

U.S. Customs and Border Protection



PROPOSED MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A LANYARD OF GLASS BEADS

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 a lanyard of glass beads.

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 lanyard of glass beads 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.

DATE: Comments must be received on or before May 12, 2017.

ADDRESS: 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: Grace A. Kim, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–7941.

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 a lanyard of glass beads. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N034500, dated August 25, 2008 (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 N034500, CBP classified a lanyard of glass beads in subheading 7018.10.50, HTSUS, which provides for “Glass beads, imitation pearls, imitation precious or semiprecious stones and similar glass smallwares and articles thereof other than imitation jewelry: Glass beads, imitation pearls, imitation precious or semiprecious stones and similar glass smallwares: Other.” CBP has reviewed NY N034500 and has determined the ruling letter to be in error. It is now CBP’s position that the lanyard of glass beads is properly classified in subheading 7018.90.50, HTSUS, which provides for “Glass beads, imitation pearls, imitation precious or semiprecious stones and similar glass smallwares and articles thereof other than imitation jewelry: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N034500 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H269055, 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: January 30, 2017

ELIZABETH JUNIOR
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY N034500

August 25, 2008

CLA-2-71:OT:RR:NC:SP:233

CATEGORY: Classification

TARIFF NO.: 3926.90.3500; 4421.90.9760;
7018.10.5000

Ms. MELANIE GEIER
OFFICE MAX
263 SHUMAN BOULEVARD
NAPERVILLE, IL 60563

RE: The tariff classification of necklace lanyards from China.

DEAR Ms. GEIER:

In your undated letter you requested a tariff classification ruling. The samples will be returned as you requested.

Samples and descriptions have been provided for three necklace lanyards with attached plastic identification holder. Item number THJ080702 is 35 inches long and features faux stones made of plastic. A clear PVC name badge holder, measuring 4 inches by 5 inches, is attached to the necklace. Item number W-080012400 comes in two versions, a glass bead necklace which is pink in color and a wood bead version. Both styles are 35 inches long and feature a clear PVC name badge holder, measuring 4 inches by 5 inches.

The applicable subheading for the plastic bead lanyard necklace, item number THJ080702 will be 3926.90.3500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "other articles of plastics... beads, bugles and spangles... articles thereof, not elsewhere specified or included, other." The rate of duty will be 6.5% ad valorem.

The applicable subheading for the glass bead lanyard necklace, item numbers W-080012400 will be 7018.10.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Glass beads,... articles thereof... Other." The rate of duty will be 1.9% ad valorem.

The applicable subheading for the wood bead lanyard necklaces, item number THJ080702, will be 4421.90.9760, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "other articles of wood." The duty rate will be 3.3 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 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 Lawrence Mushinske at (646) 733-3036.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT B

HQ H269055
CLA-2 OT:RR:CTF:TCM H269055 GaK
CATEGORY: Classification
TARIFF NO: 7018.90.50

MS. MELANIE GEIER
OFFICE MAX
263 SHUMAN BOULEVARD
NAPERVILLE, IL 60563

RE: Modification of NY N034500; Classification of a lanyard of glass beads

DEAR MS. GEIER:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) N034500, which was issued to Office Max on August 25, 2008. In NY N034500, CBP classified, among other items, a glass bead lanyard under subheading 7018.10.50, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for: “[g]lass beads...: Glass beads...: Other.” We have reviewed NY N034500 and found it to be incorrect with regard to the classification of the glass bead lanyard. For the reasons set forth below, we are modifying this ruling.

FACTS:

In NY N034500, the merchandise was described as follows:

[A] necklace lanyard with attached plastic identification holder...Item number W-080012400...[is] a glass bead necklace which is pink in color...[It is] 35 inches long and feature a clear PVC name badge holder, measuring 4 inches by 5 inches.

ISSUE:

Is the glass bead lanyard classified under subheading 7018.10.50, HTSUS, as glass beads, or under subheading 7018.90.50, HTSUS, as an article of glass beads?

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 HTSUS subheadings at issue are as follows:

7018

Glass beads, imitation pearls, imitation precious or semiprecious stones and similar glass smallwares and articles thereof other than imitation jewelry...

7018.10.50 Glass beads...: Other

* * *

7018.90.50 Other: Other

In NY N034500, CBP classified the glass bead lanyard as “glass beads” under subheading 7018.10.50, HTSUS. However, the instant merchandise does not consist of loose glass beads. Rather, it is a finished lanyard comprised of glass beads.

CBP has consistently classified articles of glass beads in subheading 7018.90.50, HTSUS. In Headquarters Ruling Letter (“HQ”) 966663, dated March 31, 2004, CBP classified plastic grapes covered with glass beads under subheading 7018.90.50, HTSUS. *See also* HQ 966664, dated March 31, 2004 (beaded berry wreath in which the berries were “completely covered” with glass beads, classified under subheading 7018.90.50, HTSUS); HQ 084748, dated August 22, 1989 (“fully glass beaded handbag” classified under subheading 7018.90.50, HTSUS); and NY 888300, dated May 5, 1993 (two trinket boxes, the exterior of which were “completely covered” with glass beads, classified under subheading 7018.90.50, HTSUS).

Therefore, we find that under GRI 1, the glass bead lanyard is classified in subheading 7018.90.50, HTSUS, which provides for articles of glass beads.

HOLDING:

Under the authority of GRI 1, the glass bead lanyard is provided for in heading 7018, HTSUS, specifically in subheading 7018.90.50, HTSUS, which provides for, “Glass beads, imitation pearls, imitation precious or semiprecious stones and similar glass smallwares and articles thereof other than imitation jewelry...Other: Other.” The 2017 column one general rate of duty is 6.6% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N034500, dated August 25, 2008, is hereby MODIFIED with regard to the classification of the glass bead lanyard.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF WAFER CATALYSTS**

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

ACTION: Notice of proposed revocation of a ruling letter and revocation of treatment relating to the tariff classification of wafer catalysts.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) intends to modify a ruling concerning the classification of wafer catalysts, 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.

DATE: Comments must be received on or before May 12, 2017.

ADDRESS: 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 Street NE, 10th Floor, Washington, D.C. 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Anthony L. Shurn, Tariff Classification and Marking Branch, Regulations and Rulings, Office of 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 neces-

sary 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 a ruling pertaining to the tariff classification of wafer catalysts. Although in this Notice, CBP is specifically referring to the revocation of CBP Ruling Letter NY N244307 (August 16, 2013) (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., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this Notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. §1625(c)(2)), 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 N244307, CBP classified wafer catalysts in heading 3815, HTSUS, specifically in subheading 3815.12.0000, HTSUS, which provides for "Reaction initiators, reaction accelerators and catalytic preparations, not elsewhere specified or included; Supported catalysts: With precious metal or precious metal compounds as the active substance..." CBP has reviewed N244307 and has determined the ruling letter to be in error. It is now CBP's position that the wafer catalysts are properly classified, by operation of HTSUS General Rule of Interpretation 1, in heading 7115, HTSUS, specifically in subheading 7115.90.60, HTSUS, which provides for "Other articles of precious metal or of metal clad with precious metal: Other: Other: Other..."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke N244307 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H249645, set forth as Attachment B to this notice. Additionally, pur-

suant 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: February 15, 2017

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY N244307

August 16, 2013

CLA-2-38:OT:RR:NC:2:235

CATEGORY: Classification

TARIFF NO.: 3815.12.0000

MS. BIRGIT MOELLER
HERAEUS HOLDING GMBH HERAEUSSTRASSE
12-14 63450 HANAU, GERMANY

RE: The Tariff classification of Catalyst Wafers from Germany

DEAR Ms. MOELLER:

In your letter dated July 24, 2013 you requested a tariff classification ruling.

The instant product consists of a fiber alloy of precious metals sintered onto a gauze wafer. The fibers are attached to the wafer using a patented sintering process. The metal alloys which make up the active catalytic portion are in pertinent part, a platinum-rhodium complex. Various combinations of Rhodium, Platinum and Palladium are indicated as potential formulations. The wafers are imported as single layers, and are combined after importation, in various thicknesses, based on customer needs. The individual wafers are approximately 1 meter square and in a circular shape. The thickness of the wafers are approximately between 0.5 and 3 mm. Information provided by you in a follow up letter indicate that the wafers are used in the production of Nitric Acid.

The applicable subheading for the Catalyst Wafers will be 3815.12.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: "reaction initiators, reaction accelerators and catalytic preparations, not elsewhere specified or included: supported catalysts: with precious metal or precious metal compounds as the active substance". This provision is free of duty.

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 Paul Hodgkiss at (646) 733-3046.

Sincerely,

DEBORAH C. MARINUCCI
Acting Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H249645
CLA-2 OT:RR:CTF:TCM H249645 ALS
CATEGORY: Classification
TARIFF NO.: 7115.90.60

Ms. BIRGIT MOLLER
TAX, CUSTOMS AND EXPORT CONTROL
HERAEUS HOLDING GMBH
HERAEUSSTRASSE 12-14
D-63450 HANAU, HESSEN, GERMANY

RE: Revocation of CBP Ruling NY N244307 (August 16, 2013); Tariff Classification of Wafer Catalysts; Harmonized Tariff Schedule of the United States subheading 7115.90.60

DEAR Ms. MOLLER:

This letter responds to your November 13, 2013 request for reconsideration of Customs and Border Protection (CBP) Ruling NY N244307 (August 16, 2013). The request concerns the legal tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of Wafer Catalysts. Our decision is set forth below.

FACTS:

The facts as stated in NY N244307 are as follows:

The instant product consists of a fiber alloy of precious metals sintered onto a gauze wafer. The fibers are attached to the wafer using a patented sintering process. The metal alloys which make up the active catalytic portion are in pertinent part, a platinum-rhodium complex. Various combinations of Rhodium, Platinum and Palladium are indicated as potential formulations. The wafers are imported as single layers, and are combined after importation, in various thicknesses, based on customer needs. The individual wafers are approximately 1 meter square and in a circular shape. The thickness of the wafers are approximately between 0.5 and 3 mm. Information provided by you in a follow up letter indicate that the wafers are used in the production of Nitric Acid.

In your request for reconsideration, you state that the Wafer Catalysts are “platinum-rhodium non-woven no-grill fabric plate[s]” and they “[consist] of Platinum metal group alloy fibers, sintered together.” You further state that the Wafer Catalysts are intermediate products, with the finished product, “tailor-made ready-to-use catalyst gauze,” being made in the United States. The imported product has no substrate, only platinum fibers that are sintered and non-woven.

You request reconsideration of NY N244307 because you argue that the subject Wafer Catalyst “is not a ‘catalytic preparation’ described in Chapter 38 as it is similar to platinum grill (woven gauze – Chapter 71) and there is no substrate (prerequisite for 3815 – ‘Supported catalysts: - With precious metal or precious metal compounds as the active substance’) but the merchandise consists of pure platinum alloy.” CBP ruled in NY N244307 that the wafer catalysts are classified under subheading 3815.12.0000, HTSUS, as “Reaction initiators, reaction accelerators and catalytic preparations, not

elsewhere specified or included; Supported catalysts: With precious metal or precious metal compounds as the active substance...”

ISSUE:

Are the Wafer Catalysts, as described above, properly classified under HTSUS heading 3815 as “Reaction initiators, reaction accelerators and catalytic preparations, not elsewhere specified or included”, or under HTSUS heading 7115 as “Other articles of precious metal or of metal clad with precious metal.”

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:

3815	Reaction initiators, reaction accelerators and catalytic preparations, not elsewhere specified or included:
3815.90	Other:
3815.90.30	Other...
	* * *
7115	Other articles of precious metal or of metal clad with precious metal
7115.10.00	Catalysts in the form of wire cloth or grill, of platinum...

You state that the Wafer Catalysts are “not a ‘catalytic preparation’ described in Chapter 38 [of the HTSUS] as it is similar to [a] platinum grill (woven gauze – Chapter 71 [, HTSUS]) *and* there is no substrate (prerequisite for 3815 – ‘Supported catalysts: - with precious metal compounds as the active substance’) but the merchandise consists of pure platinum alloy.” [*Emphasis* in original.]

However, note 3(d) of Chapter 71, HTSUS, provides that the chapter does not cover “Supported catalysts (heading 3815).” Additionally, note 1(e) of Chapter 38, HTSUS, provides in pertinent part that “[t]his chapter does not cover... catalysts consisting of metals or metal alloys in the form of, for example, finely divided powder or woven gauze (section XIV or XV).” Accordingly, catalysts of metals or metal alloys in the form, for example, of woven gauze, are excluded from Chapter 38 unless they are “supported catalysts” as specifically provided for in Heading 3815. Given the description of the Wafer

Catalysts, particularly that there is no substrate or any other kind of supporting substance, we find that that Note 3(d) is not applicable in this case. Note 1(b) of Chapter 71, HTSUS, provides that all articles of precious metal or of metal clad with precious metal are to be classified in Chapter 71. Note 4(b) of Chapter 71 defines Platinum, Rhodium, and Palladium as “platinum.” Note 4(a) of Chapter 71 defines “precious metal” in pertinent part as “platinum.” Thus, the Platinum, Rhodium, and Palladium that comprise the Wafer Catalysts are precious metals for the purposes of Chapter 71.

Heading 3815, HTSUS, provides for, among other things, catalytic preparations, not elsewhere specified or included. Heading 7115, HTSUS, specifically provides for “other articles of precious metal or of metal clad with precious metal.” Having established that the Wafer Catalysts are not supported (which does not exclude them from chapter 71) and that they are comprised of precious metal, we find that they are properly classified under Heading 7115. Specifically, the Wafer Catalysts are classified under subheading 7115.90.60 as “Other articles of precious metal or of metal clad with precious metal: Other: Other: Other...” Subheading 7115.10.00 is not applicable in this case because it has not been established that the Wafer Catalysts are in the form of wire cloth or grill.

HOLDING:

By application of GRI 1, the Wafer Catalysts are properly classified under Heading 7115. Specifically, the Wafer Catalysts are classified under subheading 7115.90.60 as “Other articles of precious metal or of metal clad with precious metal: Other: Other: Other...” The general column one rate of duty, for merchandise classified under this subheading is 4%.

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 <https://hts.usitc.gov/>.

EFFECT ON OTHER RULINGS:

CBP Ruling NY N244307 (August 16, 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,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND MODIFICATION OF ONE RULING LETTER, AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF FOOTBALL GIRDLES
AND PANTS**

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

ACTION: Notice of proposed revocation of two ruling letters and modification of one ruling letter, and revocation of treatment relating to the tariff classification of football girdles and pants.

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 and modify one ruling letter concerning tariff classification of football girdles and pants 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.

DATE: Comments must be received on or before May 12, 2017.

ADDRESS: 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: Tatiana Salnik Matherne, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0351.

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 and modify one ruling letter pertaining to the tariff classification of football girdles and pants. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N007196, dated February 27, 2007 (Attachment A); NY N052472, dated March 6, 2009 (Attachment B); and NY M80510, dated March 21, 2006 (Attachment C), 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 three 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 N007196, NY N052472 and NY M80510, CBP classified the football girdles and pants at issue in heading 9506, HTSUS, specifically in subheading 9506.99.20, HTSUS, which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof. Other: Other: Football, soccer and polo articles and equipment, except balls, and parts and accessories thereof." CBP has reviewed NY N007196, NY N052472 and NY

M80510, and has determined the ruling letters to be in error. It is now CBP's position that the subject football girdles and pants are properly classified, by operation of GRI 1, in heading 6114, HTSUS. Specifically, the football pants and girdles at issue are classified in subheading 6114.30.30, HTSUS, which provides for "Other garments, knitted or crocheted: Of man-made fibers: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY N007196 and NY N052472, modify NY M80510, and modify or revoke any other ruling not specifically identified, to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H274971, set forth as Attachment D 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: February 15, 2017

ELIZABETH JUNIOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY N007196

February 27, 2007

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

CATEGORY: Classification

TARIFF NO.: 9506.99.2000

CARLOS MALDONADO
NORMAN KRIEGER, INC.
921 W. ARTESIA BLVD.
RANCHO DOMINGUEZ CA 90220

RE: The tariff classification of a football girdle from China.

DEAR MR. MALDONADO:

In your letter dated February 9, 2007, you requested a tariff classification ruling on behalf of Wind Enterprises, Inc.

The sample merchandise is a youth seven-pad full-length football girdle. The girdle is constructed of Polypropylene sheet with seven EVA foam pads sewn into polyester pockets.

Heading 9506 of the Harmonized Tariff Schedule of the United States (HTSUS) provides for, among other things, "Articles and equipment for general physical exercise, gymnastics, athletics, [and] other sports..."

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System state at heading 9506 that the heading covers three categories of merchandise: (A) Articles and equipment for general physical exercise, gymnastics or athletics; (B) Requisites for other sports and outdoor games; and (C) Swimming and paddling pools. The ENs to the heading specifically state that category (B) includes: "Protective equipment for sports or games, e.g. fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards." However, the ENs to heading 9506 also state that sports clothing of textiles of chapter 61 and 62 is excluded from all of chapter 95, HTSUS, including heading 9506.

Textile articles, such as the football girdle at issue, that are worn on the person while participating in sports and incorporate guards, pads, or foam are evaluated on a case-by-case basis. Articles of this nature will be classified as protective sports equipment in heading 9506, HTSUS, if they are primarily worn for protection in sport and are akin to the protective sport equipment exemplars set forth in the EN to heading 9506. Generally, they will incorporate thick non-textile protective guards or pads that are designed exclusively for protection against injury, that is, having protective features with the sole or primary function of directly absorbing the impact of blows, collisions, or flying objects. Generally, these non-textile protective guards will be non-removable or specially fitted to be inserted into textile parts of the articles, made of hard plastic or thick foam, and make the articles impractical to use as everyday wearing apparel. It is our conclusion that the subject football girdle is eligible for classification in the sports equipment provisions of heading 9506, HTSUS, specifically subheading 9506.99.2000, HTSUS, which covers football...articles and equipment. The girdle incorporates comparatively significant padding and padding that is of substantially hard plastic or foam material. Articles of this nature provide protection akin to the exem-

plars set forth in the ENs to heading 9506. The protective features of this girdle pant transform the article into protective equipment for sports provided for in heading 9506. HTSUS

The applicable subheading for the sample youth seven pad full length football girdle will be 9506.99.2000, HTSUS, which provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports...Other: Other: Football, soccer and polo articles and equipment, except balls, 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).

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]

NY N052472

March 6, 2009

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

CATEGORY: Classification

TARIFF NO.: 9506.99.2000

Ms. PAT ZUGER
UNDER ARMOUR TIDE POINT
1020 HULL STREET
BALTIMORE, MD 21230

RE: The tariff classification of various football and basketball protective gear

DEAR Ms. ZUGER:

In your letter dated February 13, 2009, you requested a tariff classification ruling.

Four samples were received with your inquiry. The first item, Style 1002481, is the MPZ Touchdown Pant made in China. It is a boy's football pant made of 92% polyester and 8% elastane that extends to just below the knee. It contains six permanent protective pads of thick foam and hard plastic that protect the hips, front of the thighs and knees. One specially fitted thick foam pad used to protect the tailbone is removable. These pads are designed for protection against injury with their sole function of directly absorbing impacts, blows or collisions while playing football. This sample is being retained for future reference.

The applicable subheading for the MPZ Touchdown Pant, Style number 1002481, will be 9506.99.2000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: Other: Football, soccer and polo articles and equipment, except balls, and parts and accessories thereof." The duty rate will be Free.

The second item is Style 1002495, the MPZ Grippy Tee, and is made in Honduras. It is a boy's football shirt which contains rubber dots at the front and back of the upper body for the purposes of keeping the shoulder pads from slipping.

The third item is Style 1100757, the MPZ Protector Shirt, and is made in China. It is a men's basketball shirt which contains permanently sewn in pads made of 80% nylon and 20% elastane polyurethane.

The last item is Style 1100751, the MPZ Protector Short, and is made in China. It is a men's basketball protective undergarment with permanent padding at the hips and thighs made of 80% nylon and 20% elastane polyurethane.

Regarding the last three items, please note that the issue of the classification of motocross jackets, jerseys and pants, football and baseball pants and tops, and motorcycle/other power sports jackets/garments as sports clothing or as sports equipment, Chapters 61/62 versus heading 9506, is currently pending before the United States Court of International Trade (CIT) in the matter of LeMans Corporation v. United States, Case # 1:06-cv-00038, Fox Racing USA v. United States, Case # 1:06-cv-00083, and Wilson Hunt Inter-

national v. United States, Case # 1:06-cv-00086. Section 177.7, Customs Regulations (19 CFR 177.7) provides that rulings will not be issued in certain circumstances. Section 177.7(b) states, in pertinent part, the following:

“No ruling letter will be issued with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom.”

In light of the prohibition set out in CFR 177.7(b), and as the instant ruling request is closely related to the classification issue presently pending in the CIT, this office is unable to issue a ruling letter to you with respect to the classification of the Styles 1002495, 1100757 and 1100751. Accordingly, we are administratively closing the file. You may submit another request after the court has issued its decision on these cases. 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 James Forkan at (646) 733-3025.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

NY M80510

March 21, 2006

CLA-2-61:RR:NC:3:353 M80510

CATEGORY: Classification

TARIFF NO.: 6114.30.30.60, 9506.99.2000

MR. BRIAN REINICKE

MKC CUSTOMS BROKERS INT'L CO.

P.O. BOX 66332

CHICAGO, IL 60666-0332

RE: The tariff classification of football pants and a protective garment from China.

DEAR MR. REINICKE:

In your letter dated February 12, 2006, received in this office on February 22, 2006, on behalf of Morningstar Corporation, you requested a classification ruling.

The submitted samples are Styles F2545, Ftitanium, F4535 Football Pants and Padding Pants Football Garment. All the items are designed for use while playing football and will only be worn while participating in the sport.

Style F2545 Football Pant is constructed of knit 92% nylon, 8% spandex fabric. The pant extends to just below the knee and features a heavy-duty elastic waistband, a laced front with double D-ring closure, two large inside pockets where protective pads can be inserted, internal waistband snaps used for attachment of protective pads, and tunnel elastic leg openings.

Style Ftitanium Football Pant is constructed of knit 92% polyester, 8% spandex fabric. The pant extends to just below the knee and features a heavy-duty elastic slotted waistband, a laced front closure, two large inside pockets where protective pads can be inserted, and tunnel elastic leg openings.

Style F4535 Football Pant is constructed of knit 92% nylon, 8% spandex fabric. The pant extends to just below the knee and features a heavy-duty elastic slotted waistband, a laced front closure, two large inside pockets where protective pads can be inserted, and tunnel elastic leg openings.

Style Padding Pants Football Garment is constructed of knit 92% polyester, 8% spandex fabric. The pant extends to just below the knee and features a double D-ring closure and tunnel elastic leg openings. The garment has seven (7) permanent non-textile protective pads of thick rubber or rubber and hard plastic that protect the tailbone, hips, front of the thighs and knees.

Heading 9506 of the Harmonized Tariff Schedule of the United States (HTSUS) provides for, among other things, "Articles and equipment for general physical exercise, gymnastics, athletics, [and] other sports..."

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System state at heading 9506 that the heading covers...(B) Requisites for other sports and outdoor games. The Ens to the heading specifically state that category (B) includes: "Protective equipment for sports or games, e.g. fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards." However, the Ens to heading 9506 also state that sports clothing of textiles of chapter 61 and 62 is excluded from all of chapter 95, HTSUS, including heading 9506.

Textile articles, such as the instant Style Padding Pants Football Garment, that are worn on the person while participating in sports and incorporate guards, pads, or foam are evaluated on a case-by-case basis. Articles of this nature will be classified as protective sports equipment in heading 9506, HTSUS, if they are primarily worn for protection in sport and are akin to the protective sport equipment exemplars set forth in the EN to heading 9506. Generally, they will incorporate thick non-textile protective guards or pads that are designed exclusively for protection against injury, that is, having protective features with the sole or primary function of directly absorbing the impact of blows, collisions, or flying objects. Generally, these non-textile protective guards will be non-removable or specially fitted to be inserted into textile parts of the articles, made of hard plastic or thick foam, and make the articles impractical to use as everyday wearing apparel. In our opinion, the subject Style Padding Pants Football Garment is such an article. It provides protection akin to the exemplars set forth in the EN to heading 9506 and is solely or primarily used for protection in the conduct of sport or game activities. Therefore, it is classified as protective sports equipment in heading 9506, HTSUS.

The applicable subheading for the Styles F2545, Ftitanium and F4535 Football Pants will be 6114.30.30.60, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other garments, knitted or crocheted: of man-made fibers: other, other: men's or boys. The duty rate will be 14.9 percent ad valorem.

The applicable subheading for the Style Padding Pants Football Garment will be 9506.99.2000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: other: other: football, soccer and polo articles and equipment, except balls, and parts and accessories thereof. The duty rate 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/>.

The Styles F2545, Ftitanium and F4535 Football Pants fall within textile category designation 659. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov.

Your inquiry does not provide enough information for us to give a classification ruling on the Ftitanium Football Pant with rubber pads sewn into the pockets. Your request for a classification ruling should include a sample of the pant. When this information is available, you may wish to consider resubmission of your request. We are returning any related samples, exhibits, etc. If you decide to resubmit your request, please include all of the material that we have returned to you.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 646-733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT D]

HQ H274971
CLA-2 OT:RR:CTF:TCM H274971 TSM
CATEGORY: Classification
TARIFF NO.: 6114.30.30

CARLOS MALDONADO
NORMAN KRIEGER, INC.
921 W. ARTESIA BLVD.
RANCHO DOMINGUEZ, CA 90220

RE: Revocation of NY N007196 and NY N052472; Modification of NY M80510; Tariff Classification of football girdles and pants.

DEAR MR. MALDONADO:

This is in reference to New York Ruling Letter (NY) N007196, issued to Wind Enterprises, Inc. on February 27, 2007, concerning the tariff classification of football girdles. This is also in reference to NY M80510, issued to Morningstar Corporation on March 21, 2006, and NY N052472, issued to Under Armour on March 6, 2009. In those rulings, U.S. Customs and Border Protection (“CBP”) classified the subject merchandise under heading 9506, HTSUS, which provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof.” Upon additional review, we have found this classification to be incorrect. For the reasons set forth below we hereby revoke NY N007196, NY N052472 and modify NY M80510.

FACTS:

NY N007196, describes the subject merchandise as follows:

The sample merchandise is a youth seven-pad full-length football girdle. The girdle is constructed of Polypropylene sheet with seven EVA foam pads sewn into polyester pockets.

NY M80510, describes the subject merchandise as follows:

Style Padding Pants Football Garment is constructed of knit 92% polyester, 8% spandex fabric. The pant extends to just below the knee and features a double D-ring closure and tunnel elastic leg openings. The garment has seven (7) permanent non-textile protective pads of thick rubber or rubber and hard plastic that protect the tailbone, hips, front of the thighs and knees.¹

NY N052472, describes the subject merchandise as follows:

Style 1002481 is the MPZ Touchdown Pant made in China. It is a boy’s football pant made of 92% polyester and 8% elastane that extends to just below the knee. It contains six permanent protective pads of thick foam and hard plastic that protect the hips, front of the thighs and knees. One specially fitted thick foam pad used to protect the tailbone is removable.

¹ We note that NY M80510 also addressed classification of merchandise style numbers F2545, FTitanium and F4534, which are not at issue here.

These pads are designed for protection against injury with their sole function of directly absorbing impacts, blows or collisions while playing football.

ISSUE:

What is the tariff classification of the subject football girdles and pants?

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:

6114	Other garments, knitted or crocheted	*	*	*
9506	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof	*	*	*

Section XI Note 1(t) states that “[t]his section does not cover: Articles of chapter 95 (for example, toys, games, sports requisites and nets).” Section XI includes chapter 61, HTSUS. Therefore, by operation of Note 1(t), if the subject merchandise is properly classifiable in chapter 95, HTSUS, then it is precluded from classification in chapter 61, unless it is covered by Note 1(e) to Chapter 95, which excludes “Sports clothing or fancy dress, of textiles, of chapter 61 or 62.”

In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System 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 at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The EN to 95.06 states in relevant part:

This heading covers:

* * *

(B) Requisites for other sports and outdoor games ...

* * *

(13) Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards, ice hockey pants with built-in guards and pads.

It goes on:

This heading **excludes:**

* * *

(e) Sports clothing of textiles, of **Chapter 61 or 62**, whether or not incorporating incidentally protective components such as pads or padding in the elbow, knee or groin area (e.g., fencing clothing or soccer goalkeeper jerseys).

* * *

The Court of Appeals for the Federal Circuit (CAFC) has issued several opinions considering the tariff term “sports equipment.” The framework crafted in those opinions guides CBP’s analysis and ruling here.

In *Bauer Nike Hockey USA, Inc. v. United States*, 393 F.3d 1236 (Fed. Cir. 2004), the CAFC addressed the classification of padded sports pants that not only were “specially designed and intended for use only while playing ice hockey,” they “protected the wearer from injury by absorbing and deflecting blows, collisions, and flying objects in areas where serious injury may occur,” because they included “an interior assembly of...hard plastic guards and soft...foam padding” that collectively accounted for “about 80% of the total weight of the hockey pants.” *Id.* at 1248. Thereafter, and in light of the *Bauer* decision to classify the hockey pants as “sports equipment” of heading 9506, HTSUS, rather than as sports clothing of chapter 61 or 62, CBP began to evaluate padded sports clothing on a case-by-case basis.

The CAFC revisited these two headings when considering motocross outerwear, jerseys, pants, and jackets, in *LeMans Corp. v. United States*, 660 F.3d 1311 (Fed. Cir. 2011). There the Court observed that while the merchandise was “designed exclusively for use in a particular sport,” *id.* at 1319, and it contained padding that accounted for up to 50% of the total weight of the jerseys, pants, or jackets, ultimately the motocross merchandise was not akin to the exemplars contained in the ENs, which “are almost exclusively used for protection and would complement, or be worn in addition to, apparel worn for a particular sport.” *Id.* at 1322. In crafting a standard moving forward, the CAFC concluded, “to the extent ‘sports equipment’ encompasses articles worn by a user, [the exemplars in the EN] **are not apparel-like** and are almost exclusively protective in nature.” *Id.* at 1320. [Emphasis added]

Most recently, the CAFC applied the combined standards of the above noted cases to football jerseys, pants, and girdles, in *Riddell, Inc. v. United States*, 754 F.3d 1375 (Fed. Cir. 2014). Specifically, the pants and girdles at issue in *Riddell* were described as follows:

The pants, made of polyester and spandex, end just below the knee and have elastic leg openings. They contain four interior pockets to hold protective pads — two thigh pads and two knee pads. In tandem with a girdle, the pants also help secure three

additional pads around a player's waist — two hip pads and one tail pad. The pants are tailored to wear with the protective pads.

The girdles, made of polyester, are worn beneath football pants and extend from the waist to the thigh. They have several internal pockets to hold hip and tail pads. They function, together with the pants, to hold padding in place.

The merchandise in *Riddell* lacked the “transformative elements that were key in *Bauer*.” *Id.* at 1380. Given this deficiency, the products had not lost their character as clothing as it is ordinarily understood. Relevant to this analysis, we emphasize that the CAFC noted an exception, stating, “A narrow exception exists for an item that, as imported, contains a **character-transforming** amount of material not ordinarily found in mere body-covering clothing that functions to provide forms of protection not inherent in common body coverings, e.g., protection against impacts that readily propagate beneath the skin.” *Riddell, supra* at 1380.

We note that the instant football pants are different from the pants in *Riddell* because these pants have pads which are permanently sewn in. We further acknowledge that the protective pants and girdles at issue are specially designed and manufactured to protect against targeted blows and abrasions to the body specific to the sport of football. However, the merchandise considered in *LeMans Corp. v United States, supra*, which included motocross jerseys, motocross jackets and motocross pants, were also found to be designed exclusively for use in a particular sport, *Id.* at 1319. The CAFC held that the merchandise was prima facie classifiable as apparel, and further, chapters 61 and 62 “do not distinguish between apparel designed for general or specific uses,” which is indicated by its inclusion of “track suits, ski-suits[,] and swimwear.” *Id.* at 1317.

While the material and location of the padding may lend the instant pants and girdles to a particular use, for example, while playing football, it does not cause them to be something other than apparel. They have not been so transformed as to lose their character as “apparel.”

This analysis is consistent with the ENs to 95.06, specifically the protective exemplars in the EN 95.06(B) which includes therein, fencing masks, breast plates, elbow and knee pads, cricket pads, shin-guards, ice hockey pants with built-in guards and pads. These exemplars refer to items worn by a user almost exclusively for protection. They do not include articles that are apparel-like; rather, they are articles that have minimal textile components. They are distinguishable from the protective pants and girdles at issue here, and for

these reasons, the pants and girdles at issue are not “sports equipment” within the scope of heading 9506, HTSUS.

Therefore, as the subject protective pants and girdles are covered by Note 1(e) to Chapter 95, they are excluded from classification as sports equipment of heading 9506, HTSUS. They are properly classified as “other garments” of heading 6114, HTSUS. *See* HQ H251142, dated May 29, 2015.

HOLDING:

By application of GRI 1 (Note 1(e) to Chapter 95), we find that the subject merchandise is properly classified under heading 6114, HTSUS. Specifically, it is classified in subheading 6114.30.30, HTSUS, which provides for “Other garments, knitted or crocheted: Of man-made fibers: Other.” The 2017 column one, general rate of duty is 14.9%.

EFFECT ON OTHER RULINGS:

NY N007196, dated February 27, 2007, and NY N052472, dated March 6, 2009, are hereby REVOKED; NY M80510, dated March 21, 2006, is hereby MODIFIED with regard to the Padding Pants Football Garment.

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

**PROPOSED MODIFICATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE NAFTA ELIGIBILITY OF CERTAIN
LIQUID SUGAR PRODUCTS**

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

ACTION: Notice of proposed modification of two ruling letters and revocation of treatment relating to the NAFTA eligibility of certain liquid sugar products.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends

to modify two ruling letters concerning the eligibility for preferential tariff treatment of certain liquid sugar products under the North American Free Trade Agreement (NAFTA). 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.

DATE: Comments must be received on or before May 12, 2017.

ADDRESS: 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: Cynthia Reese, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0046.

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 two ruling letters concerning the eligibility for preferential tariff treatment of certain liquid sugar products under the NAFTA. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) NY N271090, dated July 12, 2016 (Attachment A); and NY N271047, dated June 23, 2016 (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 NY N271090, CBP classified certain pure cane flavored syrups in subheading 2106.90.9997, HTSUS, which provides for "Food preparations not elsewhere specified or included: . . . Other . . . Other. . . Other: Containing sugar derived from sugar cane and/or sugar beets." The ruling also determined that the flavored syrups did not qualify for preferential tariff treatment under the NAFTA. In NY N271047, CBP classified certain pure cane unflavored syrups in subheading 1702.90.9000, HTSUS, which provides for "Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavoring or coloring matter; artificial honey, whether or not mixed with natural honey; caramel: Other, including invert sugar and other sugar and sugar syrup blends containing in the dry state 50 percent by weight of fructose: Other: Other: Other." We note the ruling contained a typographical error identifying the subheading as 1702.90.9090, HTSUS. The ruling determined that the unflavored syrups qualified for preferential tariff treatment under the NAFTA. CBP has reviewed the decisions in NY

N271090 and NY N271047 and has determined the decisions erred with regard to the NAFTA eligibility determinations.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify NY N271090 and NY N271047 and modify or revoke any other ruling not specifically identified on the NAFTA eligibility of flavored and unflavored syrups similarly processed, to reflect the analysis contained in the proposed Headquarters Ruling Letter (HQ) H281296 and HQ H282979, respectively, set forth as Attachments “C” and “D” 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: March 02, 2017

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

July 12, 2016

CLA-2-21:OT:RR:NC:N2:228

CATEGORY: Classification

TARIFF NO.: 2106.90.9997

MR. DANIEL WALTZ
SQUIRE PATTON BOGGS (US) LLP
2550 M STREET, NW
WASHINGTON, DC 20037

RE: The tariff classification, country of origin, and status under the North American Free Trade Agreement (NAFTA) of flavored syrups from Canada; Article 509

DEAR MR. WALTZ:

In your letter dated November 23, 2015, you requested a ruling on classification, country of origin, and status under the NAFTA of four flavored syrups.

Ingredients breakdowns, product specifications, representative samples, and the liquid sucrose manufacturing process accompanied your letter. The samples were examined and disposed of. The products are said to be pure cane syrups flavored as caramel, hazelnut, vanilla (higher brix formula), and vanilla (lower brix formula). They are all said to contain liquid sucrose, medium invert syrup, filtered water, and trace amounts of caramel color, Foamdoctor A10FG (anti-foaming agent), potassium sorbate, and citric acid. The syrups will be both of United States and foreign ingredients blended in Canada, and imported into the U.S. in two bottle sizes, 375 ml and 750 ml, net weight, for sale to food service and retail customers. The flavored syrups will be used via pump dispensers to sweeten beverages of consumers' choice such as coffee, teas, cocktails, etc.

In your letter, you suggested the four flavored syrups may fall in subheading 2106.90.9972, Harmonized Tariff Schedule of the United States (HTSUS), preparations for the manufacture of beverages. We disagree. Based on the manufacturing process, and the ingredients composition, they will be classified elsewhere.

The applicable subheading for the four flavored syrups will be 2106.90.9997, HTSUS, which provides for food preparations not elsewhere specified or included . . . other . . . other . . . other . . . other . . . containing sugar derived from sugar cane and/or sugar beets. The rate of duty will be 6.4 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

General Note 12(b), HTSUS, sets forth the criteria for determining whether a good is originating under the NAFTA. General Note 12(b), HTSUS, (19 U.S.C. § 1202) states, in pertinent part, that

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as "goods originating in the territory of a NAFTA party" only if—

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; ...

Based on the facts provided, the merchandise does not qualify for preferential treatment under the NAFTA because none of the above requirements are met.

The primary ingredients of all the syrups included in this request, you state, will be liquid sucrose and medium invert syrup derived from sugar that is refined by Redpath in Canada from “world” raw sugar. As such, the country of origin for the four syrups will be the same origin as the “world” raw sugar.

This ruling is being issued under the provisions of Part 181 of the Customs 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,

STEVEN A. MACK

Director

National Commodity Specialist Division

[ATTACHMENT B]

June 23, 2016
CLA-2-17:OT:RR:NC:N4:232
CATEGORY: Classification
TARIFF NO.: 1702.90.9090

DANIEL E. WALTZ
SQUIRE PATTON BOGGS (US) LLP
2550 M STREET, NW
WASHINGTON, D.C. 20037

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of liquid sugar products from Canada; Article 509

DEAR MR. WALTZ:

In your letter dated November 23, 2015, on behalf of Redpath Sugar, you requested a ruling on the status of liquid sugar products from Canada under the NAFTA. Two liquid sugar samples and descriptive literature were submitted along with your request. The samples were submitted to the Customs Laboratory for analysis. The Laboratory has now completed its analysis of these products.

The subject matter consists of two types of liquid sugar produced in Canada. Pure Cane Classic Syrup (Lower Brix Formula) is said to contain 81.481 percent liquid sucrose #1, 18.439 percent filtered water, and 0.04 percent potassium sorbate and 0.04 percent citric acid. The liquid sugar consists of raw cane sugar originating in Mexico, Brazil, Guatemala, Costa Rica, Honduras, El Salvador or Nicaragua and is refined in Canada. The potassium sorbate is a product of China and the citric acid is a product of Brazil. Pure Cane Classic Syrup (Higher Brix Formula) is said to contain 77.185 percent liquid sucrose #1, 20 percent medium invert syrup, 2.81 percent filtered water, 0.004 percent potassium sorbate and 0.002 percent citric acid. The liquid sugar consists of raw cane sugar originating in Mexico, Brazil, Guatemala, Costa Rica, Honduras, El Salvador or Nicaragua and is refined in Canada. The medium invert syrup is a product of the United States. The potassium sorbate is a product of China and the citric acid is a product of Brazil.

The syrups will not be further processed upon arrival in the United States (they will not be incorporated in another product in the United States or further refined). They will be shipped packaged (not in bulk). There will be two bottle sizes (750 ml and 375 ml). The syrups (in both sizes) will be sold to food service industry and the retail market. These syrups will be used for beverage sweetening (e.g. coffee, teas). They will be sold in pump dispensers and the consumer will add the flavored syrups to the beverage of the consumer's choice.

According to Customs Laboratory Report no. NY20152232, dated May 13, 2016, Pure Cane Classic Syrup (Lower Brix Formula) "contains a clear, low viscosity liquid. The sample has a moisture content of 45.2 percent, and a sugar content on a dry basis of 1.6 percent fructose, 3.1 percent glucose and 87.2 percent sucrose. No flavoring, coloring compound or non-sugar soluble solids were detected." Pure Cane Classic Syrup (Higher Brix Formula) "contains a viscous yellow colored liquid. The sample has a moisture content of

33.536 percent, and a sugar content on a dry basis of 6.6 percent fructose, 6.6 percent glucose and 85.0 percent sucrose. No flavorings, coloring compound or non-sugar solids were detected.”

The applicable tariff provision for the Pure Cane Classic Syrup (Lower Brix Formula) and the Pure Cane Classic Syrup (Higher Brix Formula) will be 1702.90.9090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavoring or coloring matter; artificial honey, whether or not mixed with natural honey; caramel: Other, including invert sugar and other sugar and sugar syrup blends containing in the dry state 50 percent by weight of fructose: Other: Other: Other. The duty rate will be 5.1 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 World Wide Web at <https://hts.usitc.gov/current>.

Your inquiry also requests a ruling on the eligibility for preferential tariff treatment under the NAFTA of the Pure Cane Classic Syrup (Lower Brix Formula) and Pure Cane Classic Syrup (Higher Brix Formula) produced in Canada.

General Note 12(b), HTSUS, sets forth the criteria for determining whether a good is originating under the NAFTA. General Note 12(b), HTSUS, (19 U.S.C. § 1202) states, in pertinent part, that

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if—

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials; or

Based on the facts provided, the Pure Cane Classic Syrup (Lower Brix Formula) when made in Canada using liquid sucrose #1 from Canada, potassium sorbate from China and citric acid from Brazil, the goods described above qualify for NAFTA preferential treatment, because they will meet the requirements of HTSUS General Note 12(b)(ii)(A) and General Note 12(t) 17.1. It will therefore be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

Also, based on the facts provided, the Pure Cane Classic (Higher Brix Formula) when made in Canada using liquid sucrose #1 from Canada, medium invert syrup from the United States, potassium sorbate from China and

citric acid from Brazil, the goods described above qualify for NAFTA preferential treatment, because they will meet the requirements of HTSUS General Note 12(b)(ii)(A) and General Note 12(t) 17.1. It will therefore be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at telephone number (301) 575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 181 of the Customs 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 Frank Troise at frank.troise@dhs.gov.

Sincerely,

STEVEN A. MACK

Director

National Commodity Specialist Division

[ATTACHMENT C]

HQ H281296
OT:RR:CTF:VS H281296 CMR
CATEGORY: Classification
TARIFF NO: 2106.90.9897

DANIEL E. WALTZ, ESQ.
SQUIRE PATTON BOGGS (US) LLP
2550 M STREET, N.W.
WASHINGTON, D.C. 20037

RE: Request for Reconsideration of New York Ruling Letter (NY) N271090;
NAFTA eligibility of flavored sugar syrups

DEAR MR. WALTZ:

This is in response to your request, dated November 22, 2016, on behalf of your client, Redpath Sugar, requesting this office reconsider the decision in New York Ruling Letter (NY) N271090, dated July 12, 2016, denying preferential tariff treatment under the North American Free Trade Agreement (NAFTA) to four flavored sugar syrups your client produces in Canada. NY N271090 dealt with the classification of the flavored sugar syrups, as well as the NAFTA eligibility for preferential tariff treatment. We reviewed the decision only with regard to the question of the eligibility of the products for preferential tariff treatment under the NAFTA and are modifying it as set forth herein.

FACTS:

In NY N271090, Customs and Border Protection (CBP) classified four flavored sugar syrups in subheading 2106.90.9997, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for “Food preparations not elsewhere specified or included: Other . . . : Other, Other: Containing sugar derived from sugar cane and/or sugar beets.” You do not take issue with the classification in the ruling.

The ruling describes the four flavored syrups as follows:

The products are said to be pure cane syrups flavored as caramel, hazelnut, vanilla (higher brix formula), and vanilla (lower brix formula). They are all said to contain liquid sucrose, medium invert syrup, filtered water, and trace amounts of caramel color, Foamdoctor A10FG (anti-foaming agent), potassium sorbate, and citric acid. The syrups will be both of United States and foreign ingredients blended in Canada, and imported into the U.S. in two bottle sizes, 375 ml and 750 ml, net weight, for sale to food service and retail customers. The flavored syrups will be used via pump dispensers to sweeten beverages of consumers’ choice such as coffee, teas, cocktails, etc.

We reviewed your initial ruling request, which contained ingredient breakdowns, product specifications, and a description of the processing to produce the liquid sucrose and invert syrup used in the production of the flavored syrups. You indicate in the request that the liquid sucrose and medium invert syrup contained in these flavored syrups are derived from “world” raw sugar, *i.e.*, sugar sourced from multiple countries, which is refined by your client in Canada. The anti-foaming agent, Foamdoctor A10FG, potassium sorbate and citric acid are sourced from outside the NAFTA parties.

You have submitted additional information with regard to the *de minimis* value of the Foamdoctor A10FG which is a non-originating ingredient¹ found in the flavored sugar syrups at issue. Also, you have informed us that some, though not all, of the syrups contain more than 65 percent by dry weight of sugar. Finally, you provided arguments as to why the flavored sugar syrups should qualify to be marked as goods of Canada under the NAFTA Marking Regulations.

ISSUE:

Whether the four flavored syrups at issue qualify for preferential tariff treatment under the NAFTA.

LAW AND ANALYSIS:

The NAFTA is implemented in General Note (GN) 12 of the HTSUS. GN 12(a)(i) states that goods are eligible for the NAFTA rate of duty if they originate in the territory of a NAFTA party and qualify to be marked as goods of Canada. GN 12(b) sets forth the various methods for determining whether a good originates in the territory of a NAFTA party. Specifically, these provisions provide, in relevant part, as follows:

- (a) Goods originating in the territory of a party to the North American Free Trade Agreement (NAFTA) are subject to duty as provided herein. For the purposes of this note—
 - (i) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Canada under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), and goods enumerated in subdivision (u) of this note, when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “CA” in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act.
- * * *
- (b) For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if—
 - (ii) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or
 - (iii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—
 - (iv) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivision I, (s) and (t) of this note or the rules set forth

¹ We note, you indicate your client considers this product to be a processing aid, not an ingredient.

therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivision I, (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or

- (v) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials; ...

As described in NY N271090, the flavored syrups are produced in Canada from U.S. and foreign (non-NAFTA party) ingredients. As such, the production in Canada must cause the non-originating ingredients to meet the requisite tariff shift rule set forth in GN 12(t). As the flavored syrups at issue are classified in subheading 2106.90.99, HTSUS, the applicable tariff shift rule is “A change to heading 2106 from any other chapter.”

Only the non-originating ingredients, *i.e.*, the raw “world” sugar, Foamdoctor A10FG, potassium sorbate and citric acid need to meet the tariff shift change requirement. Raw sugar is classified in heading 1701, HTSUS, which provides for “Cane or beet sugar and chemically pure sucrose, in solid form.” The potassium sorbate and citric acid are classified in provisions within Chapter 29, HTSUS, which provides for organic chemicals. We do not have sufficient information with regard to the Foamdoctor A10FG to determine whether it may be classifiable in Chapter 21 as an “other food preparation not elsewhere specified or included” or classifiable outside of Chapter 21. However, counsel for the importer submits that the Foamdoctor A10FG falls within the *de minimis* exception of GN 12. GN 12(f)(i) provides, in relevant part:

... a good shall be considered to be an originating good if the value of all non-originating materials used in the production of the good that do not undergo an applicable change in tariff classification set out in subdivision (t) of this note is not more than 7 percent of the transaction value of the good, adjusted to a F.O.B. basis, or, if the transaction value is unacceptable under section 402(b) of the Tariff Act of 1930, as amended, the value of all such non-originating materials is not more than 7 percent of the total cost of the good, provided that—

- (A) if the good is subject to a regional value-content requirement, the value of such non-originating materials shall be taken into account in calculating the regional value content of the good; and
- (B) the good satisfies all other applicable requirements of this note.

Counsel has submitted information to support the *de minimis* claim showing that the value of the Foamdoctor A10FG is not more than 7 percent of the transaction value of the flavored syrups. Therefore, we need not determine the classification of the Foamdoctor A10FG because even if it is classifiable within Chapter 21, it is *de minimis* under GN 12(f).

As the non-originating ingredients make the requisite tariff shift to heading 2106 from outside of chapter 21 due to the processing in Canada, and the Foamdoctor A10FG falls within the *de minimis* exception, the flavored syrups will qualify for preferential tariff treatment under the NAFTA if they also qualify to be marked as goods of Canada in accordance with GN 12(a)(i).

The NAFTA Marking Rules are contained in 19 CFR Part 102 of the CBP Regulations. Section 102.11 sets forth the General Rules for determining the

country of origin of imported merchandise, with the exception of textile goods which are subject to the provisions of § 102.21. Section 102.11(a)(3) provides that the country of origin of a good is the country in which:

Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

“Foreign material” is defined in § 102.1(e) as “a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced.” Section 102.13 provides for a *de minimis* exception for foreign materials that do not undergo the applicable change in tariff classification required in § 102.20. Section 102.13(a) provides:

Except as otherwise provided in paragraphs (b) and (c) of this section, foreign materials that do not undergo the applicable change in tariff classification set out in § 102.20 or satisfy the other applicable requirements of that section when incorporated into a good shall be disregarded in determining the country of origin of the good if the value of those materials is no more than 7 percent of the value of the good or 10 percent of the value of a good of Chapter 22, Harmonized System.

Based on the information provided, the value of the Foamdoctor A10FG, the citric acid and the potassium sorbate, is no more than 7 percent of the value of the flavored sugar syrups. Therefore, these non-originating ingredients are *de minimis* under § 102.13(a) and may be disregarded in applying the tariff shift requirement of § 102.20. The applicable tariff shift requirements in § 102.20 for the flavored syrups at issue are:

A change to a good of subheading 2106.90, other than to compound alcoholic preparations, from any other subheading, except from Chapter 4, Chapter 17, heading 2009, subheading 1901.90 or subheading 2202.90; or

* * *

A change to subheading 2106.90 from Chapter 17, provided that the good contains less than 65 percent by dry weight of sugar.

* * *

For those flavored sugar syrups containing less than 65 percent by dry weight of sugar, the applicable tariff shift requirement set forth in § 102.20, *i.e.*, a change from Chapter 17 to subheading 2106.90, is met. These flavored sugar syrups are goods of Canada and should be marked as such. For those flavored sugar syrups containing 65 percent or more by dry weight of sugar, we must continue the application of the NAFTA Marking Regulations as those syrups do not meet the applicable alternative rule in § 102.20.

Section 102.11(b) provides, in relevant part:

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

- (1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good[.]

* * *

With regard to “essential character,” § 102.18(b) provides:

- (1) For purposes of identifying the material that imparts the essential character of a good under § 102.11, the only materials that shall be taken into consideration are those domestic or foreign materials that are classified in a tariff provision from which a change in tariff classification is not allowed under the § 102.20 specific rule or other requirements applicable to the good. For purposes of this paragraph (b)(1):
 - (i) The materials to be considered must be classified in a tariff provision from which a change in tariff classification is not allowed under the specific rule or other requirements applicable to the good under consideration. . . .

As the rule in § 102.20, which is applicable to the flavored sugar syrups containing 65 percent or more by dry weight of sugar, does not allow a change in tariff classification from Chapter 17, the raw sugar is the ingredient that imparts the essential character to the flavored sugar syrups. Therefore, in accordance with § 102.11(b)(1), the countries of origin of the flavored sugar syrups are the countries of origin of the raw sugar.

However, § 102.19(a) provides, in relevant part:

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

Therefore, the flavored sugar syrups containing 65 percent or more by dry weight of sugar are also goods of Canada and should be marked as such.

As we have determined that the flavored sugar syrups qualify as NAFTA originating goods under GN 12(b) of the HTSUS, they meet the definition of originating within the meaning of § 181.1(q). In addition, the processing which occurs in Canada is more than minor processing as defined in § 102.1(m). Therefore, the flavored sugar syrups qualify to be marked as goods of Canada as required by GN 12(a)(i).

HOLDING:

The flavored sugar syrups qualify for preferential tariff treatment under the NAFTA and should be marked as goods of Canada. NY N271090, dated July 12, 2016, is hereby modified in accordance with this decision.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT D]

HQ H282979
OT:RR:CTF:VS H282979 CMR
CATEGORY: Classification
TARIFF NO.: 1702.90.9000

DANIEL E. WALTZ, Esq.
SQUIRE PATTON BOGGS (US) LLP
2550 M STREET, N.W.
WASHINGTON, D.C. 20037

RE: Reconsideration of New York Ruling Letter (NY) N271047; NAFTA eligibility of certain liquid sugar products

DEAR MR. WALTZ:

On June 23, 2016, our New York office issued New York Ruling Letter (NY) N271047 to you in response to a ruling request submitted on behalf of your client, Redpath Sugar. The ruling dealt with the classification of two types of liquid sugars, which are also known as sugar syrups, and the eligibility of the sugar syrups for preferential tariff treatment under the North American Free Trade Agreement (NAFTA). We have had occasion to review this decision and have determined there is an error with regard to the eligibility of the products for preferential tariff treatment under the NAFTA. Therefore, we are modifying NY N271047 as set forth herein.

FACTS:

The products at issue are described in NY N271047 as follows:

“The subject matter consists of two types of liquid sugar produced in Canada. Pure Cane Classic Syrup (Lower Brix Formula) is said to contain 81.481 percent liquid sucrose #1, 18.439 percent filtered water, and 0.04 percent potassium sorbate and 0.04 percent citric acid. The liquid sugar consists of raw cane sugar originating in Mexico, Brazil, Guatemala, Costa Rica, Honduras, El Salvador or Nicaragua and is refined in Canada. The potassium sorbate is a product of China and the citric acid is a product of Brazil. Pure Cane Classic Syrup (Higher Brix Formula) is said to contain 77.185 percent liquid sucrose #1, 20 percent medium invert syrup, 2.81 percent filtered water, 0.004 percent potassium sorbate and 0.002 percent citric acid. The liquid sugar consists of raw cane sugar originating in Mexico, Brazil, Guatemala, Costa Rica, Honduras, El Salvador or Nicaragua and is refined in Canada. The medium invert syrup is a product of the United States. The potassium sorbate is a product of China and the citric acid is a product of Brazil.

The syrups will not be further processed upon arrival in the United States (they will not be incorporated in another product in the United States or further refined). They will be shipped packaged (not in bulk). There will be two bottle sizes (750 ml and 375 ml). The syrups (in both sizes) will be sold to food service industry and the retail market. These syrups will be used for beverage sweetening (e.g. coffee, teas). They will be sold in pump dispensers and the consumer will add the flavored syrups to the beverage of the consumer’s choice.

According to Customs Laboratory Report no. NY20152232, dated May 13, 2016, Pure Cane Classic Syrup (Lower Brix Formula) “contains a clear,

low viscosity liquid. The sample has a moisture content of 45.2 percent, and a sugar content on a dry basis of 1.6 percent fructose, 3.1 percent glucose and 87.2 percent sucrose. No flavoring, coloring compound or non-sugar soluble solids were detected.” Pure Cane Classic Syrup (Higher Brix Formula) “contains a viscous yellow colored liquid. The sample has a moisture content of 33.536 percent, and a sugar content on a dry basis of 6.6 percent fructose, 6.6 percent glucose and 85.0 percent sucrose. No flavorings, coloring compound or non-sugar solids were detected.”

The sugar syrups were classified in subheading 1702.90.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavoring or coloring matter; artificial honey, whether or not mixed with natural honey; caramel: Other, including invert sugar and other sugar and sugar syrup blends containing in the dry state 50 percent by weight of fructose: Other: Other: Other.” We note the ruling contained a typographical error, incorrectly indicating the classification as 1702.90.90go.

NY N271047 discussed the NAFTA eligibility of the sugar syrups and concluded that they met the requirements of General Note (GN) 12(b)(ii)(A) and GN 12(t)/17.1. The ruling concluded that the sugar syrups qualified for preferential tariff treatment under the NAFTA.

ISSUE:

Whether the sugar syrups described in NY N271047 qualify for preferential tariff treatment under the NAFTA.

LAW AND ANALYSIS:

The NAFTA is implemented in General Note (GN) 12 of the HTSUS. GN 12(a)(i) states that goods are eligible for the NAFTA rate of duty if they originate in the territory of a NAFTA party and qualify to be marked as goods of Canada. GN 12(b) sets forth the various methods for determining whether a good originates in the territory of a NAFTA party. Specifically, these provisions provide, in relevant part, as follows:

- (a) Goods originating in the territory of a party to the North American Free Trade Agreement (NAFTA) are subject to duty as provided herein. For the purposes of this note—
 - (i) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Canada under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), and goods enumerated in subdivision (u) of this note, when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “CA” in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act.

- (b) For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if—
- (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or
 - (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—
 - (A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivision (r), (s) and (t) of this note or the rules set forth therein, or
 - (B) the goods otherwise satisfy the applicable requirements of subdivision (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or
 - (iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials;

The sugar syrups are produced in Canada from U.S. or Mexico ingredients and foreign (non-NAFTA party) ingredients. As such, the production in Canada must cause the non-originating ingredients to meet the requisite tariff shift rule set forth in GN 12(t). As the sugar syrups at issue are classified in subheading 1702.90.9000, HTSUS, the applicable tariff shift rule is “A change to headings 1701 through 1703 from any other chapter.”

The raw cane sugar used in producing both syrups includes raw cane sugar originating from non-NAFTA parties, *i.e.*, Brazil, Guatemala, Costa Rica, Honduras, El Salvador or Nicaragua. Raw cane sugar is classified in heading 1701, HTSUS, which provides for “Cane or beet sugar and chemically pure sucrose, in solid form.” As the finished sugar syrups are classified in heading 1702, HTSUS, and the non-originating raw cane sugar is classified in 1701, HTSUS, the non-originating raw cane sugar fails to meet the requisite tariff shift and the finished sugar syrups do not qualify for preferential tariff treatment under the NAFTA.

HOLDING:

The sugar syrups described herein do not qualify for preferential tariff treatment under the NAFTA. NY N271047, dated June 23, 2016, is hereby modified in accordance with this decision.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF NINE RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF SLEEP SACKS**

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

ACTION: Notice of proposed revocation of nine ruling letters, and revocation of treatment relating to the tariff classification of sleep sacks.

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 nine ruling letters concerning tariff classification of sleep sacks 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.

DATE: Comments must be received on or before May 12, 2017.

ADDRESS: 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 nine ruling letters pertaining to the tariff classification of sleep sacks. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N012720, dated June 22, 2007 (Attachment A), NY H81550, dated June 26, 2001 (Attachment B), NY F84497, dated March 31, 2000 (Attachment C), NY C89291, dated July 16, 1998 (Attachment D), NY 817811, dated January 25, 1996 (Attachment E), Headquarters Ruling Letter ("HQ") 950620, dated February 20, 1992 (Attachment F), HQ 089134, dated August 8, 1991 (Attachment G), HQ 089137, dated August 6, 1991 (Attachment H), and HQ 088149, dated December 27, 1990 (Attachment I) 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 nine 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 N012720, NY H81550, NY F84497, NY C89291, NY 817811, HQ 950620, HQ 089134, HQ 089137, and HQ 088149, CBP classified sleep sacks in heading 6302, HTSUS, which provides for “Bed linen, table linen, toilet linen and kitchen linen.” CBP has reviewed NY N012720, NY H81550, NY F84497, NY C89291, NY 817811, HQ 950620, HQ 089134, HQ 089137, and HQ 088149, and has determined the ruling letters to be in error. It is now CBP’s position that sleep sacks are properly classified, by operation of GRIs 1 and 6, in heading 6307, HTSUS, specifically in subheading 6307.90.98, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N012720, NY H81550, NY F84497, NY C89291, NY 817811, HQ 950620, HQ 089134, HQ 089137, and HQ 088149 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H243928, set forth as Attachment J 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: March 03, 2017

ELIZABETH JUNIOR
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N012720

June 22, 2007

CLA-2-63:RR:NC:N3:349

CATEGORY: Classification

TARIFF NO.: 6302.32.2060

R.I. HASSON

INDEPENDENT BROKERAGE, LLC

10 FIFTH STREET, SUITE 403

VALLEY STREAM, NY 11581

RE: The tariff classification of a sleep sack from China

DEAR MR. HASSON:

In your letter dated June 11, 2007 you requested a classification ruling on behalf of Levinsohn Textile.

The instant sample, identified as "Travel fresh personal sleep sack", is a sleeping sack with a small carry pouch. The sack is made from 100 percent polyester woven fabric. The fabric is not printed or napped. The sleep sack measures approximately 42 x 93 inches and is sewn together on four sides. The face panel features a slit opening. The slit opening is designed to allow the insertion of a pillow at the top end and the bottom portion allows a person to easily slip into and out of the sleep sack. The small carry pouch is made from the same woven fabric as the sack and has a drawstring closure. The sleep sack does not contain any embroidery, lace, trimming, etc.

The applicable subheading for the mattress cover will be 6302.32.2060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen: of man-made fibers: other.... other: other. The duty rate will be 11.4 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

The sleep sack falls within textile category designation 666. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

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 John Hansen at 646-733-3043.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

NY H81550

June 26, 2001

CLA-2-63:RR:NC:TA:349 H81550

CATEGORY: Classification

TARIFF NO.: 6302.31.9050

Ms. YVONNE SHERRI LOPEZ
AFI (CALIFORNIA), INC.
2381 ROSECRANS AVENUE, #100
EL SEGUNDO, CA 90245

RE: The tariff classification of a sleep sack from China.

DEAR Ms. LOPEZ:

In your letter dated May 23, 2001 you requested a classification ruling on behalf of Franktex, Inc..

The instant sample, identified as "Sleeping Bag Liner", is a sleeping sack with a small carry pouch. The sack is made from 55 percent cotton and 45 percent polyester woven fabric. It measures approximately 42 x 72 inches and is sewn together on three sides. One end of the sack has a pocket that is formed by a folded length of material sewn on its sides. This pocket can be used to accommodate the insertion of a pillow. The portion of the top sheet near the pillow insert is not sewn down, forming a flap that allows a person to easily slip into and out of the sleep sack. The small carry pouch is made from the same woven fabric as the sack and has a drawstring closure.

The applicable subheading for the sack will be 6302.31.9050, Harmonized Tariff Schedule of the United States (HTS), which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen: of cotton: other: not napped.... other. The duty rate will be 7 percent ad valorem.

The sleep sack falls within textile category designation 362. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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 John Hansen at 212-637-7078.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

NY F84497

March 31, 2000

CLA-2-63:RR:NC:TA:349 F84497

CATEGORY: Classification

TARIFF NO.: 6302.39.0020

MS. NANCY BOSSECKERT
FREIGHT BROKERS INTERNATIONAL INC.
P.O. Box 960219
INWOOD, NY 11096-0219

RE: The tariff classification of sleeping sack from China.

DEAR Ms. BOSSECKERT:

In your letter dated March 15, 2000 you requested a classification ruling on behalf of Terramar Sports Worldwide.

The instant item, referred to as a "Dream Sack", is a sleeping sack with a small carry pouch. The sack is made from 100 percent silk woven fabric. It measures 34 x 96 inches and is sewn together on three sides. One end of the sack has an 11-1/2 inch pocket that is formed by a folded length of material sewn on its sides, which can be used to accommodate a pillow. The portion of the top sheet near the pillow insert is not sewn down, forming a flap that allows a person to easily slip into and out of the sleep sack. The flap features hook and loop fasteners. The small carry pouch is made from the same woven fabric as the sack and has a drawstring type closure. The submitted sample is being returned.

The applicable subheading for the sleeping sack will be 6302.39.0020, Harmonized Tariff Schedule of the United States (HTS), which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen: of other textile materials... other: containing 85 percent or more by weight of silk or silk waste. The duty rate will be 6 percent ad valorem.

Presently, the above subheading is not assigned a textile category designation and items classified therein are not subject to quota or visa requirements.

Textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. Textile and apparel categories may be subdivided into parts. If so, visa and quota requirements may be affected and should also be verified at the time of shipment.

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 John Hansen at 212-637-7078.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT D]

NY C89291

July 16, 1998

CLA-2-63:RR:NC:TA:349 C89291

CATEGORY: Classification

TARIFF NO.:6302.39.0020

Ms. LISA YORK

SPIEGEL, INC.

3500 LACEY ROAD

DOWNERS GROVE, ILLINOIS 60515-5432

RE: The tariff classification of a sleeping sack from Taiwan.

DEAR Ms. YORK:

In your letter dated June 16, 1998 you requested a classification ruling.

Style #70-3330, referred to as a "Travel Cocoon", is a sleeping sack with a small carry pouch. The sack is made from 100 percent silk woven fabric. It measures 33 x 86 inches and is sewn together on three sides. One end of the sack has an 11-1/2 inch pocket which is formed by a folded length of material sewn on its sides, which can be used to accommodate the insertion of a pillow. The portion of the top sheet near the pillow insert is not sewn down, forming a flap which allows a person to easily slip into and out of the sleep sack. The small carry pouch is made from the same woven fabric as the sack and has a button closure. The submitted sample is being returned.

The applicable subheading for the sleeping sack will be 6302.39.0020, Harmonized Tariff Schedule of the United States (HTS), which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen: of other textile materials... other: containing 85 percent or more by weight of silk or silk waste. The duty rate will be 6.9 percent ad valorem.

Presently, the above subheading is not assigned a textile category designation and items classified therein are not subject to quota or visa requirements.

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 John Hansen at 212-466-5854.

Sincerely,

ROBERT B. SWIERUPSKI

*Director,**National Commodity Specialist Division*

[ATTACHMENT E]

NY 817811

January 25, 1996

CLA-2-63:RR:NC:TP:349 817811

CATEGORY: Classification

TARIFF NO.: 6302.39.0020

MS. NANCY MORGAN
WEST WIND TRADING COMPANY
271 MORTON STREET
ASHLAND, OREGON 97520

RE: The tariff classification of a silk sleeping sack from China or Vietnam.

DEAR MS. MORGAN:

In your letter dated December 19, 1995 received by this office on December 28, 1995 you requested a classification ruling.

The instant sample is a 100 percent silk woven sleeping sack. The sack measures approximately 33 x 90 inches and is sewn on three sides. One end of the sack has a pocket which is formed by a folded length of material sewn on its sides, which can be used to accommodate the insertion of a pillow. The portion of the top sheet near the pillow insert is not sewn down, forming a flap which allows a person to easily slip into and out of the sleep sack. The sleep sack is accompanied by a small carry pouch. The sample is being returned.

The applicable subheading for the sleeping sack imported will be 6302.39.0020, Harmonized Tariff Schedule of the United States (HTS), which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen: of other textile materials... other: containing 85 percent or more by weight of silk or silk waste. The duty rate for the sack made in China will be 7.7 percent ad valorem. The duty rate for the sack made in Vietnam will be 90 percent ad valorem.

Presently, the above subheading is not assigned a textile category designation and items classified therein are not subject to quota or visa requirements.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist John Hansen at 212-466-5854.

Sincerely,

ROGER J. SILVESTRI

Director

National Commodity Specialist Division

[ATTACHMENT F]

HQ 950620

February 20, 1992

CLA-2 CO:R:C:T 950620 CC

CATEGORY: Classification

TARIFF NO.: 6302.21.2090

HANS WURIAN
DESIGN SALT
P.O. BOX 751
REDWAY, CA 95560

RE: Reconsideration of HRL 089134; classification of a cotton sleeping sack; classifiable in Heading 6302; HRL 089134 affirmed

DEAR MR. WURIAN:

This letter is in response to your request of October 20, 1991 for reconsideration of Headquarters Ruling Letter (HRL) 089134, which concerned the classification of a "cotton sleeping sack." You have submitted a sample and catalogues.

FACTS:

The merchandise at issue is a 100 percent woven cotton sleeping sack, to be imported from China. It measures 33 inches by 86 inches and is sewn together on three sides. One end of the sack has an 11 inch pocket, which is formed by a folded length of material sewn on its sides and can be used to accommodate the insertion of a pillow. The portion of the top sheet near the pillow insert is not sewn down, forming a flap which allows a person to easily slip into and out of the sleep sack. There is a 12 inch by 16 inch polyester pad of 1/16 inch thickness at the pillow area.

The literature accompanying your request states that this item is called a COCOON TRAVELSHEET. It is advertised as a "washable sleeping environment" to be used in hotels, hostels, hammocks, and homes. In your letter you indicate that the sleeping sack is intended to serve as a sleeping bag for travellers in warm countries. "COCOON" is available in three printed fabric styles.

In HRL 089134, dated August 8, 1991, we ruled that the subject merchandise is classified under subheading 6302.21.2090 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for other bed linen, printed, of cotton, other, other, other. You contend that the correct classification for this merchandise is in Heading 6306, HTSUSA, which provides for camping goods, among other articles. You contend, in the alternative, that this merchandise is classifiable in Heading 9404, HTSUSA, which provides for 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.

ISSUE:

Whether the merchandise at issue is classifiable in Heading 6302, HTSUSA, 6306, HTSUSA, or 9404, HTSUSA?

LAW AND ANALYSIS:

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

In HRL 088149, dated December 27, 1990, we ruled that the same merchandise as that at issue in this case, except for not having a polyester pad at the pillow area, is classified in Heading 6302. That ruling was affirmed in HRL 089137, dated August 6, 1991. In HRL 089134 we ruled that the addition of the polyester pad at the pillow area did not affect the classification of this merchandise. We have reviewed HRL 089134 and find no basis for modifying or revoking that ruling. Consequently the merchandise at issue is classifiable in Heading 6302.

HOLDING:

The merchandise at issue is classified under subheading 6302.21.2090, HTSUSA, which provides for bed linen, table linen, toilet linen and kitchen linen, other bed linen, printed, of cotton, other, other, other. The rate of duty is 7.6 percent ad valorem, and the textile category is 362.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

The sample and catalogues are being returned to you under separate cover. HRL 089134, dated August 8, 1991, is affirmed.

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

[ATTACHMENT G]

HQ 089134

August 8, 1991

CLA-2 CO:R:C:T 089134 HP

CATEGORY: Classification

TARIFF NO.: 6302.21.2090

MR. HANS WURIAN
DESIGN SALT USA DIV.
P.O. BOX 751
REDWAY, CA 95560

RE: Sleep sack is bed linen, not sleeping bag, camping goods or other made up article. Unfinished; Cocoon; padded; cushion; seat

DEAR MR. WURIAN:

This is in reply to your letter of April 5, 1991, concerning the tariff classification of a sleep sack, produced in China, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

FACTS:

The merchandise at issue is the same (but for one difference described below) as the sleeping sack ruled upon in HRL 088149 of December 27, 1990 (affirmed in HRL 089137 of August 6, 1991). In the former ruling, we described the sleep sack as follows:

The merchandise at issue is a 100 percent woven cotton sleeping sack, to be imported from China. It measures 33 x 86 inches and is sewn together on three sides. One end of the sack has an 11 1/2 inch pocket which is formed by a folded length of material sewn on its sides, which can be used to accommodate the insertion of a pillow. The portion of the top sheet near the pillow insert is not sewn down, forming a flap which allows a person to easily slip into and out of the sleep sack.

The literature accompanying your request states that this item is called a COCOON TRAVELSHEET. It is advertised as a "washable sleeping environment" to be used in hotels, hostels, hammocks, and homes. In your letter you indicate that the sleeping sack is intended to serve as a sleeping bag for travellers in warm countries. "COCOON" is available in three printed fabric styles.

In HRL 088149, we classified the sleep sack under subheading 6302.21.2090, HTSUSA, as other bed linen. In HRL 089137, we affirmed this conclusion, stating that the sleep sack is too flimsy to be camping goods of heading 6306. You have now modified the sleep sack by adding a 12" x 16" polyester pad of 1/16" thickness at the pillow area. You claim that this added padding is for support and comfort, and request classification under heading 9404, HTSUSA, as a padded sleeping bag.

ISSUE:

Whether the modified sleeping sack is a padded sleeping bag under the HTSUSA?

LAW AND ANALYSIS:

Heading 9404, HTSUSA, provides for, inter alia, articles of bedding and similar furnishings, stuffed or internally fitted. You claim that the addition of the small area of padding in the sleep sack now qualifies that sack for inclusion herein. We disagree. In HRL 089018, we classified a partially padded (on the underside) infants' car seat cover as internally fitted, stating that such padding was sufficient "for efficient use of the merchandise." Clearly, the small, thin padding inserted at the top of the sleep sack, where the pillow insert still exists, does not transform the bed linen into an efficiently used sleeping bag. As we stated in HRL 089137:

articles like the sleep sack, with the potential to be placed on the ground and slept in, must be fabricated so as to not absorb moisture and not easily tear on various terrain objects.

The padding does not impart these abilities; classification in heading 9404, HTSUSA, is therefore disqualified.

HOLDING:

As a result of the foregoing, the instant merchandise is classified under subheading 6302.21.2090, HTSUSA, textile category 362, as bed linen, table linen, toilet linen and kitchen linen, other bed linen, printed, of cotton, other, other, other. The applicable rate of duty is 7.6 percent ad valorem.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent negotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an issuance of the U.S. Customs Service, which is updated weekly and is available at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

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,

JOHN DURANT,

Director

Commercial Rulings Division

[ATTACHMENT H]

HQ 089137

August 6, 1991

CLA-2 CO:R:C:T 089137 HP

CATEGORY: Classification

TARIFF NO.: 6302.21.2090

MR. STEVEN W. BAKER
BELLSEY AND BAKER
100 CALIFORNIA STREET
SUITE 670
SAN FRANCISCO, CA 94111

RE: HRL 088149 affirmed. Sleep sack is bed linen, not camping goods or other made up article. Unfinished; Cocoon

DEAR MR. BAKER:

This is in reply to your letter of April 8, 1991, concerning the tariff classification of a sleep sack, produced in China, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Please reference your client Design Salt USA.

FACTS:

The merchandise at issue was described in HRL 088149 of December 27, 1991, as follows:

The merchandise at issue is a 100 percent woven cotton sleeping sack, to be imported from China. It measures 33 x 86 inches and is sewn together on three sides. One end of the sack has an 11 1/2 inch pocket which is formed by a folded length of material sewn on its sides, which can be used to accommodate the insertion of a pillow. The portion of the top sheet near the pillow insert is not sewn down, forming a flap which allows a person to easily slip into and out of the sleep sack.

The literature accompanying your request states that this item is called a COCOON TRAVELSHEET. It is advertised as a "washable sleeping environment" to be used in hotels, hostels, hammocks, and homes. In your letter you indicate that the sleeping sack is intended to serve as a sleeping bag for travellers in warm countries. "COCOON" is available in three printed fabric styles.

In HRL 088149, we classified the sleep sack under subheading 6302.21.2090, HTSUSA, as other bed linen. You disagree, and argue that the sack should be considered either a camping good or, in the alternative, an other made up article.

ISSUE:

Whether the sleeping sack is a camping good under the HTSUSA?

LAW AND ANALYSIS:

Heading 6306, HTSUSA, provides for, inter alia, camping goods. The Explanatory Notes (EN) to the HTSUSA constitute the official interpretation of the tariff at the international level. While not legally binding, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of the Customs Service to

follow, whenever possible, the terms of the Explanatory Notes when interpreting the HTSUSA. The EN to this heading states:

This heading covers a range of textile articles usually made from strong, close-woven canvas.

* * *

- (5) Camping goods. This group includes canvas buckets, water bags, wash basins; ground-sheets; pneumatic mattresses, pillows and cushions (other than those of heading 40.16); hammocks (other than those of heading 58.06).

The heading also excludes:

* * *

- (b) Padded sleeping bags and stuffed mattresses, pillows and cushions (heading 94.04).

In HRL 088149, we underwent the analysis of whether heading 6306 was applicable. Therein, we stated:

Although the design of COCOON is similar to that of sleeping bags typically used for camping, classification within heading 6306, as camping goods, is incorrect. Sleeping bags are specifically excluded from the notes of this heading. Moreover, the goods of that heading encompass items that are made of very strong and sturdy materials suitable for use out of doors. Examples provided by the Explanatory Notes include canvas buckets, wash basins, ground-sheets (which are usually waterproof to prevent ground moisture from seeping through to sleeping bags), and pneumatic mattresses and hammocks.

You state that the above rationale was inaccurate, since (1) only padded sleeping bags are specifically excluded; and (2) the “strong and sturdy materials” language is not a necessary requirement. You cite as examples mosquito netting and light weight tents. We agree in part.

You are correct in claiming that only padded sleeping bags are specifically excluded from the camping goods heading into the internally stuffed goods heading. We also agree that the “strong and sturdy materials” language is not a litmus test for prima facie classification of any merchandise in heading 6306, HTSUSA; however, “strong and sturdy materials” ARE required for construction of sleeping bags (padded or without padding) and articles intended for use similar thereto. While mosquito netting dangles and needs to be flimsy, and tents normally are not jostled once pitched, articles like the sleep sack, with the potential to be placed on the ground and slept in, must be fabricated so as to not absorb moisture and not easily tear on various terrain objects. We therefore support the analysis of HRL 088149 with respect to camping goods.

You have argued in the alternative that the sleep sack is more appropriately classified as an other made up article of heading 6307, HTSUSA, than in heading 6302. The latter heading provides for, inter alia, bed linen. The EN to heading 6302 states:

These articles are usually made of cotton or flax, but sometimes also of hemp, ramie or man-made fibres, etc.; they are normally of a kind suitable for laundering. They include:

- (1) Bed linen, e.g., sheets, pillow cases, bolster cases, eiderdown cases and mattress covers.

We held in HRL 088149 that

The travel sheet considered herein is bed linen because it is exclusively used for sleeping, as indicated by the photographs and text of your descriptive literature. In addition, its lightweight cotton fabric and its suitability for laundering is characteristic of sheets, to which they are most closely related. However, the added features of the item's construction (pillow pocket, sewn together edges) makes classification in the "other" subcategory appropriate.

In HRL 084053 of August 31, 1989, we classified sleeping bag shells which, after importation, are inverted, stuffed, sewn closed, and zipped, as other made up articles under heading 6307, HTSUSA. You claim that the sleep sacks are more closely related to these unfinished sleeping bag shells than to flat sheets or other bedding. This reliance, however, is based upon a misreading of HRL 084053.

We noted within HRL 084053 that

the language of a heading may limit or otherwise define the scope of the provision. Where the heading specifies the type of merchandise, the product must, at the time of importation, meet those specifications even if otherwise incomplete. A sleeping bag shell without being stuffed or fitted with springs, even if it has the essential character of a sleeping bag, cannot be classified in a heading for articles of bedding fitted with springs or stuffed. GRI 2 cannot be introduced to modify what is required in the heading.

For that reason, the sleeping bag shell was not classifiable in heading 9404, HTSUSA. Note, however, that the article was still considered an unfinished sleeping bag. In HRL 084418 of August 8, 1989, we classified a throw pillow cover, which would be filled and stitched closed after importation, as an other made up article under heading 6307, HTSUSA. We stated that:

unstuffed pillow covers cannot be classified as an unfinished "other furnishing article," [under heading 6302,] because, if it were finished (filled), it would not be classifiable under heading 6304 as an "other furnishing article."

Although it was not stated therein, we applied this same rationale in excluding the unfinished sleeping bag shells of HRL 084053 from heading 6302, HTSUSA. Your claim is therefore unsupported, and the holding of HRL 088149 is affirmed.

HOLDING:

As a result of the foregoing, the instant merchandise is classified under subheading 6302.21.2090, HTSUSA, textile category 362, as bed linen, table linen, toilet linen and kitchen linen, other bed linen, printed, of cotton, other, other, other. The applicable rate of duty is 7.6 percent ad valorem.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent negotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report On Current Import Quotas (Re-

straint Levels), an issuance of the U.S. Customs Service, which is updated weekly and is available at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

Pursuant to section 177.9(d), CUSTOMS REGULATIONS (19 C.F.R. 177.9(d)), HRL 088149 of December 27, 1990, is affirmed.

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,

JOHN DURANT,

Director

Commercial Rulings Division

[ATTACHMENT I]

HQ 088149

December 27, 1990

CLA-2 CO:R:C:G 088149 JS

CATEGORY: Classification

TARIFF NO.: 6302.21.2090

MR. HANS WURIAN
DESIGN SALT
P.O. BOX 751
REDWAY, CA 95560

RE: Cotton Sleeping Sack

DEAR MR. WURIAN:

This is in reference to your letter of September 19, 1990, requesting classification of a cotton sleeping sack under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). A sample was provided for our inspection.

FACTS:

The merchandise at issue is a 100 percent woven cotton sleeping sack, to be imported from China. It measures 33 x 86 inches and is sewn together on three sides. One end of the sack has an 11 1/2 inch pocket which is formed by a folded length of material sewn on its sides, which can be used to accommodate the insertion of a pillow. The portion of the top sheet near the pillow insert is not sewn down, forming a flap which allows a person to easily slip into and out of the sleep sack.

The literature accompanying your request states that this item is called a COCOON TRAVELSHEET. It is advertised as a "washable sleeping environment" to be used in hotels, hostels, hammocks, and homes. In your letter you indicate that the sleeping sack is intended to serve as a sleeping bag for travellers in warm countries. "COCOON" is available in three printed fabric styles.

The sample will be returned to you under separate cover, as requested.

ISSUE:

What is the appropriate classification for a sleeping sack under the HTSUSA?

LAW AND ANALYSIS:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRI), taken in order. GRI 1 provides that the classification shall be determined according to the terms of the headings and any relevant section or chapter notes.

Heading 6302, HTSUSA, provides for, inter alia, bed linen. The Explanatory Notes, the official interpretation of the nomenclature at the international level, state that the heading usually includes articles made of cotton, which are normally of a kind suitable for laundering. Provided for by example are sheets.

The travel sheet considered herein is bed linen because it is exclusively used for sleeping, as indicated by the photographs and text of your descriptive literature. In addition, its lightweight cotton fabric and its suitability for

laundering is characteristic of sheets, to which they are most closely related. However, the added features of the item's construction (pillow pocket, sewn together edges) makes classification in the "other" subcategory appropriate.

Although the design of COCOON is similar to that of sleeping bags typically used for camping, classification within heading 6306, as camping goods, is incorrect. Sleeping bags are specifically excluded from the notes of this heading. Moreover, the goods of that heading encompass items that are made of very strong and sturdy materials suitable for use out of doors. Examples provided by the Explanatory Notes include canvas buckets, wash basins, ground-sheets (which are usually waterproof to prevent ground moisture from seeping through to sleeping bags), and pneumatic mattresses and hammocks.

HOLDING:

The merchandise at issue is classified under subheading 6302.21.2090, HTSUSA, which provides for bed linen, table linen, toilet linen and kitchen linen: other bed linen, printed: of cotton: other, other: other, textile category 362, and dutiable at the rate of 7.6 ad valorem.

Due to the changeable nature of the statistical annotation and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

[ATTACHMENT J]

HQ H243928
CLA-2 OT:RR:CTF:TCM H243928 PJG
CATEGORY: Classification
TARIFF NO.: 6307.90.98

MR. HANS WURIAN
DESIGN SALT
P.O. BOX 751
REDWAY, CALIFORNIA 95560

RE: Revocation of NY N012720, NY H81550, NY F84497, NY C89291, NY 817811, HQ 950620, HQ 089134, HQ 089137, and HQ 088149; tariff classification of sleep sacks

DEAR MR. WURIAN:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered three Headquarters Ruling Letters (“HQ”), specifically, HQ 088149, dated December 27, 1990, HQ 089134, dated August 8, 1991, and HQ 950620, dated February 20, 1992, issued to you on behalf of Design Salt.¹ We have also reconsidered HQ 089137, dated August 6, 1991, issued to Bellsey and Baker. All four rulings pertain to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of the COCOON TravelSheet 100 percent woven cotton sleep sacks. We have since reviewed these rulings and determined them to be in error. Accordingly, HQ 088149, HQ 089137, HQ 089134, and HQ 950620 are revoked.

CBP has also reviewed New York Ruling Letters (“NY”) NY 817811, dated January 25, 1996, NY C89291, dated July 16, 1998, NY F84497, dated March 31, 2000, NY H81550, dated June 26, 2001, and N012720, dated June 22, 2007, which concern the tariff classification of substantially similar sleep sacks, and has determined them to be in error as well. Accordingly, NY 817811, NY C89291, NY F84497, NY H81550, and N012720 are revoked.

FACTS:

In both HQ 088149 and HQ 089137 (which affirmed HQ 088149), the sleep sack was described as follows:

The merchandise at issue is a 100 percent woven cotton sleeping sack, to be imported from China. It measures 33 x 86 inches and is sewn together on three sides. One end of the sack has an 11 1/2 inch pocket which is formed by a folded length of material sewn on its sides, which can be used to accommodate the insertion of a pillow. The portion of the top sheet near the pillow insert is not sewn down, forming a flap which allows a person to easily slip into and out of the sleep sack.

¹ In Headquarters Ruling Letter (“HQ”) 957767, dated August 30, 1995, U.S. Customs Service indicated that it had reviewed HQ 088149, dated December 27, 1991, HQ 089137, dated August 6, 1991, and HQ 089134, dated August 8, 1991, and determined them to be erroneous. The U.S. Customs Service indicated that it intended to revoke those rulings. In HQ 957767, CBP withdrew its proposed revocation of District ruling (“DD”) 801305, dated September 6, 1994, and HQ 956038, dated June 22, 1994, and affirmed those two rulings, which classified Double TravelSheet sleeping bag liners under heading 6307, HTSUS. In HQ 957767, CBP stated that the merchandise “opens on one side, has a Velcro closure, and features a pocket for a pillow insert.”

The literature accompanying your request states that this item is called a COCOON TRAVELSHEET. It is advertised as a “washable sleeping environment” to be used in hotels, hostels, hammocks, and homes. In your letter you indicate that the sleeping sack is intended to serve as a sleeping bag for travellers in warm countries. “COCOON” is available in three printed fabric styles.

In your Sales Facts sheet that you submitted, you describe the COCOON TravelSheet as a “[s]leeping bag liner” and a “stand alone product in warmer climates.” On your website, you explain that the “TravelSheet is an extremely lightweight and roomy sleep sack or sleeping bag liner for hotels, youth hostels, alpine huts, boats, planes and trains. TravelSheets are also used as warm weather sleeping bags and guestsheets.”²

In both HQ 088149 and HQ 089137, CBP classified the sleep sack in heading 6302, HTSUS, which provides for “Bed linen, table linen, toilet linen and kitchen linen.”

ISSUE:

Whether the subject sleep sacks are classifiable in heading 6302, as bed linen, or in heading 6307, HTSUS, as other made up articles.

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 2017 HTSUS provisions under consideration are as follows:

6302 Bed linen, table linen, toilet linen and kitchen linen:
* * *

6307 Other made up articles, including dress patterns:

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 63.02 states, in pertinent part:

These articles are usually made of cotton or flax, but sometimes also of hemp, ramie or man-made fibres, etc.; they are normally of a kind suitable for laundering. They include :

- (1) **Bed linen** , e.g., sheets, pillowcases, bolster cases, eiderdown cases and mattress covers.

The EN to 63.07 states, in pertinent part :

² http://www.cocoon.at/products/index.php/p/travelsheet_mummyliners_en

This heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.

As to the issue of whether the subject merchandise is a “bed linen,” we note that neither the relevant legal text of the HTSUS nor EN 63.02 define the term “bed linen,” therefore, we are permitted to consult dictionaries and other reliable sources to determine its common meaning. *See C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271 (C.C.P.A. 1982) (citing *Optical Glass, Inc. v. United States*, 612 F.2d 1283 (C.C.P.A. 1979)). The Oxford English Dictionary defines “bed linen” as “[b]ed-clothes, esp. sheets and pillow-cases, originally of linen.” *Id.* (Oxford University Press 2012) available at www.oed.com. The dictionary defines “bed-clothes” as “[t]he sheets and blankets with which a bed is covered.” *Id.* (Oxford University Press 2016) available at www.oed.com.

The tariff term “bed linens” in heading 6302, HTSUS, includes “specialized items ... which are only found on ‘some’ beds.” *See Medline Indus. v. United States*, 62 F.3d 1407, 1409 (Fed. Cir. 1995) (the court held that drawsheets, which are “used primarily by hospitals and other health care providers to lift, roll, or slide incapacitated patients and to protect undersheets and mattresses from soiling” are classified in heading 6302, HTSUS). The court referred to the definition of “bed linen” in the *Webster’s Third New International Dictionary* 196 (1981), which defined the term as “linen or cotton articles for a bed; *esp.* : sheets and pillow cases” and also referenced the broad language of the Explanatory Notes for heading 6302, HTSUS, which also included bolster cases and mattress covers as examples of bed linen. *Id.* The court concluded that “[n]either the statute nor the sources cited above limit the definition of ‘bed linens’ to only ‘those items found on *all* beds.’ The definition of bed linens includes at least linen, cotton or other fabric articles for a bed.” *Id.*

The term “bed” is defined by the Oxford English Dictionary as “[t]he sleeping-place of a person or animal.” The Oxford English Dictionary further provides that a bed is “[a] permanent structure or arrangement for sleeping on, or for the sake of rest.” *Id.* (Oxford University Press 2016) available at www.oed.com.

Your description of the subject merchandise and your website suggest that it is designed and marketed primarily for use during travel, such as in a hammock, sleeping bag or independently, rather than on a “permanent structure or arrangement” as a bed linen. Therefore, we find that the COCOON TravelSheet described in HQ 088149, HQ 089137, HQ 089134, and HQ 950620 is not classifiable as bed linens in heading 6302, HTSUS.

Similarly, the sleep sacks described in NY N012720, NY H81550, NY F84497, NY C89291, and NY 817811, are not classifiable as bed linens in heading 6302, HTSUS, because they are certainly not “found on *all* beds,” nor can they be described as “specialized items ... which are only found on ‘some’ beds.” *See Medline*, 62 F.3d at 1409. Instead, they are designed to travel with the consumer and be used either on a bed, alone, or as a sleeping bag liner. Indeed, some of the sleep sacks are imported with a carrying pouch for easier travel. Moreover, unlike the drawsheets in *Medline*, the sleep sacks are used to protect the consumer from the undersheets and mattresses, rather than to protect the undersheets and mattresses from the consumer. In other words, they are not “bed-clothes” designed to cover the bed, rather they are designed

to protect the consumer. *Id.* (Oxford University Press 2016) available at www.oed.com.

Since the sleep sacks are not classifiable more specifically in any other heading, we find that they are classifiable in heading 6307, HTSUS, as “Other made up articles, including dress patterns” and specifically under subheading 6307.90.98, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other: Other.”

HOLDING:

Under the authority of GRIs 1 and 6 the sleep sacks are classified in heading 6307, HTSUS, specifically in subheading 6307.90.98, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other: Other.” The 2017 column one, general rate of duty is 7 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 N012720, dated June 22, 2007, NY H81550, dated June 26, 2001, NY F84497, dated March 31, 2000, NY C89291, dated July 16, 1998, NY 817811, dated January 25, 1996, HQ 950620, dated February 20, 1992, HQ 089134, dated August 8, 1991, HQ 089137, dated August 6, 1991, and HQ 088149, dated December 27, 1990, are hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF THREE RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF POLYESTER FLOWER LEIS**

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

ACTION: Notice of proposed revocation of three ruling letters, and revocation of treatment relating to the tariff classification of polyester flower leis.

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 three ruling letters concerning tariff classification of polyester flower leis 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.

DATE: Comments must be received on or before May 12, 2017.

ADDRESS: 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: Grace A. Kim, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-7941.

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 three ruling letters pertaining to the tariff classification of polyester flower leis. Although in this notice, CBP is specifically referring to New York Ruling Letter

(“NY”) NY N048019, dated January 7, 2009 (Attachment A); NY N245539, dated September 19, 2013 (Attachment B); and NY N247373, dated November 20, 2013 (Attachment C), 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 three 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 N048019, NY N245539, and NY N247373, CBP classified polyester flower leis in heading 7117, HTSUS, specifically in subheading 7117.90.90, HTSUS, which provides for “Imitation jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Other.” CBP has reviewed NY N048019, NY N245539, and NY N247373 and has determined the ruling letters to be in error. It is now CBP’s position that polyester flower leis are properly classified, by operation of GRI 1, in heading 6207, HTSUS, specifically in subheading 6207.90.35, HTSUS, which provides for “Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: Of other materials: Other: Of man-made fibers.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N048019, NY N245539, and NY N247373 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H251022, set forth as Attachment D 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: March 03, 2017

ELIZABETH JUNIOR
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N048019

January 7, 2009

CLA-2-71:OT:RR:E:NC:SP:233

CATEGORY: Classification

TARIFF NO.: 7117.90.9000

VALERIE SMITH
DIRECTOR OF IMPORTING
3875 SW HALL BOULEVARD
BEAVERTON, OR 97005

RE: The tariff classification of an artificial floral lei from China.

DEAR Ms. SMITH:

In your letter dated December 30, 2008 you requested a tariff classification ruling.

The item is a 34 inch artificial floral lei worn over the neck. The flowers are on a string and are separated by clear plastic tubes measuring 1 inch long by 3/16 of an inch in diameter. Individual flowers of different colors are made of polyester, and measure approximately 2.5 inches in diameter. Each lei cost 24.8 cents, or \$2.98 (rounded) per dozen.

It is stated that each flower is made from a single die-cut piece of material. This is analogous to cutting the shape of each flower from a single piece of paper. Chapter 67, Note 3(b), to the Harmonized Tariff Schedule of the United States excludes "artificial flowers, foliage or fruit of pottery, stone, metal, wood or other materials, obtained in one piece by molding, forging, carving, stamping or other process, or consisting of parts assembled otherwise than by binding, gluing, fitting into one another or similar methods."

The applicable subheading for the artificial floral lei will be 7117.90.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Imitation jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Other." The rate of duty will be 11%.

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 Neil H. Levy at (646) 733-3036.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

N245539

September 19, 2013

CLA-2-71:OT:RR:NC:N4:433

CATEGORY: Classification

TARIFF NO.: 7117.90.9000

LARRY LIEBERMAN
NEW YORK CUSTOMS BROKERS, INC.
148-02 GUY R. BREWER BLVD.
JAMAICA, NY 11434

RE: The tariff classification of a flower lei from China.

DEAR MR. LIEBERMAN:

In your letter dated August 21, 2013, on behalf of Missry Associates, Inc., you requested a tariff classification ruling. A sample was submitted.

The sample indicates, item number CSL0003 is a polyester flower lei. The front of the blister card has the words *Colliers de Fleurs*, which translates from French to English as a necklace or garland of flowers. By observation of the sample, the individual flowers appear to be a single die-cut piece of material that when grouped together with plastic spacers form a lei.

When terms are not defined in the Harmonized Tariff Schedule of the United States (HTSUS) or the ENs to the HTSUS, they are construed in accordance with their common and commercial meaning – *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

Multiple source dictionaries define a lei as a garland of flowers worn around the neck. Leis are decorative and often given as a symbol of affection. It is common today that leis are made of either real or artificial flowers. As the item is not classified elsewhere in the Nomenclature, we are of the opinion that the lei falls within the class or kind of good designated as necklaces within the meaning of imitation jewelry of heading 7117, HTSUS – see Legal Notes 11 and 9 (a) to Chapter 71, HTSUS.

The applicable subheading for the polyester flower lei, consisting of single die-cut flowers, grouped together, will be 7117.90.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Imitation Jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Other.” The rate of duty will be 11% 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/>.

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 Neil H. Levy at (646) 733-3036.

Sincerely,

MYLES B. HARMON

Acting Director

National Commodity Specialist Division

[ATTACHMENT C]

N247373

November 20, 2013

CLA-2-71:OT:RR:NC:N4:433

CATEGORY: Classification

TARIFF NO.: 7117.90.9000; 7117.90.7500

REGINA WOODY
CLASSIFICATION COORDINATOR
HOBBY LOBBY STORES, INC.
7707 SW 44TH STREET
OKLAHOMA CITY, OK 73179

RE: The tariff classification of leis from China.

DEAR MS. WOODY:

In your letter dated October 25, 2013, you requested a tariff classification ruling. As requested, the samples submitted will be returned to you.

Item number 193391, Wristlet-Silk Flower, are four leis attached to a blister card. The blister card identifies the item as the 4-count Wristlets. The item is comprised of 24 multi-colored woven polyester flowers. Two flowers of identical color are strung together on a polyamide fiber string in repeating patterns of dual alternating colors, thus forming each of the wrist leis. Each set of two flowers is separated by a clear polypropylene straw. Each of the wristlets measure approximately 3-inches in diameter. This item is meant to be worn around the wrist. Company provided material breakdown figures indicate that the weight and cost of the woven polyester flowers exceeds that of the other materials. Upon physical handling of the samples, each flower is constructed of one piece of material.

Item number 337428, Lei-Silk Flowers-88 Petals, is a singular lei attached to a blister card. The blister card identifies the item as the Tropical Lei. The item is comprised of 88 multi-colored woven polyester flowers. Two flowers of identical color are strung together on a polyamide fiber string in repeating patterns of dual alternating colors, thus forming the lei. Each set of two flowers is separated by a clear polypropylene straw. The Tropical Lei is approximately 16-inches in diameter. This item is meant to be worn around the neck. Company provided material breakdown figures indicate that the weight and cost of the woven polyester flowers exceeds that of the other materials. Upon physical handling of the sample, each flower is constructed of one piece of material.

Item number 413245, Lei-Silk Flowers-Orange, are three leis attached to a blister card. The blister card identifies the item as the 3-count Tropical Leis. The item is comprised of 72 woven polyester flowers. Each flower is color dyed to either bright orange or yellow with orange tips. Two flowers are strung together in an alternating color pattern on a polyamide fiber string. Two sets of two orange flowers are strung together alternating between one set of two yellow flowers with orange tips, thus forming the lei. Each set of two flowers is separated by a clear polypropylene straw. Each of the Tropical Leis is approximately 14-inches in diameter. This item is meant to be worn around the neck. Company provided material breakdown figures indicate that the weight and cost of the woven polyester flowers exceeds that of the other materials. Upon physical handling of the samples, each flower is constructed of one piece of material.

Item number 438184, Lei-Silk Carnation Flower, are three leis attached to a blister card. The blister card identifies the item as the 3-count Tropical Leis. The item is comprised of 56 woven polyester flowers. Two flowers of identical color are strung together on a polyamide fiber string in repeating patterns of dual alternating colors, thus forming the lei. Each set of two flowers is separated by a clear polypropylene straw. Each of the Tropical Leis is approximately 14-inches in diameter. This item is meant to be worn around the neck. Company provided material breakdown figures indicate that the weight and cost of the woven polyester flowers exceeds that of the other materials. Upon physical handling of the samples, each flower is constructed of one piece of material.

Item number 593897, Leis-Plastic-Fringe, are six leis attached to a blister card. The blister card identifies the item as the 6-count Tropical Leis. Each of the leis is a different color comprised of many layers of polyethylene sewn together with polyester string. The edges of the polyethylene are cut to create a fringe effect. Each of the Tropical Leis is approximately 12-inches in diameter. This item is meant to be worn around the neck. Company provided material breakdown figures indicate that the weight and cost of the polyethylene exceeds that of the string. Upon physical handling of the samples, each flower is constructed of one piece of material.

When terms are not defined in the Harmonized Tariff Schedule of the United States (HTSUS) or the ENs to the HTSUS, they are construed in accordance with their common and commercial meaning – *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

Multiple source dictionaries define a {lei} as a garland of flowers (especially or usually) worn around the neck. Leis are decorative and often given as a symbol of affection. It is common today to find leis made of either real or artificial flowers, or made of other man-made materials giving flower-like appearances. As the items are not classified elsewhere in the Nomenclature, including heading 6702, HTSUS, which does not include artificial flowers obtained in the one piece, we are of the opinion that the leis fall within the class or kind of good designated as necklaces or bracelets within the meaning of imitation jewelry of heading 7117, HTSUS – *see* Legal Notes 11 and 9 (a) to Chapter 71, HTSUS.

In a dispositive decision for Christmas lapel pins and earrings and Halloween earrings, the Federal Circuit Court in *Russ Berrie & Company, Inc. v. United States*, Slip Op. 04–1084, 2004 U.S. App. LEXIS 18226 (Fed. Cir. August 27, 2004) considered whether jewelry items (lapel pins and earring sets) reflecting Christmas and Halloween themes, which did not contain precious metals, or precious or semi-precious stones, should be classified as “imitation jewelry” of heading 7117, Harmonized Tariff Schedule of the United States (HTSUS), or as “festive articles” of heading 9505, HTSUS. The Court found that the Christmas and Halloween theme jewelry articles were more specifically classified as “imitation jewelry” in heading 7117 of the HTSUS.

We find that leis in general are flower garlands, made from real or artificial flowers, or made from other man-made materials, worn chiefly around the neck (also worn around the wrist) for personal adornment, much like the purpose of imitation jewelry of heading 7117, HTSUS. When leis are worn

around the neck they are similar in fashion to necklaces and when leis are worn around the wrist they are similar in fashion to bracelets. Consistent with *Russ Berrie & Company, Inc. v. United States*, we are of the opinion that heading 7117, HTSUS, more specifically describes the leis of the merchandise concerned.

The applicable subheading for item numbers 193391, 337428, 413245 and 438184, imitation flower leis made essentially of woven polyester, will be 7117.90.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Imitation Jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Other.” The rate of duty will be 11% ad valorem.

The applicable subheading for item number 593897, flower-like lei made essentially of polyethylene, will be 7117.90.7500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Imitation Jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Of plastics.” 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 Neil H. Levy at (646) 733-3036.

Sincerely,

GWENN KLEIN KIRSCHNER

Acting Director

National Commodity Specialist Division

[ATTACHMENT D]

H251022

CLA-2 OT: RR: CTF: TCM H251022 GaK

CATEGORY: Classification

TARIFF NO.: 6702.90.3500

VALERIE SMITH
DIRECTOR OF IMPORTING
3875 SW HALL BOULEVARD
BEAVERTON, OR 97005

RE: Revocation of NY N048019, NY N245539, and NY N247373; classification of polyester flower leis

DEAR Ms. SMITH:

On January 7, 2009, U.S. Customs and Border Protection (“CBP”) issued to you New York Ruling Letter (“NY”) N048019. CBP also issued NY N245539, dated September 19, 2013, and NY N247373, dated November 20, 2013, on similar products. The rulings pertain to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of polyester flower leis. In NY N048019, NY N245539, and NY N247373, CBP classified the polyester flower leis under subheading 7117.90.9000, HTSUS. We have reviewed these rulings and have found them to be in error. For the reasons described in this ruling, we hereby revoke NY N048019, NY N245539, and NY N247373.

FACTS:

In NY N048019, CBP described the merchandise, in pertinent part, as follows:

The item is a 34 inch artificial floral lei worn over the neck. The flowers are on a string and are separated by clear plastic tubes measuring 1 inch long by 3/16 of an inch in diameter. Individual flowers of different colors are made of polyester, and measure approximately 2.5 inches in diameter.

It is stated that each flower is made from a single die-cut piece of material. This is analogous to cutting the shape of each flower from a single piece of paper.

ISSUE:

Whether the subject merchandise is classifiable under heading 6702, HTSUS, or under heading 7117, 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 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 be applied in order.

The 2017 HTSUS headings under consideration in this case are as follows:

6702 Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit:

* * *

7117 Imitation jewelry:

Note 3(g) to Chapter 71, HTSUS, provides that:

This chapter does not cover: Goods of section XI (textiles and textile articles);

Applying GRI 1, we must first determine if the merchandise is classifiable under one heading. The subject merchandise is made of polyester, a type of fabric used to produce textiles and textile articles. Note 3(g) to Chapter 71 excludes textiles and textile articles in that chapter, thus preventing classification of the polyester leis under heading 7117, HTSUS.

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).

EN 67.02 provides as follows:

This heading covers:

...

(3) Articles made of artificial flowers, foliage or fruit (e.g., bouquets, garlands, wreaths, plants), and other articles, for use as trimmings or as ornaments, made by assembling artificial flowers, foliage or fruit.

...

Subject to the exclusions listed below, these goods may be made of **textile materials**, felt, paper, plastics rubber, leather, metal foil, feathers, shells or of other materials of animal origin...Provided they meet the specifications of the preceding paragraphs, all such articles fall in this heading irrespective of their degree of finish.

This heading does not include:

...

(e) Artificial flowers, foliage or fruit, of pottery, stone, metal, wood, etc., obtained in one piece by moulding, forging, carving, stamping or other process, or consisting of parts assembled otherwise than by binding, glueing, fitting into one another or similar methods.

Based upon the express terms of heading 6207, HTSUS and the scope put forth in the corresponding EN, the polyester flower lei is correctly classified under heading 6207, HTSUS. The polyester flower lei is made of textile materials. It is assembled by connecting the flowers with a string and spacing them using clear plastic tubes. Therefore, the polyester flower leis are classified under heading 6207, HTSUS, specifically under subheading 6207.90.3500, HTSUS, which provides for “[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: Of other materials: Other: Of man-made fibers.”

HOLDING:

Pursuant to GRIs 1 and 6, the polyester flower lei is classified in subheading 6207.90.3500, HTSUS, which provides for “[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: Of other materials: Other: Of man-made fibers.” The 2017 column one, general rate of duty is 9 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 World Wide Web at www.usitc.gov/tata/hts/.


EFFECTS ON OTHER RULINGS:

NY N048019, dated January 7, 2009, NY N245539, dated September 19, 2013, and NY N247373, dated November 20, 2013, are revoked.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division



**PROPOSED MODIFICATION OF ONE RULING LETTER
AND MODIFICATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A PLASTIC CARTRIDGE
FOR AN EAR PIERCING GUN**

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

ACTION: Notice of proposed modification of one ruling letter, and modification of treatment relating to the tariff classification of a plastic cartridge for an ear piercing gun.

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 New York Ruling Letter (NY) N261965, dated March 27, 2015, concerning the classification of a plastic cartridge containing a piercing earring and clutch under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to modify any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before May 12, 2017.

ADDRESS: 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: 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, this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of a plastic cartridge containing a piercing earring and clutch for use in an ear piercing gun. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N261965, dated March 27, 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 ruling

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 modify 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 N261965, CBP determined that a plastic cartridge containing a piercing earring and clutch, to be used within an ear-piercing instrument, was classified in accordance with GRI 3(b) as a composite article in subheading 7116.20.05, HTSUS, when imported with a cubic zirconium gemstone, and subheading 7117.19.90, HTSUS, when imported with a glass gemstone. Subheading 7116.20.05 provides for "Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Articles of jewelry: Valued not over \$40 per piece." Subheading 7117.19.90, HTSUS, provides for "Imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other: Other." CBP has reviewed NY N261965 and has determined the ruling letter to be in error. It is now CBP's position that while the classification and the application of GRI 3(b) were correct, the instant merchandise is not a composite good but rather a GRI 3(b) set.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N261965 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H266006, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to modify 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: January 5, 2017

ELIZABETH JUNIOR
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N261965

March 27, 2015

CLA-2-71:OT:RR:NC:N4:433

CATEGORY: Classification

TARIFF NO.: 7117.19.9000; 7116.20.0580

CARMEN A. TRUTANICH, COUNSEL
TUCKER ELLIS, LLP
515 SOUTH FLOWER STREET
LOS ANGELES, CA 90071-2223

RE: The tariff classification of a plastic cartridge containing a piercing earring and clutch from Mexico, North American Free Trade Agreement (NAFTA) determination, country of origin determination, and whether there are any other duty exemptions applicable.

DEAR MR. TRUTANICH:

In your letter dated March 17, 2015, on behalf of Onyx Industries Inc. (Onyx), you requested a tariff classification ruling, country of origin determination, and whether there are any duty exemptions, for the “System 75 Display,” which is assembled and packaged in Mexico. As requested, the sample submitted will be returned to you.

We note from the position paper filed on behalf of your client Onyx that past CBP business transactions have occurred. However, since all entries have reached final liquidation of those past business transactions, you are now requesting a ruling based upon prospective business transactions of work undertaken in Mexico and imported into the United States.

The merchandise concerned is a plastic cartridge containing a piercing earring and clutch used within an ear-piercing instrument. The backend of the stud is sharpened to a point that enables the earring to pierce through an earlobe without a preexisting hole. The piercing studs are made of stainless steel or titanium posts, and the clutches are made of stainless steel, of which some of the posts and clutches are gold-plated. Some of the posts are further embellished with foreign origin faux jewels made of glass or of Cubic Zirconia (CZ) which is considered a simulated (synthetic) precious gemstone of diamond. Some imitation jewels are also made of plastic, such as those that are sold as faux pearls. Two System 75 Display(s) are sealed together in an adjoining, perforated sterile blister pack and are meant to be sold in pairs, however, one can purchase an individual Display.

Each System 75 Display, not including the foreign faux or simulated gemstone or faux pearl, consists of four plastic components (a white plastic box, a white plastic support, two clear plastic inserts) of United States origin and three base metal components (spring, stud and clutch) of United States origin, all of which are assembled in Mexico. It is unstated whether the faux gemstone or pearl or CZ is affixed to the earring post in the United States or Mexico; for purposes of this discussion the faux stone or faux pearl or CZ will be considered affixed to the post within the United States. The unassembled cartridge itself prior to being assembled in Mexico consists of a white plastic box, a white plastic support, two clear plastic inserts and a base metal spring. In Mexico the plastic cartridge with base metal spring (five pieces) is assembled, and the base metal piercing earring along with its base metal clutch are positioned and placed appropriately within the cartridge. After which two

System 75 Display(s) are sealed together in an adjoining, perforated sterile blister pack. In total seven United States components are assembled together to form the System 75 Display.

Under the General Rules of Interpretation (GRIs) to the Harmonized Tariff Schedule of the United States (HTSUS), specifically at GRI 3(b), the System 75 Display, without a CZ gemstone, is composed of different components (chiefly plastic and metal, and may contain glass) and is therefore considered a composite good. Regarding the essential character of composite goods, the Explanatory Notes (ENs) to GRI 3 (b) (VIII) of the HTSUS state that “the factor which determines essential character will vary between different kinds of goods. It may for example, be determined by the nature of the materials or components, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.” When the essential character of a composite good can be determined, the whole product is classified as if it consisted only of the material or component that imparts the essential character to the composite good.

We recognize that the foreign faux gemstone or faux pearl provides the visual attractiveness to the studded earring. Nevertheless in this particular case, the fact that the base metal stud is worked into a point expressly fulfills the functionality of this good, which is to allow for the discharge of a piercing earring into one’s earlobe for establishing articles of jewelry worn for personal adornment. Accordingly, the essential character is imparted by the base metal stud.

The applicable subheading for the System 75 Display, without a CZ gemstone, will be 7117.19.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Imitation Jewelry: Of base metal, whether or not plated with precious metal: Other: Other: Other.” The rate of duty will be 11% ad valorem.

In regard to the System 75 Display, with a CZ, Legal Note 11 to Chapter 71 of the Harmonized Tariff Schedule of the United States (HTSUS) provides that for the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of note 9 above (but not including buttons or other articles of heading 9606, or dress combs, hair slides or the like, or hairpins, of heading 9615), not incorporating natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal. *See* Legal Note 9 (a), HTSUS, for exemplars of articles of jewelry. With case in point, a CZ is a synthetic (simulated) diamond and is categorized under precious gemstones. Accordingly, this item is classifiable, not as imitation jewelry of subheading 7117.19, HTSUS, but rather as precious (synthetic) jewelry in subheading 7116.20, HTSUS.

The applicable subheading for the System 75 Display, with a CZ gemstone, will be 7116.20.0580, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Articles of jewelry: Valued not over \$40 per piece: Other.” The rate of duty will be 3.3% 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

Due to the fact that the System 75 Display is being assembled in Mexico, and that the country of origin is governed by the North American Free Trade Agreement (NAFTA), we will also rule on whether or not the System 75 Display is eligible for preferential duty treatment under NAFTA. To be eligible for tariff preferences under NAFTA, goods, must be “originating goods” within the rules of origin in General Note 12 (b), HTSUS.

In this particular case, to be an “originating good” the System 75 Display must be transformed in the territory of Mexico pursuant to General Note 12 (b) (ii), (A) or (B), which states: (A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or (B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note. In the event that 12 (b) (ii), (A) or (B) cannot be satisfied, then General Note 12 (b) (iii) states: they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials.

In examining whether or not the System 75 Display is transformed in the territory of Mexico, the NAFTA tariff shift rule of origin, as provided in General Note 12 (t), Chapter 71, Note 2 to the HTSUS, is applicable. The rule states at Note 2: A change to headings 7113 through 7118 from any heading outside that group. We note that all of seven components used in the assembling of the System 75 Display are originating in the United States, and therefore we find no change to headings 7113 through 7118 occurred; consequently this rule does not satisfy the rule of origin for NAFTA preferential duty treatment. However, we find that the System 75 Display is made from “exclusively originating materials,” and therefore satisfies the rule of origin under General Note 12 (b) (iii); accordingly, the System 75 Display is eligible for NAFTA preferential duty treatment.

Part 134, Customs Federal Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. In Section 134.1 (b), the country of origin of an article is defined as the 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 for country of origin marking purposes. 19 CFR 134.1 (b) is not applicable for NAFTA goods, as country of origin will be determined in accordance with 19 CFR 102 – Rules of Origin.

19 CFR, Section 102.20, “specific rule by tariff classification” is inapplicable to a country of origin determination for the System 75 Display, in that all of the materials are originating and therefore cannot meet the rules: “a change to heading 7116 or a change to heading 7117” As such, 19 CFR, Section 102.11 (b) (1) provides that “the country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good.” 19 CFR, Section 102.18 (b) (1) elaborates on the meaning of “essential character” to include only those materials, both domestic and foreign, in which a change in tariff classification is not allowed under 19 CFR 102.20. As all of the materials are of United States origin, it is our opinion that the base metal piercing stud imparts the essential character to the good, resulting in the country of origin being that of the United States.

Further, we find that 19 CFR 102.19 (NAFTA preference override) is implicated. 19 CFR 102.19 (b) states: "If, under any other provision of this part, the country of origin of a good which is originating within the meaning of 19 CFR 181 (q) of this chapter is determined to be the United States and that good has been exported from, and returned to, the United States after having been advanced in value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States." It is our position that the assembling of the seven components of U.S. origin in the manufacturing of a dedicated part used in an ear piercing gun is an advancement in value and an improvement in condition of the unassembled cartridge with its piercing earring and clutch. Accordingly, the country of origin for "duty purposes" is Mexico.

Subheading 9801.00.10, HTSUS, provides that products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad can be entered duty free provided the documentary requirements of 19 CFR 10.1 are satisfied.

The question in this particular case is whether the seven unassembled United States components that when assembled together in Mexico to make a plastic spring-loaded cartridge containing a piercing earring and clutch, for use as a one-time functional part in an ear piercing gun, is an advancement in value or improvement in condition of the ear piercing stud.

The court held in *Border Brokerage Company, Inc. v. United States*, 314 F. Supp. 788 (1970), that tomatoes of American origin were entitled to duty free entry under item 800.00, Tariff Schedules of the United States ("TSUS") (the predecessor to subheading 9801.00.10, HTSUS). The tomatoes were shipped to Canada where they were unloaded, unpacked, sorted, graded by color and size, and repacked. The court stated that the test to be applied in item 800 cases is whether the merchandise of American origin has itself (apart from its container) been the object of advancement in value or improvement in condition while abroad. The court noted that there was no cleaning, wiping or individual wrapping of any of the involved tomatoes in Canada. Further, in *Superscope, Inc. v. United States*, 727 F. Supp. 629 (CIT 1989), the court held that American glass panels that were repackaged in New Zealand as part of unassembled cabinets were entitled to duty free status under item 800.00, TSUS.

Counsel uses five Headquarters rulings to assert that the plastic spring-loaded cartridge containing a piercing earring and clutch is simply packaging of American goods returned, and is entitled to duty-free treatment under 9801.00.10. Counsel also suggest by means of GRI 5 (b) to the HTSUS that the System 75 Display cartridge undergoes a packaging operation, rather than an assembly into a new device. The following five rulings are referenced in support of Counsel's position: HQ 560811 dated February 11, 1998; HQ 555183 dated February 15, 1989; HQ 557322 dated August 31, 1993; HQ 560993 dated September 23, 1989; and HQ 560802 dated March 19, 1998.

Examination of five Headquarters rulings as referenced by Counsel indicates a common denominator, in that all of the components were of solid construction and were of fully prepared products, requiring no assembly to build a packaging instrument, and that those components did not influence (advance in value or improve in condition) the primary component of United

States origin from simply being packaged. Unlike HQ 560811, in which the packaging of United States screws onto carrier reels were merely packaging operations, or HQ555183 and HQ 557322, in which United States dental floss was placed into plastic dispensers, the System 75 Display in unassembled form lacks any type of packaging instrument until being assembled together in Mexico. GRI 5 (b) requires a good prior to an allowance for its packing materials and packing containers, and as such, we are of the opinion that only the sealed blister pack is entitled to such treatment upon placing the assembled plastic spring-loaded cartridge containing a piercing earring and clutch within its packaging.

We are not persuaded that the unassembled components sent to Mexico for assembly of a plastic spring-loaded cartridge containing a piercing earring and clutch is simply packaging of American goods returned – *see* Headquarters ruling HQ 555509 dated January 29, 1990. There is no packaging until the good is assembled. Further, once assembled, the base metal spring used to force the piercing earring from its held position within the cartridge upon squeezing the trigger of the gun is an indication that the finished good is a dedicated part of an ear piercing gun, even with recognizing that the assembly operation is not complex. Equally important and not discussed by Counsel is the sterilization of the blister pack, which may, in and over itself, further advance and improve in condition the piercing earring, if sterilized in Mexico. Accordingly, the merchandise concerned is not entitled to 9801.00.10 treatment.

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

All three requirements of subheading 9802.00.80, HTSUS, must be satisfied before an article may receive a duty allowance. An article entered under this tariff provision is subject to duty upon the full appraised value of the imported assembled article, less the cost or value of the U.S. components assembled therein, upon compliance with the documentation requirements of 19 CFR 10.24.

19 CFR 10.24 (a) (1), requires an assembler's declaration to be filed in connection with the entry of assembled articles claimed to be subject to the exemption under subheading 9802.00.80, HTSUS, indicating that the imported articles were assembled in whole or in part from fabricated components which are products of the United States. The assembler's declaration should include: marks of identification or numbers, description of the component, quantity, unit value at the time and place of export from the U.S., the port and date of export from the U.S., and the name and address of the manufacturer of the component. In addition, Customs and Border Protection (CBP) regulations require that the importer sign an endorsement stating that the assembler's declaration and any other information submitted in support of the entry is correct and in compliance with the legal notes to the HTSUS – *see* 19 CFR. 10.24 (a) (2).

Subsection 10.24 (c) provides that, in lieu of filing duplicate lists of components and descriptions of assembly operations with each entry, the docu-

ments specified in subsection 10.24 (a) may refer to assembly descriptions and lists of components previously filed with and approved by the port director, or to records showing costs, names of manufacturers, and other necessary data on components, provided the importer has arranged with the port director to maintain such records and keep them available for examination by authorized CBP officers – see 19 CFR 10.24(c).

In this particular case, there are seven United States components that when assembled together in Mexico make a plastic spring-loaded cartridge containing a piercing earring and clutch, which is used within an ear-piercing instrument. Provided information indicates that the four plastic pieces of the cartridge and spring snap together, while the base metal stud and clutch, embellished or not, are tightly placed and positioned within the cartridge. Based on the facts presented, the seven United State components are exported ready for assembly without further fabrication. Accordingly, the snapping together of components and placing of components into fixed, held positions within the cartridge is an acceptable assembly operation performed abroad. All seven components of U.S. origin are eligible for “partial duty-exemption” under 9802.00.80, HTSUS, upon compliance with the documentation requirements of 19 CFR 10.24.

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 Neil H. Levy at neil.h.levy@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

ATTACHMENT B

HQ H266006

CLA-2 OT:RR:CTF:TCM H266006 CkG

CATEGORY: Classification

TARIFF NO.: 7117.19.90; 7116.20.05

CARMEN A. TRUTANICH,
TUCKER ELLIS, LLP
515 SOUTH FLOWER STREET
LOS ANGELES, CA 90071-2223

Re: Modification of NY N261965; classification of plastic cartridge for ear piercing gun

DEAR Ms. TRUTANICH,

This is in response to your request of April 30, 2015, on behalf of Onyx Industries, Inc., for the reconsideration of New York Ruling N261965, dated March 27, 2015, concerning the classification of the System 75 cartridge with earring and clutch. You request clarification of the ruling, specifically as to whether the System 75 is classified as a part of an ear piercing gun, or whether it is classified as part of a set along with the included earring.

FACTS:

In NY N261965, the subject merchandise is described as follows:

The merchandise concerned is a plastic cartridge containing a piercing earring and clutch used within an ear-piercing instrument. The backend of the stud is sharpened to a point that enables the earring to pierce through an earlobe without a preexisting hole. The piercing studs are made of stainless steel or titanium posts, and the clutches are made of stainless steel, of which some of the posts and clutches are gold-plated. Some of the posts are further embellished with foreign origin faux jewels made of glass or of Cubic Zirconia (CZ) which is considered a simulated (synthetic) precious gemstone of diamond. Some imitation jewels are also made of plastic, such as those that are sold as faux pearls. Two System 75 Display(s) are sealed together in an adjoining, perforated sterile blister pack and are meant to be sold in pairs, however, one can purchase an individual Display.

Each System 75 Display, not including the foreign faux or simulated gemstone or faux pearl, consists of four plastic components (a white plastic box, a white plastic support, two clear plastic inserts) of United States origin and three base metal components (spring, stud and clutch) of United States origin, all of which are assembled in Mexico. It is unstated whether the faux gemstone or pearl or CZ is affixed to the earring post in the United States or Mexico; for purposes of this discussion the faux stone or faux pearl or CZ will be considered affixed to the post within the United States. The unassembled cartridge itself prior to being assembled in Mexico consists of a white plastic box, a white plastic support, two clear plastic inserts and a base metal spring. In Mexico the plastic cartridge with base metal spring (five pieces) is assembled, and the base metal piercing earring along with its base metal clutch are positioned and placed appropriately within the cartridge. After which two System 75 Display(s) are sealed together in an adjoining, perforated

sterile blister pack. In total seven United States components are assembled together to form the System 75 Display.

The System 75 is designed to be incorporated into a Studex ear piercing gun. The System 75 holds the earring in the correct position, and when the trigger of the ear piercing gun is pulled, the metal spring in the System 75 is activated and pushes the earring into the ear.

ISSUE:

1. Whether the System 75 is classified in heading 8479, HTSUS, heading 7116, HTSUS, or heading 7117, HTSUS.
2. Whether the System 75 is classified by application of GRI 1, GRI 3(b), or GRI 5(b).

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification 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:

7116:	Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed):
7116.20:	Of precious or semiprecious stones (natural, synthetic or reconstructed):
	Articles of jewelry:
7116.20.05:	Valued not over \$40 per piece...
	* * *
7117:	Imitation jewelry:
	Of base metal, whether or not plated with precious metal:
7117.19:	Other:
	Other:
7117.19.90:	Other...
	* * *
8205:	Hand tools (including glaziers' diamonds), not elsewhere specified or included; blow lamps; vices, clamps and the like, other than accessories for and parts of, machine tools; anvils; portable forges; hand or pedal-operated grinding wheels with frameworks.
8205.59:	Other:
	Of iron or steel:
8205.59.45:	Caulking gun...
8205.59.55:	Other...
	* * *
8479:	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter:

Other machines and mechanical appliances:

8479.89: Other...
* * * *

General Rule of Interpretation (GRI) 5 provides as follows:

5. In addition to the foregoing provisions, the following Rules shall apply in respect of the goods referred to therein :
 - (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This Rule does not, however, apply to containers which give the whole its essential character;
 - (b) Subject to the provisions of Rule 5 (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

Note 2 to Chapter 82 provides as follows:

Parts of base metal of the articles of this Chapter are to be classified with the articles of which they are parts, except parts separately specified as such and tool-holders for hand tools (heading 84.66). However, parts of general use as defined in Note 2 to Section XV are in all cases excluded from this Chapter

Note 11 to Chapter 71 provides as follows:

For the purposes of heading 71.17, the expression “imitation jewellery” means articles of jewellery within the meaning of paragraph (a) of Note 9 above (but not including buttons or other articles of heading 96.06, or dress-combs, hair-slides or the like, or hairpins, of heading 96.15), not incorporating natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

* * * *

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The Explanatory Note to GRI 5(b) reads as follows:

RULE 5 (b)

(Packing materials and packing containers)

(IV) This Rule governs the classification of packing materials and packing containers of a kind normally used for packing the goods to which they relate. However, this provision is not bind-

ing when such packing materials or packing containers are clearly suitable for repetitive use, for example, certain metal drums or containers of iron or steel for compressed or liquefied gas.

(V) This Rule is subject to Rule 5 (a) and, therefore, the classification of cases, boxes and similar containers of the kind mentioned in Rule 5 (a) shall be determined by the application of that Rule.

The EN to heading 7116, HTSUS (EN 7116), provides, in pertinent part:

The heading covers all articles...wholly of natural or cultured pearls, precious or semi-precious stones, or consisting partly of natural or cultured pearls or precious or semi-precious stones, but not containing precious metals or metals clad with precious metal...

It thus includes:

(A) Articles of personal adornment and other decorated articles ...containing natural or cultured pearls, precious or semi-precious stones, set or mounted on base metal (whether or not plated with precious metal), ivory, wood, plastics etc.

The EN to heading 7117, HTSUS (EN 7117), provides, in pertinent part:

For the purposes of this heading, the expression imitation jewelry...[does] not incorporate precious metal or metal clad with precious metal...nor natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed).

* * * *

In NY N261965, CBP determined that the System 75 with the included earrings was a composite article classified in either heading 7116 or heading 7117, HTSUS, depending on the composition of the gemstone, by application of GRI 3(b) (finding that the earring with the faux gemstone imparted the essential character to the article). You request “clarification” of the holding in NY N261965, suggesting that either the System 75 Display should be classified at GRI 1 as a part of the earring gun in heading 8479, HTSUS, or that it be considered “ordinary packaging” for the earring, and thus classified in heading 7117, HTSUS, by application of GRI 5(b).

In NY N261965, it was noted that the System 75 would be considered a dedicated part of a complete ear piercing gun. You suggest if

this is the case, then classification in heading 8479, HTSUS, as a part of a machine with an individual function not elsewhere specified, should be considered.

The courts have considered the nature of “parts” under the HTSUS and two distinct though not inconsistent tests have resulted. See *Bauerhin Techs. Ltd. v. United States* (“Bauerhin”), 110 F. 3d 774 (Fed. Cir. 1997). The first, articulated in *United States v. Willoughby Camera Stores, Inc.* (“Willoughby”), 21 C.C.P.A. 322, 324 (1933), requires a determination of whether the imported item is 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 778 (quoting *Willoughby*, 21 C.C.P.A. 322 at 324). The second, set forth in *United States v. Pompeo*, 43 C.C.P.A. 9, 14 (1955), states that an “imported item dedicated solely for use with another article is a ‘part’ of that article within the meaning of the HTSUS.” *Id.* at 779 (citing *Pompeo*, 43 C.C.P.A. 9 at 13). Under either line cases, an imported item is not a part if it is “a separate and distinct commercial entity.” *Bauerhin*, 110 F. 3d at 779.

The System 75 is designed to be used in conjunction with an ear piercing gun. The ear piercing gun cannot function without the cartridge or the earrings. The cartridge, holds the earrings in the correct position and propels the earrings into the ear when the ear piercing gun is triggered. Even though the System 75 can function without the Studex ear piercing gun, the fact that the System 75’s purpose is to secure the operation of the Studex gun is enough to establish that the component is integral to the machine. See *Bauerhin* at 1451. We therefore agree that the System 75 is a part of a complete ear piercing gun. A complete ear piercing gun, however, is classified in heading 8205, HTSUS, as a hand tool¹. See e.g., NY N211356, dated April 6, 2012. See also HQ 950032, dated October 30, 1991, and NY C83998, dated February 23, 1998 (tagging guns). A part of an ear piercing gun cannot be classified as a part of machine of heading 8479, HTSUS, if the machine itself is not classified therein.

The System 75 is not a machine of heading 8479, HTSUS. The System 75 operates by way of a simple spring mechanism. Pursuant to the decision of the United States Customs Court in *Border Brokerage Company v. United States*, C.D. 2046 (1958), a simple spring operated mechanism is not considered a machine for the purposes of

¹ Heading 8205, HTSUS, does not include a provision for parts of hand tools. Note 2 to Chapter 82 directs the classification of base metal parts to the heading corresponding to the articles of which they are parts. The plastic cartridge is not made of base metal, and the earrings themselves, imported alone, would not be classified as parts of heading 8205, HTSUS, pursuant to Additional U.S. Rule of Interpretation 1(c). Therefore the System 75 is not classifiable in heading 8205, HTSUS.

the HTSUS (“The simple kind of mechanical action involved in the release of the energy stored up in a spring, when in fact nothing more is accomplished than that something held in a downward position by a heavy weight is pulled erect, prompts us to agree with defendant that a spring stake bunk does not rise to the dignity of a machine.”). The System 75 operates by way of a similar spring mechanism to that at issue in *Border Brokerage Company*, it is not sold, marketed, or recognized in the trade as a machine, and therefore is not classifiable as a machine of Chapter 84.

As there is no heading which provides for the System 75 at GRI 1, we turn to the remaining GRIs. In NY N261965, we considered the System 75 a composite good and classified it accordingly, by application of GRI 3(b). Similarly, in NY N214377, dated May 11, 2012, CBP applied GRI 3(b) in classifying an “ear piercing cassette” and earrings included, designed for an ear piercing gun, in heading 7117, HTSUS. While we agree with the ultimate classification and the applicability of GRI 3(b), we disagree that the System 75 is a composite good. The System 75 consists of two distinct goods, classifiable in different headings, which are intended to be used together for the specific purpose of placing the earring in the ear but which are not integrated or combined together. The earring and clutch are classified in either heading 7116, HTSUS, as precious jewelry, or heading 7117, HTSUS, as imitation jewelry, depending on whether the gemstone is cubic zirconium or glass. The plastic cartridge in turn is classifiable in heading 3926, HTSUS, as an other article of plastic. The earring and clutch are placed into the plastic cartridge, which ejects the earring when the Studex ear piercing gun is triggered. We consider the earring and plastic cartridge to constitute a set under GRI 3(b). We further consider the earrings to impart the essential character to the set. The plastic cartridge is essentially a storage and delivery mechanism for the earring, which is the more valuable component, and the reason for purchasing the System 75.

In regard to the System 75 with a cubic zirconium gemstone, Legal Note 11 to Chapter 71 provides that for the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of note 9 (i.e., any small objects of personal adornment such as earrings), not incorporating natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal. A cubic zirconium is a synthetic (simulated) diamond and is categorized under precious gemstones. Accordingly, this item is precluded from classification in heading 7117 by operation of Note 11 to Chapter 71, and is classifiable

as precious (synthetic) jewelry in heading 7116, HTSUS. *See e.g.*, HQ H007655, dated September 28, 2007. When the System 75 is imported without a cubic zirconium gemstone it is classified in heading 7117, HTSUS.

Within heading 7117, HTSUS, two subheadings are implicated: 7117.19, HTSUS, which provides for other imitation jewelry of base metal, and 7117.90, HTSUS, which provides for other imitation jewelry. Pursuant to GRI 6, we apply GRIs 1 through 5 in order again at the subheading level to determine the classification. The earring consists of a base metal stud and a faux gemstone made of either glass, plastic, or cubic zirconium, and thus could fall under either subheading 7117.19, HTSUS, or 7117.90, HTSUS, at GRI 1. At GRI 3(b), we must determine the essential character of the earring in order to determine the subheading classification. As discussed in NY N261965, the base metal stud is worked into a point, which expressly fulfills the functionality of this good (i.e., to allow for the discharge of a piercing earring into one's earlobe for establishing articles of jewelry worn for personal adornment). Accordingly, the essential character is imparted by the base metal stud. The applicable subheading for the System 75, without a cubic zirconium gemstone, will be 7117.19.90, HTSUS. We therefore agree with the finding in NY N261965 that the System 75 is classified in heading 7116 when imported with a cubic zirconium gemstone, or 7117 when imported with a plastic or glass faux gemstone.

Although you appear to agree with the classification of the System 75 in headings 7116 or 7117, HTSUS, you argue that the classification of the System 75 should be based on GRI 5(b). We note first that we have already found that the System 75 and earrings are classified in heading 7116 or 7117, HTSUS, by GRI 3(b), and therefore resort to GRI 5 is unnecessary. GRI 5(b) is further inapplicable in this case because the System 75 is not a packing container normally used for packing jewelry.

GRI 5(b) provides that packing materials and packing containers presented with the goods therein will be classified with the goods if they are of a kind normally used for packing such goods. In NY N261965 we determined that the article at issue is the combination of the plastic cartridge and earrings—i.e., a composite good. You argue instead that the earrings are the article or good to be examined, and that the System 75 plastic cartridge is merely the packaging for said article under GRI 5(b) and should be classified with the earrings.

The concept of “usual” containers includes a variety of containers such as plastic envelopes for carrying rainwear when not in use, cases designed for electric shavers, and tobacco tins, which may continue to

be used by the purchaser to “house” the original contents but which, when that purpose has been fulfilled, are usually discarded because of their lack of durability or their general unsuitability for other uses. A container is not “of a kind normally used for packing” when it possesses independent commercial appeal and adds significantly to the value of the goods. *See* HQ 560811, HQ 085766, dated February 1, 1990 (bubble bath container). The System 75 cartridge is not so flimsy as to be inherently disposable, and it is capable of being reused with any other set of earrings. It also adds value to the earrings by integrating with the Studex ear piercing gun, thus providing the mechanism by which the earrings are placed in the ear. The convenience of piercing the ear and fitting the earrings in one motion, in the comfort of home, is likely to be an advantage and selling point of the System 75 and the Studex ear piercing gun. The System 75 has multiple functions in relation to the earrings—it serves as packaging, display, and delivery mechanism—i.e., it allows the user to pierce the ears and place the earrings in the ear in one motion. It is more than simply packaging, and it is not the “usual” or “ordinary” packaging for jewelry. It is the blister packs that the System 75 cartridges are placed in that constitute the packaging for the cartridge and earrings. The System 75 is thus not classifiable at GRI 5. *See e.g., Bruce Duncan Co. v. United States*, 63 Customs Ct. 412, C.D. 3927 (1969), *Amersham Corporation v. United States*, 728 F.2d 1453, 1456 (Fed. Cir. 1984), *Mita Copystar Am. v. United States*, 160 F.3d 710, 713 (Fed. Cir. 1998), which classified printer toner cartridges and butane fuel cartridges as parts of printers and cigarette lighters at GRI 1. Although the instant cartridges are not classifiable at GRI 1, they are classifiable at GRI 3 and therefore classification under GRI 5 is precluded. *See also* HQ H273316, dated July 19, 2016.

HOLDING:

By application of GRI 1 and GRI 3(b), the System 75, when imported with a cubic zirconium gemstone, is classified in heading 7116, HTSUS, specifically subheading 7116.20.05, HTSUS, which provides for “Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Articles of jewelry: Valued not over \$40 per piece.” The 2016 general, column one rate of duty is 3.3% *ad valorem*.

By application of GRI 1 and GRI 3(b), the System 75, when imported with a faux gemstone made of glass or plastic, is classified in heading 7117, HTSUS, specifically subheading 7117.19.90, which pro-

vides for “Imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other.” The 2016 general, column one rate of duty is 11% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N261965, dated March 27, 2015, is hereby modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



19 CFR PART 177

**REVOCATION OF THREE RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF PLASTIC WATER
DISPENSERS**

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

ACTION: Notice of revocation of three ruling letters and revocation of treatment relating to the tariff classification of plastic water dispensers.

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 concerning tariff classification of plastic water dispensers 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. 45, on November 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 June 12, 2017.

FOR FURTHER INFORMATION CONTACT: Nicholai Daimond, 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. 50, No. 45, on November 9, 2016, proposing to revoke three ruling letters pertaining to the tariff classification of plastic water dispensers. As stated in the proposed notice, this action will cover Headquarters Ruling Letters (“HQ”) H044957, HQ H044959, and HQ H058924, all dated August 2, 2011, 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 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 im-

porter'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 H044957, HQ H044959, and HQ H058924, CBP classified various plastic water dispensers in heading 3926, HTSUS, specifically in subheading 3926.90.99, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other." CBP has reviewed HQ H044957, HQ H044959, and HQ H058924 and has determined the ruling letters to be in error. It is now CBP's position that the plastic water dispensers are properly classified, by operation of GRI 1, in heading 3924, HTSUS, specifically in subheading 3924.10.40, HTSUS, which provides for "Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Tableware and kitchenware: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ H044957, HQ H044959, and HQ H058924 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H278188, 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: January 03, 2017

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H278188

January 03, 2017

CLA-2 OT:RR:CTF:TCM H278188 NCD

CATEGORY: Classification

TARIFF NO.: 3924.10.4000

Ms. LESA R. HUBBARD

J.C. PENNEY PURCHASING CORPORATION

P.O. BOX 10001

DALLAS, TEXAS 75301-0001

RE: Revocation of HQ H044957, HQ H044959, and HQ H058924; Classification of plastic water dispensers

DEAR Ms. HUBBARD:

This is in reference to Headquarters Ruling Letter (HQ) HQ H044957, issued to you by U.S. Customs and Border Protection (CBP) on August 2, 2011. We have reviewed HQ H044957, which involved classification of a “mini” water dispenser 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 HQ H044959 and HQ H058924, both dated August 2, 2011, which similarly involved classification of plastic water dispensers under the HTSUS. As with HQ H044957, we have determined that HQ H044959 and HQ H058924 are incorrect and, for the reasons set forth below, are revoking those rulings.¹

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. 45, on November 9, 2016. No comments were received in response to the notice.

FACTS:

HQ H044957, which revoked NY I82366, dated July 5, 2002, provides the following description of the “mini” water dispenser at issue:

[A] mini dispenser...comprised of a dispensing base and an inverted water bottle that essentially replicates in miniature a typical bottled water dispenser. You indicate that the dispenser is designed to hold and dispense the eight, eight ounce glasses of water that are generally recommended for daily drinking. Both the base and bottle are constructed of plastic and are imported shrink-wrapped and packaged together for retail sale. The base incorporates a hand-operated valve with a spout to control the flow of water from the storage bottle.

¹ We also considered revoking HQ H044956 and HQ H044958, both dated August 2, 2011, in which, respectively, a World Globe Liquor Dispenser consisting of a plastic globe-shaped dispenser with a metal stand and a water tank set consisting of a plastic refillable water bottle, ceramic dispenser pot, and metal stand were classified in heading 3926, HTSUS. However, because the World Globe Liquor Dispenser and water tank set both included items made up of materials other than plastic, they could not be classified in heading 3924, HTSUS, by application of GRI 1. They were therefore appropriately classified in heading 3926, HTSUS, insofar as their plastic water bottle components imparted their essential characters pursuant to GRI 3(b). See HQ H967002, dated February 18, 2005 (classifying plastic sports water bottle in heading 3926).

In HQ H044959, which revoked NY L89010, dated December 12, 2005, the Penguin Water Dispenser at issue was described as follows:

The dispenser is comprised of a dispensing base, which is in the shape of a penguin, and an inverted water bottle. Both the base and bottle are constructed of plastic and are imported packaged together for retail sale. The base incorporates a hand-operated valve with a spout to control the flow of water from the storage bottle.

HQ H058924, which revoked NY R04997, dated October 26, 2006, provides the following description of the water bottle dispenser at issue:

[A] water dispenser ... comprised of a plastic water bottle and a plastic stand. The stand incorporates a hand-operated valve to control the flow of water from the bottle.

In HQ H044957, HQ H044959, and HQ H058924 alike, the various beverage dispensers at issue were classified in subheading 3926.90.99, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.”

ISSUE:

Whether the subject water dispensers are properly classified as tableware of plastic in heading 3924, HTSUS, as “other” articles of plastics in heading 3926, HTSUS, or as table articles of steel in heading 7323.

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:

3924	Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:
3924.10	Tableware and kitchenware:
3924.10.40	Other

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
	Other:
3926.90.99	Other

As a preliminary matter, the subject water dispensers can only be classified in heading 3926, HTSUS, if they are not more specifically classifiable in heading 3924, HTSUS. *See* EN 39.26 (“This heading covers articles, not elsewhere specified or included.”); *Container Store v. United States*, 145 F. Supp. 3d 1331, 1341 (Ct. Int’l Trade 2016) (characterizing heading 3926 as a “broad basket provision” that “only cover[s] articles not specified elsewhere”).

Accordingly, we initially consider heading 3924, HTSUS, which provides, *inter alia*, for tableware of plastics. EN 39.24 states, in pertinent part, as follows:

This heading covers the following articles of plastics:

- (A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes and trays of all kinds, coffee-pots, teapots, sugar bowls, beer mugs, cups, sauce-boats, fruit bowls, cruets, salt cellars, mustard pots, egg-cups, teapot stands, table mats, knife rests, serviette rings, knives, forks and spoons.

Among the above-named exemplars in EN 39.24 of “tableware” are several items, such as soup tureens, salad bowls, and fruit bowls, that are designed for placement upon tabletops and the subsequent dispensation of food or beverages from their stationary positions. Thus, the EN 39.24 makes clear that heading 3924 applies to items designed for such use. *See LeMans Corp. v. United States*, 660 F.3d 1311, 1321 (Fed. Cir. 2011) (stating that use of EN exemplars to clarify the scope of a heading is “entirely proper”). Consistent with this, CBP has previously treated plastic beverage and food dispensers consisting of containers set upon stationary bases as tableware for purposes of heading 3924. For example, in HQ 958719, dated February 26, 1998, we classified a candy dispenser consisting of a top “reservoir” designed to hold and dispense candy, as well as a bottom stand upon which the reservoir was set, in heading 3924. Similarly, in NY R04736, dated September 14, 2006, CBP classified a countertop beverage dispenser made up of a plastic cylindrical beverage container and plastic base in heading 3924.

Here, like the products at issue in HQ 958719 and NY R04736, the entirety of the subject merchandise consists of plastic containers set upon plastic bases, the latter of which dispenses the water stored in the containers by operation of attached valves. Insofar as they bear these features, the subject water dispensers are designed for placement upon a tabletop and for dispensation of the stored water once set. As such, they qualify as tableware within the meaning of heading 3924, HTSUS, and are properly classified in that heading.

Lastly, we note that while the subject merchandise in HQ H044957, HQ H044959, and HQ H058924 was classified in heading 3926 by application of GRI 3(b) in those rulings, we need not apply GRI 3(b) because the merchandise is in fact described in whole by heading 3924, and is therefore classified there by application of GRI 1.

HOLDING:

By application of GRI 1, the subject water dispensers are properly classified in heading 3924, HTSUS. They are specifically classified in subheading 3924.10.4000 HTSUSA (Annotated), which provides for: "Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Tableware and kitchenware: Other." The 2016 column one general rate of duty is 3.5% *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:

Headquarters Ruling Letters H044957, HQ H044959, and HQ H058924, all dated August 2, 2011, 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: Ms. Lorianne Aldinger
Rite Aid Corporation
P.O. Box 3165
Harrisburg, PA 17105

Mr. Todd Stumpf
Stonepath Logistics
1930 6th Avenue
Suite 401
Seattle, WA 98134



**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 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 Customs and Border Protection (CBP) is modifying 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. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify one ruling letter concerning the country of origin marking of certain roasted vegetables was published on September 21, 2016, in Volume 50, Number 38 of the *Customs Bulletin*. One comment was received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 12, 2017.

FOR FURTHER INFORMATION CONTACT: Antonio J. Rivera, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, 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) (hereinafter “Title VI”) became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are informed compliance and shared responsibility. These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and 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, notice proposing to modify one ruling letter concerning the country of origin marking of certain roasted vegetables was published on September 21, 2016, in Volume 50, Number 38 of the *Customs Bulletin*. One comment was received in response to this notice.

As stated in the proposed notice, although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) N260916, dated February 18, 2015, 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 ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the 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 treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In NY N260916, CBP determined, in relevant part, that the roasted vegetables product is 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.

Based on our recent review of NY N260916, it is now CBP's position that the NAFTA Marking Rules only apply to the individually quick frozen vegetables imported from Mexico, while the individually quick frozen vegetables imported from non-NAFTA countries that are mixed with the individually quick frozen vegetables 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 individu-

ally quick frozen vegetables at issue, the roasted vegetables product is not exempt from country of origin marking.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N260916 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper country of origin marking of such roasted vegetables products, according to the analysis contained in the attached Headquarters Ruling Letter (“HQ”) H270451. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. One comment was received in response to this notice, and it is addressed in the attached modified ruling letter.

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

Dated: January 04, 2017

IEVA K. O’ROURKE

For

MYLES B. HARMON

Director

Commercial and Trade Facilitation Division

Attachment

HQ H270451

January 04, 2017

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, other than the United States, 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.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), notice proposing to modify NY N260916 was published on September 21, 2016, in Vol. 50, No. 38, of the Customs Bulletin. CBP received one comment in response to this notice.

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 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.

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

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.

origin for such vegetable preparations will be the country where the vegetable originated prior to its preparation by freezing and operations incidental to freezing.

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

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).

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 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 H243328, dated August 19, 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).

CBP received one comment in response to the notice to modify NY N260916. The commenter states the NAFTA Marking Rules must be applied to determine the country of origin of the IQF and ingredients from non-NAFTA countries because such are processed into the RMV in the United States, a NAFTA country. The commenter cites to HQ 561749, dated November 8, 2000, to show that CBP applied the NAFTA Marking Rules only to determine whether mushrooms from Chile originated in Canada. The commenter also cites to HQ H243329, HQ H243328, and NY J87490, dated July 31, 2003, to note that CBP applied the “FTA Marking Rules to determine the origin of an item manufactured in Canada and Korea from non-originating goods.” The commenter argues that “[n]othing in the NAFTA suggests that CBP is only to apply the NAFTA Marking Rules to determine whether an article is a good of a NAFTA country other than the United States.” The commenter further differentiates this case from HQ 561208 because HQ 561208 did not analyze whether the NAFTA Marking Rules should be applied to the items from non-NAFTA countries and applying the NAFTA Marking Rules in HQ 561208 would not result in a determination that the item was a good of a NAFTA country. The commenter also cites to NY N235705, dated December 17, 2012; and HQ 557994, dated October 25, 1994, to show that CBP applied the NAFTA Marking Rules to imported items further processed in the United States. The commenter concludes that the RMV is a product of the United States by applying the NAFTA Marking Rules to both the IQFs and ingredients from NAFTA and non-NAFTA countries. In support, the

commenter argues that the note to Chapter 20, HTSUS, does not apply because the IQFs are already frozen before entering the United States and kept frozen in freezing facilities in the United States, and thus they could not have been prepared merely by freezing, or operations incidental to freezing, while in the United States.

In response, we note the following portions from 19 C.F.R. § 134.1(d):

The “ultimate purchaser” is generally the last person in the United States who will receive the article in the form in which it was imported; however, for a good of a NAFTA country, the “ultimate purchaser” is the last person in the United States who purchases the good in the form in which it was imported. It is not feasible to state who will be the “ultimate purchaser” in every circumstance. The following examples may be helpful:

(1) If an imported article will be used in manufacture, the manufacturer may be the “ultimate purchaser” if he subjects the imported article to a process which results in a substantial transformation of the article, even though the process may not result in a new or different article, or for a good of a NAFTA country, a process which results in one of the changes prescribed in the NAFTA Marking Rules as effecting a change in the article’s country of origin.

(2) If the manufacturing process is merely a minor one which leaves the identity of the imported article intact, the consumer or user of the article, who obtains the article after the processing, will be regarded as the “ultimate purchaser.” With respect to a good of a NAFTA country, if the manufacturing process does not result in one of the changes prescribed in the NAFTA Marking Rules as effecting a change in the article’s country of origin, the consumer who purchases the article after processing will be regarded as the ultimate purchaser.

As previously discussed, marking is required for the purpose of indicating this marking to the ultimate purchaser in the United States. As 19 C.F.R. § 134.1(d) illustrates for purposes of determining the ultimate purchaser, when articles are imported into the United States and subject to further processing in the United States, a determination needs to be made as to whether or not that imported article will be considered a good of a NAFTA country prior to the processing that occurs in the United States. That is, with non-NAFTA materials we determine whether the processing was substantial or not in order to determine whether the manufacturer or consumer is the ultimate purchaser; while with NAFTA materials we look to the NAFTA Marking Rules to determine whether the processing satisfied the rules or not in order to determine whether the manufacturer or consumer is the ultimate purchaser. In this case, the process of blending the IQFs and ingredients from non-NAFTA countries in the United States is not a substantial transformation, eliminating the manufacturer as the ultimate purchaser. Instead, we find the blending process in the United States to be minor, rendering the consumer the ultimate purchaser based on the substantial transformation test. Moreover, CBP has consistently applied the substantial transformation test to determine whether non-NAFTA materials imported directly into the United States become products of the United States as a result of further processing in the United States. *See* HQ H259326, dated April 13, 2015; HQ H253522, dated February 5, 2015; HQ H213362, dated August 17, 2012; and, HQ 563286, dated August 25, 2005. Permitting the commenter’s rationale

and applying the NAFTA Marking Rules to this case would contradict CBP's consistent use of the substantial transformation test for these fact patterns (i.e., non-NAFTA materials imported directly to, and further processed in, the United States).

Furthermore, we disagree with the commenter's arguments based on HQ 561749, HQ H243329, NY J87490, NY N235705, and HQ 557994. In these cases, CBP applied the NAFTA Marking Rules because the materials were from, or underwent processing in, Canada prior to importation into the United States. The fact that some of these materials were then further processed in the United States after importation did not dictate application of the NAFTA Marking Rules, particularly since the imported materials themselves were already considered materials of a NAFTA country (Canada) prior to any processing in the United States. *See generally* HQ H264609, dated June 30, 2016 (explaining application of the NAFTA Marking Rules with regard to materials imported from a NAFTA country into the United States). Furthermore, we disagree with the commenter's arguments based on HQ H243328. Like the NAFTA cases above, the reason for the particular use of origin rules in HQ H243328 is that preference was claimed under the UKFTA for an article that was imported from a member country into the United States. However, we note that our use of HQ H243328 above is only to interpret "incidental to the process" and not to illustrate the country of origin marking rules. Furthermore, in contrast to HQ 561749, HQ H243329, NY J87490, NY N235705, HQ 557994, and HQ H243328, we find that HQ 561208 is directly applicable to the case at hand because it considers the manner in which a product should be marked after blending imported articles from NAFTA and non-NAFTA countries in the United States. That HQ 561208 did not analyze whether the NAFTA Marking Rules should be applied to the items from non-NAFTA countries is precisely the assessment that should have been made when articles are imported into the United States from non-NAFTA countries.

To this extent, we only apply the NAFTA Marking Rules to the IQFs imported from Mexico into the United States, and we further disagree with the commenter's argument that the note to Chapter 20, HTSUS, does not apply. The commenter states that the IQFs were never thawed and re-frozen in the United States because the IQFs were already frozen and kept frozen in freezing facilities throughout the processing in the United States. Because the IQFs are in a constant frozen state throughout the process, the commenter states that the blending with oil and other seasonings cannot be considered a process incidental to freezing, and more specifically that the oil and seasonings are not prepared or preserved through the freezing process. Assuming, as the commenter implies, that the oil and seasonings are not frozen while blended with the IQFs at facilities in the United States which are kept at freezing temperatures to ensure that the IQFs do not thaw, this does not preclude the conclusion that the blending with oil and seasoning is not a process that is incidental to the process of freezing. Here, the blending is specifically done with freezing temperatures in the United States for the purpose of maintaining the frozen state of the IQFs. That is, the IQFs are literally preserved in their frozen state while blended with oil and seasonings through the process of using facilities in the United States that are kept frozen. While the oil and seasoning may not have been prepared through the freezing process, these are not the goods subject to the NAFTA Marking Rules. Instead, the IQFs from Mexico are the imported goods subject to these

rules, and the processing to convert these goods into the RMV requires preserving them in their frozen state using freezing temperatures. Moreover, we find the process of blending with oils and seasoning constitutes processing that is incidental to the process of preparation or preservation by roasting, packaging, or freezing as has been previously noted in HQ H243329 with regard to processes such as salting and mixing with other ingredients.

Given the foregoing, the country of origin of the Mexican IQF's 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

AGENCY INFORMATION COLLECTION ACTIVITIES:

Documents Required Aboard Private Aircraft

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

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act

of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than May 30, 2017) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0058 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email:* Submit comments to: CBP_PRA@cbp.dhs.gov.

(2) *Mail:* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP Web site at www.cbp.gov/.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Documents Required Aboard Private Aircraft.

OMB Number: 1651-0058.

Form Number: None.

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

Type of Review: Extension (without change).

Affected Public: Individuals.

Abstract: In accordance with 19 CFR 122.27(c), a commander of a private aircraft arriving in the U.S. must present several documents to CBP officers for inspection. These documents include: (1) A pilot certificate/license; (2) a medical certificate; and (3) a certificate of registration. The information on these documents is used by CBP officers as an essential part of the inspection process for private aircraft arriving from a foreign country. These requirements are authorized by 19 U.S.C. 1433, as amended by Public Law 99-570.

Estimated Number of Respondents: 120,000.

Estimated Number of Annual Responses: 120,000.

Estimated Time per Response: 1 minute.

Estimated Total Annual Burden Hours: 1,992.

Dated: March 24, 2017.

SETH RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, March 29, 2017 (82 FR 15530)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:****Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement**

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

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act

of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than May 30, 2017 to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0051 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email:* Submit comments to: *CBP_PRA@cbp.dhs.gov*.

(2) *Mail:* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP Web site at *www.cbp.gov* /.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement.

OMB Number: 1651-0051.

Form Number: None.

Current Actions: CBP proposes to extend the expiration date of this information collection. There is no change to the burden hours, the information collected, or to the record keeping requirements.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit institutions.

Abstract: In accordance with 19 CFR 146.4 and 146.25 foreign trade zone (FTZ) operators are required to account for zone merchandise admitted, stored, manipulated and removed from FTZs. FTZ operators must prepare a reconciliation report within 90 days after the end of the zone year for a spot check or audit by CBP. In addition, within 10 working days after the annual reconciliation, FTZ operators must submit to the CBP port director a letter signed by the operator certifying that the annual reconciliation has been prepared and is available for CBP review and is accurate. These requirements are authorized by Foreign Trade Zones Act, as amended (Pub. L. 104-201, 19 U.S.C. 81a *et seq.*)

Record Keeping Requirements Under 19 CFR 146.4

Estimated Number of Respondents: 276.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 207.

Certification Letter Under 19 CFR 146.25

Estimated Number of Respondents: 276.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 91.

Dated: March 24, 2017.

SETH RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

AGENCY INFORMATION COLLECTION ACTIVITIES:**e-Allegations Submission**

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

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than May 30, 2017 to be assured of consideration).

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0131 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: CBP_PRA@cbp.dhs.gov.

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP Web site at www.cbp.gov/.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the

burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: e-Allegations Submission.

OMB Number: 1651-0131.

Form Number: None.

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

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals.

Abstract: In the interest of detecting trade violations to customs laws, Customs and Border Protection (CBP) established the e-Allegations Web site to provide a means for concerned members of the trade community to confidentially report violations to CBP. The e-Allegations site allows the public to submit pertinent information that assists CBP in its decision whether or not to pursue the alleged violations by initiating an investigation. The information collected includes the name, phone number and email address of the member of the trade community reporting the alleged violation. It also includes a description of the alleged violation, and the name and address of the potential violators. The e-Allegations Web site is accessible at <https://apps.cbp.gov/eallegations/>.

Estimated Number of Respondents: 1,600.

Estimated Number of Total Annual Responses: 1,600.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 400.

Dated: March 24, 2017.

SETH RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

AGENCY INFORMATION COLLECTION ACTIVITIES:**Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release**

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

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than May 30, 2017) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0013 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email:* Submit comments to: *CBP_PRA@cbp.dhs.gov*.

(2) *Mail:* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP Web site at *www.cbp.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the

burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release.

OMB Number: 1651-0013.

Form Number: CBP Form 7523.

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

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: CBP Form 7523, *Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release*, is used by carriers and importers as a manifest for the entry of merchandise free of duty under certain conditions. CBP Form 7523 is also used by carriers to show that articles being imported are to be released to the importer or consignee, and as an inward foreign manifest for a vehicle or a vessel of less than 5 net tons arriving in the United States from Canada or Mexico with merchandise conditionally free of duty. CBP uses this form to authorize the entry of such merchandise. CBP Form 7523 is authorized by 19 U.S.C. 1433, 1484 and 1498. It is provided for by 19 CFR 123.4 and 19 CFR 143.23. This form is accessible at <https://www.cbp.gov/newsroom/publications/forms?title=7523&=Apply>.

Estimated Number of Respondents: 4,950.

Estimated Number of Responses per Respondent: 20.

Estimated Total Annual Responses: 99,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 8,247.

Dated: March 24, 2017.

SETH RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.