properly classified, pursuant to General Rule of Interpretation (GRI) 3(b), as goods put up in sets for retail sale, or whether the individual components of the Studio Wrap Pack should be separately classified, by application of GRI 1, in their respective headings.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principals set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context with requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determine first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order.

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

- 6402 Other footwear with outer soles and uppers of rubber or plastics
- 6404 Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials

* * * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HS and are thus useful in ascertaining the proper classification of merchandise. It is CBP’s practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

As an initial matter, CBP observes that the Nike Studio Wrap Pack consists of a variety of individual articles (the Foot Wraps, Flats, Straps, Insoles, and Mesh Bag), packaged together for retail sale, that are, *prima facie*, classifiable in two or more headings. Specifically, there is no dispute that the Foot Wraps are described by heading 6402, HTSUS; the Flats are described by heading 6404, HTSUS; the Straps are described by heading 6307, HTSUS; the Insoles are described by heading 6406, HTSUS; and that the Mesh Bag is described by heading 6307, HTSUS.

Consequently, because the Nike Studio Wrap Pack is, *prima facie*, classifiable under two or more headings, classification shall be effected by application of GRI 3—specifically GRI 3(b), which directs that “[g]oods 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.”¹

For purposes of tariff classification under GRI 3(b), the term “sets for retail sale” carries a specific meaning that is defined in detail by EN (X) to GRI 3(b). Specifically, EN (X) to GRI 3(b) states:

- (X) For the purpose of this Rule, the term ‘goods put up in sets for retail sale’ shall be taken to mean goods which:
- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings . . . ;
 - (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
 - (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

* * * * *

Upon consideration of whether the component articles of the Nike Studio Wrap Pack are properly classifiable as a “set” under GRI 3, there is no dispute that the merchandise is described by criteria (a) and (c), as set forth in EN (X) to GRI 3(b). Consistent with EN (X)(a) and (c) to GRI 3(b), the individual component articles of the Studio Wrap Pack are, *prima facie*, classifiable in different headings; likewise, the articles are packaged together in a retail box that is suitable for sale directly to users without repacking. Consequently, because the Nike Studio Wrap Pack satisfies criterion (a) and (c) of the EN (X) to GRI 3(b), the determination as to whether the Studio Wrap Pack is classifiable as “goods put up in sets for retail sale” turns on whether the merchandise is also described by EN(X)(b), which states that “sets” must consist of products or articles put up “to meet a particular need or carry out a specific activity.”

The courts have provided guidance on the meaning of “products or articles put up together to meet a particular need or carry out a specific activity” for purposes of classification pursuant to GRI 3(b). See *Estee Lauder, Inc. v. United States*, 815 F. Supp. 2d 1287, 1294 (Ct. Int’l Trade 2012). In *Estee Lauder*, the Court of International Trade (CIT) considered the classification of several cosmetic items put up together for retail sale, and concluded that because each item was specifically related to makeup and possessed an identifiable, individual function that was intended for use together or in conjunction with one another for the single activity of putting on makeup, the cosmetic items met the particular need of makeup application and were therefore, properly classified pursuant to GRI 3(b). *Id.* at 1295–96. Noting that each of the exemplars provided in the ENs consist of individual components that are used together or in conjunction with another for a single

¹ GRI 3(b) states, in pertinent part, as follows:

3. When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

[...]

- (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.

purpose or activity, the CIT agreed that “for goods put up together to meet the ‘particular need’ or ‘specific activity’ requirement and thereby be deemed a set, they must be so related as to be clearly intended for use together or in conjunction with one another for a single purpose or activity.” *Id.* (citing with approval CBP’s *Informed Compliance Publication*, “Classification of Sets”, 12 (2004)).²

Consistent with the courts’ interpretation of the terms “particular need” and “specific activity” in EN (X)(b) to GRI 3(b), CBP finds that the individual component articles of the Nike Studio Wrap Pack are put up together for use in a single purpose or activity. Specifically, they are designed for use in conjunction with one another to provide foot protection and floor traction during yoga, pilates, and barre exercise activities.

Moreover, CBP notes that the complementary design of the individual component articles makes it such that a consumer would not purchase the Studio Wrap Pack to use the Foot Wraps or Flats without the other. That the Flats may be used as conventional footwear, independent of the Foot Wraps, does not negate the fact that the Flats are put up with the other component articles for the particular activity of exercising. Consequently, upon consideration of the character and use of the Foot Wraps, Straps, Flats, Insoles, and Mesh Bag with one another, CBP concludes that the Studio Wrap Pack is fully described by EN(X)(b) to GRI 3, because the merchandise is put up together to provide foot protection and floor traction during yoga, pilates, and barre exercise activities.

With respect to the Mesh Bag included with the Studio Wrap Pack to transport, store, and wash the Foot Wraps and Straps, CBP notes that in *Estee Lauder*, the CIT repeatedly referred to cases and containers, suitable for general use and classifiable elsewhere in the Nomenclature, as non-functional set components contemplated under GRI 3(b). *Estee Lauder*, 815 F. Supp. 2d at 1299–1300 (citing EN (X) to GRI3(b)). In each example, the inclusion of a case or container with a set, although suitable for general use, did not negate the set’s qualification under GRI 3(b). *Id.*

Used in conjunction with the Studio Wrap Pack, the Mesh Bag facilitates the transport, storage, and care of the Foot Wraps and Straps which enable the Studio Wrap Pack to fulfill the specific activity that makes it a set. The fact that the Mesh Bag is suitable for other general uses or is designed for the ancillary care and transport of only some of the set components does not negate a finding that the Mesh Bag, when considered together with the functional articles of the Studio Wrap Pack, forms part of a set that is put up together to provide a person with foot protection and traction during exercise activities.

Pursuant to the text of GRI 3(b), goods put up in sets for retail sale must be classified as if they consisted of the material or component which “gives

² Equally important, however, the CIT in *Estee Lauder* warned against conflating the GRI 3(b) requirements for composite goods (i.e., whether the items are “mutually complementary” or “adapted to one another”), with the requirements for the GRI 3(b) retail sets analysis (do the goods “meet a particular need” or “carry out a specific activity”), stating:

Requiring set goods to be mutually complementary or adapted to one another effectively joins the Explanatory Notes requirements for composite goods to the Explanatory Notes describing retail sets. This conflation of requirements is unsupported in the statute or the Explanatory Notes. *Estee Lauder*, 815 F. Supp. 2d 1287 at 1295–96 (citing ENs (IX) and (X) to GRI 3(b))

them their essential character.”³ The phrase “essential character” carries specific meaning in the context of tariff classification, and the courts have defined “essential character” as, “that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int’l Trade 2005).

EN VIII to GRI 3(b) explains that “[t]he factor which determines essential character will vary as between different kinds of goods,” and may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods. See EN VIII to GRI 3(b). However, among those factors identified in EN VIII to GRI 3(b), recent court decisions concerning “essential character” analysis under GRI 3(b) have primarily focused on the role of the constituent material in relation to the use of the goods. See *Estee Lauder*, 815 F. Supp. 2d at 1296; see also *Structural Industries*, 360 F. Supp. 2d 1330; *Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278 (Ct. Int’l Trade 2006), *aff’d* 491 F.3d 1334 (Fed. Cir. 2007).

Consistent with the guidance provided by the courts and the ENs to GRI 3, CBP evaluates the functional components of a set when determining what article or component imparts a set with its essential character. Relevant to the classification of the instant merchandise, CBP has previously found that the essential character of sets consisting of footwear sold in combination with a bag or pouch is often imparted by the functional article of footwear. See Headquarters ruling letter (“HQ”) H008845, October 3, 2008 (finding that a pair of bowling shoes imparted the essential character of a set consisting of bowling shoes, a plastic slip-on shoe cover for one of the shoes, a fabric shoe bag, and a smaller “sole and heel” bag containing four interchangeable soles and four interchangeable heels); NY N239273, dated April 2, 2013 (finding that the articles of footwear imparted the essential character of a set consisting of a pair of slip-on dance shoes and a polyester carrying pouch).

Here, the essential character of the Nike Studio Wrap Pack is imparted by the functional items used to provide foot protection and traction for exercise activities, namely the Foot Wraps and Flats. CBP finds that the Insoles, Straps, and Mesh Bag serve supporting roles in providing foot protection and traction for purchasers. The role of the Insoles is to provide additional cushioning for the foot when used in the Flats and is not essential to the use of the Studio Wrap Pack. Similarly, the relative low bulk and value of the Straps and Mesh Bag, combined with the fact that the components do not provide foot protection or traction when used independently of the Foot Wraps and Flats, are evidence of the components’ supportive role in facilitating the use and care of the items that enable the Studio Wrap Pack to fulfill the specific activity that makes it a set. Accordingly, CBP finds that the Insoles, Straps, and Mesh Bag do not impart the Studio Wrap Pack with its essential character.

By contrast, it is apparent upon first impression that the Foot Wraps and Flats are functional items of the Studio Wrap Pack. The Foot Wraps and Flats provide foot protection and traction and are necessary for the particular

³ EN VIII to GRI 3(b) explains that “[t]he factor which determines essential character will vary as between different kinds of goods,” and may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods. See EN VIII to GRI 3(b).

activity of the set. Without either component, a purchaser could not protect his or her feet or gain additional traction as compared to barefoot exercise.

In determining whether the Foot Wraps or Flats impart the Studio Wrap Pack with its essential character, CBP observes that the Foot Wraps and Flats are designed to be used, separately or in combination with one another, to provide foot protection and traction for exercise activities. Accordingly, CBP finds that the articles share equal importance in fulfilling the particular need or specific activity associated with the Studio Wrap Pack. *See* EN(X), GRI 3(b). Similarly, the Foot Wraps and Flats share similar individual unit production costs; the Foot Wraps and Flats account for 43.4% and 32%, respectively, of the total production cost of the Studio Wrap Pack. Consequently, because the specific role, function, and unit production cost of the Foot Wraps and Flats do not distinguish either article as uniquely indispensable to the “structure, core, or condition” of the Studio Wrap Pack, CBP cannot determine whether the Foot Wraps or Flats impart the merchandise with its essential character. *See Structural Industries v. United States*, 360 F. Supp. 2d at 1336.

When goods cannot be classified by reference to GRI 3(a) or 3(b), GRI (c) instructs that they shall be classified “under the heading which occurs last in numerical order among those which equally merit consideration.” Here, CBP has determined that the Foot Wraps and Flats are equally important to the essential character of the Studio Wrap Pack. The Foot Wraps are classifiable in heading 6402, HTSUS; and the Flats are classifiable in heading 6404, HTSUS. Accordingly, by application of GRI 3(c), CBP finds that the Nike Studio Wrap Pack is classifiable in heading 6404, HTSUS, which provides for, “Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials.”

HOLDING:

By application of GRI 3(c), the Nike Studio Wrap Pack is classified in heading 6404, HTSUS, specifically subheading 6404.19.39, HTSUS, which provides for “Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Other: Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6404.19.20 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: Other: Other.” The column one, general rate of duty under this provision is 37.5%, *ad valorem*.

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

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, NY N239002, dated March 29, 2013, is hereby **REVOKED**.

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

Sincerely,


GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**PROPOSED REVOCATION OF TWO RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CHILDREN'S FISHING ROD
AND REEL COMBINATIONS**

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

ACTION: Notice of proposed revocation of two ruling letters and revocation of treatment relating to the tariff classification of children's fishing rod and reel combinations.

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 two ruling letters concerning tariff classification of children's fishing rod and reel combinations under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before October 21, 2016.

ADDRESSES: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 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: Laurance W. Frierson, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0371.

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) (“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 public 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 proposing to revoke two ruling letters pertaining to the tariff classification of children’s fishing rod and reel combinations. Although in this notice, CBP is specifically referring to New York Ruling Letters (“NY”) N003439, dated November 30, 2006 (Attachment A), and NY N004939, dated January 12, 2007 (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 two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing

to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in 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 ruling letters NY N0034349 and NY N004939, CBP classified certain children's fishing rod and reel combinations in subheadings 9503.90.80 and 9503.70.00, HTSUS, respectively. Heading 9503, HTSUS, provides for "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof." CBP has reviewed ruling letters NY N0034349 and NY N004939 and has determined the ruling letters to be in error. It is now CBP's position that the children's fishing rod and reel combinations are properly classified, by operation of GRI 3(c), in heading 9507, HTSUS, specifically under subheading 9507.30, HTSUS, which provides for "Fishing rods, fish hooks and other line fishing tackle; fish landing nets, butterfly nets and similar nets; decoy "birds" (other than those of heading 9208 or 9705) and similar hunting or shooting equipment; parts and accessories thereof: Fishing reels and parts and accessories thereof."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke ruling letters NY N0034349 and NY N004939 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H194140, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: August 29, 2016

GREG CONNOR
For

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N003439

November 30, 2006

CLA-2-95:RR:NC:2:224

CATEGORY: Classification

TARIFF NO.: 9503.90.0080

MS. GAIL T. CUMINS
SHARRETT, PALEY, CARTER & BLAUVELT, P.C.
75 BROAD STREET
NEW YORK, NY 10004

RE: The tariff classification of Shrek® Fun Casting Combo from China

DEAR MS. CUMINS:

In your letter dated November 15, 2006, on behalf of your client, Bimini Bay Outfitters Ltd., you requested a tariff classification ruling.

You are requesting the tariff classification on a product called Shrek® Fun Casting Combo. There is no designated style number for the product. The item, a toy fishing rod, is a hard plastic rod with fishing line that can be attached to the soft plastics casting plug. The article is designed to teach children to fish who may not have the fine motor skills required. The sample will be returned, as requested by your office.

The applicable subheading for the Shrek® Fun Casting Combo will be 9503.90.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other. The rate of duty will be 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 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 Tom McKenna at 646-733-3025.

Sincerely,

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

[ATTACHMENT B]

N004939

January 12, 2007

CLA-2-95:RR:NC:2:224

CATEGORY: Classification

TARIFF NO.: 9503.70.0000

Ms. GAIL T. CUMINS
SHARRETT, PALEY, CARTER & BLAUVELT, P.C.
SEVENTY-FIVE BROAD STREET
NEW YORK, N.Y. 10004

RE: The tariff classification of a Shrek® Fun Casting Kit from China

DEAR Ms. CUMINS:

In your letter dated December 20, 2006, you requested a tariff classification ruling, on behalf of Bimini Bay Outfitters Ltd., your client.

The submitted sample is described as a Shrek® Fun Casting Kit; there is no designated item number for the item. The product is made up of the following components: a toy casting rod with fishing line, a casting plug, protective sunglasses, and a small utility box, packaged in a clear plastic backpack. The product will be classified in Chapter 95 of the HTSUS as a toy set designed for the amusement of children who will pretend that they are really fishing. The sample will be returned, as requested by your office.

The applicable subheading for the Shrek® Fun Casting Kit will be 9503.70.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other toys, put up in sets or outfits, and parts and accessories thereof. The rate of duty will be 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 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).

Pursuant to title 19 United States Code, Section 3005 The Harmonized Tariff Schedule of the United States is in the process of being amended to reflect changes recommended by the World Customs Organization. The amendments are expected to affect the classification of your merchandise. Pursuant to Section 3005 c, the report recommending those changes was sent to the President for proclamation of the changes. By law, the President cannot proclaim the implementation of these latter amendments in the HTS until a required 60- legislative-day Congressional layover period is completed. We understand that the layover period has been completed. Accordingly, the recommended changes will become law after they are proclaimed by the President. The effective date of those changes will be specified in the Presidential proclamation. In addition, at that time, the United States International Trade Commission will post an updated electronic version of the 2007 HTSUS on its website, www.usitc.gov, and the Government Printing Office will publish a hard-copy version of the 2007 HTS.

Once those changes are in effect, it is anticipated that your merchandise will be classified in 9503.00.00 HTSUS. Under the circumstances, this information is advisory only.

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 646-733-3025.

Sincerely,

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

[ATTACHMENT C]

HQ H194140
CLA-2 OT:RR:CTF:TCM H194140
CATEGORY: Classification
TARIFF NO.: 9507.30

GAIL R. CUMMINS
SHARRETT, PALEY, CARTER & BLAUVELT, P.C.
75 BROAD STREET
NEW YORK, NY 10004

RE: Revocation of two ruling letters concerning the tariff classification of children's fishing rod and reel combinations; New York Ruling Letter ("NY") N003439, dated November 30, 2006, and NY N004939, dated January 12, 2007

DEAR Ms. CUMMINS:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered two ruling letters issued to your client, Bimini Bay Outfitters, Ltd. ("Bimini Bay"), concerning the tariff classification of children's fishing rod and reel combinations. Specifically, in New York Ruling Letters ("NY") N003439, dated November 30, 2006, and NY N004939, dated January 12, 2007, CBP classified the "Shrek® Fun Casting Combo" and the "Shrek® Fun Casting Kit" in heading 9503, HTSUS, which provides for "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof."

CBP has reviewed ruling letters NY N003439 and NY N004939, and has determined that the fishing rods and reels described in the two ruling letters are classified in heading 9507, HTSUS, which provides for "Fishing rods, fish hooks and other line fishing tackle; fish landing nets, butterfly nets and similar nets; decoy "birds" (other than those of heading 9208 or 9705) and similar hunting or shooting equipment; parts and accessories thereof." Accordingly, for the reasons set forth below, CBP is revoking ruling letter NY N003439 and NY N004939.

FACTS:

The Bimini Bay "Shrek® Fun Casting Combo" and the "Shrek® Fun Casting Kit" at issue in ruling letters NY N003439 and N004939, each consist, in pertinent part, of a children's fishing rod with an attached reel, and a separate plastic plug for casting practice. The fishing reel is spooled with monofilament fishing line suitable for use with fishing tackle.

ISSUE:

Whether the children's fishing rod and reel combinations are classified in heading 9503, HTSUS, as other toys, or heading 9507, HTSUS, as fishing rods, fish hooks, and other line fishing tackle.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the

goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to the GRIs.

The following HTSUS provisions will be referenced:

- 9503: Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
- 9507: Fishing rods, fish hooks and other line fishing tackle; fish landing nets, butterfly nets and similar nets; decoy "birds" (other than those of heading 9208 or 9705) and similar hunting or shooting equipment; parts and accessories thereof:
- 9507.10 Fishing rods and parts and accessories thereof:
[...]
- 9507.30 Fishing reels and parts and accessories thereof:

* * * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTS and are thus useful in ascertaining the proper classification of merchandise. It is CBP's practice to follow, whenever possible the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to heading 95.03, HS, state, in relevant part:

This heading covers:

[...]

(D) **Other toys.**

This group covers toys intended essentially for the amusement of persons (children or adults).

[...]

- (ix) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).

* * * * *

The ENs to heading 95.07, HS, state, in relevant part:

This heading covers:

[...]

- (3) **Line fishing rods and tackle.** Fishing rods may be of various sizes, and may be made of various materials (bamboo, wood, metal, glass fibre, plastics, etc.). They may consist of a single piece or be jointed. Fishing tackle comprises such items as reels and reel mountings; artificial bait (e.g., imitation fish, flies, insects or worms) and hooks

mounted with such bait; spinning bait; mounted lines and casts; fishing floats (cork, glass, quill, etc.) including luminous floats; line winding frames; automatic striking devices; mounted fishing rings (**other than** mounted rings of precious or semi-precious stone); sinkers, and fishing rod bells when mounted or attached to external clamps, clips or other devices.

* * * * *

As an initial matter, this office observes that in 1998—prior to the publication of ruling letters NY N003439 and NY N004939, dated November 30, 2006 and January 12, 2007, respectively—CBP addressed the classification of a child’s fishing rod and reel in a ruling letter issued to Wal-Mart Stores, Inc. *See* NY C89170, dated June 22, 1998. Specifically, in ruling letter NY C89170, CBP classified a child’s fishing rod and reel, described as a “four foot six inch fishing rod blister packed with a reel containing monofilament line, and a small practice casting plug,” in heading 9507, HTSUS, as fishing rods, fish hooks and other line fishing tackle. *See* NY C89170. Inasmuch as the instant “Shrek® Fun Casting Combo” and the “Shrek® Fun Casting Kit” are nearly identical to the child’s fishing rod and reel at issue in NY C89170, this office notes that the classification of children’s fishing rod and reel combinations under heading 9507, HTSUS, was set forth in a valid ruling letter prior to the issuance of ruling letters NY N003439 and NY N004939.

Because CBP has not initiated a notice and comment procedure pursuant to 19 U.S.C. § 1625(c) to propose to revoke NY C89170, ruling letter NY C89170 remains valid with respect to substantially similar merchandise. Consequently, CBP’s decisions in NY N003439 and NY N004939 to classify substantially similar children’s fishing rod and reel combinations as “other toys” under heading 9503, HTSUS, directly contradicts the classification analysis set forth in ruling letter NY C89170. Accordingly, to best meet CBP’s obligations regarding the sound administration of the HTSUS and other customs and related laws, this office must now determine whether children’s fishing rod and reel combinations at issue in NY N003439 and NY N004939 are properly classified under heading 9503 or 9507, HTSUS. *See* 19 C.F.R. § 177.7(a).

Classification as a toy under heading 9503, HTSUS, requires that the article be principally used as a toy. *See StoreWALL, LCC v. United States*, 644 F.3d 1358, 1365–66 (Fed. Cir. 2011). Toys have been found to include “articles whose principal use is amusement, diversion, or play, rather than practicality.” *Processed Plastics Co. v. United States*, 473 F.3d 1164, 1169–10 (quoting *Minnetonka Brands, Inc. v. United States*, 24 CIT 645, 651, 110 F. Supp. 2d 1020, 1027 (2000)) (“We agree with the standard adopted in *Minnetonka* to determine whether merchandise should be classified as a toy.”).

In the tariff context, the “amusement” quality of an article is compared against its utilitarian function. Specifically, in *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, C.D. 4688 (1977), the court stated that, “[W]hen amusement and utility become locked in controversy, the question becomes one of the determining whether the amusement is incidental to the utilitarian purpose, or the utility purposes incidental to the amusement.” Therefore, if the level of amusement of the article is not sufficient to constitute its principal use, the article is not a toy. *See United States v. Topps Chewing Gum, Inc.*, 440 F.2d 1384 (1973).

To determine if an article is principally used for amusement, diversion or play purposes, the courts have considered an article's "general physical characteristics" to be an important indicator of whether the good's amusement value outweighs its utilitarian purpose. *Infantino, LLC v. United States*, 36 Int'l Trade Rep. (BNA) 1534 (Ct. Int'l Trade Dec. 24, 2014); *see also United States v. Carborundum Co.*, 536 F.2d 373 (Fed. Cir. 1976). Consequently, in evaluating whether an article is *prima facie* classifiable as a toy of heading 9503, HTSUS, CBP often relies on an examination of the physical characteristics of an article to determine whether it is principally used for amusement purposes.

Consistent with the Courts' guidance on the scope of heading 9503, HTSUS, CBP has previously ruled that certain miniature fishing rods, reels, and games are classifiable as "toys" of heading 9503, HTSUS, because the diminutive or other physical characteristics of such merchandise have rendered them useless for the utilitarian function of recreational fishing. For example, in ruling letter NY L89646, dated January 3, 2006, CBP classified a child's educational toy containing a 5-³/₄-inch wooden fishing pole with attached magnet in heading 9503, HTSUS, finding that the toy is designed to improve hand-eye coordination and sea creature recognition for children. Similarly, in ruling letters NY K89172 and NY F84650, dated September 14, 2004 and April 7, 2000, CBP classified two children's miniature fishing rods with attached magnets for collecting toy fish as "toys" of heading 9503, HTSUS. *See also* NY F82180, dated January 27, 2000 (classifying a battery-powered toy fish with remote control designed to resemble a fishing rod and reel in heading 9503, HTSUS).

By contrast, CBP has previously held that child-sized fishing rod and reel combinations whose physical characteristics render them suitable for the utilitarian purpose of recreational fishing are not classifiable as "toys" of heading 9503, HTSUS. For example, in ruling letter NY C89170, dated June 22, 1998, CBP classified a child's "[4-foot, 6-inch] fishing rod[,] blister packed with a reel containing monofilament line, and a small practice casting plug" in heading 9507, HTSUS, because the merchandise was designed for the utilitarian purpose of serving as an introductory sport fishing device. Specifically, this office notes that the children's fishing rod in NY C89170 was constructed of sufficient length to be used to catch small fish, and the fishing reel and monofilament line were suitable for tying and casting of fishing hooks and lures.

Similar to the merchandise at issue in ruling letter NY C89170, the instant Shrek®-themed children's fishing rods and reels each consist of a child-sized fishing rod, a reel with monofilament line, and a practice casting plug. Upon examination of the physical characteristics of the merchandise, this office observes that the fishing rod is of sufficient length to enable casting, and the fishing reel and monofilament line are of suitable strength to catch small fish. The plastic practice casting plug provides some amusement value; however, it is not permanently attached to the monofilament line and can be easily removed and replaced with line fishing hooks or other tackle. Moreover, there is no indication that the merchandise is intended to be used as part of a game or other children's endeavor. *Compare* ruling letter NY C89170, *with* ruling letters NY L89646, NY K89172 and NY F84650 (children's miniature fishing poles with attached magnets for collecting toy fish). Accordingly, based on the

physical characteristics and function of the children's fishing rods and reels, this office concludes that the utilitarian nature of the merchandise outweighs its amusement purposes.

Because the Shrek®-themed children's fishing rods and reels are not principally used for amusement purposes, they are not classifiable as a "toy" of heading 9503, HTSUS, and must be classified elsewhere in the Nomenclature. Heading 9507, HTSUS, provides, in pertinent part, for "Fishing rods, fish hooks and other line fishing tackle." Insomuch as the Shrek®-themed children's fishing rods and reels are fully described by the terms "fishing rods" and "other line fishing tackle," they are *prima facie* classifiable in heading 9507, HTSUS.

Similar to the analysis set forth in NY C89170, this office notes that the Shrek®-themed children's fishing rods and reels are described at the 6-digit level by two, equally-specific subheadings of heading 9507, HTSUS. Subheading 9507.10, HTSUS, provides for "fishing rods and parts and accessories thereof," and subheading 9507.30, HTSUS, provides for "fishing reels and parts and accessories thereof." Consequently, because the component fishing rod and reel are equally essential to the utilitarian function of sport fishing, CBP must refer to GRI 3(c), which provides that when goods cannot be classified by reference to GRI 3(a) or (b), "they shall be classified under the [subheading] which occurs last in numerical order among those which equally merit consideration." Accordingly, by application of GRIs 3(c) and 6, the Shrek®-themed children's fishing rod and reel combinations are classifiable in subheading 9507.30, HTSUS, as fishing reels.¹

HOLDING:

By application of GRIs 6 and 3(c), the children's fishing rod and reel combinations are classified under heading 9507, HTSUS, specifically in subheading 9507.30, HTSUS, which provides for "Fishing rods, fish hooks and other line fishing tackle; fish landing nets, butterfly nets and similar nets; decoy "birds" (other than those of heading 9208 or 9705) and similar hunting or shooting equipment; parts and accessories thereof: Fishing reels and parts and accessories thereof."

The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at <http://www.usitc.gov>.

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, ruling letters NY N003439, dated November 30, 2006, and NY N004939, dated January 12, 2007, are hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

¹ Classification at the 8-digit level within subheading 9507.30, HTSUS, is determined based on the value of the merchandise (for example, subheading 9507.30.20, HTSUS, which provides, in relevant part, for fishing reel "valued not over \$2.70 each").

**PROPOSED REVOCATION OF TEN RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF INTERNALLY-PADDED
GROUND MATS**

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

ACTION: Notice of proposed revocation of ten ruling letters and revocation of treatment relating to the tariff classification of ground mats containing internal padding.

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 ten ruling letters concerning tariff classification of internally-padded ground mats under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before October 21, 2016.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 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: Nicholai C. Diamond, Tariff Classification and Marking Branch, at (202) 325–0292.

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) (“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 public 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 proposing to revoke ten ruling letters pertaining to the tariff classification of internally-padded ground mats. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N253198, dated May 29, 2014 (Attachment A), NY H82586, dated June 28, 2001 (Attachment B), NY G85866, dated February 7, 2001 (Attachment C), NY G86314, dated January 25, 2001 (Attachment D), NY G86128, dated January 24, 2001 (Attachment E), NY F81159, dated December 28, 1999 (Attachment F), NY E87993, dated November 8, 1999 (Attachment G), NY D80795, dated August 6, 1998 (Attachment H), NY 878296, dated September 25, 1992 (Attachment I), and NY 849584, dated March 12, 1990 (Attachment J), 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 ten identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

er'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 N253198, NY H82586, NY G85866, NY G86314, NY G86128, NY F81159, NY E87993, NY D80795, NY 878296, and NY 849584, CBP classified various ground mats containing internal padding in heading 6307, HTSUS. In NY N253198, CBP specifically classified an internally-padded ground mat in subheading 6307.90.98, HTSUS, which provides for "Other made up articles, including dress patterns: Other: Other: Other." In NY H82586, NY G85866, NY G86314, NY G86128, NY F81159, NY E87993, NY D80795, and NY 878296, CBP specifically classified various internally-padded ground mats in subheading 6307.90.99, HTSUS, which provided for "Other made up articles, including dress patterns: Other: Other: Other." In NY 849584, CBP specifically classified an internally-padded ground mat in subheading 6307.90.90, HTSUS, which provided for "Other made up articles, including dress patterns: Other: Other." CBP has reviewed NY N253198, NY H82586, NY G85866, NY G86314, NY G86128, NY F81159, NY E87993, NY D80795, NY 878296, and NY 849584, and has determined the ruling letters to be in error. It is now CBP's position that internally-padded ground mats are properly classified, by operation of GRI 1, in heading 9404, HTSUS, specifically in subheading 9404.90.20, HTSUS, which provides for "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Pillows, cushions and similar furnishings: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N253198, NY H82586, NY G85866, NY G86314, NY G86128, NY F81159, NY E87993, NY D80795, NY 878296, and NY 849584, and to revoke any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in the proposed Headquarters Ruling Letter H264344, set forth as Attachment K to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: August 29, 2016

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N253198

May 29, 2014

CLA-2-63:OT:RR:NC:N3:351

CATEGORY: Classification

TARIFF NO.: 6307.90.9889

MS. DEBBIE CHIALTAS
LIGHT SPEED OUTDOORS
2245 SAN DIEGO AVENUE, SUITE #125
SAN DIEGO, CA 92110

RE: The tariff classification of a ground mat from China

DEAR MS. CHIALTAS:

In your letter dated May 1, 2014, you requested a tariff classification ruling.

You have submitted a sample of an item you call a Camp Mat, a water-resistant ground mat to be used outdoors. The mat is constructed of two fabrics sewn together. The bottom side is a woven polyester textile fabric which you say is water-resistant. The top side is made up of a smooth polyester woven textile fabric. The two sides are sewn together with a polypropylene batting on the inside and finished with polypropylene banding and measures 60"L x 70"W. The mat once folded has an outside pocket on the cover flap with an adjustable shoulder strap for easy transport. The ground mat is secured by a hook-and-loop strip sewn across the outer flap.

The applicable subheading for the camp mat will be 6307.90.9889, Harmonized Tariff Schedule of the United States, (HTSUS), which provides for other made up textile articles, other. The rate of duty will be 7% 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/>.

The sample will be returned.

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 Mitchel Bayer at mitchel.s.bayer@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Acting Director

National Commodity Specialist Division

[ATTACHMENT B]

NY H82586

June 28, 2001

CLA-2-63:RR:NC:TA:351 H82586

CATEGORY: Classification

TARIFF NO.: 6307.90.9989

MR. DANIEL BERKOWITZ
SPECTRUM IMPORTS, INC
420 HEATHERWOOD LANE, SUITE 2C
DEVON, PA 19333

RE: The tariff classification of a mat from Korea and/or China.

DEAR MR. BERKOWITZ:

In your letter dated June 19,2001, you requested a tariff classification ruling. The sample is being returned as requested.

The sample submitted is a mat, article number 155150. The mat is made of 100 percent acrylic twill weave fabric on the top exterior surface and a PVC material on the bottom exterior surface. Between the two surfaces is a thin layer of foam. The mat measures approximately 60" x 48".

The applicable subheading for the mat will be 6307.90.9989, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles . . . Other. The rate of duty will be 7 percent ad valorem.

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 Mitchel Bayer at 212-637-7086.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT C]

NY G85866

February 7, 2001

CLA-2-63:RR:NC:TA:351 G85866

CATEGORY: Classification

TARIFF NO.: 6307.90.9989

MS. ELIZABETH HODUR
WARNACO INC.
149 MADISON AVE.
NEW YORK, NY 10016

RE: The tariff classification of a “Speedo Beach Mat” from China.

DEAR MS. HODUR:

In your letter dated December 21, 2000, you requested a tariff classification ruling. The sample is being returned as requested.

The sample submitted is a “Speedo Beach Mat,” style number 753700. It is made of an exterior surface of a brushed knit fabric panel and one of nylon woven fabric which has been coated, covered or laminated with a layer of plastic material. The plastic has been determined to be noncellular. The plastic surface of this material faces outward and the plastic has been embossed to simulate the look of a woven fabric. The fabric panels are sewn over a spring-type steel tubing which allows the article to pop open by itself and be used as a beach mat. The article features two sewn in foam cushion. When not in use it is coiled into a flat disc shape and stored in a zippered bag made of woven fabric and mesh fabric.

The applicable subheading for the “Speedo Beach Mat” will be 6307.90.9989, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles . . . Other. The rate of duty will be 7 percent ad valorem.

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 Mitchel Bayer at 212-637-7086.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT D]

NY G86314

January 25, 2001

CLA-2-63:RR:NC:TA:351 G86314

CATEGORY: Classification

TARIFF NO.: 6307.90.9989

MR. FLOYD SIRICO
ROGERS & BROWN CUSTOM BROKERS, INC.
P.O. BOX 20160
CHARLESTON, SC 29413-0160

RE: The tariff classification of a "Beach Mat" from China.

DEAR MR. SIRICO:

In your letter dated January 9, 2001, on behalf of Franco Manufacturing Company, Inc. you requested a tariff classification ruling. The sample is being returned as requested.

The sample submitted is a "Beach Mat." It is made of two textile fabric panels. One is constructed of nylon woven fabric and the other is made of a terry cloth fabric panel. The panels are sewn together with a woven textile binder fabric. Between the panels is polyester fiber filling and the product has been quilted. The quantity of polyester fiber filling is so small that the mat can not be considered to be a cushion. Sewn onto the woven fabric side is a pocket which is opened at both ends. When not in use the article is designed to be rolled up and secure with a nylon strap with metal snaps. It features nylon carry straps.

The applicable subheading for the "Beach Mat" will be 6307.90.9989, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles . . . Other. The rate of duty will be 7 percent ad valorem.

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 Mitchel Bayer at 212-637-7086.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT E]

NY G86128
January 24, 2001
CLA-2-63:RR:NC:TA:351 G86128
CATEGORY: Classification
TARIFF NO.: 6307.90.9989

MR. DENNIS AWANA
INTER-ORIENT SERVICES
1455 MONTEREY PASS ROAD #205
MONTEREY PARK, CA 91754

RE: The tariff classification of a combination bag/beach mat from Taiwan or China.

DEAR MR. AWANA:

In your letter dated December 12, 2000, on behalf of G & A Trading Corporation, you requested a tariff classification ruling.

The sample submitted is a combination bag/beach mat. It is made of two textile fabric panels constructed of nylon woven fabric which has been coated, covered or laminated with a layer of PVC material on the interior side. The two panels are sewn together with a foam filling. When not in use as a mat the article can be folded over in half and secured by a textile zipper closure on each side extending upward nearly two-fifths from the midsection. The remaining ends are folded inwards forming a bag-type item. It features two textile web carry straps. An eight-inch wide flap with a metal snap closure further secures it. This flap features a zippered pocket.

The applicable subheading for the combination bag/beach mat will be 6307.90.9989, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles . . . Other. The rate of duty will be 7 percent ad valorem.

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 Mitchel Bayer at 212-637-7086.

Sincerely,
ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT F]

NY F81159

December 28, 1999

CLA-2-63:RR:NC:TA:352 F81159

CATEGORY: Classification

TARIFF NO.: 6307.90.9989

MR. MICHAEL LOHAN
FRANCO MANUFACTURING COMPANY, INC.
555 PROSPECT STREET
METUCHEN, NJ 08840-2293

RE: The tariff classification of a beach mat from China.

DEAR MR. LOHAN:

In your letter dated December 17, 1999 you requested a tariff classification ruling.

The submitted sample is a beach mat measuring 58" X 48". It is constructed with an outer layer of 100% filament nylon woven fabric. This layer is designed to form the bottom of the mat and is constructed of a strong rugged fabric. The face of the mat is constructed of 100% staple acrylic woven fabric. A small quantity of polyester fiber has been placed between the two layers and the product has been quilted. The quantity of polyester Fiberfil is so small that the mat can not be considered to be a cushion. This product features a woven fabric capping sewn along all of the outside edges and is designed to be folded into 12" X 10" package that is characterized by two fabric carrying handles.

The applicable subheading for the beach mat will be 6307.90.9989, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles, including dress patterns, other, other, other, other, other. The rate of duty will be 7 percent ad valorem in both 1999 and 2000.

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 Alan Tytelman at 212-637-7092.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT G]

NY E87993

November 8, 1999

CLA-2-63:RR:NC:TA:352 E87993

CATEGORY: Classification

TARIFF NO.: 6307.90.9989

MS. JOHNNA BERRY
AKA INTERNATIONAL, INC.
2601 ELLIOTT AVENUE, SUITE 3167
SEATTLE, WA 98121

RE: The tariff classification of a “Beach Buddy” from China.

DEAR MS. BERRY:

In your letter dated October 18, 1999, on behalf of United Biznet, Inc., you requested a tariff classification ruling. The sample is being returned as requested.

The sample submitted is a “Beach Buddy”. It is a circular mat used at the beach. It is made of two textile fabric panels. One panel is made of 100 percent polyester woven fabric with two pockets made of open-work knit fabric sewn onto the exterior side. It is stated that the other panel will be made of either 100 percent cotton knit terry cloth or 100 percent polyester woven brushed fleece fabric. Between the panels are 100 percent polyester fibers. The panels are sewn together on all sides. An open-work knit fabric is sewn around the outer edges. Passing through the open-work fabric is a braided textile cord. The cord is used as a drawstring to carry the article. There is horizontal top stitching throughout the article.

The applicable subheading for the “Beach Buddy” will be 6307.90.9989, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles . . . Other. The rate of duty will be 7 percent ad valorem.

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 Alan Tytelman at 212-637-7092.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT H]

NY D80795

August 6, 1998

CLA-2-63:RR:NC:TA:352 D80795

CATEGORY: Classification

TARIFF NO.: 6307.90.9989

MS. IRENE KWOK
CDP ASIA LTD.
3/F, CALIFORNIA TOWER
30-32 D'AGUILAR STREET
CENTRAL, HONG KONG

RE: The tariff classification of a "Beach Mat" from China.

DEAR MS. KWOK:

In your letter dated July 27, 1998, you requested a tariff classification ruling.

The sample submitted is a "Beach Mat". The mat is made with 100 percent polyester woven fabric on the top exterior surface and silver foil material on the bottom exterior surface. Between the two surfaces is a thin layer of foam. When not in use the mat can be rolled up and secured with the attached fabric straps with plastic buckle and be carried by the textile carry handle.

The applicable subheading for the "Beach Mat" will be 6307.90.9989, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles...Other. The rate of duty will be 7 percent ad valorem.

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 Alan Tytelman at 212-466-5896.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT I]

NY 878296
SEPTEMBER 25, 1992
CLA-2-63:S:N:N3H:345 878296
CATEGORY: Classification
TARIFF NO. 6307.90.9986

MR. SCOTT A. COHN
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN
12 EAST 49TH STREET
NEW YORK, NY 10017

RE: The tariff classification of a combination beach mat/bag from China.

DEAR MR. COHN:

In your letter dated September 15, 1992, on behalf of B. M. Mamiye and Company, you requested a tariff classification ruling.

The sample submitted is a combination beach mat/bag composed of an exterior surface of 100 percent man-made terrycloth fabric and one of nylon woven fabric with a foam filling. When folded over in half, manifesting a nylon woven exterior surface, and thereon secured by a textile zipper closure on each side extending upwards nearly two-fifths from its midsection. The remaining flap portions, one of which contains a head-extension portion, are folded inwards forming a bag-type item. Further, affixed to its top portion are double webbing carrying straps. The sample is being returned as requested.

The applicable subheading for the combination beach mat/bag will be 6307.90.9986, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles...Other: Other, other. The rate of duty will be 7 percent ad valorem.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,
JEAN F. MAGUIRE
Area Director
New York Seaport

[ATTACHMENT J]

NY 849584

March 12, 1990

CLA-2-63:S:N:N3G:345 849584

CATEGORY: Classification

TARIFF NO.: 6307.90.9050

MR. RALPH H. SHEPPARD
ADDUCI, MASTRIANI, MEEKS & SCHILL
330 MADISON AVENUE
NEW YORK, N.Y. 10017

RE: The tariff classification of a beach mat from Taiwan.

DEAR MR. SHEPPARD:

In your letter dated February 12, 1990, on behalf of SGI, Cranston, Rhode Island, you requested a tariff classification ruling.

The submitted sample and descriptive literature are representative of a beach mat, item #40252, composed of two layers of material; one layer is constructed of vinyl, the other consist of 65 percent polyester and 35 percent cotton woven fabric. Between the layers are nonwoven polyester batting. The article measures approximately 69 ¼ inches long by 26 3/8 inches wide with two opened pockets sewn on one side. When not in use the article can be folded and hand carried by woven textile straps. It is held closed with a textile woven strap and metal snaps. The sample is being returned as requested.

The applicable subheading for the beach mat will be 6307.90.9050, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles...other, other. The rate of duty will be 7 percent ad valorem.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

[ATTACHMENT K]

HQ H264344
 CLA-2 OT:RR:CTF:TCM H264344 NCD
 CATEGORY: Classification
 TARIFF NO.: 9404.90.2000

DEBBIE CHIALTAS
 LIGHT SPEED OUTDOORS
 2245 SAN DIEGO AVENUE
 SUITE #125
 SAN DIEGO, CA 92110

RE: Revocation of NY N253198, dated May 29, 2014, NY H82586, dated June 28, 2001, NY G85866, dated February 7, 2001, NY G86314, dated January 25, 2001, NY G86128, dated January 24, 2001, NY F81159, dated December 28, 1999, NY E87993, dated November 8, 1999, NY D80795, dated August 6, 1998, NY 878296, dated September 25, 1992, and NY 849584, dated March 12, 1990; tariff classification of internally-padded ground mats

DEAR Ms. CHIALTAS:

This letter is in reference to New York Ruling Letter (NY) N253198, issued to you on May 29, 2014, which involved classification of a ground mat containing polypropylene batting under the Harmonized Tariff Schedule of the United States (“HTSUS”). We have reviewed NY N253198 and determined that it is incorrect. For the reasons set forth below, we are revoking that ruling.

We have additionally reviewed NY H82586, dated June 28, 2001, NY G85866, dated February 7, 2001, NY G86314, dated January 25, 2001, NY G86128, dated January 24, 2001, NY F81159, dated December 28, 1999, NY E87993, dated November 8, 1999, NY D80795, dated August 6, 1998, NY 878296, dated September 25, 1992, and NY 849584, dated March 12, 1990, all of which involve classification of ground mats containing internal padding. As with NY N253198, we have determined that the enumerated rulings are incorrect and, for the reasons set forth below, are revoking them.

FACTS:

The merchandise at issue consists of various mats, designated “camp mat,” “beach mat” or derivations thereof, or simply “mat,” that are designed to be placed on the ground and subsequently sat, reclined, or laid upon. Each mat contains an exterior surface of twill, nylon, polyester, or other textile fabric, as well as an interior padding of polypropylene, polyester fiber, or cellular rubber. The polyester filling contained in two of the mats, specifically those at issue in NY G86314 and NY F81159, is described in the rulings as “so small that the mat cannot be considered to be a cushion.” Attached to several of the mats are combinations of straps, snaps, zippers, pockets, hooks, loops, and/or other items that, in concert, allow for compression and carrying of the mats as bags.

The subject ground mats were all classified by U.S. Customs and Border Protection (CBP) in heading 6307, HTSUS. The mat at issue in NY N253198 was specifically classified in subheading 6307.90.98, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other: Other.” The various mats at issue in NY H82586, NY G85866, NY G86314, NY G86128, NY F81159, NY E87993, NY D80795, and NY 878296 were specifi-

cally classified in subheading 6307.90.99, HTSUS, which provided for “Other made up articles, including dress patterns: Other: Other: Other.” The mat at issue in NY 849584 was specifically classified in subheading 6307.90.90, HTSUS, which provided for “Other made up articles, including dress patterns: Other: Other.”¹

ISSUE:

Whether the subject ground mats with interior padding are classified as “other made up articles” in heading 6307, HTSUS, or as cushions in heading 9404, HTSUS?

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first 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 heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The 2016 HTSUS provisions under consideration are as follows:

6307	Other made up articles:
6307.90	Other:
	Other:
6307.90.98	Other
<hr/>	
9404	Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered:
9404.90	Other:
	Pillows, cushions and similar furnishings:
9404.90.20	Other

As a preliminary matter, Section XI, Note 1(a), HTSUS, states as follows: “This section does not cover...[a]rticles of chapter 94 (for example, furniture, bedding, lamps and lighting fittings.” Therefore, if the instant mats are *prima facie* classifiable in heading 9404, HTSUS, they cannot be classified in heading 6307, HTSUS.

Heading 9404 provides, *inter alia*, for articles of bedding and similar furnishing, and specifically lists cushions as an example of such. The tariff

¹ As part of the 1992 amendments to the HTSUS, subheading 6307.90.90 was re-designated subheading 6307.90.99. In turn, subheading 6307.90.99 was re-designated 6307.90.98 as part of the 2002 amendments to the HTSUS. Because the three subheadings are identical in language, we consider whether the instant mats are classifiable in subheading 6307.90.98, HTSUS, which remains in effect

term “cushion” is not defined in the HTSUS, and therefore must be construed in accordance with its plain meaning, which can be ascertained by reference to dictionaries, scientific authorities, and other “reliable information sources” and “lexicographic and other materials.” *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001); *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). According to various dictionary definitions, “cushion” can be understood as a “pad or pillow with a soft filling, used for resting, reclining, or kneeling.” THE AMERICAN HERITAGE COLLEGE DICTIONARY 1135 (4th ed. 2004); see also Oxford Online Dictionaries (defining “cushion” as “pillow or pad stuffed with a mass of soft material, used as a comfortable support for sitting or leaning on”). This interpretation is consistent with court decisions describing “cushion” as an article containing internal padding that boosts the physical comfort of the user sitting, reclining, or lying upon it. See *Bauerhin Tech. Ltd. Pshp. v. United States*, 110 F.3d 774, 778 (Fed. Cir. 1997); *Infantino, LLC v. United States*, No. 11–00497, 2014 Ct. Intl. Trade LEXIS 164, at *10–12 (Ct. Int’l Trade Dec. 14, 2014) (“The Funny Farmer certainly qualifies as cushioning, insofar as it is stuffed with a polyester-fiber filling and is designed to cushion a child in either of its configurations.”).

As these decisions, as well as various CBP rulings, make clear, a cushion must only satisfy the above-stated definition of such to qualify as a product classifiable in heading 9404. For example, a cushion within the meaning of heading 9404 need not necessarily be designed for use with beds or for inducement or facilitation of sleeping. See *Bauerhin*, 110 F.3d at 778 (“Whether or not the car seats are used primarily for ‘napping’ is irrelevant.”); *Infantino*, 2014 Ct. Intl. Trade LEXIS 164, at *10–11 (“The important point from *Bauerhin* is that heading 9404 can cover non-sleep-purposed cushioning...”). Nor must it be restricted to use with, or incorporation into, beds or bedding articles, or necessarily be bare of attached articles unrelated to its comfort-boosting functions. See *Bauerhin*, 110 F.3d at 778 (classifying car seat insert with polyester fiberfill as a cushion in heading 9404); *Infantino*, 2014 Ct. Intl. Trade LEXIS 164, at *2, 10–11 (concluding that a children’s “play mat” with interior polyester-fiber batting and various attached toys is described as cushioning of heading 9404)²; NY N057945, dated April 29, 2009 (classifying a beach mat with internal polyurethane foam padding and external shoulder straps in heading 9404); NY I83405, dated July 23, 2002 (classifying beach mats with polyester filler and roll-up straps in heading 9404); and NY E86645, dated September 24, 1999 (classifying beach mat with interior foam and exterior side zippers and straps in heading 9404). Finally, the internal padding within cushions is not subject to minimum requirements with respect to thickness or density. See *Infantino*, 2014 Ct. Intl. Trade LEXIS 164, at *2 (characterizing polyester fiberfill in play mat as “light”); Headquarters Ruling Letter H185719, dated January 30, 2013 (classifying 1/4 inch-thick mat in heading 9404).

Here, the ground mats at issue all contain textile exteriors encasing interior padding. This padding is made up in all cases of polyester fiber or foam, both of which can be characterized as “soft” materials that, when incorporated into the mats, effectually offer a comfortable buffer between the mats’

² The court in *Infantino* ultimately classified the play mat in heading 9503 by application of GRI 3(b), but only after determining that the mat was *prima facie* classifiable in both heading 9404 and heading 9503. 2014 Ct. Intl. Trade LEXIS 164, at *25–27.

users and the underlying surface. Per *Bauerhin* and *Infantino*, it is immaterial that the mats do not necessarily induce or facilitate sleep or that they lend themselves to use apart from beds or bedding articles. It is also immaterial, with respect to the beach mats, that these mats include various materials designed to facilitate conversion of the mat into a bag for transport purposes. Finally, per *Infantino*, the purported thinness of the polyester filling in the mats at issue in NY G86314 and NY F81159 do not prevent these mats' classification in heading 9404. Because all the mats at issue contain internal padding that bolsters the comfort of the users lying or sitting atop them, they are described as cushions of heading 9404, HTSUS. As such, they are excluded from heading 6307, HTSUS, and are properly classified in heading 9404. We note, however, that this determination is applicable only to mats that contain internal padding.³

HOLDING:

Under the authority of GRI 1, the subject internally-padded ground mats are classified in heading 9404, HTSUS, specifically in subheading 9404.90.2000, HTSUSA (Annotated), which provides for: "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Pillows, cushions and similar furnishings: Other." The 2016 column one general rate of duty rate is *free*.

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

EFFECT ON OTHER RULINGS:

New York Ruling Letter N253198, dated May 29, 2014, H82586, dated June 28, 2001, NY G85866, dated February 7, 2001, NY G86314, dated January 25, 2001, NY G86128, dated January 24, 2001, NY F81159, dated December 28, 1999, NY E87993, dated November 8, 1999, NY D80795, dated August 6, 1998, NY 878296, dated September 25, 1992, and NY 849584, dated March 12, 1990 are hereby REVOKED in accordance with the above analysis.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

CC: Daniel Berkowitz
Spectrum Imports, Inc.
420 Heatherwood Lane, Suite 2C
Devon, PA 19333

³ As such, the instant decision does not apply, *inter alia*, to NY N247154, dated November 20, 2013, NY N017850, dated October 4, 2007, NY K82186, dated January 13, 2004, NY H88842, dated February 28, 2002, or NY E86489, dated September 14, 1999, all of which involve classification of beach mats that are not stated to contain internal filling.

Elizabeth Hodur
Warnaco, Inc.
149 Madison Ave.
New York, NY 10016

Floyd Sirico
Rogers & Brown Custom Brokers, Inc.
P.O. Box 20160
Charleston, SC 29413

Dennis Awana
Inter-Orient Services
1455 Monterey Pass Road #205
Monterey Park, CA 91754

Michael Lohan
Franco Manufacturing Company, Inc.
555 Prospect Street
Metuchen, NJ 08840

Johnna Berry
AKA International, Inc.
2601 Elliot Avenue, Suite 3167
Seattle, WA 98121

Irene Kwok CDP Asia Ltd.
3/F., California Tower
30-32 d'Aguilar Street
Central, Hong Kong

Scott A. Cohn
Grunfeld, Desiderio, Lebowitz & Silverman
12 East 49th Street
New York, NY 10017

Ralph H. Sheppard
Adduci, Mastriani, Meeks & Schill
330 Madison Avenue
New York, NY 10017

19 CFR PART 177

REVOCATION OF THREE RULING LETTERS, MODIFICATION OF TWO RULING LETTERS, AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF BILBERRY AND BLUEBERRY EXTRACT POWDERS

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

ACTION: Notice of revocation of three ruling letters, modification of two ruling letters, and revocation of treatment relating to the tariff classification of bilberry and blueberry extract powders.

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 three ruling letters and modifying two ruling letters concerning tariff classification of bilberry and blueberry extract powders 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. 49, No. 51, on December 23, 2015. Two comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 21, 2016.

FOR FURTHER INFORMATION CONTACT: Nicholai C. Diamond, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0292.

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) (“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 public 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. 49, No. 51, on December 23, 2015, proposing to revoke three ruling letters and modify two ruling letters pertaining to the tariff classification of bilberry and blueberry extract powders. As stated in the proposed notice, this action will cover Headquarters Ruling Letter ("HQ") 964139, dated April 19, 2002, New York Ruling Letter ("NY") N219927, dated June 27, 2012, NY N037866, dated October 3, 2008, HQ 967972, dated March 2, 2006, and NY 814027, dated February 2, 1996, as well as 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 five identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 notice.

In HQ 964139, U.S. Customs and Border Protection ("CBP") classified a bilberry extract powder in subheading 1302.19.40, HTSUS, which provides for "Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Other: Ginseng; substances having anesthetic, prophylactic or therapeutic

properties: Other.” In NY N219927, CBP classified a similar bilberry extract powder in subheading 1302.19.91, HTSUS, which provides for “Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Vegetable saps and extracts: Other: Other.” In NY N037866, CBP classified a blueberry extract powder in subheading 1302.19.91, HTSUS. In NY 814027, which involved classification of four different extract powders, CBP classified the bilberry extract powder at issue in subheading 1302.19.40, HTSUS. In HQ 967972, CBP affirmed NY 814027 with regard to the latter’s classification of the bilberry extract powder in subheading 1302.19.40, HTSUS. It is now CBP’s position that the various bilberry and blueberry extract powders at issue in HQ 964139, NY N219927, NY N037866, NY 814027, and HQ 967972 are, by operation of GRI 1, classified in heading 3824, HTSUS, specifically in subheading 3824.90.92, HTSUS, which provides for “Prepared binders for foundry molds or cores; 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.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ 964139, NY N219927, and NY N037866, modifying NY 814027 and HQ 967972, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H262217, set forth as an attachment to this notice. 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: August 24, 2016

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H262217

August 24, 2016

CLA-2 OT:RR:CTF:TCM H262217 NCD

CATEGORY: Classification

TARIFF NO.: 3824.90.9290

PORT DIRECTOR, PORT OF BLAINE
U.S. CUSTOMS AND BORDER PROTECTION
9901 PACIFIC HIGHWAY
BLAINE, WA 98230

RE: Revocation of HQ 964139, dated April 19, 2002, NY N219927, dated June 27, 2012, and NY N037866, dated October 3, 2008; modification of HQ 967972, dated March 2, 2006, and NY 814027, dated February 2, 1996; Bilberry and blueberry extract powders

DEAR PORT DIRECTOR:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered Headquarters Ruling Letter (HQ) 964139, dated April 19, 2002, in which we granted a May 12, 2000 protest filed on behalf of Baralex, Inc. concerning classification of bilberry dry hydroal extract (“bilberry extract” or “subject merchandise”) under the Harmonized Tariff Schedule of the United States (HTSUS). In HQ 964139, we classified the instant bilberry extract in subheading 1302.19.40, HTSUS, which provides for “Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Other: Ginseng; substances having anesthetic, prophylactic or therapeutic properties: Other.” We have reviewed HQ 964139 and found it to be incorrect with respect to the classification of the subject bilberry extract. For the reasons set forth below, we are revoking this ruling.

In addition to HQ 964139, CBP is revoking NY N219927, dated June 27, 2012, and to modify HQ 967972, dated March 2, 2006, and NY 814027, dated February 2, 1996, all of which involve classification of bilberry extracts under heading 1302, HTSUS. CBP is also revoking NY N037866, dated October 3, 2008, in which we classified a blueberry extract under heading 1302, HTSUS.

As an initial matter, we note that under *San Francisco Newspaper Printing Co. v. United States*, 620 F. Supp. 738 (Ct. Int’l Trade 1985), the decision on the merchandise which was the subject of Protest No. 3004-00-100090 was final and binding on both the protestant and CBP. Therefore, while we may review the law and analysis of HQ 964139, any decision taken herein would not impact the entries subject to that ruling.

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 of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 51, on December 23, 2015. Two comments concerning the proposed action, submitted by Barlow & Co. LLC (“Barlow”) and The American Herbal Products Association (“AHPA”), were received in response to the notice. Both comments are addressed in this decision.

FACTS:

In HQ 964139, we described the subject bilberry powder as follows:

Bilberry dry hydroal extract powder 25% anthocyanide content is extracted from *Vaccinium myrtillus* berries. The process by which the an-

thocyanides are obtained from the plant is as follows: Billberry fruits are extracted with ethanol. The eluate is concentrated under vacuum, purified by a process of column separation that removes much of the tannins and other plant material, then concentrated and standardized to 25% anthocyanide content. This liquid is dried and crushed into a powder. It is imported in bulk powder form packed in plastic bags inside 10 kilogram fiberboard boxes. Additional information received from the importer indicates that the merchandise is pure plant material on importation without added carriers. Maltodextrin and other excipients are added at the time of encapsulation after entry.

We classified the subject merchandise in subheading 1302.19.40, HTSUS, upon finding that it was substantially similar to the merchandise in NY 814027 and concluding that NY 814027 was consequently “dispositive of this issue.”

NY 814027 involved classification of a bilberry powder and three other powders described as follows:

The four subject products, which [the importer] describes as “standardized herbal extracts”, consist of four plant extracts, namely: Gingko biloba dry extract; Milk thistle (*Silybum marianum*); Leucoanthocyanins [(grape seed) *Vitis vinifera*]; and Bilberry (*Vaccinium myrtillus*). [The importer has] submitted flow charts from the manufacturer outlining the solvent extraction process used for each product, and [has] indicated in [its] letter that these extracts will be imported in bulk-powder form. [The importer] further indicate[s] that, subsequent to importation and sale...the extracts are combined with other ingredients and further processed into capsules and other similar forms for retail sale.

CBP classified the bilberry powder at issue in that case in subheading 1302.19.40, HTSUS. Although not stated in the ruling letter, we noted in HQ 964139 that the bilberry powder of NY 814027 was comprised 25% of anthocyanoside content. Also, in HQ 967972, in which we affirmed the portion of NY 814027 concerning classification of the bilberry powder, we noted that “all four of the substances in NY 814027 are obtained by sophisticated means such as solvent-solvent extraction, distillation, dialysis, chromatographic procedures, electrophoresis, etc.” and that “these processes result in a substance containing a targeted chemical compound or compounds along with ubiquitous plant material that need not be further removed for the manufacturers’ purpose.”

In NY N037866, we described the blueberry powder at issue as follows:

The subject product is an extract made from blueberries. Additional information was requested from you regarding the extraction process. In the supplementary documents submitted, you indicated that the extract is not a juice, but is an extract obtained from the blueberry fruit...Documentation provided indicates that the powdered extract contains approximately 20 percent anthocyanosides and 40 percent total polyphenols. The powdered extract will be used as a raw material in the production of dietary supplements.

According to the ruling, the manufacturing process for the blueberry powder entails pressing, initial alcohol extraction, subsequent elution, drying, filtration, and sterilization. CBP classified the powder in subheading 1302.19.91,

HTSUS, which provides for “Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Vegetable saps and extracts: Other: Other.”

Finally, in NY N219927, we described the bilberry powder at issue as follows:

The subject product, Bilberry Extract Powder 25% is a fine, ground powder of the Bilberry fruit...In the flow chart you submitted, it is indicated that the Bilberry fruits are extracted with ethanol, filtered, and undergo absorption by resin. The extract undergoes various processing to remove the ethanol, dry, grind, mix, and filter the product prior to packaging. The extract is standardized to a phenol and flav[ol]noid content of 70% and 38%, respectively. According to [the importer’s] submission, various non-phenolic plant compounds will remain in the finished extract. [The importer] indicate[s] that 30 percent of the finished extract consists of non-phenolic plant compounds which remain from the extracted fruit. The powdered extract will be use[d] as a raw material in the production of dietary supplements.

CBP classified the bilberry powder in subheading 1302.19.91, HTSUS.

ISSUE:

Whether the instant powders are properly classified in heading 1302, HTSUS, as vegetable extracts, in heading 2907, HTSUS, as polyphenols, or in heading 3824, HTSUS, as chemical preparations.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order.

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 the headings. It is CBP’s practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The 2016 HTSUS provisions under consideration are as follows:

1302 Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:

Vegetable saps and extracts:

1302.19	Other: Ginseng; substances having anesthetic, prophylactic or therapeutic properties:
1302.19.91	Other
2907	Phenols; phenol-alcohols: Polyphenols; phenol-alcohols:
2907.29	Other:
2907.29.90	Other
3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:
3824.90	Other: Other: Other:
3824.90.92	Other

At the outset, we note that the subject merchandise can only be classified under 3824, HTSUS, if it is not more specifically classifiable elsewhere in the Nomenclature. See *Cargill, Inc. v. United States*, 318 F. Supp. 2d 1279, 1278–88 (Ct. Int'l. Trade 2004). Accordingly, we first consider whether the instant bilberry and blueberry powders fall under the scope of heading 1302, HTSUS, or, alternatively, heading 2907, HTSUS.

Heading 1302, HTSUS, covers vegetable extracts. EN 13.02 provides, in relevant part, as follows:

The heading covers saps and extracts (vegetable products usually obtained by natural exudation or by incision, or extracted by solvents) **provided** that they are not specified or included in more specific headings of the Nomenclature (see list of exclusions at the end of Part (A) of this Explanatory Note).

These saps and extracts differ from the essential oils, resinoids and extracted oleoresins of heading 33.01, in that, apart from volatile odoriferous constituents, they contain a far higher proportion of other plant substances (e.g., chlorophyll, tannins, bitter principles, carbohydrates and other extractive matter).

The saps and extracts classified here include:

- (1) **Opium**, the dried sap of the unripe capsules of the poppy (*Papaver somniferum*) obtained by incision of, or by extraction from, the stems or seed pods. It is generally in the form of balls or cakes of varying size and shape. However, concentrates of poppy straw containing not less than 50% are **excluded** from this heading (see Note 1 (f) to this Chapter).

- (4) **Pyrethrum extract** , obtained mainly from the flowers of various pyrethrum varieties (e.g., *Chrysanthemum cinerariaefolium*) by extraction with an organic solvent such as normal hexane or “petroleum ether.”

- (7) **Ginseng extract** , obtained by water or alcohol extraction, whether or not put up for retail sale.

Mixtures of ginseng extract with other ingredients (e.g., lactose or glucose) used for the preparation of ginseng “tea” or beverage are excluded (heading 21.06).

- (11) **Quassia amara extract**, obtained from the wood of the shrub of the same name (*Simaroubaceae* family), which grows in South America.

Quassin, the principal bitter extract of the wood of the *Quassia amara*, is a heterocyclic compound of **heading 29.32**.

- (18) **Papaw juice** , whether or not dried, but not purified as papain enzyme. (The agglomerated latex globules can still be observed on microscopic examination.). Papain is **excluded (heading 35.07)**.

- (20) **Cashew nutshell extract**. The polymers of cashew nutshell liquid extract are, however, **excluded (generally heading 39.11)**.

Saps are usually thickened or solidified. **Extracts** may be in liquid, paste or solid form. “**Tinctures**” are extracts still dissolved in the alcohol by means of which they are extracted; the so-called “**fluid extracts**” are solutions of extracts in, for example, alcohol, glycerol or mineral oil. Tinctures and fluid extracts are generally standardised (for instance, pyrethrum extract may be standardised by adding mineral oil to produce commercial grades with a standard pyrethrins content of, e.g., 2%, 20% or 25%)...

The term “extract” is not defined in heading 1302, HTSUS, or elsewhere in the Nomenclature. Undefined tariff terms are construed in accordance with their common meanings, which may be ascertained by reference to “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials,” as well as the pertinent ENs. *GRK Can., Ltd. v. United States*, 761 F.3d 1354, 1357 (Fed. Cir. 2014); *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356–1357 (Fed. Cir. 2001). Numerous sources and authorities, including periodicals, publications in scientific journals, and product overviews offered by extract retailers, all indicate that the term “extract,” when referenced in the context of botanical solvent extraction, denotes a substance obtained by dissolution of the starting plant material. See Headquarters Ruling Letter (HQ) 965030, dated May 20, 2002 (citing United States Pharmacopeia and Remington’s Pharmaceutical Sciences); S.S. Handa, An Overview of Extraction Techniques for Medicinal and Aromatic Plants in EXTRACTION TECHNOLOGIES FOR MEDICINAL AND AROMATIC PLANTS 21

(U.N. Industrial Development Organization and the International Centre for Science and High Technology 2008) [Handa] (“Extraction, as the term is used pharmaceutically, involves the separation of medicinally active portions of plant or animal tissues from the inactive or inert components by using selective solvents in standard extraction procedures. The products so obtained from plants are relatively impure liquids, semisolids or powders intended only for oral or external use.”); S. Sasidharan et. al., *Extraction, Isolation and Characterization of Bioactive Compounds from Plants’ Extracts*, Vol. 8, No. 1 AFR. J. OF TRADITIONAL, COMPLEMENTARY AND ALTERNATIVE MED. 2 (2011) [Sasidharan] (describing extraction steps); Berkem, All About Plant Extraction, <http://www.berkem.com/en/content/all-about-plant-extraction-15> (“A plant extract must, by definition, be obtained from a solid-liquid extraction.”); Becarre Natural, In Fact, What is an Extract?, <http://www.becarre-natural.com/extraction.php> (“A plant extract is a substance or an active with desirable properties that is removed from the tissue of a plant, usually by treating it with a solvent, to be used for a particular purpose.”). While these sources provide that extracts may be standardized, they unanimously distinguish “extraction,” which is effected by maceration, infusion, decoction, percolation, digestion, or other solid-liquid extraction methods, from subsequent “isolation,” “purification,” or “separation” stages, in which the concentrations of certain compounds are increased by means of chromatographic purification or similar techniques. See HQ 965030, *supra*; Handa, *supra*, at 21–33 (surveying extraction methods and listing steps involved in extraction); Sasidharan, *supra* at 2–3 (listing extraction techniques); *Plant Medicine: Herbal Extraction Methods*, MOTHER EARTH LIVING, Sept./Oct. 1998, <http://www.motheearthliving.com/Health-and-Wellness/HERBAL-EXTRACTS.aspx> (describing extraction steps).

This widespread understanding of “extract” as encompassing only substances obtained by initial extraction of solid plant material finds support in several portions of EN 13.02. For example, solvent extraction as a means of extract obtention is placed in a series with exudation and incision, both of which are performed on solid plant material. Additionally, the EN states that extracts “contain a far higher proportion of other plant substances” than do isolated substances such as essential oils, indicating that the former are not subject to purification. Consistent with this, it lists various examples of extracts, including opium, quassia amara, papaw juice, and cashew nutshell extract, which, once purified to a degree that would not be achievable by solvent extraction of the biomass, are no longer classifiable in heading 1302, HTSUS. Finally, in setting forth permissible post-extraction steps, the EN identifies standardization as such a step and indicates that it is accomplished by dilution, rather than purification, following solvent extraction with an “organic solvent.” Conspicuously absent from the explanation of permissible post-extraction steps are any references to chromatographic purification or any other method of further purifying liquid extracts.

Accordingly, it is CBP’s position that heading 1302, HTSUS, applies to products that have been created through dissolution of plant material and subjected to limited post-extraction processing, but not to those that have subsequently been advanced by chromatographic purification or similar steps. See HQ H106785, dated October 14, 2010 (classifying extract in heading 1302, HTSUS, upon determining that “[t]he products are solvent-obtained extracts, not further subjected to extraordinary processing to isolate a single compound or family of compounds”); HQ H061203, dated August 12,

2010 (“There appears to be a limit on the degree and extent of purification that can occur for the product to remain in heading 1302.”). The latter are therefore excluded from heading 1302, HTSUS, and must be classified elsewhere. See HQ H061203, *supra* (“It is thus the opinion of this office that phenolic compounds are targeted and further concentrated in the extraction and purification process, resulting in a relatively pure chemical product that can no longer be considered a simple extract of heading 1302, HTSUS.”); HQ W968424, dated December 19, 2006 (excluding from heading 1302 a pine bark product that had undergone reverse osmosis); HQ W967214, dated April 4, 2006 (excluding *luo han guo* powder from heading 1302 where it had undergone cation ion exchange so as to render it a “relatively pure extensively processed chemical product”); and HQ 966448, dated July 9, 2004 (“The use of this chromatographic procedure in the preparation of these products exclude them from classification as vegetable extracts in heading 1302, HTSUS.”).

Here, the instant powders have all undergone some form of chromatographic purification. The bilberry powder at issue in HQ 964139 is “purified by a process of column separation,” a form of chromatography, while the powder in NY 814027 is subjected to unspecified “chromatographic procedures.” Similarly, the bilberry powder in NY N219927 and blueberry powder in NY N037866 undergo, respectively, absorption by resin and elution, both of which are common steps in chromatographic or other purification processes. See HQ 966448, *supra* (characterizing cation resin isolation as a chromatographic procedure). Our research indicates that chromatographic purification of liquid bilberry and blueberry solutions results in the increase of the solutions’ anthocyanoside content to concentrations that would not be achievable solely by initial solvent extraction. See, e.g., Can. Patent No. 2,421,109 (issued May 3, 2011) and (U.S. Patent No. 7,462,370 (issued Dec. 9, 2008) (describing purification of “crude” bilberry extracts by means of column purification); China Patent No. 101,215,424 (issued June 2, 2010) (describing purification of bilberry extract by means of resin adsorption). Consequently, having been purified by chromatographic purification following extraction, the instant powders are excluded from heading 1302, HTSUS.

In opposing the instant action, both commenters urge CBP to adopt broader definitions of “extract” that would encompass the subject products. Citing dictionary definitions and a university laboratory manual, Barlow asserts that “an extract from plant material remains an extract from plant material” within the meaning of heading 1302 even after undergoing subsequent purification. However, neither of the dictionary definitions cited actually indicate this, either explicitly or implicitly. For its part, the AHPA relies almost entirely upon a definition of “semi-purified extract” from its own publication in contending that extracts may be purified following initial solid-liquid extraction. Moreover, it concedes that “extract” is contradictorily defined elsewhere in its own publications as a “complex, multicomponent mixture obtained after using a solvent to dissolve components of the biomass,” a definition that is consistent with that set forth above. Given the preponderance of sources clearly distinguishing extraction from purification in defining the term extract, we are not inclined to adopt a broader definition of the term based upon self-promulgated definitions and an excerpt from a single neutral source.

AHPA additionally contends that Remington’s Pharmaceutical Sciences (“Remington’s”) and United States Pharmacopeia (“USP”), cited in previous

CBP rulings, actually support such a broader definition of extract. Specifically, AHPA's argument goes, Remington's states that extracts may be standardized after extraction while the USP sets forth monographs of relatively pure extracts. However, as explained in EN 13.02, the steps described in Remington's specifically occur following rendition of the extract to dry, finished form, at which point standardization entails *reducing rather than increasing* concentrations of certain compounds and classes through the addition of excipients. Moreover, the USP monographs cited all describe substances obtained from solid-liquid extractions and make no reference to post-extraction purification steps.

Both Barlow and AHPA also contend that CBP's reliance on EN 13.02 in excluding purified extracts from heading 1302, HTSUS, is misplaced. Specifically, the commenters assert that the exemplars of opium, quassia amara, papaw juice, and cashew shell extract all involve products that, once purified, are more specifically classified elsewhere in the HTSUS, and that these exemplars thus direct classification of extracts only in headings that are more specific, and not less specific, than heading 1302. However, there is no indication in the EN that excluded substances must necessarily be classified in more specific headings. To the contrary, the EN states that purified papaw juice and cashew shell extracts are outright excluded from heading 1302, indicating that they are not *prima facie* classifiable there irrespective of whether they are described by a more specific heading. Moreover, the EN counsels exclusion of ginseng extract from the heading and directs its classification in heading 2106, HTSUS, which is *less* specific than heading 1302. *R.T. Foods, Inc. v. United States*, 757 F.3d 1349, 1354 (Fed. Cir. 2014) ("HTSUS 2106...is a 'basket provision' as indicated by the terms 'not elsewhere specified or included'...A basket provision is not a specific provision."). Finally, read in its entirety, EN 13.02 contains myriad indicators that the purification of extracts renders them outside the scope of heading 1302, HTSUS, as discussed above.

Finally, AHPA contends that the position taken in this decision is inconsistent with HQ H121546, dated February 19, 2015, and HQ 963848, dated April 17, 2002, in which, respectively, a pine bark extract and a pyrethrum extract were classified in heading 1302, HTSUS. However, both these rulings involved products that had undergone multiple extractions by means of solid-liquid extraction techniques, but had not been subjected to more advanced purification steps like chromatographic purification. In fact, in HQ H121546, CBP specifically found that "the solvent extraction method used is...less complex than...reverse osmosis or column chromatography, which CBP has determined target specific compounds to a degree not contemplated by the ENs to heading 1302, HTSUS." As such, the products in HQ H121546 and HQ 963848 are distinguishable from the instant bilberry and blueberry powders, all of which have been purified by means of chromatographic purification. AHPA further contends that other CBP rulings, including HQ H238484, dated October 21, 2015, and HQ H237599, dated May 27, 2015, HQ H061203, *supra*, and HQ 966448, *supra*, are "based on erroneous assumptions and faulty logic, and should be revoked." Notwithstanding the fact that those rulings comport with our above-stated position, which is itself consistent with numerous authorities and EN 13.02, those rulings are not at issue in the present action. Comments suggesting their revocation are therefore inapposite.

Consequently, we remain of the position that the instant bilberry and blueberry powders are excluded from heading 1302, HTSUS. We accordingly consider whether these powders can be classified in heading 2907, HTSUS, as phenols. General Note 1 to Chapter 29 provides, in relevant part, as follows:

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;
- (b) Mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (chapter 27)...

With regard to “chemically defined” and “impurities” as referenced in Note 1(a) to Chapter 29, the EN to Chapter 29 states as follows:

A separate chemically defined compound is 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. In a crystal lattice, the molecular species corresponds to the repeating unit cell.

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...

Per Note 1(a) and the EN to Chapter 29, a substance is classifiable within Chapter 29 where it is comprised almost entirely by a single molecular structure, so long as any structurally-deviant constituents satisfy the definition of “impurities” as set forth in the EN to Chapter 29. *See Degussa Corp. v. United States*, 508 F.3d 1044, 1047–48 (Fed. Cir. 2007) (discussing the scope of, and applying, identical language concerning chemical impurities in the EN to Chapter 28); *Rhodia, Inc. v. United States*, 441 F. Supp. 2d 1368, 1375 n.3 (Ct. Int’l Trade 2006) (“The term ‘chemical compound’ is generally used to refer to ‘a substance composed chemically of two or more elements in definite proportions (as opposed to mixture).’”). Pursuant to Note 1(b) to Chapter 29, headings of the chapter also cover mixtures of isomers of organic compounds, i.e., of organic compounds that are represented by a single

chemical formula in diverse structural arrangements, that also may or may not contain such “impurities.” Among other things, “impurities” in a separately defined chemical compound or mixture of isomers cannot have been “deliberately left in the product with a view to rendering it particularly suitable for specific use rather than for general use.” See EN to Chapter 29; HQ 965089, dated January 31, 2002 (“Toluene...is deliberately left in the product with a view to rendering it particularly suitable for the specific use of manufacturing dextro-propoxyphene rather than for general use...Hence, the toluene is an impermissible impurity for tariff classification purposes.”).

Here, according to the product descriptions, the instant bilberry and blueberry powders all contain 20 percent to 25 percent anthocyanosides, and the products in NY N037866 and NY N219927 contain 40 percent total polyphenols and 70 percent total phenols respectively. Anthocyanosides, polyphenols, and phenols are all classes of compounds, rather than separate chemically defined compounds or isomers thereof. Thus, it is unclear whether any of the instant products consists of a single separately chemically defined compound, a mixture of its isomers, or simply a mixture of diverse compounds that falls outside the scopes of Note 1(a) and Note 1(b) to Chapter 29. Moreover, the bilberry powders in HQ 964139 and NY N219927 are described as “standardized,” indicating that they may have been supplemented with inert ingredients so as to achieve a standard concentration suitable for ingestion as a medicinal supplement, in which case the additional material could not be considered “impurities” for purposes of Note 1 to Chapter 29. See, e.g., U.S. Patent No. 6,649,195 (issued Nov. 18, 2003) and U.S. Patent No. 6,203,756 (issued Aug. 15, 2000) (both describing benefits of bilberry extracts standardized to 25% anthocyanosides in promoting healthy eyesight). In view of this, it cannot be said that the instant products satisfy Note 1 to Chapter 29, and they consequently fall outside the scope of heading 2907, HTSUS.

We lastly consider whether the instant products are classified in heading 3824, HTSUS. Heading 3824 provides for, among other things, “chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included.” General Note 1 to Chapter 38 provides, in relevant part, that “[t]his Chapter...does not cover chemically defined elements or compounds (usually classified in Chapter 28 or 29...” Additionally, EN 38.24 states, in pertinent part, as follows:

(B) CHEMICAL PRODUCTS AND CHEMICAL OR OTHER PREPARATIONS

With only three exceptions... this heading does not apply to separate chemically defined elements or compounds.

The **chemical products** classified here are therefore products whose composition is not chemically defined, whether they are obtained as by-products of the manufacture of other substances (this applies, for example, to naphthenic acids) or prepared directly.

Consistent with General Note 1 to Chapter 38 and the EN 38.24, it is CBP’s practice to classify products in heading 3824 where they have been purified following extraction, and thus fall outside the scope of heading 1302, but yet do not qualify as a product of a Chapter 29 heading. See HQ H195716, dated February 19, 2015; HQ H061203, *supra*; and HQ 959099, dated May 1, 1998. The subject powders, as chemical products that have been subjected to chro-

matographic purification, but cannot be classified in heading 2907, HTSUS, or in any other headings of Chapter 29, are properly classified in heading 3824, HTSUS.

HOLDING:

By application of GRI 1, the bilberry and blueberry extracts are classified under heading 3824, HTSUS, specifically under subheading 3824.90.9290, HTSUSA (Annotated), which provides for “Prepared binders for foundry molds or cores; 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.” The general column one rate of duty is 5.0% 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 the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

HQ 964139, dated April 19, 2002, NY N219927, dated June 27, 2012, and NY N037866, dated October 3, 2008, are hereby REVOKED in accordance with the above analysis. HQ 967972, dated March 2, 2006, and NY 814027, dated February 2, 1996, are hereby MODIFIED as set forth above in regard to the classification of the bilberry extract powder, but not to the other products at issue in HQ 967972 and NY 814027.

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

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

CC: Dennis Awana
Inter-Orient Services
1455 Monterey Pass Road, Suite 205
Monterey Park, CA 91754

Jonathan Selzer
HerbaSway Laboratories
101 North Plains Industrial Road
Wallingford, CT 06492

Brian S. Goldstein, Esq. .
Tompkins & Davidson
One Astor Plaza
1515 Broadway, 43rd Floor
New York, NY 10036-8901

19 CFR PART 177

REVOCAION OF TWO RULING LETTERS AND REVOCAION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF GALAXOLIDE® MIXTURES

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

ACTION: Notice of revocation of two ruling letters and revocation of treatment relating to the tariff classification of Galaxolide® mixtures.

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 two ruling letters concerning tariff classification of Galaxolide® mixtures 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. 50, No. 27, on July 6, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 21, 2016.

FOR FURTHER INFORMATION CONTACT: Nicholai Diamond, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0292.

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) (“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 public 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. 50, No. 27, on July 6, 2016, proposing to revoke three ruling letters pertaining to the tariff classification of Galaxolide® mixtures. As stated in the proposed notice, this action will cover New York Ruling Letter ("NY") N196797, dated February 3, 2012, and NY C85217, dated March 18, 1998, as well as 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 two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 notice.

In NY N196797 and NY C85217, CBP classified various Galaxolide® mixtures in heading 2932, HTSUS, specifically in subheading 2932.99.70, HTSUS, which provides for "Heterocyclic compounds with oxygen hetero-atom(s) only: Other: Aromatic: Other: Other." CBP has reviewed NY N196797 and NY C85217 and has determined the ruling letters to be in error. It is now CBP's position that the Galaxolide® mixtures are properly classified, by operation of GRI 1, in heading 3302, HTSUS, specifically in subheading 3302.90.10, HTSUS, which provides for "Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in

industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages: Containing no alcohol or not over 10 percent of alcohol by weight: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N196797 and NY C85217 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H274972, set forth as an attachment to this notice. 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: August 18, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H274972

August 18, 2016

CLA-2 OT:RR:CTF:TCM H274972 NCD

CATEGORY: Classification

TARIFF NO.: 3302.90.1050

MARK K. NEVILLE, JR.
SMITH, GAMBRELL & RUSSELL, LLP
250 PARK AVENUE, SUITE 1900
NEW YORK, NY 10177

RE: Revocation of NY N196797 and NY C85217; classification of Galaxolide® mixtures

DEAR MR. NEVILLE, JR.:

This is in reference to New York Ruling Letter (NY) N196797, issued to you by U.S. Customs and Border Protection (CBP) on February 3, 2012. We have reviewed NY N196797, which involved classification of Galaxolide® mixtures under the Harmonized Tariff Schedule of the United States (HTSUS), and determined that it is incorrect. For the reasons set forth below, we are revoking that ruling.

We have additionally reviewed NY C85217, dated March 18, 1998, which similarly involved classification of a Galaxolide® mixture under the HTSUS. As with NY N196797, we have determined that NY C85217 is incorrect and, for the reasons set forth below, are revoking it.

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 of the proposed action was published in the Customs Bulletin, Vol. 50, No. 27, on July 6, 2016. No comments were received in response to the notice.

FACTS:

Both NY N196797 and NY C85217 pertain to mixtures of Galaxolide®, whose chemical formula is depicted in Figure 1 below, dissolved in various solvents.

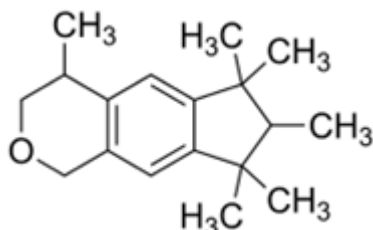


Figure 1

Specifically at issue in NY N196797 were Galaxolide® mixtures designated “Galaxolide® 50 DEP” and “Galaxolide® 66% IPM.” These products are described as follows in the ruling:

Galaxolide 50 DEP consists of Galaxolide dissolved in Diethyl phthalate, a fluidizer (solvent.) Galaxolide 66% IPM consists of Galaxolide dissolved in isopropyl myristate, a fluidizer (solvent.) The products are identical

with the exception of the solvents. Based on Chapter Note 1(e) to Chapter 29, Galaxolide 50 DEP and Galaxolide 66% IPM are separate chemically defined organic compounds. Galaxolide, CAS No. 1222-05-5, is chemically known as Cyclopenta[g]-2-benzopyran, 1,3,4,6,7,8-hexahydro-4,6,6,7,8,8-hexamethyl-. The products are aromatic heterocyclic compounds with oxygen hetero-atoms indicated for use in the fragrance industry.

NY C85217 pertains to a Galaxolide® mixture designated “Galaxolide® 60 MIP,” which, according to the description in the ruling, “is used as a fragrance component.” MIP is the French acronym for isopropyl myristate.

All three products in NY N196797 and NY C85217 were classified in heading 2932, HTSUS. They were specifically classified in subheading 2932.99.70, HTSUS, which provides for: “Heterocyclic compounds with oxygen hetero-atom(s) only: Other: Other: Aromatic: Other: Other.”

ISSUE:

Whether the subject Galaxolide® mixtures are properly classified in heading 2932, HTSUS, as heterocyclic compounds with oxygen hetero-atom(s) only, or in heading 3302, HTSUS, as mixtures with a basis of one or more odoriferous substances, of a kind used in industry.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first 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 heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

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).

The 2016 HTSUS provisions under consideration are as follows:

2932	Heterocyclic compounds with oxygen hetero-atom(s) only:
	Other:
2932.99	Other:
	Aromatic:
	Other
2932.99.70	Other

3302 Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages:

3302.90 Other:

3302.90.10 Containing no alcohol or not over 10 percent of alcohol by weight:

Heading 2932, HTSUS, provides for heterocyclic compounds with oxygen hetero-atom(s) only. Note 1 to Chapter 29 provides, in pertinent part, as follows:

1. Except where the context requires, the headings of this chapter apply only to:
 - (a) Separate chemically defined organic compounds, whether or not containing impurities;
 - ***
 - (e) Products mentioned in (a), (b) or (c) above dissolved in other solvents provided that the solution constitutes a normal and necessary method of putting up these products adopted solely for reasons of safety or for transport and that the solvent does not render the product particularly suitable for specific use rather than for general use...

With respect to Note 1(a) to Chapter 29, the General EN to Chapter 29 states as follows:

A separate chemically defined compound is 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. In a crystal lattice, the molecular species corresponds to the repeating unit cell.

The provisions in the General Explanatory Note to Chapter 28 concerning the addition of stabilisers, antidusting agents and colouring substances apply, *mutatis mutandis*, to the chemical compounds of this Chapter.

The General EN to Chapter 28 in turn states as follows:

Such elements and compounds are **excluded** from Chapter 28 when they are dissolved in **solvents other than water**, unless the solution constitutes a normal and necessary method of putting up these products adopted solely for reasons of safety or for transport (in which case the solvent must not render the product particularly suitable for some types of use rather than for general use).

The General EN to Chapter 29 defines “separate chemically defined compound” for purposes of Note 1 as a “substance...whose composition...can be represented by a definitive structural diagram.” Pursuant to Note 1(e) to Chapter 29, as explained in the General EN to Chapter 28, such compounds may be dissolved in non-aqueous solvents needed solely for safety or for transport. However, when the solvent enables or enhances the resulting solution’s end-use, or is otherwise added for reasons other than safety or

transport, the solution falls outside the scope of Note 1(e) to Chapter 29. *See, e.g.*, Headquarters Ruling Letter (HQ) 968018, dated January 9, 2006 (determining that Bitrex dissolved in propylene glycol did not meet the terms of Note 1(e) to Chapter 29 because Bitrex “is designed for human exposure and is not harmful” and the solution “is not necessary to put up or sell the product”); and HQ 965089, dated January 31, 2002 (excluding solution from heading 2922, HTSUS, where the solvent did not “enhance the safety of transportation” but instead “aid[ed] in the manufacture of the final product”).

The products at issue consist of Galaxolide®, a heterocyclic compound represented by a distinct structural diagram, dissolved in diethyl phthalate or in isopropyl myristate. Like other Galaxolide® mixtures, the instant products are incorporated as active ingredients in perfumes and other fragrance products. Our research indicates that diethyl phthalate and isopropyl myristate, both known diluents, are added to Galaxolide® for the express purpose of reducing the latter’s viscosity and rendering it in usable form for incorporation in perfumes. *See* Horst Surburg and JOHANNES PANTEN, COMMON FRAGRANCE AND FLAVOR MATERIALS: PREPARATION, PROPERTIES AND USES (6th ed. 2016). Our research further indicates that diethyl phthalate also functions as a fixative, which is “a substance that prevents too rapid volatilization of the components of a perfume and tends to equalize...rates of volatilization” and which “thus increases the odor life of a perfume and keeps the odor unchanged.” RICHARD J. LEWIS, SR., HAWLEY’S CONDENSED CHEMICAL DICTIONARY 566–67 (15th ed. 2007); *see also* U.S. Food and Drug Admin., Phthalates, <http://www.fda.gov/Cosmetics/ProductsIngredients/Ingredients>. American Chemistry Council, Diethyl Phthalate (DEP) in Cosmetics Deemed Safe, <https://phthalates.americanchemistry.com/Phthalates-Basics/Personal-Care-Products/Diethyl-Phthalate-DEP-in-Cosmetics-Deemed-Safe.html> (last visited May 23, 2016). As such, neither additive enables or enhances the safe use or transportation of Galaxolide®, which can in fact be safely maintained or transported in its undiluted form. *See* NY C87142, dated May 11, 1998 (classifying Galaxolide® “neat”). Instead, these additives enable fabrication of the finished perfumes and, in the case of the Galaxolide® 50 DEP, extend these perfumes’ shelf lives. Consequently, neither product at issue is covered by Note 1(e) to Chapter 29. Because the subject products do not otherwise satisfy Note 1 to Chapter 29, they are excluded from heading 2932, HTSUS.¹

We next consider heading 3302, HTSUS, which applies, *inter alia*, to mixtures with a basis in one or more odoriferous substances, of a kind used as raw materials in the industry. Chapter Note 2 to Chapter 33 states as follows:

The expression “*odoriferous substances*” in heading 3302 refers only to the substances of heading 3301, to odoriferous constituents isolated from those substances or to synthetic aromatics.

With respect to “aromatics,” Additional U.S. Note 2(a) to Section Note VI states as follows:

2. For the purposes of the tariff schedule:

¹ We also considered whether the instant products are covered by Note 1(f) to Chapter 29, which provides for: “The products mentioned in (a), (b), (c), (d) or (e) above with an added stabilizer (including an anticaking agent) necessary for their preservation or transport.” However, while diethyl phthalate prevents volatilization of the final perfume, neither it nor isopropyl myristate stabilizes Galaxolide® when added to it.

- (a) The term “*aromatic*” as applied to any chemical compound refers to such compound containing one or more fused or unfused benzene rings...

EN 33.02 states, in pertinent part, as follows:

This heading covers the following mixtures **provided** they are of a kind used as raw materials in the perfumery, food or drink industries (e.g., in confectionery, food or drink flavourings) or in other industries (e.g., soap-making):

- (6) Mixtures of one or more odoriferous substances (essential oils, resins, extracted oleoresins or synthetic aromatics) combined with added diluents or carriers such as vegetable oil, dextrose or starch...

Pursuant to Chapter Note 2 to Chapter 33, heading 3302, HTSUS, applies, *inter alia*, to synthetic aromatics, which are synthetic compounds containing at least one benzene ring, mixed with one or more substances. EN 33.02 states that the substances with which these synthetic aromatics may be mixed include diluents and carriers.

Galaxolide® is a synthetic substance that, according to its structural diagram, contains the requisite benzene ring of an aromatic compound within the meaning of Additional U.S. Note 2(a) to Section Note VI. See U.S. Patent No. 4,162,256 (issued July 24, 1979). It can therefore be described as a “synthetic aromatic” and, in effect, as an “odoriferous substance” within the meaning of Note 2 to Chapter 33. Because the instant products are mixtures consisting of an odoriferous substance and diluents, and because they are used as raw materials for perfumery products, they are described by EN 33.02 as examples of products classifiable in heading 3302. Consequently, we find that the instant products are properly classified in heading 3302, HTSUS, as mixtures with bases in an odoriferous substance, of a kind used as raw materials in the industry.

HOLDING:

By application of GRI 1, the subject Galaxolide® mixtures are properly classified in heading 3302, HTSUS. They are specifically classified in sub-heading 3302.90.1050, HTSUSA (Annotated), which provides for: “Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages: Other: Containing no alcohol or not over 10 percent of alcohol by weight: Other.” The 2016 column one general rate of duty is *free*.

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

EFFECT ON OTHER RULINGS:

New York Ruling Letters N196797, dated February 3, 2012, and NY C85217, dated March 18, 1998, are hereby REVOKED in accordance with the above analysis.

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

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON, DIRECTOR

Commercial and Trade Facilitation Division

CC: Daniel J. Gluck
Serko & Simon
One World Trade Center
New York, NY 10048



19 CFR PART 177

REVOCATION OF ONE RULING LETTER, MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF FM TRANSMITTERS FOR IPODS; WITHDRAWAL OF PROPOSED MODIFICATION OF A RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF PLASTIC CAR MOUNTS

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

ACTION: Notice of revocation of one ruling letter, modification of one ruling letter, and revocation of treatment relating to the tariff classification of FM transmitters for iPods.

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 one ruling letter concerning the tariff classification of FM transmitters for iPods under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially similar transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 44, No. 26, on June 23, 2010.

One comment was received in response to the proposal with respect to the plastic car mount. However, As a result of pending litigation in the Court of International Trade on substantially similar merchandise, we withdraw our proposal to modify a ruling letter with respect to the tariff classification of plastic car mounts.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 21, 2016.

FOR FURTHER INFORMATION CONTACT: Nerissa Hamilton-vom Baur, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0104.

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) (“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 public 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. 26, on June 23, 2010, proposing to revoke one ruling letter and modify one ruling letter pertaining to the tariff classification of FM transmitters for the iPod. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N008149, dated April 4, 2007, and NY N005439, dated February 7, 2007, as well as 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 one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 notice.

In NY N008149, CBP classified the FM transmitter in heading 8517, HTSUS, specifically in subheading 8517.69.00, HTSUS, which provides for "Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof: Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Other." CBP has reviewed NY N008149 and has determined the ruling letter to be in error. It is now CBP's position that the FM transmitter for iPod is properly classified, by operation of GRI 1, in heading 8525, HTSUS, specifically in subheading 8525.50.7010, HTSUS, which provides for "Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders: Transmission apparatus: For radiobroadcasting: Transmitters."

In NY N005439, CBP classified a FM Transmitter in heading 8525, HTSUS, specifically subheading 8525.60.20 as "Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders: Transmission apparatus incorporating reception apparatus: Other..." It is now CBP's position that the product at issue is classified in subheading 8525.50.70, HTSUS, as "Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders: Transmission apparatus: for radiobroadcasting..." In addition, in NY N005439, CBP also classified a plastic car mount in heading 3926, HTSUS, specifically in subheading 3926.30.50, HTSUS as "other articles of

plastics and articles of other materials of headings 3901 to 3914: fittings for furniture, coachwork or the like: other...” The proposal, as published in the June 23, 2010 notice, to modify the classification of car mounts is withdrawn. One comment was received in response to this notice. Due to pending litigation in the Court of International Trade on the *Jing Mei Automotive (USA) v. United States*, (CIT No. 13–00321) case, CBP withdraws its proposal with respect to the plastic car mount, as classified in NY N005439, which was proposed in HQ H007467. It is CBP’s position, therefore, that the classification of the car mount remains as set forth in NY N005439.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N008149 and revoking or modifying any other ruling not specifically identified, as originally published in the Customs Bulletin, Vol. 44, No. 26, on June 23, 2010, to reflect the analysis contained in HQ H023819, set forth as Attachment “A” to this Notice. CBP is also modifying NY N005439 and revoking or modifying any other ruling not specifically identified, as proposed with respect to the FM Transmitter as originally published in the June 23, 2010 notice, *supra*, and as set forth in HQ H007467 (Attachment “B”). 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: August 9, 2016

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ H023819

August 9, 2016

CLA-2 OT:RR:CTF:TCM H023819 HvB

CATEGORY: Classification

TARIFF NO.: 8525.50.7010

Ms. TAMRA S. NELSON
IMPORT/EXPORT COMPLIANCE SUPERVISOR
BELKIN INTERNATIONAL, INC.
501 W. WALNUT STREET
COMPTON, CALIFORNIA 90220

RE: Revocation of NY N008149; Classification of a TuneFM™ for iPod® Nano, TuneBase™ FM for iPod® Nano, and a TuneCast™ Mobile FM Transmitter

DEAR Ms. NELSON:

This letter is in reference to New York Ruling Letter (“NY”) N008149, issued to you on April 9, 2007, concerning the tariff classification of a TuneFM, a TuneBase, and a TuneCast transmitter for iPods, MP-3 players, and computers. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under heading 8517, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network).” We have reviewed NY N008149 and found it to be in error. For the reasons set forth below, we hereby revoke NY N008149.

FACTS:

In NY N008149 we described the merchandise, in relevant part, as follows:

The TuneFM™ for iPod® nano is identified in your letter as Part # F8Z061-BLK. It wirelessly connects your iPod® to your car, home or portable stereo enabling the pre-recorded music to be heard through the car, home or portable stereo’s speakers. The TuneFM™ plugs into the dock connector of an iPod® nano. The user then tunes the stereo to a clear FM frequency and the pre-recorded music on the iPod is heard through the speakers.

The TuneBase™ FM for iPod® nano is identified in your letter as Part # F8Z063-BLK. It contains a built-in FM wireless transmitter that connects to your car stereo on multiple FM channels, from 88–1MHz to 107.9 MHz. The pre-recorded contents (music files) of a iPod® nano is transmitted through an FM channel and the TuneBase™ FM allows the user to chose the best available frequency for listening to the music files through a car’s stereo speakers. This wireless device features four single-touch programmable preset memory buttons, which enable the user to find the clearest frequencies and toggle among them for best performance/reception. This item sits in a swivel holder cradle with a flexible steel neck that is connected to a car power adapter. The flexibility of the steel neck enables the user to vary the positioning of the iPod® nano.

The TuneCast™ Mobile FM Transmitter is identified in your letter as Part # F8V367-APL. It enables the user to listen to the pre-recorded tunes

(music files) from an iPod® mobile digital device through an FM stereo receiver. The TuneCast™ Mobile FM Transmitter wirelessly connects portable music players to a car or home stereo. It plugs into the headphone jack of an iPod® or any audio source, such as a PDA, MP3, CD or cassette player, or a personal or laptop computer. Once a clear FM frequency is tuned-in, the music coming from each of these devices can be heard through the car or home stereo's speakers.

Since the issuance of NY N008149, it has come to our attention that these devices are not operating as closed communication devices. We understand that while the devices are not capable of transmitting signals to a large geographical area, they still use radio broadcasting frequencies to transmit data so that anyone in the vicinity may listen to those transmissions.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification and revocation was published on June 23, 2010, in the *Customs Bulletin*, Volume 44, No. 26, with respect to the FM transmitter, which CBP classified in NY N008149 and NY N005439, in which CBP classified an FM transmitter and a plastic car mount. As stated in the notice, CBP proposed to modify NY N005439 in Headquarters Ruling Letter (HQ) H007467. NY N008149 will be addressed separately in HQ H007467. NY N005439 is being revoked by this decision, HQ H023819. No comments were received with respect to the FM transmitter.

ISSUE:

Whether the TuneFM™ for iPod® Nano, TuneBase™ FM for iPod® Nano, and a TuneCast™ Mobile FM Transmitter are classified in heading 8517, HTSUS, as an apparatus for communication in a wireless network, or in heading 8525, HTSUS, as a transmission apparatus for radio-broadcasting?

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first 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 heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

- 8517** Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527, or 8528; parts thereof:

Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network):

- 8517.69 Other
- 8525** Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders:
- 8525.50 Transmission apparatus:
- ***
- 8525.50.70 For radiobroadcasting...

* * * *

The terms of heading 8517, HTSUS, are limited to transmission apparatus which are not classified in heading 8525, HTSUS. As such, if the merchandise is classified in heading 8525, HTSUS, it cannot be classified in heading 8517, HTSUS. As a result, heading 8525, HTSUS, must be considered before classification in heading 8517, HTSUS, is appropriate. The legal text of heading 8525, HTSUS, as further illustrated by EN 85.25, provides that the goods of heading 8525 must transmit radio-broadcasting signals through the ether without a line connection.¹

Applying these principles to the present case, all of the products at issue are apparatus that broadcast signals by means of electro-magnetic waves through the ether without any line connection. The products transmit a signal through recognized FM radio bands that any radio can receive, including car radios, portable radios, and permanent radio tuners that are in the broadcast area of the product. In other words, there is no limitation to accessing the transmission nor is there any way to limit access to the transmission. As a result, these devices cannot be excluded from heading 8525, HTSUS.

Insofar as the subject FM transmitters do not have the ability to receive an FM signal that is being broadcast through the ether, the proper subheading classification of these devices is 8525.50.7010, HTSUS, which provides for “Transmission apparatus for radio-broadcasting that do not incorporate a reception apparatus...: Transmission apparatus: For radiobroadcasting: Transmitters.”

HOLDING:

By application of GRI 1, the TuneFM™ for iPod® nano; the TuneCast™ Mobile FM Transmitter; and a TuneCast™ Mobile FM Transmitter are classified in heading 8525, HTSUS. Specifically they are classified in subheading

¹ The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff 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 at the international level. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

8525.50.7010, HTSUS, which provides for “[t]ransmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders: [t]ransmission apparatus: [f]or radiobroadcasting: [t]ransmitters,” The general column one rate of duty is 3% *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 the World Wide Web, at <http://www.usitc.gov/tata/hts/>.

EFFECT ON OTHER RULINGS:

NY N008149, dated April 9, 2007, 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,

LEVA K. O’O’ROURKE
for

MYLES B. HARMON
Director,

Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H007467

August 9, 2016

CLA-2 OT:RR:CTF:TCM H007467 HvB

CATEGORY: Classification

TARIFF NO.: 8525.50.7010

MR. DARREN LENOX
 CUSTOMS COMPLIANCE MANAGER
 ACCO BRANDS CORP.
 300 TOWER PARKWAY
 LINCOLNSHIRE, ILLINOIS 60069-3640

RE: Modification of New York Ruling Letter (NY) N005439; classification of an iPod® FM Transmitter

DEAR MR. LENOX:

This is in response to your letter, dated February 14, 2007, in which you requested that we reconsider the classification of the plastic car mount that was the subject of NY N005439, issued to you on February 7, 2007. We also considered additional information that you submitted to this office on August 6, 2009 and on June 25, 2010. However, as explained below, we withdraw the proposal to modify N005439 with respect to the plastic car mount, due to litigation on similar merchandise, in the case of *Jing Mei Automotive Products (USA) v. United States* (CIT No. 13-00321) which is currently pending before the Court of International Trade.

In NY N005439, U.S. Customs and Border Protection (“CBP”) classified the plastic car mount for an FM transmitter under heading 3926, Harmonized Tariff Schedule of the United States (“HTSUS”), as an article of plastic. In addition, NY N005439 also classified an FM transmitter in heading 8525, HTSUS, specifically in subheading 8525.60.20, HTSUS, which provides for transmission apparatus for radio-broadcasting which incorporate a reception apparatus. We have reviewed this ruling letter in its entirety and believe that it is partially in error. For the reasons set forth below, we hereby modify NY N005439 with respect to the classification of the FM transmitter. The remaining analysis of NY N005439 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 Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification was published on June 23, 2010, in the *Customs Bulletin*, Volume 44, No. 26. One comment was received in response to the notice. Due to pending litigation in the Court of International Trade on the *Jing Mei Automotive (USA) v. United States*, (CIT No. 13-00321), CBP withdraws its proposal with respect to the plastic car mount, as classified in NY N005439.

FACTS:

In NY N005439 we described the products as follows:

The subject merchandise, based on the submitted sample, is an FM transmitter auto kit, item number 33387, which consists of the following:

- 1) a FM receiver/transmitter that is designed to be plugged into the car’s DC power outlet (i.e., cigarette lighter) for activating the transmitter’s display; this device has a self-contained cable with

a 30-pin dock connector that is designed for insertion into an iPod's dock-connecting port for charging an iPod (not included). When the iPod is turned on, the transmitter receives the iPod's music files and wirelessly transmits (not enabled by the DC power outlet) the music to the car radio through an unused FM channel/frequency, which is selected by the user.

- 2) a plastic car mount that is designed to hold an iPod or a similarly constructed MP3 Player; this article incorporates, at one end, a flexible, goose-like arm with a suction cup, as well as a rectangular-shaped holder, at the other end, with adjustable, expanding sides, which possess inner foam-like padding.

When imported as a kit, this merchandise, at the time of importation, will be put up in a manner suitable for sale directly to users without repackaging.

ISSUE:

Whether the FM transmitter is properly classifiable in subheading 8525.50.70, HTSUS, as a transmission apparatus for radio-broadcasting or in subheading 8525.60.20, HTSUS, as a transmission apparatus incorporating a reception apparatus?

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 3 governs the classification of goods that are *prima facie* classifiable in two or more headings, including, *inter alia*, goods put up in sets for retail sale. GRI 3(b) provides, in relevant part, that "goods put up in sets for retail sale... shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the Harmonized System at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8525	Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders:
-------------	--

8525.50	Transmission apparatus:
8525.50.70	For radiobroadcasting...
8525.60	Transmission apparatus incorporating reception apparatus:
8525.60.20	Other...

* * *

Upon receipt of your request for reconsideration of this ruling letter, we determined that the subject FM transmitter does not incorporate a reception apparatus. There is no information in your recent submissions, or in your initial submissions requesting a binding ruling, which indicates that the device contains a reception apparatus. Therefore, the proper subheading for the FM transmitter is subheading 8525.50.70, HTSUS, which provides for a transmission apparatus for radio-broadcasting.

In your comment you submitted on June 25, 2010, you argued that the FM Transmitters should stay classified in subheading 8525.60.20 based on the application of EN 85.25 and based upon our decision in NY K84903, dated April 8, 2004. Specifically, you state that the EN to heading 85.25 which states that a transmission apparatus “must be for the transmission of signals by means of electro-magnetic waves transmitted through the ether without any line connection” only applies to the transmission apparatus and not to the reception apparatus. CBP does not disagree with you that this language in the EN applies only to the transmission apparatus. However, the cited EN clarifies the scope of heading 85.25 and therefore describes products classifiable under both subheadings at issue. Further, we do not agree that the subject FM Transmitters are identical to the product we ruled upon in NY K84903. In response to this comment, CBP reviewed its file on that ruling and determined that the product in that case is substantially different than the FM transmitter in this case. The FM transmitter that was the subject of NY K84903 had the ability to receive AM/FM signals and could play the radio stations received on that product. As noted above, there is no indication that your product has that ability. Therefore, this ruling will not have the effect of modifying or revoking NY K84903.

Finally, the determination that the plastic car mount and FM transmitter, when imported together in a package for retail sale are considered a set pursuant to GRI 3(b) remains the same. However, the classification of the set will change to reflect the classification of the FM transmitter as provided in this letter.

HOLDING:

By application of GRI 1, the FM transmitter is classified in heading 8525, HTSUS, specifically in subheading 8525.50.70, HTSUS, which provides for “[t]ransmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders: [t]ransmission apparatus: [f]or radiobroadcasting...” The column one general rate of duty is 3% *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 the World Wide Web, at <http://www.usitc.gov.tata/hts/>.

EFFECT ON OTHER RULINGS:

NY N005439, dated February 14, 2007, is hereby MODIFIED with respect to the FM transmitter.

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

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON

Director,

Commercial and Trade Facilitation Division



19 CFR PART 177

**REVOCAION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A CABLE CUTTER**

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to the tariff classification of a cable cutter.

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 one ruling letter concerning the tariff classification of a cable cutter 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. 50, No. 27, on July 6, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 21, 2016.

FOR FURTHER INFORMATION CONTACT: Emily Simon, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0142.

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) (“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 public 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. 50, No. 27, on July 6, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of a cable cutter. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N021177, dated December 28, 2007, as well as 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 one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 notice.

In NY N021177, CBP classified a cable cutter in heading 8203, HTSUS, specifically in subheading 8203.20.60, HTSUS, which provides for “Files, rasps, pliers (including cutting pliers), pincers, tweezers, metal cutting shears, pipe cutters, bolt cutters, perforating punches and similar handtools, and base metal parts thereof: Pliers (including cutting pliers), pincers, tweezers and similar tools, and parts thereof: Other: Other (except parts).” CBP has reviewed NY N021177 and has determined the ruling letter to be in error. It is now CBP’s position that the cable cutter is properly classified, by operation of GRIs 1 and 6, in heading 8203, HTSUS, specifically in subheading 8203.30.00, HTSUS, which provides for “Files, rasps, pliers (including cutting pliers), pincers, tweezers, metal cutting shears, pipe cutters, bolt cutters, perforating punches and similar handtools, and base metal parts thereof: Metal cutting shears and similar tools and similar tools, and parts thereof.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N021177 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H270402, set forth as Attachment “A” to this notice. 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: August 17, 2016

JACINTO JUAREZ
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H270402

August 17, 2016

CLA-2 OT:RR:CTF:TCM H270402 EMS

CATEGORY: Classification

TARIFF NO.: 8203.30.0000

SOLOMON SARANG

TRADE COMPLIANCE SPECIALIST

CENTRAL PURCHASING LLC (DBA HARBOR FREIGHT TOOLS)

26541 AGOURA ROAD

CALABASAS, CA 91302

RE: Revocation of NY N021177; Classification of a Cable Cutter (Item Number 40507)

DEAR MR. SARANG:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) N021177, dated December 28, 2007, in response to your request, dated September 3, 2015, on behalf of Central Purchasing LLC (dba Harbor Freight Tools). In NY N021177, CBP classified a cable cutter (item number 40507) under subheading 8203.20.6030 of the Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Files, rasps, pliers (including cutting pliers), pincers, tweezers, metal cutting shears, pipe cutters, bolt cutters, perforating punches and similar handtools, and base metal parts thereof: Pliers (including cutting pliers), pincers, tweezers and similar tools, and parts thereof: Other (except parts): Pliers.”

We have reviewed NY N021177 and found it to be in error based on the revised facts set forth in your request for reconsideration and your supplemental submission, dated June 3, 2016. Accordingly, for the reasons set forth below, CBP is revoking NY N021177.

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 of the proposed action was published on July 6, 2016, in Volume 50, Number 27, of the *Customs Bulletin*. No comments were received in response to the notice.

FACTS:

In NY N021177, CBP provided the following description of the cable cutter:

You describe Item number 40507 as a 10” cable cutter. The item is said to be made of rugged heat-treated drop forged steel. You state that it is capable of cutting through cable up to 7/8” in diameter but it is not suitable for cutting steel. The picture you supplied indicates that this item has dipped handles connected to two cutting jaws that pivot at the joint.

The request for reconsideration indicates that the factual description provided in the original ruling request did not take into account that the cable cutter was capable of cutting through copper and aluminum cable. According to the request for reconsideration, “item 40507 is capable of cutting through copper or aluminum cable.” The Harbor Freight Tools website describes the cable cutter, in part, as follows: “Cable cutter cuts copper and aluminum cable

[to 7/8 in. diameter] with ease.”¹ It has been confirmed in a supplemental submission by Harbor Freight Tools that the cable cutter has always had this capability, including at the time of issuance of NY N021177. Moreover, the images of the product that we reviewed demonstrate that the two cutting jaws that pivot at the joint actually slide past each other when cutting cables made of the aforementioned metals.²

ISSUE:

Whether the cable cutter (item number 40507) is classified as “pliers” of subheading 8203.20, HTSUS, or as “metal cutting shears” of subheading 8203.30, HTSUS.

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.

Heading 8203, HTSUS, provides for: “Files, rasps, pliers (including cutting pliers), pincers, tweezers, metal cutting shears, pipe cutters, bolt cutters, perforating punches and similar handtools, and base metal parts thereof: Pliers (including cutting pliers), pincers, tweezers and similar tools, and parts thereof.” The HTSUS subheadings under consideration in this case are as follows:

8203.20	Pliers (including cutting pliers), pincers, tweezers and similar tools, and parts thereof
8203.30	Metal cutting shears and similar tools and similar tools, and parts thereof

The applicable legal note is Note 3 to Section XV, HTSUS, which states as follows:

Throughout the schedule, the expression “base metals” means: iron and steel, copper, nickel, aluminum, lead, zinc, tin, tungsten (wolfram), molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium.

In understanding the language of the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the Harmonized System at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are

¹ Harbor Freight Tools: Pittsburgh – Item Number 40507, <http://www.harborfreight.com/10-inch-cable-cutter-40507.html> (last visited June 6, 2016).

² We note that the original ruling request for NY N021177 neither included a sample nor did it otherwise expound upon the operation of the subject cable cutters (degree of movement of the shears) or identify any metals that it could cut.

generally indicative of the proper interpretation of the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The ENs to heading 8203 address the types of hand tools covered in this heading and the ENs provide, in relevant part, as follows:

(B) **Pliers (including cutting pliers), pincers, tweezers and similar tools**, including:

- (1) Pliers (e.g., seal closers and pliers, sheep ear and other animal marking pliers, gas pipe pliers, pliers for inserting or extracting cotter pins, eyelet and eyelet closing pliers; plier type saw sets).
- (2) Pincers (e.g., farriers' tongs and smiths' tongs).
- (3) Tweezers (e.g., watchmakers', florists', philatelists', depilating).
- (4) Nail pullers (jaw type, working on the pincer principle).

(C) **Metal cutting shears and similar tools**, including tinmen's snips, and other sheet metal or wire cutting shears.

(emphasis in original).

As is evident from the ENs above, both pliers of subheading 8203.20, HTSUS, and shears of heading 8203.30, HTSUS, are capable of performing a cutting function. A critical difference is that while both tools work around a pivot, "the cutting blades of shears slide past each other to perform their cutting function." See NY N026888, dated May 2, 2008 (classifying "Oval Head Cutters" and "Flush Cutting Shears" as pliers of subheading 8203.20 because "[t]he cutting edges of these blades are not similar to shears since they do not slide past each other."). The cutting blades of the subject cable cutter do slide past each other when cutting cable. The kinds of cable that can be cut include both copper and aluminum, which are base metals, as defined in Note 3 to Section XV, HTSUS.

In light of the above, the subject cable cutter is classifiable as "metal cutting shears" of subheading 8203.30, HTSUS, as described EN (C) to heading 8203. See NY N231636, dated September 6, 2012 (classifying a "Cable Cutter ... for cutting copper and aluminum cable" that "consist of two handles that operate to shear-type blades around a pivot" under subheading 8302.30, HTSUS).

HOLDING:

By application of GRIs 1 and 6, the cable cutter (item number 40507) is classified under subheading 8203.30, HTSUS, and specifically under subheading 8203.30.0000, HTSUS, which provides for "Files, rasps, pliers (including cutting pliers), pincers, tweezers, metal cutting shears, pipe cutters, bolt cutters, perforating punches and similar handtools, and base metal parts thereof: Metal cutting shears and similar tools and similar tools, and parts thereof." The column one, general rate of duty is free.

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 at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N021177, dated December 28, 2007, 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,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



19 CFR PART 177

**MODIFICATION OF THREE RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CRANKS AND CHAIN RINGS
THAT ARE PARTS OF BICYCLE COTTERLESS-TYPE
CRANK SETS**

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

ACTION: Notice of modification of three ruling letters and revocation of treatment relating to the tariff classification of cranks and chain rings that are parts of bicycle cotterless-type crank sets.

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 three rulings concerning the classification of cranks and chain rings that are parts of bicycle cotterless-type crank sets, under the Harmonized Tariff Schedule of the United States (“HTSUS”). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 27, on July 6, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 21, 2016.

FOR FURTHER INFORMATION CONTACT: Anthony L. Shurn, Tariff Classification and Marking Branch Regulations and Rulings, Office of International Trade, at (202) 325-0218.

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) (“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 public 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. 50, No. 27, on July 6, 2016, proposing to modify three ruling letters pertaining to the tariff classification of cranks and chain rings that are parts of bicycle cotterless-type crank sets. As stated in the proposed notice, this action will cover CBP Ruling Letters NY K81790 (February 3, 2004), NY K80388 (November 17, 2003), and HQ 083052 (April 21, 1989), as well as 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 three of rulings identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), CBP is revoking any treat-

ment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 notice.

In NY K81790 and NY K80388, CBP classified chain rings and cranks that are parts of bicycle cranksets that utilize pinch bolts but no cotters in subheading 8714.99.80, HTSUS, which provides for other "Parts and accessories of vehicles of heading 8711 to 8713: Other: Other: Other." CBP has reviewed NY K81790, NY K80388, and HQ 083052 and has determined the ruling letters to be in error. It is now CBP's position that chain rings and cranks that are parts of bicycle cranksets that utilize pinch bolts but no cotters are properly classified, by operation of HTSUS General Rule Interpretation 6, in subheading 8714.96.50, HTSUS, which provides for "Parts and accessories of vehicles of heading 8711 to 8713: Other: Pedals and crank-gear, and parts thereof: Cotterless-type crank sets and parts thereof."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY K81790, NY K80388, and HQ 083052 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H243595, set forth as an attachment to this notice. 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: August 17, 2016

SINCERELY,
GREG CONNOR
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H243595

August 17, 2016

CLA-2 OT:RR:CTF:TCM H243595 ALS

CATEGORY: Classification

TARIFF NO.: 8714.96.50

IVAN P. KOVES, Esq.

HOLLAND & HART, LLP

555 17TH STREET, SUITE 3200

DENVER, COLORADO 80202

RE: Modification of CBP Ruling NY K81790 (February 3, 2004), CBP Ruling NY K80388 (November 13, 2003), and CBP Ruling HQ 083052 (April 21, 1989); Tariff Classification of Bicycle Chainrings and Cranks; Harmonized Tariff Schedule of the United States subheading 8714.96.50

DEAR MR. KOVES:

This letter responds to your June 3, 2013 request for reconsideration of Customs and Border Protection (CBP) Ruling NY K81790 (February 3, 2004) on behalf of SRM Service Center. The request concerns the legal tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of SRM’s chainrings and cranks that are part of its cycling power meter system. The other components considered under NY K81790 are not affected in this ruling. In addition to NY K81790, we find that CBP Ruling NY K80388 warrants reconsideration for reasons discussed below in the FACTS section, and CBP Ruling HQ 083052 warrants reconsideration for reasons discussed below in the LAW AND ANALYSIS section. Our decision is set forth below.

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 of proposed modification was published on July 16, 2016, in the Customs Bulletin, Vol. 50, No. 27. No comments were received in response to this notice.

FACTS:

The facts as stated in NY K81790 are as follows:

You import separately five items, PowerMeters, PowerControls, Chainrings, Cranks, and Cables. The PowerMeter and the Chainring are joined together in the sample you submitted, but we understand from your letter that they will be imported separately. You will resell these either together as elements of the SRM system “for use on a bicycle in scientific testing and research and to promote health and fitness” or individually as replacement parts.

The metal Chainrings and Cranks replace the ones already on any standard bicycle and continue to perform the standard function for each. The replacement is made so the PowerMeter can be readily integrated into the bicycle. You state that the PowerControl is “a small portable computer that receives and processes data transmitted from the PowerMeter.” It does not perform a control function, but keeps time, calculates the desired parameters from the raw data received, and displays that information. We assume it will be attached to the bicycle’s handle bars. Since it displays Heartrate as well as Power, Time, Speed, Distance, and Cadence,

we assume it actually receives data also from another device, since we see no way the PowerMeter attached to the Chainring could transmit heart-beat data.

The specific items at issue here are the chainrings and cranks of various SRM cranksets. The article at issue in HQ 083052 was a crank (described as a “crank arm blank” in that ruling) imported separately from the crankset with which it is used.¹

You request reconsideration of NY K81790 because you argue that “the chainrings and cranks are part of an SRM crankset which is cotterless.” For that reason, you contend that [HTSUS subheading] “8714.96.5000 is the more specific and better classification” than both HTSUS subheading 8714.96.9000, the tariff classification under which the chainrings were classified in NY K81790, and HTSUS subheading 8714.99.8000, the tariff classification under which the cranks were classified in NY K81790. CBP issued NY K81790 to correct a clerical error in CBP Ruling NY K80388 (November 17, 2003). The substance of NY K80388 was not changed as a result. Consequently, both NY K81790 and NY K80388 are being reconsidered herein. All subsequent references herein to NY K81790 apply equally to NY K80388.

ISSUE:

Are certain SRM chainrings as described above properly classified under HTSUS subheading 8714.96.90 as “Part and accessories of vehicles of heading 8711 to 8713: Other: Pedals and crank-gear, and parts thereof: Other crank-gear and parts thereof,” or under HTSUS subheading 8714.96.50 as “Part and accessories of vehicles of heading 8711 to 8713: Pedals and crank-gear, and parts thereof: Cotterless-type crank sets and parts thereof”?

Are certain SRM cranks as described above properly classified under HTSUS subheading 8714.99.80 as “Part and accessories of vehicles of heading 8711 to 8713: Other: Other,” or under HTSUS subheading 8714.96.50 as “Part and accessories of vehicles of heading 8711 to 8713: Other: Pedals and crank-gear, and parts thereof: Cotterless-type crank sets and parts thereof”?

LAW AND ANALYSIS:

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation (“ARI”). GRI 1 provides that the classification of goods shall be “determined according to the terms of the headings 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, GRIs 2 through 6 may be applied in order. GRI 6 states that [f]or legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

The HTSUS provisions at issue are as follows:

¹ The terms “crank” and “crank arm” are used interchangeably in HQ 083052 and are used as if having the same meaning in this case.

8714	Parts and accessories of vehicles of headings 8711 to 8713: Other:
8714.96	Pedals and crank-gear, and parts thereof:
8714.96.50	Cotterless-type crank sets and parts thereof... * * *
8714.96.90	Other crank-gear and parts thereof... * * *
8714.99	Other:
8714.99.80	Other...

There is no question that the articles at issue are parts of a vehicle of headings 8711 to 8713, specifically a bicycle of HTSUS heading 8712, which provides for “Bicycles and other cycles (including delivery tricycles), not motorized”. The distinction between the two HTSUS subheadings that CBP ruled to be applicable in this case is the 8714.96 specifically refers to pedals, crank-gear, and parts thereof, while 8714.99 more generally refers to other parts and accessories of vehicles of headings 8711 to 8713 and as such is a residual provision. *See, e.g., E.M. Industries, Inc. v. United States*, 999 F. Supp. 1473, 1480 (CIT 1998). (“Basket’ or residual provisions of HTSUS headings... are intended as a broad catch-all to encompass the classification of articles for which there is no more specifically applicable subheading.”) Thus, the primary issue is whether the SRM chainrings and cranks fall under the scope of subheading 8714.96 as parts of crank gear. If yes, then the follow-up question to be answered is whether the SRM chainrings and cranks are parts of a cotterless-type crankset of subheading 8714.96.50.

The SRM crankset, as mentioned in the FACTS section above, consists of chainrings, crank, a spider, pinch bolts (in some iterations), washers, screws, bolts, and end caps. This is typical of most bicycle cranksets. The spider is a multi-pronged piece upon which the chainrings are affixed with bolts and screws on one side and to which one of the two cranks is affixed with the pinch bolts and nuts. An example of an unassembled complete crankset appears as follows in Image 1:

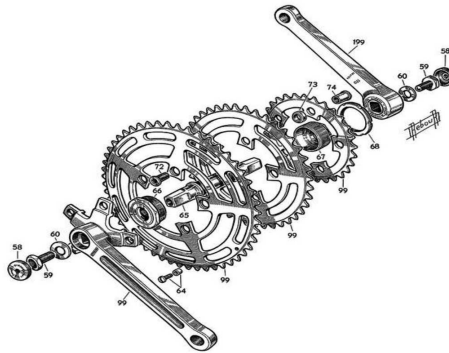


Image 1

Image 1b below shows a side view of a crankset with each part identified:

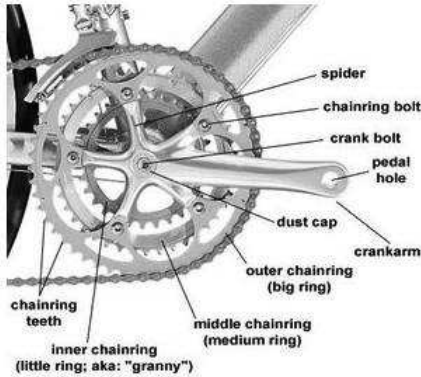


Image 1b

The following (Image 1c) is a more simplified blown up view of an unassembled crankset:

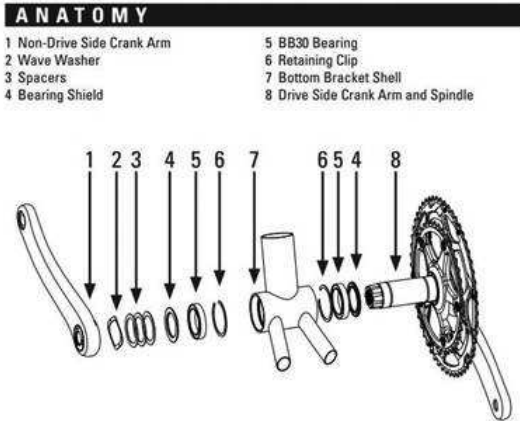


Image 1c

In Images 1 and 1b, the three large circular pieces with “teeth” lining their entire outer edges are chainrings. The subject chainrings are of the same design and have the same dimensions as the chainrings they are designed to replace on stock bicycles. In Image 1c, the long cylinder-like pieces that are fitted onto the spindle and then protrude out are the crank arms, or simply, cranks. The pedals of the bicycle are screwed into the holes at the outer end of the cranks. Note the spindle in relation to the chainrings and cranks in Image 1c. The subject cranks are similar in design and have the same longitudinal dimensions as the cranks they are designed to replace on stock

bicycles. Thus, it is without question that the subject chainrings and cranks are parts of crank gear, as specifically covered under subheading 8714.96. Therefore, subheading 8714.99 is not applicable, as a basket provision for articles not specifically covered elsewhere in HTSUS, to either article at issue in this case.

We must now determine if the SRM chainrings and cranks are, as parts of crank gear of subheading 8714.96, parts of cotted cranksets or coterless cranksets. To do so, we will discuss the differences between cotted cranksets and coterless cranksets.

Cotted cranksets

The following photograph (Image 2) is of a typical cotter for a bicycle cotted crankset assembly. Note the flat face of one side and the nut and washer affixed to one end but not the other end:



Image 2

An illustration of how the cotter fits into a crank and onto the spindle is as follows in Image 3:

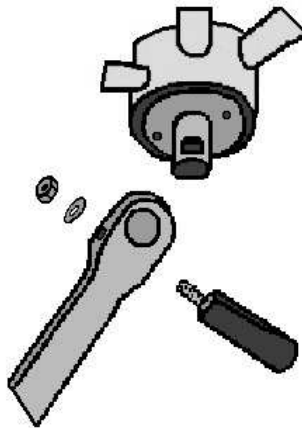


Image 3

In Image 3, the cotter is secured to the crank with the nut and washer after it is inserted into the crank and thereby fitted onto the spindle. The flat face of the cotter fits snugly onto the flat side of the spindle in this assembly. The following Image 4 is a photograph of a cotter inserted into a crank without the securing nut and washer:



Image 4

The following Image 5 is a photograph of flat-faced spindles onto which the crank and cotter is fitted:



Image 5

The following Image 5b is a photograph of a fully-assembled cotted crankset:



Image 5b

Cotterless cranksets

In a cotterless crankset assembly, the cranks are fitted onto the spindle by inserting the end of the spindle in the corresponding hole of the crank. The following photograph (Image 6) shows four different types of cotterless spindles:



Image 6

As shown, cotterless spindles come in different shapes and the hole of the corresponding crank is, of course, shaped accordingly. Upon being fitted onto the spindle, the cotterless crank is secured to the spindle either exclusively with an end cap/bolt or a combination of the end cap/bolt and pinch bolts screwed into the end of the crank. The following (Image 7) is a photograph of a crank secured exclusively via an end bolt, with a cross-section cut out for illustration purposes:



Image 7

The following (Image 8) is an illustration of a crank with pinch bolts at the end and an end cap. This is similar to the SRM cranks at issue. Note the ridges on the inside of the hole in the crank:

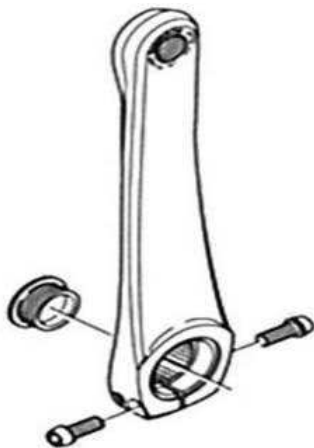


Image 8

The following (Image 9) is a photograph of the same type of crank fitted onto the spindle. Note the end cap secured in place:



Image 9

Analysis

You assert that the method of attaching the subject crank to the axle by means of a splined spindle from the axle inserted into a matched hole in the crank and then secured by pinch bolts at the end of the crank is descriptive of a cotterless crank. You specifically disagree with HQ 083052, *supra*, in which CBP determined that the pinch bolt in this type of crankset assembly “fits very comfortably within [the definition]” of a cotter. HQ 083052 cited the Webster’s Third New International Dictionary, Unabridged (1986) for guidance on the definition of a cotter, which that dictionary defined as “a wedge shaped or tapered piece used to fasten together parts of a machine or structure by being driven into a tapered opening through one or all of the parts.” The ruling also cited another dictionary that defined a cotter as “a pin, wedge, key or the like, fitted or driven into an opening to secure something or hold parts together.” Random House Dictionary of the English Language, The Unabridged Edition (1973).

The latter definition is also stated verbatim in the online dictionary Dictionary.com (2016). A more recent definition of a cotter defines it as “a wedge-shaped or tapered piece used to fasten together parts of a structure.” <http://www.merriam-webster.com/dictionary/cotter> (2016).

Engineering-dictionary.org defines cotterless crankset as “abicycle crankset in which the crank arms are fastened to the axle by means of nuts or bolts instead of cotter pins.” http://www.engineering-dictionary.org/Cotterless_crank. The same definition is offered verbatim on an automotive website. See http://www.automotivedictionary.org/Dictionary-of-Automotive-Terms/H/6/N/2/P/A/9/I/3/Cotterless_crank.

In the HOLDING section of HQ 083052, CBP concluded that “the term ‘cotterless’ was not used in the common sense of ‘absence of a cotter’ but in a commercial sense and ‘cotterless’ referred to the attachment of the crank to the axle piece by mounting bolts and crank arm caps.” In reaching that conclusion, CBP cited CBP Letter HQ 069847 (June 11, 1982), which was

circulated as C.I.E. N36/75. Upon review of the present case, we find the conclusion reached in HQ 083052 to be in error.

Our reading of the general definition of a cotter pin is that its pertinent defining characteristic is that it is tapered or wedge-shaped, as shown in Image 2. This is true no matter the source of the definition, even the definition cited in HQ 083052. In this context, that shape is critical to how the various pieces of the cottered crankset are fitted together. As noted above, a cottered crank spindle is flat on one side (see Image 5) so that the flat side of the cotter can fit snugly together, as shown in Images 3 and 4. This is basically how a cottered crankset is fitted together. The nut and washer that screw onto the end of the cotter that protrudes out of one end of the crank after insertion are what secures the cotter pin in place.

In contrast to how a cottered crankset is designed, a cotterless crankset has splines notched into the outer diameter of the end(s) of the spindle, as shown on the last three spindles in Image 6 from left to right, and the crank(s) (in some cases, the spindle is integrated onto the spider and/or the opposite crank, as shown in Image 1c) have corresponding splines notched into the inside of the spindle hole at the end of the crank, as shown in Image 8. (In earlier designs, the spindle has a rectangular knob at its end and the crank has a corresponding rectangular hole at its end, as shown in the first spindle in Image 6 from left to right.) The spindle and crank are fitted together by inserting the splined end of the spindle into the splined spindle hole of the crank. As noted above, the crank is secured to the spindle either exclusively with an end cap or bolt cap or with pinch bolts in conjunction with an end cap or bolt cap, as shown in Images 8 and 9.

While HQ 083052 finds that the pinch bolts fit within the definition of a cotter, we disagree with that finding. We find that the pinch bolts are more akin to the nut and washer of the cotter pin of cottered cranksets in that the pinch bolts secure the assembly in place after the principal parts, the spindle and crank(s), along with the spider, have been fitted together. There is no corresponding part for the cotter pin on cotterless cranksets as a cotter is not needed to fit the principal parts together. Furthermore, the pinch bolts are not tapered or wedge-shaped, rather they are shaped like conventional bolts with a head that is shaped for a corresponding wrench and a cylinder-shaped body with winding grooves running along its length. In short, the pinch bolts are not designed to and do not perform the equivalent function of a cotter pin in a cottered crankset.

Given the foregoing, we find that the pinch bolts are not cotters. We also find that cranksets that utilize such pinch bolts but do not utilize a cotter pin are not cottered cranksets, but are in fact cotterless cranksets. It also follows that the parts of cranksets that utilize pinch bolts but not a cotter pin, including chainrings, are parts of a cotterless crankset, not a cottered crankset. Consequently, the subject chainrings and cranks are identified as parts of cranksets that are cotterless. Therefore, in accordance with GRI 6, the subject chainrings and cranks and other SRM chainrings and cranks that are parts of SRM cranksets that do not utilize a cotter pin to be fitted together are properly classified under HTSUS subheading 8714.96.50 as "Parts and accessories of vehicles of heading 8711 to 8713: Other: Pedals and crank-gear, and parts thereof: Cotterless-type crank sets and parts thereof..." Thus, NY K81790 and NY K80388 are to be modified accordingly.

We note again that CBP Ruling HQ 083052 (April 21, 1989) held that pinch bolts that are used as described above are parts of a cottered crankset, not a

cotterless crankset. Based on the foregoing, the crank at issue in HQ 083052 is a part of a cotterless crankset and as such is properly classified under HTSUS subheading 8714.96.50 as “Parts and accessories of vehicles of heading 8711 to 8713: Other: Pedals and crank-gear, and parts thereof: Cotterless-type crank sets and parts thereof...” Consistent with our findings and conclusion here, we now find the holding in HQ 083052 to be incorrect and therefore HQ 083052 is to be modified accordingly.

HOLDING:

By application of GRI 6, the subject chainrings and cranks that are parts SRM cranksets that do not utilize a cotter pin to be fitted together are properly classified under HTSUS subheading 8714.96.50 as “Parts and accessories of vehicles of heading 8711 to 8713: Other: Pedals and crank-gear, and parts thereof: Cotterless-type crank sets and parts thereof...” The general column one rate of duty, for merchandise classified under this subheading is free.

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*.

EFFECT ON OTHER RULINGS:

CBP Ruling NY K81790 (February 3, 2004) is hereby MODIFIED only with respect to the tariff classification of Chainrings and Cranks.

CBP Ruling NY K80388 (November 17, 2003) is hereby MODIFIED only with respect to the tariff classification of Chainrings and Cranks.

CBP Ruling HQ 083052 (April 21, 1989) is hereby MODIFIED only with respect to the tariff classification of Cranks (referred to as “Crank Arm Blanks” in that ruling).

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF ONE RULING LETTER
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF REFINERY MODULES**

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

ACTION: Notice of proposed modification of one ruling letter and revocation of treatment relating to the tariff classification of refinery modules.

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 one ruling letter concerning tariff classification of refinery modules under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATES: Comments must be received on or before October 21, 2016.

ADDRESSES: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 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: Nicholai C. Diamond, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0292.

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) (“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 public 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 proposing to modify one ruling letter pertaining to the tariff classification of refinery modules. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N047164, dated January 8, 2009 (Attachment A), 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 one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in 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 N047164, CBP classified three types of refinery modules in heading 7308, HTSUS, specifically in subheading 7308.90.95, HTSUS, which provides for “Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge sections, lock gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns) of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel: Other: Other: Other.” CBP has reviewed NY N047164 and has determined the ruling letter to be partially in error. It is now CBP’s position that two of the three refinery module types are properly classified, by operation of GRIs 1 and 3(b), in the heading describing the material that imparts the modules’ essential character.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N047164 and to revoke or modify any other ruling not specifically

identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H269853, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: August 30, 2016

Sincerely,

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

[ATTACHMENT A]

N047164

January 8, 2009

CLA-2-73:OT:RR:NC:1:117

CATEGORY: Classification

TARIFF NO.: 7308.90.9590

MATTHEW D. ANDERSON
CHARTER BROKERAGE
22762 WESTHEIMER PARKWAY, SUITE 530
KATY, TX 77450

RE: The tariff classification of various refinery modules from Mexico.

DEAR MR. ANDERSON:

In your letter dated December 9, 2008, on behalf of Motiva Enterprises LLC, you requested a tariff classification ruling.

The products to be imported are three types of modules used in the refining industry. Module Type 1, referred to as Interbattery Connection Pipe Racks, are steel skeletal structures that are used to support pipes that carry the various fluids to and from the refinery process units as well as supporting electrical trays which hold electrical cables. Module Type 2, known as Power Station 4 Pipe Racks, function in the same manner as do the Interbattery Connection Pipe Racks. However, they support piping which transports and circulates steam, cooling water and filtered water to and from the power station. Module Type 3, Stair Towers, are pre-fabricated stairways that are used in conjunction with, and allow access to, the other modules.

You suggest that the pipe racks and stair towers would be correctly classified as machinery...: other machinery,...parts: of heat exchange units in 8419.90.3000 Harmonized Tariff Schedule of the United States (HTSUS). This is not correct. The articles are structures used in association with refinery modules, but are not integral to the refinery process, nor are they components of a heat exchange unit as you have suggested.

The applicable subheading for the refinery modules will be 7308.90.9590, Harmonized Tariff Schedule of the United States (HTSUS), which provides for structures (excluding pre-fabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge sections, lock gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns) of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel, other, other, other, other, other. The rate of duty will be 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 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 Mary Ellen Laker at (646) 733-3020.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H269853
CLA-2 OT:RR:CTF:TCM H269853 NCD
CATEGORY: Classification
TARIFF NO.: Unknown

MATTHEW D. ANDERSON
CHARTER BROKERAGE
22762 WESTHEIMER PARKWAY, SUITE 530
KATY, TX 77450

RE: Modification of NY N047164; classification of refinery modules

DEAR MR. ANDERSON:

This is in reference to New York Ruling Letter (NY) N047164, dated January 8, 2009, issued to you by U.S. Customs and Border Protection (CBP) in response to your letter of October 23, 2008, in which you requested a determination as to the proper classification of various refinery modules under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N047164, determined that it is partially incorrect, and, for the reasons set forth below, are modifying that ruling. In reaching this decision, we have taken into account your October 23, 2008 letter (“ruling request”), December 9, 2008 supplemental submission (“supplemental submission”), and information provided to our office in electronic communications following the issuance of NY N269854.

FACTS:

The subject merchandise consists of prefabricated, interconnecting modules that, following entry, are installed as integrated components in an expansion of a pre-existing oil refinery complex. Your supplemental submission provides the following descriptions of the three types of modules at issue:

Module Type #1 – Interbattery Connection (“IBC”) Pipe Racks.

The IBC pipe racks are fabricated structural steel skeletal structures that can be shipped and installed on foundations built to receive the modules... These module racks support several pipe lines, that are connected on the site in order to quickly and efficiently build the necessary infrastructure between various new and existing refinery units as well [as] conveying the received crude and products... Once the piping on these racks is connected this provides the interconnecting piping that primarily receive input streams (called feedstock streams) from prior (called upstream) process units or crude tanks to subsequent (called downstream) process units or storage tankage for product blending.

In addition to the piping used to move refinery product streams between units, the IBC pipe racks will also support piping that will be used to convey utilities such as raw water, clarified water and filtered water required to operate a new...[p]ower facility, cooling water, natural gas, plant and instrument air. This piping will also convey other utility streams and...process storm water for treatment and disposal...Finally, in addition to the piping used for products and utilities the IBC racks will provide additional levels to support cable trays to support electrical cables for distributing electrical power from the power facility to a main substation and to the local process unit substation.

Module #2 – Power Station 4 (“PS4”) Pipe Racks

The PS4 pipe racks are fabricated metal skeletal structures that can be shipped and connected to one another on-site at the refinery in order to quickly and efficiently build the necessary infrastructure between the refinery units and the on-site power plant in the refinery. The structures are connected together to create the steam and water distribution system for the power plant. The connection of these units uses piping to transport and circulate steam, cooling water and filtered water to and/or from various units and the on-site power plant[.]

Module #3 – Stair Tower Modules

The stair tower modules are fabricated modules with...stairways. These modules are strictly used as stairways and have no process functions. These modules connect with the other modules described herein, to allow for plant employees to have access to the various modules and the contents of the modules (i.e. piping, utilities, etc.).

Notably, the technical drawings of the IBC Pipe Racks and PS4 Pipe Racks appended to your ruling request depict these modules with incorporated pipes. Also appended to the ruling request are photos displaying the fabrication and installation of pipes in the IBC Pipe Racks and PS4 Pipe Racks. In an email dated October 14, 2015, we inquired as to whether the modules at issue in NY N047164 contained pipes and/or other components at the time of entry. In your email response, dated October 19, 2015, you referenced the following statement by a project coordinator:

All of the pipe rack modules have structural steel columns and beams that comprise the skeleton, with internal piping. There are a few valves. Depending on the nature of the flow stream in each pipe, the material for that pipe may differ. The bulk of the piping is either a type of carbon steel or stainless steel.

No further information concerning the modules' contents or their constituent materials has been provided.

All three refinery modules were classified in heading 7308, HTSUS. They were specifically classified in subheading 7308.90.95, HTSUS, which provides for: “Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge sections, lock gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns) of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel: Other: Other: Other.”

ISSUE:

Whether the subject refinery modules are properly classified in heading 7308, HTSUS, as structures of steel.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation.

tation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 3 governs the classification of goods that are *prima facie* classifiable in two or more headings, including, *inter alia*, composite goods. GRI 3(b) provides, in relevant part, that “composite goods consisting of different materials or made up of different components...shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.”

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).

For purposes of this ruling, we consider whether the subject refinery modules are classified in the following 2016 HTSUS provision:

7308 Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge sections, lock gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns) of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel

As stated above, the refinery modules at issue in NY N047164 were classified in heading 7308, which provides, *inter alia*, for “steel structures.” EN 73.08 provides, in pertinent part, as follows:

This heading covers complete or incomplete metal structures, as well as parts of structures. For the purpose of this heading, these structures are characterised by the fact that once they are put in position, they generally remain in that position. They are usually made up from bars, rods, tubes, angles, shapes, sections, sheets, plates, wide flats including so-called universal plates, hoop, strip, forgings or castings, by riveting, bolting, welding, etc. Such structures sometimes incorporate products of other headings such as panels of woven wire or expanded metal of heading 73.14. Parts of structures include clamps and other devices specially designed for assembling metal structural elements of round cross-section (tubular or other). These devices usually have protuberances with tapped holes in which screws are inserted, at the time of assembly, to fix the clamps to the tubing.

Apart from the structures and parts of structures mentioned in the heading, the heading also includes products such as:

Pit head frames and superstructures; adjustable telescopic props, tubular props, extensible coffering beams, tubular scaffolding and similar equipment; sluice-gates, piers, jetties and marine moles; lighthouse superstructures; masts, gangways, rails, bulkheads, etc., for ships; balconies

and verandas, shutters, gates, sliding doors; assembled railings and fencing; level-crossing gates and similar barriers; frameworks for greenhouses and forcing frames; large-scale shelving for assembly and permanent installation in shops, workshops, storehouses, etc.; stalls and racks; certain protective barriers for motorways, made from sheet metal or from angles, shapes or sections.

The heading also covers parts such as flat-rolled products, “wide flats” including so-called universal plates, strip, rods, angles, shapes, sections and tubes, which have been prepared (e.g., drilled, bent or notched) for use in structures.

The heading further covers products consisting of separate rolled bars twisted together, which are also used for reinforced or pre-stressed concrete work.

The term “structure” is not defined in heading 7308 or elsewhere in the HTSUS. When possible, the meaning of an undefined tariff term is to be ascertained by reference to lexicographical sources. *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). However, as the courts have noted with respect to “structure” for classification purposes, “a complete definition of ‘structural’ or ‘structure’ is not to be found.” *Supermarket Systems, U.S. v. United States*, 13 C.I.T. 907, 912 (1989) (citing *S.G.B. Steel Scaffolding & Shoring Co., Inc. v. United States*, 82 Cust. Ct. 197 (1979)). As such, dictionary definitions of the term “structure” are of limited value and have only proven useful in certain cases. For example, CBP has previously cited dictionary entries defining “structure” as “something made up of a number of parts that are held or put together in a particular way” or “something put together by arranging or connecting an array of parts” for the express purpose of determining that structures must be made up of multiple parts or sections. See Headquarters Ruling Letter (HQ) H257207, dated November 12, 2015 and HQ 968176, dated October 11, 2006. However, neither these definitions nor any other surveyed provide any indication as to which forms a given structure may take and which functions it may perform, and they consequently lack any application in the present case.

We therefore apply the statutory canon *noscitur a sociis*, under which “the meaning of an unclear word or phrase should be determined by the words immediately surrounding it” so as to “avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress.” *Trumpf Med. Sys. v. United States*, 753 F. Supp. 2d 1297, 1309 (Ct. Int’l Trade 2011) (citing Black’s Law Dictionary (9th ed. 2009) 1160–61); *Motorola, Inc. v. United States*, 462 F. Supp. 2d 1367, 1381 (Ct. Int’l Trade 2006). Pursuant to the doctrine, the meaning of an undefined tariff term can be derived by identification of the common characteristic(s) shared by its neighboring words. See *Trumpf Med. Sys.*, 753 F. Supp. 2d at 1417–18 (applying *noscitur a sociis* to define “diagnostic” in part as “illuminative” based upon its appearance in a series alongside “probing” and “irradiation”). As it appears in heading 7308, the term “structure” is accompanied by exemplars of articles classifiable in the heading, or parts of such, including bridges and bridge sections, lock gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns. These exemplars are all types or parts of enclosures, platforms, supports, or frameworks, none of which have any independent functionality beyond their ca-

capacity to enclose or provide weight-bearing support to persons or other objects. In view of this, and of the need to avoid adopting an overly-broad definition of “structure,” it is our position that structures within the meaning of heading 7308 are limited to articles that enclose the persons or objects within them or support the objects or persons atop them.

This interpretation is supported by the relevant EN text, case law, and CBP precedent alike. For example, EN 83.07 lists numerous additional exemplars of structures which, like those enumerated in heading 7308, function solely as enclosures or supports. The bars, rods, tubes, angles, shapes, sections, sheets, plates, wide flats, hoop, strip, forgings or castings, etc. of which these structures are “made up” do not, in and of themselves, lend any individual functionality to their incorporating structures. Moreover, the courts and CBP alike have made clear that an article with components that render it more than an enclosure or physical support is “clearly more than a structure” and cannot be classified in heading 7308, HTSUS. See *Supermarket Systems*, 13 C.I.T. at 914. In *Supermarket Systems*, for example, the Court of International Trade held that an automatic entry system consisting of corridor-forming columns and railings, a housing unit, a pivoting gate arm, and a sensor and alarm could not be considered a structure for classification purposes. The court reasoned that, above and beyond providing a structural entryway, the system served to control pedestrian flow and to deter unauthorized exits. *Id.* at 915–17. In a similar vein, we ruled in Headquarters Ruling Letter (HQ) 085145, dated September 15, 1989, that oil rig “jackets” were structures within the meaning of heading 7308 because they provided the foundations for the topside platforms, but did not contain any drilling or production equipment. See also HQ 964757, dated September 25, 2001 (classifying wind turbine towers in heading 7308 upon finding that “[t]he towers do not provide operational or mechanical interaction with the turbine or its rotor”) and HQ 087730, dated September 5, 1990 (classifying telephone booths without telephones in heading 7308). By contrast, we determined in HQ 966175, dated January 30, 2003, that the topside platforms were not classifiable in heading 7308 because, unlike the jackets, they housed the equipment that was used to drill for and extract oil.

Here, of the three modules at issue, the subject IBC Pipe Racks and PS4 Pipe Racks are described as “steel skeletal structures” which support various pipes, whereas the Stair Tower Modules are described as stairways that “have no process functions.” With regard to the latter, the Stair Tower Modules are metal frames that simply bear the weights of their users, and are not capable of any “process functions” that are tangential to this. They are therefore structures within the meaning of heading 7308, HTSUS. Like the Stair Tower Modules, the IBC Pipe Racks and PS4 Pipe Racks consist of metal frames that function as enclosures and supports. However, according to the diagrams and photos appended to your ruling request, as well as your October 19, 2015 email, these frames house pipes at their times of entry. Unlike the pipes referred to in EN 73.08, these pipes are accompanied by valves that, in combination with such, actively contribute to the complex’s refinement operations by supplying the power and raw material for these operations and enabling disposal of a physical impediments. Specifically, the pipes and valves in the IBC Pipe Racks transport feedstock from various upstream units for distribution to downstream units, or transport water and other necessary fluids to an on-site power facility or to transport storm water for treatment and disposal, while those in the PS4 Pipe Racks transport

steam and water to and from the on-site power plant. As such, these pipes and valves impart the frameworks in which they are housed with tangential functionality and thereby render them more than simply enclosures or supports. Accordingly, like the entry system in *Supermarket Systems*, the IBC Pipe Racks and PS4 Pipe Racks are “more than structures” and cannot be classified in heading 7308, HTSUS, by application of GRI 1. However, the Stair Tower Modules remain classified in heading 7308, HTSUS, by application of GRI 1.

Because the IBC Pipe Racks and PS4 Pipe Racks are made up of various components, including metal frames, cable trays, electrical cables, pipes, and valves, all of which are described in separate headings, the modules are composite goods within the meaning of GRI 3(b). As such, they are to be classified “as if they consisted of the...component which gives them their essential character.” With respect to “essential character” for purposes of GRI 3(b), EN (VIII) to GRI 3(b) states as follows:

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.

While application of the “essential character test” requires a fact-intensive analysis, courts have consistently applied some or all of the factors listed in the above-cited EN in identifying various articles’ essential characters. See *Alcan Food Packaging (Shelbyville) v. United States*, 771 F.3d 1364, 1367 (Fed. Cir. 2014); *Home Depot USA, Inc. v. United States*, 491 F.3d 1334, 1337 (Fed. Cir. 2007).

Here, because the compositions and dimensions of the modules’ pipes are unknown, we are unable to identify the full range of headings under which the components may fall. Moreover, of the materials whose classifications are readily identifiable, we are unable to determine the relative bulks, quantities, weights, or values of such. Accordingly, we are unable to classify the IBC Pipe Racks and PS4 Pipe Racks at this time.

HOLDING:

By application of GRI 1, the Stair Tower Modules remain classified in heading 7308, HTSUS. By application of GRIs 1 and 3(b), the IBC Pipe Racks and PS4 Pipe Racks are classified in the heading describing the article that imparts the modules’ essential character.

Should you require a determination as to the classification of the IBC Pipe Racks and PS4 Pipe Racks, please submit a request for a binding ruling, along with any information required for this determination, to CBP’s National Commodities Specialist Division (NCSO). Requests for a binding ruling may be made electronically via CBP’s website, <https://apps.cbp.gov/erulings/index.asp>, or by writing to NCSO at the following address:

Director, National Commodity Specialist Division
Regulations and Rulings
Office of Trade
U.S. Customs and Border Protection
1100 Raymond Boulevard
Newark, New Jersey 07102
Attn.: Binding Ruling Request

EFFECT ON OTHER RULINGS:

New York Ruling Letter N047164 is hereby MODIFIED in accordance with the above analysis.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division



19 CFR PART 177

**REVOCAION OF ONE RULING LETTER AND
MODIFICATION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF COTTON KNIT YARN**

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

ACTION: Notice of revocation of one ruling letter and modification of one ruling letter and revocation of treatment relating to the tariff classification of tubular cotton knit yarn measuring more than 20,000 decitex.

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 one ruling letter and modifying one ruling letter, concerning the tariff classification of tubular cotton knit yarn made of 92% cotton and 8% elastane (spandex), measuring more than 20,000 decitex, 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.50, No. 23, on June 8, 2016. No comments supporting the proposed revocation and modification were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 21, 2016.

FOR FURTHER INFORMATION CONTACT: Michele Boyd, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0136.

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) (“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 public 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. 50, No. 23, on June 8, 2016 proposing to revoke one ruling letter and modify one ruling letter pertaining to the tariff classification of tubular cotton knit yarn measuring more than 20,000 decitex. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N200641, dated January 23, 2012, and NY N244143, dated July 24, 2013, as well as 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 two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 notice.

In NY N200641, CBP classified the yarn called “Hooked Zopagetti”¹ in heading 5607, HTSUS, specifically in subheading 5607.90.9000, HTSUS, which provides for “Twine, cordage, ropes and cables, whether or not plaited or braided and whether or not impregnated, coated, covered or sheathed with rubber, or plastics: Other: Other.” CBP has reviewed NY N200641 and has determined the ruling letter to be in error. It is now CBP’s position that the goods are properly classified, by operation of GRI 1, in heading 5606, HTSUS, specifically in subheading 5606.00.0010, HTSUS, which provides for “loop wale-yarn.”

Similarly, in NY N244143 CBP classified Hooked Zpagetti yarn sold as part of a craft kit in heading 5607, HTSUS, specifically in subheading 5607.90.9000, HTSUSA. It is now CBP’s opinion that the craft kit, with the yarn imparting the kit’s essential character, is also properly classified in subheading 5606.00.0010, HTSUSA.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N200641 and modifying NY N244143 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H249752, set forth as an Attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: August 24, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

¹ The sample named in NY N200641 is Hooked Zopagetti. The company and product are called Hoooked Zpagetti. The three “os” in “Hoooked” are not a typo. The extra “o” in Zpagetti is a typo. See www.zpagetti.com.au

HQ H249752

August 24, 2016

CLA-2 OT: RR: CTF: TCM H249752 ERB/MAB

CATEGORY: Classification

TARIFF NO.: 5606.00.0010

Ms. KELLY MORRISON

METROPOLIS CUSTOMS BROKERS

156-15 146TH AVENUE, SUITE 110

JAMAICA, NY 11434

RE: Revocation of NY N200641, Modification of NY N244143; Tariff classification of tubular knit cotton yarn measuring more than 20,000 decitex

DEAR Ms. MORRISON,

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letters (NY) N200641, issued to you January 23, 2012, and NY N244143, issued to you July 24, 2013, each concerning the tariff classification of a knit cotton textile, under the Harmonized Tariff Schedule of the United States (HTSUS). We find them to be in error as regards the tubular cotton knit yarn. One small sample swatch, approximately one inch in length, (2.54 centimeters) was provided to this office.

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 revoke NY N200641 and modify NY N244143 was published on May 4, 2016, in Volume 50, Number 23 of the Customs Bulletin. No comments were received in response to this notice.

FACTS:

NY N200641 describes the product at issue as follows:

You submitted a sample of a yarn called Hooooked Zopagetti. It is described as 92% cotton and 8% elastane (spandex). Our examination reveals it to be a knit yarn of a decitex well over 20,000. Legal Note 3(A)(e) to Section XI, Harmonized Tariff Schedule of the United States (HTSUS), states that any cotton yarn of greater than 20,000 decitex is to be classified as twine, cordage, rope or cables in heading 5607, HTSUS.¹

NY N244143 describes the product at issue as follows:

Style Hooooked Zpagetti is a narrow fabric constructed of 92% cotton and 8% elastane (spandex). (You state that the fiber content may vary. Once again, please note that this ruling only classifies the samples we have received. A different fiber content may result in a different classification.) It curls to the center from the edges and is approximately 10 mm wide, but 30 mm wide when flattened. It comes in a 312-gram hank that measures 50 meters, with a decitex greater than 20,000. The yarn meets the tariff definition [of] cordage found in Section XI, Note 3(A)(3), Harmonized Tariff Schedule of the United States (HTSUS).

¹ The sample named in NY N200641 is Hooooked Zopagetti. This is a typographical error. The company and product are called Hooooked Zpagetti. The three "o"s in "Hooooked" are not a typo. The extra "o" in Zpagetti is a typo. See www.zpagetti.com.au

Style Hooked Zpagetti yarn is also sold as part of a craft kit that you indicate contains everything needed to create a handbag. The kit also contains a crocheting hook and/or knitting needles, a handle for the purse made of bamboo, wood or plastic, along with step-by-step instructions.

It is the opinion of this office that the craft kit is a set for tariff purposes. ... In the set, the cordage imparts the essential character and thus determines the classification. The applicable subheading for both style Hooked Zpagetti cordage and Hooked Zpagetti craft kit will be 5607.90.9000, HTSUS, which provides for “Twine, cordage, ropes and cables, whether or not plaited or braided and whether or not impregnated, coated, covered or sheathed with rubber or plastics: Other: Other.”

The remainder of NY N244143 remains intact (e.g. Style Glitter Ribbon, Style Unique, and Style Silk Purse), and the classification of the same is not affected by the instant ruling.

ISSUE:

What is the classification of a tubular knit yarn, described as 92% cotton and 8% elastane, with a decitex over 20,000.

LAW AND ANALYSIS:

Classification under the HTSUS 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 GRIs may then be applied.

The HTSUS classification headings under consideration are as follows:

- | | |
|------|--|
| 5606 | Gimped yarn, and strip and the like of heading 5404 or 5405, gimped (other than those of heading 5605 and gimped horsehair yarn); chenille yarn (including flock chenille yarn); loop wale-yarn: |
| 5607 | Twine, cordage, ropes and cables, whether or not plaited or braided and whether or not impregnated, coated, covered or sheathed with rubber or plastics: |

Note 2 to Section XI which covers textiles states the following, in relevant part:

- (A) Goods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material.

- (C) The provisions of paragraphs (A)...apply also to the yarns referred to in notes 3, 4, 5 or 6 below.

Note 3 to Section XI states the following, in relevant part:

- (A) For the purposes of this section, and subject to the exceptions in paragraph (B) below, yarns (single, multiple (folded) or cabled) of the following descriptions are to be treated as “*twine, cordage, ropes and cables.*”

- (e) Of other vegetable fibers, measuring more than 20,000 decitex;
or

(B) Exceptions:

- (e) Chenille yarn, gimped yarn, and loop wale-yarn of heading
5606

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35128 (August 23, 1989).

The General EN to Section XI, which covers textiles, specifically in Section (I) which regards Chapters 50 to 55, is relevant here. Specifically, subsection (B) Yarns, Table 1, which regards the classification of yarns, twine, cordage, rope and cables of textile materials. Table 1 states the following, in relevant part:

Gimped yarn, other than those of headings 51.10 and 56.05, chenille yarn and loop wale yarn [are] in all cases [to be classified in] heading 56.06.

The EN to 56.06 states the following, in relevant part:

(C) LOOP WALE-YARN

Loop Wale-yarn is a tubular yarn made on a circular knitting machine and is 1.5 to 2 mm wide when pressed flat. This yarn is used for making fringes and other textile accessories and for making woven fabrics on conventional warp and weft looms.

The EN to 56.07 states the following, in relevant part:

This heading covers twine, cordage, ropes and cable, produced by twisting or by plaiting or braiding.

- (1) Twine, cordage, ropes and cables, not plaited or braided.

Parts (I)(B)(1) and (2) (particularly the Table) of the General Explanatory Note to Section XI set out the circumstances in which single, multiple (folded) or cabled yarns are regarded as twine, cordage, ropes or cables of this heading.

Twine, cordage, ropes and cables are used as binder twine, for tying packages, towing, loading, etc. Their cross-section is usually round but some (e.g. some transmission cables) have a square, trapezoidal or triangular section. They are normally unbleached, but may be dyed, impregnated to make them rot-proof, formed of different coloured strands, or impregnated, coated, covered or sheathed with rubber or plastics.

It continues:

The heading excludes:

- (b) Gimped yarn, chenille yarn and loop wale-yarn of heading 56.06.

The rulings at issue here relied on Note 3(A)(e) to Section XI, to classify yarn of vegetable fiber which is more than 20,000 in decitex, as twine,

cordage, ropes and cables. While the subject textile is cotton of the requisite decitex it is not produced by twisting, plaiting or braiding, as is the case with twine, cordage, ropes and cables. And further, pursuant to the EN 56.07 the subject cotton yarn is not manufactured as binder twine for tying packages, towing, or loading. Rather, it is a knitted yarn. Therefore it is not described by the tariff terms of heading 5607, HTSUS.

The subject textile is 98% cotton and 2% elastene². It is a knit tubular yarn which features successive interlocking loops. This is called loop wale-yarn. The General EN to Section XI, Section (I), Subsection (B) Yarn, Table 1 directs that loop wale-yarn is, “in all cases” to be classified in heading 5606, HTSUS.

This classification comports with the Informed Compliance Publication, entitled, “*What Every Member of the Trade Community Should Know About: Classification of Fibers and Yarns under the HTSUS*” (published in September 2011). Therein, CBP clarifies that “Loop Wale-Yarn” is described as a textile created by knitting a fabric that is narrow enough to have the appearance of a yarn, with successive interlocking loops typical of knit construction. The ICP further cites the ENs, which state that in all cases, it is to be classified in heading 5606, HTSUS, and is excluded from classification in heading 5607, HTSUS, under the EN 56.07(1)(b).

HOLDING:

By application of GRI 1, the subject Hoooked Zpagetti tubular knit yarn is classified in heading 5606, HTSUS. It is specifically provided for under subheading 5606.00.0010, HTSUSA (Annotated), which provides for, “Gimpe yarn, and strip and the like of heading 5404 or 5405, gimpe (other than those of heading 5605 and gimpe horsehair yarn); chenille yarn (including flock chenille yarn); loop wale-yarn: Containing elastomeric filaments.” The column one, general rate of duty is 8% *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 at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N200641, dated January 23, 2012, is hereby REVOKED, and NY N244143, dated July 24, 2013, is hereby MODIFIED, in regard to style Hoooked Zpagetti yarn contained in a craft kit.

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 and Trade Facilitation Division

² Chapter 52 provides for cotton textiles. However, Note 4(A)(b)(i) through (iii) provides a weight limit on goods classified in Chapter 52. The subject cotton yarn exceeds that weight limit and thus cannot be classified therein, or as goods “put up for retail sale”, as that phrase is understood in Note 4.

**PROPOSED MODIFICATION OF ONE RULING LETTER
AND REVOCATION OF TREATMENT RELATING TO THE
COUNTRY OF ORIGIN MARKING OF CERTAIN ROASTED
VEGETABLES**

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

ACTION: Notice of proposed modification of one ruling letter and revocation of the treatment relating to the country of origin marking of certain roasted vegetables.

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 one ruling letter concerning the country of origin marking of certain roasted vegetables. Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before October 21, 2016.

ADDRESSES: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 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: Antonio J. Rivera, Valuation and Special Programs Branch, at (202) 325–0226.

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) (“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 public 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 proposing to modify one ruling letter pertaining to the country of origin marking of certain roasted vegetables. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N260916, dated February 18, 2015 (Attachment A), 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 one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in 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 N260916, CBP determined, in relevant part, that the roasted vegetables product made by mixing imported individually quick frozen vegetables from Mexico and other foreign countries with olive oil and seasoning in the United States were products of the United

States as determined solely under the North American Free Trade Agreement (“NAFTA”) Marking Rules, and thus exempt from country of origin marking.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N260916 and to revoke any other ruling not specifically identified to reflect the proper country of origin marking of such roasted vegetables products, according to the analysis contained in proposed Headquarters Ruling Letter (“HQ”) H270451, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: August 30, 2016

MYLES B. HARMON
Director,
Commercial & Trade Facilitation Division

Attachments

[ATTACHMENT A]

February 18, 2015

CLA-2-20:OT:RR:NC:N2:228

CATEGORY: Classification

TARIFF NO.: 2004.90.8580

MR. JAMES CORPSTEIN
J.R. SIMPLOT COMPANY
999 MAIN STREET, SUITE 1300
BOISE, ID 83702

RE: The tariff classification, country of origin, and marking of “Roasted Mediterranean Vegetables;” Article 509

DEAR MR. CORPSTEIN:

In your letter dated January 19, 2015, you requested a ruling on classification, country of origin, and marking of “Roasted Mediterranean Vegetables.”

An ingredients breakdown accompanied your inquiry. A marked sample was not provided with your letter for review. The subject product, “Roasted Mediterranean Vegetables,” consists of approximately 19 percent IQF (Individually Quick Frozen) yellow squash, 18 percent IQF green beans, 18 percent IQF sliced carrots, 18 percent IQF sliced zucchini, 9 percent IQF roasted onion strips, 5 percent IQF roasted red bell pepper strips, 5 percent IQF roasted green bell pepper strips, 4 percent IQF roasted yellow bell pepper strips, 2 percent extra virgin olive oil, and one percent seasoning.

The IQF green beans and seasoning are products of the United States. The IQF roasted onion strips, IQF roasted red bell pepper strips, IQF roasted green bell pepper strips, IQF roasted yellow bell pepper strips are grown and processed in the United States. The IQF sliced carrots is a product of Israel. The IQF sliced zucchini is a product of Guatemala or Mexico. The olive oil is a product of Spain, Tunisia, Italy, Turkey or Morocco. The IQF yellow squash is a product of Guatemala, Mexico or Spain. In a telephone conversation with a member of my staff, on February 9, 2015, you confirmed that each ingredient was prepared separately in their specified state in their respective countries, then mixed together at your company’s United States (U.S.) based facility to become the final product, “Roasted Mediterranean Vegetables.” The finished product will be ready for retail sale in frozen condition.

The applicable tariff provision for the “Roasted Mediterranean Vegetables” will be 2004.90.8580, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006 ... other vegetables and mixtures of vegetables ... other ... other, including mixtures.

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, CBP Regulations (19 C.F.R. Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. § 1304.

The country of origin marking requirements for a “good of a North American Free Trade Agreement (NAFTA) country” are also determined in accordance with Annex 311 of the NAFTA, as implemented by section 207 of the NAFTA Implementation Act (Pub. L. 103–182, 107 Stat 2057) (December 8, 1993) and the appropriate CBP Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, CBP Regulations. The marking requirements of these goods are set forth in Part 134, CBP Regulations.

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.

I. Non-NAFTA Origin Determination

The issue to be considered here is whether the imported ingredients, when all are sourced from non-NAFTA countries, and are mixed with U.S.-origin ingredients in the U.S., become a good of the U.S. as a result of the mixing operation. This issue would turn on whether the imported ingredients are substantially transformed by being mixed.

A substantial transformation occurs when an article emerges from a process with a new name, character or use different from that possessed by the article prior to processing. *United States v. Gibson-Thomsen Co., Inc.*, 27 CCPA 267, C.A.D. 98 (1940); *National Hand Tool Corp. v. United States*, 16 CIT 308 (1992), *aff'd*, 989 F. 2d 1201 (Fed. Cir. 1993). However, if the manufacturing or combining process is merely a minor one that leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026, 1029 (1982), *aff'd*, 702 F.2d 1022 (Fed. Cir. 1983).

In this instance, we find that the sliced carrots, sliced zucchini, yellow squash, and olive oil have not undergone a substantial transformation. The operations performed in the U.S. do not result in notable changes in the name, character, or use of the imported products. The vegetables and olive oil are still readily discernable in the mixture.

Applying the Marking Rules set forth in section 304 of the Tariff Act of 1930, as amended and Part 134 of the CBP Regulations, we find that the country of origin of the “Roasted Mediterranean Vegetables” is the country of origin of each ingredient, for example, the United States, Israel, Guatemala and Spain. Depending on the actual countries of origin of the olive oil and yellow squash, the listed countries of origin may change.

Goods of U.S. origin are excepted from the country of origin marking requirements of 19 U.S.C. 1304. Thus, it would be acceptable for the packaging to be marked to indicate only that the mix is a product of Israel, Guatemala, and Spain as an example. However, if you also wish to identify the U.S. origin ingredients, CBP would have no objection to a marking such as “Product of U.S.A., Israel, Guatemala, and Spain.” In this regard, it should be noted that the marking of articles in whole or in part as “Product of U.S.A.” is a matter within the jurisdiction of the Federal Trade Commission (FTC) and we suggest that you contact that agency for a determination.

II. NAFTA Country of Origin Determination

When the sliced zucchini and/or the yellow squash are sourced from Mexico, and the sliced carrots and olive oil are products of non-NAFTA countries, and the final preparation has been produced in the U.S., the NAFTA Marking Rules apply.

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) 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. Section 134.45(a) (2) of the regulations, provides that a “good of a NAFTA country” may be marked with the name of the country of origin in English, French or Spanish.

Section 134.35(b) states that a good of a NAFTA country which is to be processed in the United States in a manner that would result in the good becoming a good of the U.S. under the NAFTA Marking Rules is excepted from marking. Unless the good is processed by the importer or on its behalf, the outermost container of the good shall be marked in accord with this part.

Part 102 of the regulations, sets forth the “NAFTA Marking Rules” for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes. Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the facts of this case, we find that the “Roasted Mediterranean Vegetables” is a product of the United States because each foreign ingredient undergoes an applicable tariff shift pursuant to 19 C.F.R. §102.11(a)(3) and 19 C.F.R. §102.20(d).

Chapter 20 Note under 19 C.F.R. §102.20(d) states:

Notwithstanding the specific rules of this chapter, fruit, nut and vegetable preparations of Chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as a good of the country in which the fresh good was produced.

However, this note does not apply to the subject product. Mixing the vegetables with olive oil and a seasoning according to the pre-determined formulation exceeds the operations described in the Chapter 20 Note.

Accordingly, since the “Roasted Mediterranean Vegetables” is a product of the U.S., it is excepted from country of origin marking. However, use of the phrase “Made in U.S.A.” is within the jurisdiction of the FTC and we suggest that you contact that agency for a determination.

III. Marking

As provided in section 134.41(b), CBP Regulations (19 C.F.R. 134.41(b)), the country of origin marking is considered conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain.

In section 134.1(k), CBP Regulations (19 C.F.R. 134.1(k)), “Conspicuous” means capable of being easily seen with normal handling of the article or container.

With regard to the permanency of marking, section 134.41(a), CBP Regulations (19 C.F.R. 134.41(a)), provides that as a general rule marking require-

ments are best met by marking worked into the article at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in, or etched. However, section 134.44, CBP Regulations (19 C.F.R. 134.44), generally provides that any marking that is sufficiently permanent so that it will remain on the article until it reaches the ultimate purchaser unless deliberately removed is acceptable.

In this case, in the non-NAFTA origin determination scenario, the product may be marked such as “Product of Israel, Guatemala and Spain” depending on the actual countries of origin of foreign ingredients, or similar language in a conspicuous place as legibly, indelibly and permanently as the nature of its container will permit. In the NAFTA origin determination scenario, the product is determined to be a product of the U.S. and exempted from marking. As stated before, products of the U.S. are not subject to the country of origin marking requirements of 19 U.S.C. 1304. Whether an article may be marked with the phrase “Made in the U.S.A.” or similar words denoting U.S. origin, is an issue under the authority of the FTC. We suggest that you direct any questions on this issue to the FTC.

In your letter, you also request the eligibility of any trade agreements on the “Roasted Mediterranean Vegetables.” This office will not issue a ruling on the free trade agreement eligibility or marking requirements of the “Roasted Mediterranean Vegetables” upon exportation to other countries as this would be under the jurisdiction of those countries.

This ruling is being issued under the provisions of Part 181 of the CBP Regulations (19 C.F.R. 181).

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 Bruce N. Hadley, Jr. at bruce.hadleyjr@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H270451

OT:RR:CTF:VS H270451 AJR

MR. JAMES CORPSTEIN
J.R. SIMPLOT COMPANY
999 MAIN STREET, SUITE 1300
BOISE, ID 83702

RE: Modification of NY N260916; NAFTA; Country of Origin Marking; Substantial Transformation; Roasted Vegetables Mixed in United States

DEAR MR. CORPSTEIN:

This is in reference to New York Ruling Letter (“NY”) N260916, dated February 18, 2015, issued to you with regard to “Roasted Mediterranean Vegetables” (hereinafter, “RMV(s)”). At issue was the tariff classification and country of origin marking of the RMV. In NY N260916, U.S. Customs and Border Protection (“CBP”) found, in relevant part, that the RMV made by mixing imported individually quick frozen vegetables (“IQF(s)”) from Mexico and other foreign countries with olive oil and seasoning in the United States were products of the United States as determined solely under the North American Free Trade Agreement (“NAFTA”) Marking Rules, and thus exempt from country of origin marking. It is now our position that the NAFTA Marking Rules only apply to the IQFs from Mexico, while the IQFs from non-NAFTA countries that are mixed with the IQFs from Mexico in the United States require a separate substantial transformation analysis to determine their countries of origin. Additionally, because this results in different countries of origin depending on the IQF at issue, the RMV is not exempt from country of origin marking. For the reasons described in this ruling, we hereby modify NY N260916.

The country of origin marking determination with respect to the RMVs that were made from only non-NAFTA IQFs, and the tariff classification of the RMV under subheading 2004.90.8580, Harmonized Tariff Schedule of the United States (“HTSUS”), are unaffected.

FACTS:

NY N260916 stated, in relevant part:

The subject product, “Roasted Mediterranean Vegetables,” consists of approximately 19 percent IQF (Individually Quick Frozen) yellow squash, 18 percent IQF green beans, 18 percent IQF sliced carrots, 18 percent IQF sliced zucchini, 9 percent IQF roasted onion strips, 5 percent IQF roasted red bell pepper strips, 5 percent IQF roasted green bell pepper strips, 4 percent IQF roasted yellow bell pepper strips, 2 percent extra virgin olive oil, and one percent seasoning.

The IQF green beans and seasoning are products of the United States. The IQF roasted onion strips, IQF roasted red bell pepper strips, IQF roasted green bell pepper strips, IQF roasted yellow bell pepper strips are grown and processed in the United States. The IQF sliced carrots are a product of Israel. The IQF sliced zucchini is a product of Guatemala or Mexico. The olive oil is a product of Spain, Tunisia, Italy, Turkey or Morocco. The IQF yellow squash is a product of Guatemala, Mexico or Spain. In a telephone conversation with a member of my staff, on Febru-

ary 9, 2015, you confirmed that each ingredient was prepared separately in their specified state in their respective countries, then mixed together at your company's United States (U.S.) based facility to become the final product, "Roasted Mediterranean Vegetables." The finished product will be ready for retail sale in frozen condition.

ISSUE:

What is the proper country of origin marking for the RMVs which are processed in the United States with ingredients that were separately imported directly into the United States from Mexico and from non-NAFTA countries?

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930 (19 U.S.C. § 1304), as amended, provides that unless excepted, every article of foreign origin 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, CBP Regulations (19 C.F.R. Part 134), implements the country of origin marking requirements of 19 U.S.C. § 1304. Pursuant to 19 C.F.R. § 134.1(b), the country of origin is 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 the meaning of this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. A "good of a NAFTA country" is defined as "an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules." See 19 C.F.R. § 134.1(g).

In N260916, CBP found that when the sliced zucchini and/or the yellow squash sourced from Mexico and the sliced carrots and olive oil products sourced from non-NAFTA countries, were prepared into the final product in the United States, the NAFTA Marking Rules applied. Under the NAFTA Marking Rules set forth in 19 C.F.R. Part 102, the RMVs were determined to be a product of the United States because each foreign ingredient underwent an applicable tariff shift pursuant to 19 C.F.R. § 102.11(a)(3) and 19 C.F.R. § 102.20(d). Furthermore, it was noted that while "vegetable preparations of Chapter 20 that have been prepared or preserved merely by freezing, by packing [...], or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as a good of the country in which the fresh good was produced [...] [m]ixing the vegetables with olive oil and a seasoning according to the pre-determined formulation exceeds the operations described in the Chapter 20 Note." With regard to marking, CBP held that since these RMVs became products of the United States, they were exempt from country of origin marking.

In this case, the RMVs consist of a mix of NAFTA and non-NAFTA goods. The issue to be considered here is whether these imported goods blended with each other in the United States become a product of the United States as a result of the blending operations. Because the IQFs from Mexico are goods of a NAFTA country, the NAFTA Marking Rules will determine the country of

origin after they are subjected to the blending operations in the United States. However, the IQFs and ingredients from non-NAFTA countries are not goods of a NAFTA country. As a result, further work or materials added to these articles in the United States must effect a substantial transformation in order to render the United States the country of origin.

Headquarters Ruling Letter (“HQ”) 561208, dated March 8, 1999, illustrates how the country of origin marking rules should be applied to NAFTA and non-NAFTA goods that are imported and blended together in the United States, and sold as a blended product like the RMVs at issue. In HQ 561208, a distributor blended crab meat in the United States that was sourced from Mexico, Venezuela, and other foreign countries. With regard to the imported crab meat sourced from Venezuela and other non-NAFTA countries, the issue was whether this imported crab meat (sourced from non-NAFTA countries) was substantially transformed when it was blended with crab meat from another country (U.S. or foreign) in the United States. CBP held that the countries of origin of the crab meat sourced from non-NAFTA countries remained unchanged because the blending operations did not substantially transform this crab meat. Separately, with regard to the imported crab meat sourced from Mexico, the issue was whether the Mexican crab meat became a good of the United States under the NAFTA Marking Rules when it was blended with crab meat from another country (U.S. or foreign) in the United States. CBP held that the country of origin of the Mexican crab meat remained Mexico pursuant to the NAFTA Marking Rules. CBP was satisfied with the crab meat distributor’s proposed marking label that read “Blended Crabmeat Product of [...] Mexico [...] Venezuela [...] United States [...] Other: _____” and similar variations of this label. There was no indication that CBP determined the country of origin of the Venezuelan crab meat by applying the NAFTA Marking Rules merely because it was blended with Mexican crab meat. Rather, HQ 561208 only applied the NAFTA Marking Rules to the Mexican portion of the crab meat blend and separately applied the substantial transformation test to determine the country of origin of the non-NAFTA portion of the crab meat blend.

Thus, despite the fact that a non-NAFTA good is blended in the United States with another NAFTA good, the country of origin marking for the non-NAFTA good is still determined by examining whether it was substantially transformed, and not by applying the NAFTA Marking Rules, even though such rules will apply to the NAFTA portion of the blended product. Accordingly, we find that when the RMVs consist of a blend of IQFs from Mexico and IQFs and ingredients from non-NAFTA countries that are all blended together in the United States, the country of origin marking for these imported goods is determined separately: (1) by applying the NAFTA Marking Rules to the IQFs from Mexico only; and, (2) by examining whether the IQFs and ingredients from non-NAFTA countries are substantially transformed in the United States.

With regard to the IQFs and ingredients from non-NAFTA countries, we find that they were not substantially transformed as a result of the blending operations in the United States. CBP has consistently held that blending operations, which do not change the essential character of the imported good being blended, do not result in a substantial transformation of the good. See *National Juice Products Association v. United States*, 628 F. Supp. 978 (CIT

1986); *see also* HQ 561208; HQ 967925, dated February 28, 2006; and, HQ 559965, dated January 24, 1997.¹ Therefore, we find that the countries of origin of the RMVs with respect to the non-NAFTA IQFs are the countries of origin from which such non-NAFTA IQFs were sourced.

With regard to the IQFs from Mexico, the issue to be addressed is whether the Mexican IQFs that are blended in the United States with IQFs and ingredients from another country (non-NAFTA or the United States) become a good of the United States under the NAFTA Marking Rules. The NAFTA Marking Rules, per 19 C.F.R. § 102.11, set forth the required hierarchy for determining whether a good is a good of a NAFTA country for purposes of country of origin marking. Paragraph (a) of this section states that 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 section 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

Sections 102.11(a)(1) and 102.11(a)(2) do not apply to the RMV, because it is neither wholly obtained or produced in the United States, nor produced exclusively from United States materials. Since an analysis of sections 102.11(a)(1) and 102.11(a)(2) will not yield a country of origin determination for the RMV, we look to section 102.11(a)(3).

The applicable rule in 19 C.F.R. § 102.20(a) provides for a “change to heading 2001 through 2007 from any other chapter.” However, the note to Chapter 20, HTSUS, provides:

Notwithstanding the specific rules of this chapter, fruit, nut and vegetable preparations of Chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing or roasting), shall be treated as a good of the country in which the fresh good was produced.

See 19 C.F.R. § 102.20(a).

Though the IQFs from Mexico appear to undergo the requisite tariff shift from Chapter 7, HTSUS, to subheading 2004.90.8580, HTSUS, it remains to be determined whether they meet the additional test imposed by the note to Chapter 20, HTSUS. Under this provision, when vegetable preparations are prepared “merely” by freezing, or by processing “incidental” to freezing, then the origin of the vegetables in their “fresh” state determines the origin of the good. The “fresh” state refers to the state of the vegetables before they are frozen or processed in a manner incidental to freezing. Thus, the country of origin for such vegetable preparations will be the country where the vegetable originated prior to its preparation by freezing and operations incidental to freezing.

¹ We note that NY N260916 made a similar determination with respect to a finding that we are not modifying. That unmodified finding is that the non-NAFTA IQFs were not substantially transformed when they were blended with other non-NAFTA IQFs and U.S.-origin ingredients in the United States.

The term “merely” is not specifically defined in 19 C.F.R. Part 102, but per its dictionary definition means “only (what is referred to) and nothing more.”² Read in the context of 19 C.F.R. Part 102, the term “merely” means that the processes listed in the note to Chapter 20, HTSUS, by themselves, are insufficient to change the country of origin, despite changing tariff classifications per 19 C.F.R. § 102.20(a). Thus, we find that the effect of the note to Chapter 20, HTSUS, is to ensure that a good undergoes sufficient processing in a NAFTA country, beyond the listed processes, in order to be considered a good of a NAFTA country for purposes of 19 C.F.R. Part 102.

The term “incidental” is also not specifically defined in 19 C.F.R. Part 102, but per its dictionary definition means “occurring or liable to occur in fortuitous or subordinate conjunction with something else of which it forms no essential part.”³ Applying this definition to the note to Chapter 20, HTSUS, the term “incidental” indicates a process that may happen with or as a result of freezing, packing, or roasting, but is secondary to, or of lesser importance than, these processes.

In this case, the IQFs from Mexico were already frozen prior to being mixed with other IQFs and ingredients in the United States to make the RMV. Inasmuch as all the IQFs are already frozen prior to their importation into the United States, then mixed together with olive oil and seasoning in the United States, and ultimately sold as a frozen product to customers in the United States,⁴ this means that the entire product is frozen and that the non-frozen ingredients were not only mixed with the blend of IQFs, but also frozen in the United States to the extent necessary to sell the entire RMV as a frozen product. As such, the Mexican IQFs appear to undergo a further freezing process in oil and seasoning while in the United States.

NY N260916 held that mixing the vegetables with olive oil and seasoning exceeds the operations described in the note to Chapter 20, HTSUS. HQ 561242, dated May 7, 1999, made a similar determination with regard to Mexican fresh green olives and provisionally preserved green olives that were unsuitable for immediate consumption, and imported into the United States under Chapter 7, HTSUS. In the United States, the olives underwent a calculated pickling process in 10 ton chambers, which turned the imported green olives into black olives, while removing their natural bitterness. The black olives were subsequently treated with brine, filtered, canned, and cooked. The final prepared black olives were classified in subheading 2005.70, HTSUS. While it concluded that the canning process would not confer U.S.-origin on the Mexican olives, this particular ripening process was distinguished from the canning process as a process that was unique to olives. Namely, the ripening process was unrelated to the canning process because it transformed the imported green olives into black ripe olives, and thus exceeded the operations described in the note to Chapter 20, HTSUS.

We find that the facts in NY N260916 are different from the facts in HQ 561242, and do not result in operations that would exceed the preparations of

² “Merely” defined by *Oxford English Dictionary* at <http://www.oed.com/view/Entry/116740?rskey=jcbGqY&result=2#eid>.

³ “Incidental” defined by the *Oxford English Dictionary* at <http://www.oed.com/view/Entry/93467?redirectedFrom=incidental#eid>.

⁴ NY N260916 states that the RMV is sold at retail in frozen condition. See also <http://www.simplotfoods.com/Product/10071179757603> (description of RMV by company at issue indicating that product is sold as frozen).

the note to Chapter 20, HTSUS. In this case, the IQFs from Mexico do not undergo a pickling process, and there is no indication that they were imported in a state that was unsuitable for human consumption, as were the olives in HQ 561242. Rather, the IQFs from Mexico, along with the other IQFs, “were prepared separately in their specified state in their respective countries, then mixed together” in the “United States based facility to become the final product, ‘Roasted Mediterranean Vegetables.’” This indicates that the IQFs from Mexico were already frozen prior to importation into the United States. In the United States, the only additional processing involves mixing the Mexican IQFs with other already frozen IQFs, olive oil, and seasoning in order to make the RMV, which is sold as a frozen product to customers in the United States.

Moreover, the mixing with seasoning is precisely the type of lesser processing contemplated by the note as incidental. Mixing with seasoning often occurs in connection with freezing, canning, or roasting. It is the freezing, canning, and roasting processes, either dry or in oil, which are the means by which the products are principally prepared (here, by freezing in oil and seasoning). By contrast, mixing with seasoning has far less consequences to the essential character of the product. Moreover, the addition of seasoning like salt, other flavors, spices, or other ingredients is, comparatively, a relatively simple process. *See* HQ H243329, dated March 9, 2016 (holding that salting was incidental to the process of roasting nuts under the NAFTA); and, HQ H240383, dated May 3, 2013 (salting was a process incidental to roasting with regard to a provision from the United States-Korea Free Trade Agreement (“UKFTA”) that is parallel to the NAFTA provision).

Given the foregoing, the country of origin of the Mexican IQFs per 19 C.F.R. § 102.11(a)(3) (incorporating the note from Chapter 20, HTSUS, under 19 C.F.R. § 102.20) is the country where the fresh vegetable was produced, which in this case is Mexico.

HOLDING:

Based on the information presented, NY N260916 is modified to reflect that the country of origin marking should be applied separately for the non-NAFTA portion of the good and for the NAFTA portion of the good. With regard to the non-NAFTA portion of the good, the non-NAFTA IQFs and ingredients are not substantially transformed by the further processing in the United States. Accordingly, the countries of origin of these non-NAFTA IQFs and ingredients are the countries where such materials were sourced. With regard to the NAFTA portion of the good, the country of origin of the NAFTA IQFs is determined to be Mexico under the NAFTA Marking Rules. The final RMV product must be marked to indicate all of the countries of origin contained therein, as the individual vegetables from Mexico do not meet the requisite rule and the non-NAFTA vegetables do not undergo a substantial transformation.

EFFECT ON OTHER RULINGS:

NY N260916, dated February 18, 2015, is hereby MODIFIED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

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

**COPYRIGHT, TRADEMARK, AND TRADE NAME
RECORDATIONS**

(No. 8 2016)

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

SUMMARY: The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in August 2016. The last notice was published in the CUSTOMS BULLETIN on August 17, 2016.

Corrections or updates may be sent to: Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, D.C. 20229–1177, or via email at iprrquestions@cbp.dhs.gov.

FOR FURTHER INFORMATION CONTACT: LaVerne Watkins, Paralegal Specialist, Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade at (202) 325–0095.

CHARLES R. STEUART
Chief,
Intellectual Property Rights Branch
Regulations and Rulings, Office of Trade

CBP IPR RECORDATION — AUGUST 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 16-00138	08/01/2016	08/01/2036	TRUE TIMBER CONCEAL PINK.	True Timber Outdoors Holding Company, LLC.	No
COP 16-00139	08/09/2016	08/09/2036	Cyber Metropolis.	Anuradha Sharma	No
COP 16-00140	08/09/2016	08/09/2036	AURI-VERDE	Anuradha Sharma	No
COP 16-00141	08/17/2016	08/17/2036	Exotic Puzzle	Nicole, Inc. dba Nicole Lee	No
COP 16-00142	08/19/2016	10/01/2116	steve test 1000	steve test	No
COP 16-00143	08/19/2016	05/18/2017	Test DRM 08/19/2016 #1	Test	No
COP 16-00145	08/20/2016	05/20/2017	TEST GG 3!	gg	No
COP 16-00146	08/25/2016	08/25/2036	INTECO 5 Pack of Panties (Briefs or Hi Cutt or Bikini)	INTIMATECO, L.L.C.	No
COP 16-00147	08/31/2016	08/31/2036	New Europe	Nicole, Inc. dba Nicole Lee	No
TMK 01-00072	08/17/2016	06/28/2020	HURLEY	HURLEY INTERNATIONAL LLC	No
TMK 01-00072	08/17/2016	06/28/2020	HURLEY	HURLEY INTERNATIONAL LLC	No
TMK 03-00209	08/31/2016	12/23/2026	DURAMUNE	BOEHRINGER INGELHEIM VET-MEDICA, INC.	No
TMK 03-00209	08/31/2016	12/23/2026	DURAMUNE	BOEHRINGER INGELHEIM VET-MEDICA, INC.	No
TMK 03-00788	08/17/2016	02/21/2021	H Design	HURLEY INTERNATIONAL LLC	No

CBP IPR RECORDATION — AUGUST 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/TmK/TmM	Owner Name	GM Restricted
TMK 03-00788	08/17/2016	02/21/2021	H Design	HURLEY INTERNATIONAL LLC	No
TMK 03-00908	08/19/2016	08/18/2026	GOOD NEWS	THE GILLETTE COMPANY	No
TMK 03-00908	08/19/2016	08/18/2026	GOOD NEWS	THE GILLETTE COMPANY	No
TMK 05-00513	08/24/2016	10/29/2026	PRECISE (Stylized)	KABUSHIKI KAISHA PILOT CORPORATION T/A PILOT CORPORATION	No
TMK 05-00513	08/24/2016	10/29/2026	PRECISE (Stylized)	KABUSHIKI KAISHA PILOT CORPORATION T/A PILOT CORPORATION	No
TMK 05-00573	08/17/2016	09/25/2026	230	Haynes International, Inc.	No
TMK 05-00573	08/17/2016	09/25/2026	230	Haynes International, Inc.	No
TMK 06-00365	08/29/2016	05/07/2025	CHOPARD	CHOPARD (USA) LTD	No
TMK 06-00365	08/29/2016	05/07/2025	CHOPARD	CHOPARD (USA) LTD	No
TMK 06-00498	08/30/2016	06/06/2026	STEELEERS	PITTSBURGH STEELERS LLC	No
TMK 06-00498	08/30/2016	06/06/2026	STEELEERS	PITTSBURGH STEELERS LLC	No
TMK 06-00518	08/29/2016	08/06/2023	CHOPARD GENEVE & DESIGN	CHOPARD (USA) LTD	No
TMK 06-00518	08/29/2016	08/06/2023	CHOPARD GENEVE & DESIGN	CHOPARD (USA) LTD	No
TMK 06-00760	08/19/2016	05/29/2026	KC & Arrowhead Design	Kansas City Chiefs Football Club, Inc.	No
TMK 06-00760	08/19/2016	05/29/2026	KC & Arrowhead Design	Kansas City Chiefs Football Club, Inc.	No

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TMK 06-01193	08/02/2016	10/04/2026	66884	Webb Wheel Products, Inc.	No
TMK 06-01193	08/02/2016	10/04/2026	66884	Webb Wheel Products, Inc.	No
TMK 06-01219	08/02/2016	10/04/2026	66864	Webb Wheel Products, Inc.	No
TMK 06-01219	08/02/2016	10/04/2026	66864	Webb Wheel Products, Inc.	No
TMK 06-01280	08/23/2016	12/12/2026	WILD IRIS	Clark-Claudon Vineyards, LLC	No
TMK 06-01280	08/23/2016	12/12/2026	WILD IRIS	Clark-Claudon Vineyards, LLC	No
TMK 06-01290	08/23/2016	09/06/2026	CLARK-CLAUDON	Clark-Claudon Vineyards, LLC	No
TMK 06-01290	08/23/2016	09/06/2026	CLARK-CLAUDON	Clark-Claudon Vineyards, LLC	No
TMK 06-01334	08/02/2016	08/11/2024	AC/DC and Design	Leitsephein Press B.V.	No
TMK 06-01334	08/02/2016	08/11/2024	AC/DC and Design	Leitsephein Press B.V.	No
TMK 06-01480	08/16/2016	12/10/2026	COREG	SMITHKLINE BEECHAM LIMITED	No
TMK 06-01480	08/16/2016	12/10/2026	COREG	SMITHKLINE BEECHAM LIMITED	No
TMK 07-00005	08/17/2016	11/22/2026	CHANEL	Chanel, Inc.	No
TMK 07-00005	08/17/2016	11/22/2026	CHANEL	Chanel, Inc.	No
TMK 07-00085	08/17/2016	12/12/2026	SUPERLEGGERA	Chanel, Inc.	No
TMK 07-00085	08/17/2016	12/12/2026	SUPERLEGGERA	Chanel, Inc.	No
TMK 07-00199	08/24/2016	02/07/2027	M2	M2 Vintners	No

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TMK 07-00199	08/24/2016	02/07/2027	M2	M2 Vintners	No
TMK 07-00277	08/11/2016	04/23/2026	CK CALVIN KLEIN & Stylization	CALVIN KLEIN TRADEMARK TRUST WILMINGTON TRUST COMPANY	No
TMK 07-00277	08/11/2016	04/23/2026	CK CALVIN KLEIN & Stylization	CALVIN KLEIN TRADEMARK TRUST WILMINGTON TRUST COMPANY	No
TMK 07-00713	08/26/2016	03/13/2026	RIDGELINE	HONDA MOTOR CO., LTD.	No
TMK 07-00713	08/26/2016	03/13/2026	RIDGELINE	HONDA MOTOR CO., LTD.	No
TMK 07-00714	08/02/2016	09/28/2026	BELLA'S GARDEN	TWO HANDS U.S.A. LLC	No
TMK 07-00714	08/02/2016	09/28/2026	BELLA'S GARDEN	TWO HANDS U.S.A. LLC	No
TMK 07-00715	08/19/2016	10/25/2026	MAX'S GARDEN	TWO HANDS U.S.A. LLC	No
TMK 07-00715	08/19/2016	10/25/2026	MAX'S GARDEN	TWO HANDS U.S.A. LLC	No
TMK 07-00822	08/19/2016	07/11/2026	ZHATS	Zephyr Grafix, Inc.	No
TMK 07-00822	08/19/2016	07/11/2026	ZHATS	Zephyr Grafix, Inc.	No
TMK 08-00728	08/04/2016	05/28/2026	ZORBITIVE	MERCK KGAA A KOMMANDITGESELL- SCHAFT AUF AKTIEN	No
TMK 08-00728	08/04/2016	05/28/2026	ZORBITIVE	MERCK KGAA A KOMMANDITGESELL- SCHAFT AUF AKTIEN	No

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TMK 08-01111	08/02/2016	06/08/2026	FENDER	FENDER MUSICAL INSTRUMENTS CORPORATION	No
TMK 08-01111	08/02/2016	06/08/2026	FENDER	FENDER MUSICAL INSTRUMENTS CORPORATION	No
TMK 08-01126	08/19/2016	08/30/2026	FUSION	The Gillette Company	No
TMK 08-01126	08/19/2016	08/30/2026	FUSION	The Gillette Company	No
TMK 08-01187	08/02/2016	08/03/2026	F (Stylized)	FILA LUXEMBOURG S.A.R.L.	No
TMK 08-01187	08/02/2016	08/03/2026	F (Stylized)	FILA LUXEMBOURG S.A.R.L.	No
TMK 09-00020	08/29/2016	08/16/2026	NINTENDO DS	Nintendo of America Inc.	No
TMK 09-00020	08/29/2016	08/16/2026	NINTENDO DS	Nintendo of America Inc.	No
TMK 09-00028	08/29/2016	08/16/2026	NINTENDO DS & Design	Nintendo of America Inc.	No
TMK 09-00028	08/29/2016	08/16/2026	NINTENDO DS & Design	Nintendo of America Inc.	No
TMK 09-00749	08/15/2016	10/23/2026	AV	ABG-SLG, LLC	No
TMK 09-00749	08/15/2016	10/23/2026	AV	ABG-SLG, LLC	No
TMK 10-00377	08/19/2016	09/20/2026	SUDAFED PE	JOHNSON & JOHNSON CORPORATION	No
TMK 10-00377	08/19/2016	09/20/2026	SUDAFED PE	JOHNSON & JOHNSON CORPORATION	No
TMK 11-00461	08/22/2016	08/09/2026	FAMILY GUY	Twentieth Century Fox Film Corporation	No

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TMK 11-00461	08/22/2016	08/09/2026	FAMILY GUY	Twentieth Century Fox Film Corporation	No
TMK 11-00820	08/16/2016	04/30/2026	ELEMENT	Rocket Trademarks Pty Ltd	No
TMK 11-00820	08/16/2016	04/30/2026	ELEMENT	Rocket Trademarks Pty Ltd	No
TMK 11-00825	08/16/2016	01/29/2023	ELEMENT	ROCKET TRADEMARKS PTY LTD	No
TMK 11-00825	08/16/2016	01/29/2023	ELEMENT	ROCKET TRADEMARKS PTY LTD	No
TMK 11-01202	08/03/2016	03/27/2026	FAMILY GUY	Twentieth Century Fox Film Corporation	No
TMK 11-01202	08/03/2016	03/27/2026	FAMILY GUY	Twentieth Century Fox Film Corporation	No
TMK 11-01276	08/31/2016	02/21/2027	PHU QUOC AND DESIGN	Viet Huong Fishsaucе Company, Inc.	No
TMK 11-01276	08/31/2016	02/21/2027	PHU QUOC AND DESIGN	Viet Huong Fishsaucе Company, Inc.	No
TMK 11-01292	08/30/2016	08/30/2026	HUONG VIET (Stylized)	Viet Huong Fishsaucе Company Inc.	No
TMK 11-01292	08/30/2016	08/30/2026	HUONG VIET (Stylized)	Viet Huong Fishsaucе Company Inc.	No
TMK 12-00288	08/19/2016	08/30/2026	ETERNITY MOMENT	Calvin Klein Cosmetic Corporation	No
TMK 12-00288	08/19/2016	08/30/2026	ETERNITY MOMENT	Calvin Klein Cosmetic Corporation	No
TMK 12-00745	08/30/2016	09/20/2026	SR-71 BLACKBIRD	Lockheed Martin Corporation	No
TMK 12-00745	08/30/2016	09/20/2026	SR-71 BLACKBIRD	Lockheed Martin Corporation	No
TMK 12-00974	08/16/2016	08/16/2026	METAMUCIL	The Procter & Gamble Company	No
TMK 12-00974	08/16/2016	08/16/2026	METAMUCIL	The Procter & Gamble Company	No

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TMK 12-01132	08/09/2016	04/04/2025	CACIQUE	Cacique, Inc.	No
TMK 12-01132	08/09/2016	04/04/2025	CACIQUE	Cacique, Inc.	No
TMK 12-01349	08/03/2016	08/30/2026	DIXIE	Dixie Consumer Products LLC	No
TMK 12-01349	08/03/2016	08/30/2026	DIXIE	Dixie Consumer Products LLC	No
TMK 13-01113	08/01/2016	07/30/2026	THE GLENLIVET	THE GLENLIVET DISTILLERS	No
TMK 13-01113	08/01/2016	07/30/2026	THE GLENLIVET	THE GLENLIVET DISTILLERS	No
TMK 14-00672	08/17/2016	10/25/2026	TRUVATIV AND DESIGN	SRAM CORPORATION	No
TMK 14-00672	08/17/2016	10/25/2026	TRUVATIV AND DESIGN	SRAM CORPORATION	No
TMK 15-00239	08/26/2016	08/30/2026	CR-V	HONDA MOTOR CO., LTD.	No
TMK 15-00239	08/26/2016	08/30/2026	CR-V	HONDA MOTOR CO., LTD.	No
TMK 16-00867	08/01/2016	06/29/2026	HOME IS WHERE YOU PARK IT	Heirloom Inc.	No
TMK 16-00868	08/01/2016	12/19/2016	ULTRALITE	Carbo Ceramics Inc.	No
TMK 16-00869	08/01/2016	05/07/2019	FRACPRO (Stylized)	STRATAGEN, INC.	No
TMK 16-00870	08/01/2016	05/25/2024	NETWORK	StrataGen, Inc.	No
TMK 16-00871	08/01/2016	07/19/2026	BADJACK MACHINE	Bad Jack Machine	No
TMK 16-00872	08/01/2016	06/08/2026	ASSURETRUST	INSURETrust.com LLC	No
TMK 16-00873	08/01/2016	03/09/2027	DANTOGARD	LONZA INC.	No

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TMK 16-00874	08/01/2016	05/09/2026	JUUL (Stylized)	PAX Labs, Inc.	No
TMK 16-00875	08/01/2016	04/27/2024	O BOTICARIO (STYLIZED)	BOTICA COMERCIAL FARMACEUTICA LTDA.	No
TMK 16-00876	08/01/2016	11/02/2021	FALCON LINER	Falcon Technologies and Services, Inc.	No
TMK 16-00877	08/01/2016	11/02/2021	FALCON LINER (Stylized)	Falcon Technologies and Services, Inc.	No
TMK 16-00878	08/01/2016	03/28/2021	R plus Design	REVISION MILITARY INC.	No
TMK 16-00879	08/02/2016	07/19/2026	PRODOCTOR	Knowledges Source Solutions	No
TMK 16-00880	08/02/2016	07/19/2026	HEALTHQUILT CONNECTING FOR QUALITY and Design	Kimberly Dunn	No
TMK 16-00881	08/02/2016	12/22/2025	PAX2 (Stylized)	PAX LABS, INC.	No
TMK 16-00882	08/02/2016	10/19/2026	MAYAPPLE BABY	MayApple Baby, LLC	No
TMK 16-00883	08/02/2016	07/23/2023	Design	StrataGen, Inc.	No
TMK 16-00884	08/02/2016	11/19/2024	BEERADVENT	Craft Beer Importers Canada Inc.	No
TMK 16-00885	08/02/2016	09/13/2026	Transdermal patch logo	Mylan Pharmaceuticals Inc.	No
TMK 16-00886	08/02/2016	10/11/2026	NEGUS	T.L.A., Inc.	No
TMK 16-00887	08/03/2016	01/03/2026	GOLD TOE CLASSIC	GILDAN USA INC.	No
TMK 16-00888	08/03/2016	08/31/2026	DURA+MATES	GILDAN USA INC.	No

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TMK 16-00889	08/03/2016	06/29/2026	COLORAMA	Prometheus Brands, LLC	No
TMK 16-00890	08/03/2016	11/24/2020	HURRICANE	TELEBRANDS CORP.	No
TMK 16-00891	08/03/2016	03/23/2025	MIGHTY MITE	Westheimer Corporation	No
TMK 16-00892	08/03/2016	11/02/2026	SaddleBar Brand Cycle Utility Bar Logo	Dooner, Michael Joseph	No
TMK 16-00893	08/04/2016	09/28/2026	PEDEGG POWERBALL	International Edge, Inc.	No
TMK 16-00894	08/04/2016	10/19/2026	ENAGIC	Enagic Co. Ltd.	No
TMK 16-00895	08/04/2016	10/19/2026	Capital E in stylized form	Enagic Co. Ltd.	No
TMK 16-00896	08/04/2016	07/12/2021	Kangen Ukon?	Enagic USA, Inc.	No
TMK 16-00897	08/04/2016	12/21/2020	Leveluk (stylized)	ENAGIC INC.	No
TMK 16-00898	08/04/2016	09/28/2026	LAZERBOND	Prometheus Brands LLC	No
TMK 16-00899	08/04/2016	02/18/2019	MISSHA and Design	ABLE C & C CO., LTD.	No
TMK 16-00900	08/04/2016	01/21/2025	BRODMANN	HONG, SUN PYO AKA PETER HONG AND SUN PETER HONG	No
TMK 16-00901	08/08/2016	01/17/2027	WARRIOR	Kimber IP, LLC	No
TMK 16-00902	08/08/2016	10/19/2025	HRE Performance Wheels and Logo (Design)	Phoenix Wheel CO., Inc. DBA HRE Performance Wheels	No
TMK 16-00903	08/08/2016	02/08/2022	AVANIR	AVANIR PHARMACEUTICALS, INC.	No

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TMK 16-00904	08/08/2016	07/12/2021	NUEDEXTA	Avanir Pharmaceuticals, Inc.	No
TMK 16-00905	08/08/2016	11/02/2026	XSAIL	Avanir Pharmaceuticals, Inc.	No
TMK 16-00906	08/08/2016	05/11/2024	Flavor Vapes FV & Design	UTVG Europe Holding B.V.	No
TMK 16-00907	08/08/2016	09/16/2025	E-HITTER	UTVG Europe Holding B.V.	No
TMK 16-00908	08/08/2016	04/21/2024	Vape Master V & Design	UTVG Europe Holding B.V.	No
TMK 16-00909	08/08/2016	09/10/2024	UTVG	UTVG Europe Holding B.V.	No
TMK 16-00910	08/08/2016	11/02/2026	PERSONALIZATION	Colby, Brandon	No
TMK 16-00911	08/08/2016	10/12/2026	PA LOGO (Stylized)	Paul Andrew Design, LLC	No
TMK 16-00912	08/09/2016	11/02/2026	ONZETRA	Avanir Pharmaceuticals, Inc.	No
TMK 16-00913	08/09/2016	10/22/2018	THE FISH GRIP	United Plastic Molders, Inc.	No
TMK 16-00914	08/09/2016	08/27/2018	MANSION GARRIDO TINTO SUPERIOR and Design	Garrido, Jorge Luis	No
TMK 16-00915	08/09/2016	10/05/2026	MODERN BURLAP	Lischka, Samantha	No
TMK 16-00916	08/11/2016	09/21/2026	DESIGN ONLY (HEART SHAPE OPEN-ING)	United Plastic Molders, Inc.	No
TMK 16-00917	08/11/2016	10/21/2025	NATURAL SODA and Design	NATURAL SODA, LLC	No
TMK 16-00918	08/11/2016	12/12/2016	CCI	VISTA OUTDOOR OPERATIONS LLC	No

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TMK 16-00919	08/11/2016	10/04/2017	CCI	Vista Outdoor Operations LLC	No
TMK 16-00920	08/11/2016	11/02/2026	22 MINUTE HARD CORPS	Beachbody, LLC	No
TMK 16-00921	08/11/2016	12/24/2025	"500" Design	DUNLOP MANUFACTURING, INC.	No
TMK 16-00922	08/11/2016	02/17/2026	DIGIMAG	Magnum Magnetics Corporation	No
TMK 16-00923	08/11/2016	04/30/2021	DIGIMAG	MAGNUM MAGNETICS CORPORATION	No
TMK 16-00924	08/11/2016	08/19/2025	DIGIMAXX	Magnum Magnetics Corporation	No
TMK 16-00925	08/11/2016	11/14/2026	FELS-NAPTHA (stylized)	THE DIAL CORPORATION CORPORATION	No
TMK 16-00926	08/12/2016	07/22/2018	MESSAGEMAG	Magnum Magnetics Corporation	No
TMK 16-00927	08/12/2016	02/10/2020	MUSCLEMAG	Magnum Magnetics Corporation	No
TMK 16-00928	08/12/2016	06/05/2022	MAGNUM	Magnum Magnetics Corporation	No
TMK 16-00929	08/12/2016	12/29/2025	LOCK LACES	Positive Distribution LLC	No
TMK 16-00930	08/15/2016	04/21/2017	MAGNUM MAGNETICS	Magnum Magnetics Corporation	No
TMK 16-00931	08/15/2016	03/21/2021	LOCK LACES & Design	POSITIVE DISTRIBUTION LLC	No
TMK 16-00932	08/15/2016	06/20/2017	PROMAG	MAGNUM MAGNETICS CORPORATION	No
TMK 16-00933	08/15/2016	02/12/2024	Billabong Wave Logo (design)	GSM (Operations) Pty Ltd	No
TMK 16-00934	08/15/2016	12/17/2022	Stylized VA	SEAL TRADEMARKS PTY LTD	No

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TMK 16-00935	08/15/2016	11/09/2026	RMS TRIAD plus Design	The Trustees of the Robert M. Szajner Living Trust 100615 DBA RMS Triad Productions Robert M. Szajner / USA / Trustee Loretta M. Szajner / USA / Trustee	No
TMK 16-00936	08/15/2016	10/22/2024	POPSOCKETS	PopSockets LLC	No
TMK 16-00937	08/16/2016	10/04/2026	NATURE'S HERBS	NUTRAMARKS, INC.	No
TMK 16-00938	08/16/2016	03/28/2020	RUBBERSTEEL	Magnum Magnetics Corporation	No
TMK 16-00939	08/16/2016	07/01/2024	BILLABONG	GSM (Trademarks) Pty Ltd	No
TMK 16-00940	08/16/2016	04/02/2017	ELEMENT	Rocket Trademarks Pty Ltd	No
TMK 16-00941	08/16/2016	12/22/2025	YONEX	YONEX KABUSHIKI KAISHA	No
TMK 16-00942	08/16/2016	09/28/2026	DESIGN ONLY (Mushroom)	Louis Poulsen A/S	No
TMK 16-00943	08/16/2016	09/27/2018	JUICY JUICE	HARVEST HILL BEVERAGE COMPANY	No
TMK 16-00944	08/16/2016	02/08/2022	BLUE TIGER	North American Blue Tiger Company LLC	No
TMK 16-00945	08/16/2016	08/08/2022	SUNRISE and Design	Just Case USA, Inc.	No
TMK 16-00946	08/16/2016	05/23/2026	SAKE EXPRESS	Sake Express Inc of Gastonia	No
TMK 16-00947	08/16/2016	08/10/2026	NSWTA and Design	National Senior Women's Tennis Association DBA NSWTA	No
TMK 16-00948	08/16/2016	06/15/2026	SYNCHRONIST SUITE	Blane, Canada Ltd.	No

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TMK 16-00949	08/16/2016	08/10/2026	SYSTEM SHEPHERD	Absolute Performance, Inc.	No
TMK 16-00950	08/16/2016	08/10/2026	XPERTDOX	Xperdox, LLC	No
TMK 16-00951	08/16/2016	08/24/2026	INNATE CHIROPRACTIC and Design	Innate Chiropractic	No
TMK 16-00952	08/17/2016	08/03/2026	SYNERGY VANILLA BOLD	Synergy Flavors, Inc.	No
TMK 16-00953	08/17/2016	08/10/2026	WANET	Wheaton Academy	No
TMK 16-00954	08/17/2016	07/26/2026	SOOO GOOD	Philz Coffee, Inc.	No
TMK 16-00955	08/17/2016	09/07/2026	SNAAP	Dr. Tom J. Maricich, Ph.D	No
TMK 16-00956	08/17/2016	08/25/2023	MOUNT PLEASANT	MPW, Inc.	No
TMK 16-00957	08/18/2016	05/11/2024	FUNKY SOCKS	KVZ INTERNATIONAL LTD.	No
TMK 16-00958	08/19/2016	10/12/2026	POOP LIKE A CHAMPION	Spring Advertising Ltd. DBA Spring limited company (ltd.)	No
TMK 16-00959	08/19/2016	09/16/2025	IRING	AAUXX, Inc.	No
TMK 16-00960	08/19/2016	06/30/2025	SMITH & WESSON	Smith & Wesson Corp.	No
TMK 16-00961	08/19/2016	06/30/2025	S&W Logo	Smith & Wesson Corp.	No
TMK 16-00962	08/19/2016	04/18/2021	LSI	AVAGO TECHNOLOGIES GENERAL IP (SINGAPORE) PTE. LTD.	No

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TMK 16-00963	08/19/2016	01/09/2023	GOLDEN PRODUCTS	(REGISTRANT) Golden Products LLC. LIMITED LIABILITY COMPANY NEW YORK 159-21 Cross Bay Blvd. Howard Beach NEW YORK 11414	No
TMK 16-00964	08/22/2016	03/16/2019	LSI and Design	AVAGO TECHNOLOGIES GENERAL IP (SINGAPORE) PTE. LTD.	No
TMK 16-00965	08/22/2016	03/03/2024	UNI-DOLLY	RD Enterprises of Washington LLC	No
TMK 16-00966	08/23/2016	08/24/2021	POLARIS & Star Design	Polaris Industries Inc.	No
TMK 16-00967	08/23/2016	08/10/2025	POLARIS	Polaris Industries Inc.	No
TMK 16-00968	08/23/2016	12/17/2025	POLARIS & DESIGN	POLARIS INDUSTRIES INC.	No
TMK 16-00969	08/23/2016	06/26/2023	V VICTORY MOTORCYCLES USA & DESIGN	Polaris Industries Inc.	No
TMK 16-00970	08/25/2016	07/03/2017	UltraTech (Stylized)	UltraTech Systems, Inc.	No
TMK 16-00971	08/25/2016	01/14/2025	TENGA (Stylized)	TENGA Co., Ltd.	No
TMK 16-00972	08/26/2016	11/19/2018	ALLERZIP	JAB Distributors LLC	No
TMK 16-00973	08/26/2016	10/03/2017	JOCKEY	Jockey International, Inc.	No
TMK 16-00974	08/26/2016	03/04/2018	SUMMIT SERIES and Design	The North Face Apparel Corp.	No
TMK 16-00975	08/26/2016	06/15/2026	POKEMON	Nintendo of America Inc.	No

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TMK 16-00976	08/26/2016	09/28/2026	PJ MASKS DESIGN	ENTERTAINMENT ONE UK LIMITED	No
TMK 16-00977	08/26/2016	10/26/2026	THE LEGEND OF ZELDA TRI FORCE HEROES	Nintendo of America Inc.	No
TMK 16-00978	08/29/2016	03/05/2017	Double Prism logo	ORAFOL MERGER SUB LLC	No
TMK 16-00979	08/30/2016	09/14/2026	BIRD BRAINS	Cuttwood LLC	No
TMK 16-00980	08/30/2016	02/23/2025	LEXAR	MICRON CONSUMER PRODUCTS GROUP, INC.	No
TMK 16-00981	08/30/2016	12/22/2025	PJ MASKS	ENTERTAINMENT ONE UK LIMITED	No
TMK 16-00982	08/31/2016	11/20/2023	TD (Stylized)	The Toronto-Dominion Bank	No
TMK 16-00983	08/31/2016	10/29/2023	HUNTER	HUNTER BOOT LIMITED	No
TMK 16-00984	08/31/2016	02/11/2025	SLINGGRIP	JOHNNY RHYMES WITH CONNIE, LLC	No
TMK 16-00985	08/31/2016	02/07/2017	RAM MOUNTS	National Products Inc.	No
TMK 16-00986	08/31/2016	01/14/2027	BIODYNES	ARCH PERSONAL CARE PRODUCTS, L.P.	No
TMK 16-00987	08/31/2016	01/19/2025	INTENSE	Intense Cycles, Inc.	No
TMK 16-00988	08/31/2016	02/29/2024	BRONCHI-SHIELD	BOEHRINGER INGELHEIM VET-MEDICA, INC.	No

CBP IPR RECORDATION — AUGUST 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 16-00989	08/31/2016	10/11/2019	PRESPONSE	BOEHRINGER INGELHEIM VET-MEDICA, INC.	No
TMK 16-00990	08/31/2016	05/02/2020	PROZINC	BOEHRINGER INGELHEIM VET-MEDICA, INC.	No
TMK 92-00521	08/01/2016	07/21/2026	SARABETH'S(Stylized)	SARABETH'S KITCHEN, LLC	No
TMK 92-00521	08/01/2016	07/21/2026	SARABETH'S(Stylized)	SARABETH'S KITCHEN, LLC	No
TMK 96-00618	08/02/2016	08/27/2026	STUSSY	STUSSY INC.	No
TMK 96-00618	08/02/2016	08/27/2026	STUSSY	STUSSY INC.	No
TMK 97-00015	08/16/2016	12/17/2026	CALVIN KLEIN	Calvin Klein Trademark Trust	No
TMK 97-00015	08/16/2016	12/17/2026	CALVIN KLEIN	Calvin Klein Trademark Trust	No
TMK 97-00016	08/15/2016	11/13/2026	CALVIN KLEIN	The Trustee of Calvin Klein Trademark Trust Wilmington Trust Company	No
TMK 97-00016	08/15/2016	11/13/2026	CALVIN KLEIN	The Trustee of Calvin Klein Trademark Trust Wilmington Trust Company	No
TMK 99-00163	08/29/2016	12/16/2017	The North Face and Half Dome Design	NORTH FACE APPAREL CORP., THE	No
TMK 99-00163	08/29/2016	12/16/2017	The North Face and Half Dome Design	NORTH FACE APPAREL CORP., THE	No

