U.S. Customs and Border Protection

19 CFR PART 177

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN OF COMPUTER SERVER CABINETS

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

ACTION: Notice of modification of one ruling letter and of revocation of treatment relating to the country of origin of computer server cabinets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning the country of origin of computer server cabinets 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. 5, No. 8, on March 4, 2020. 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EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 1, 2024.

FOR FURTHER INFORMATION CONTACT: Joy Marie Virga, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–1511.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with 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 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 54, No. 8, on March 4, 2020, proposing to modify one ruling letter pertaining to the country of origin of computer server cabinets. 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 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 the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In New York Ruling Letter ("NY") N303338, dated March 20, 2019, CBP found that the server cabinet, classified under subheading 9403.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS") was not subject to additional duties as provided for under 9903.88.03, HTSUS, because it was not a product of China. CBP has reviewed NY N303338 and has determined the ruling letter to be in error. It is now CBP's position that the server cabinet, classified under subheading 9403.10.00, HTSUS, is subject to the additional duties in one of the proposed manufacturing scenarios as it is a product of China, enumerated in U.S. Note 20(f), Chapter 99, HTSUS.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N303338 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H305371, 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*.

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H305371

July 12, 2024
OT:RR:CTF:VS H305371 JMV
CATEGORY: Origin

LISA MURRIN
EXPEDITORS TRADEWIN, LLC
3 TECHNOLOGY DRIVE
PEABODY, MA 01960

RE: Modification of NY N303338, dated March 20, 2019; Section 301 Measures

DEAR MS. MURRIN:

This is in reference to New York Ruling Letter ("NY") N303338, issued to Expeditors Tradewin, LLC on March 20, 2019. The request asked for a determination of the country of origin and applicability of Section 301 trade remedies of a computer server cabinet. In NY N303338, U.S. Customs and Border Protection ("CBP") found that the country of origin of the computer server cabinet is Mexico and that the cabinet is not subject to Section 301 trade remedies as provided for under 9903.88.03, Harmonized Tariff Schedule of the United States ("HTSUS").

Upon additional review, we have found NY N303338 to be incorrect with respect to the application of trade remedies under Section 301 as the decision erroneously used the NAFTA Marking Rules in 19 CFR Part 102, and the North American Free Trade Agreement preferential tariff treatment rules of origin in General Note 12, HTSUS, in its analysis. For the reasons set forth below, with respect to the applicability of Section 301 duties to subheading 9403.10.00, HTSUS, we hereby modify NY N303338. The tariff classification of the computer server cabinet under subheading 9403.10.00, HTSUS, as determined in NY N303338, is unaffected.

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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed action was published on March 4, 2020, in Volume 54, Number 8, of the Customs Bulletin. No comments were received in response to this notice.

FACTS:

NY N303338 concerned the Foxconn "Computer Server Cabinet," which is a floor-standing moveable steel storage cabinet on four swivel castors designed to secure a computer server and hardware. The cabinet measures approximately 44" in length, 24" in width, and 80" in height. NY N303338 found that the applicable subheading for the cabinet is 9403.10.00, HTSUS, which provides for "Other furniture and parts thereof: Metal furniture of a kind used in offices: Other."

NY N303338 also considered the country of origin of the cabinet under two manufacturing scenarios:

Scenario One:

The assembly of the server cabinet includes approximately 85–90 parts. In Mexico, the six posts, base and top subassembly of Chinese origin are welded together to form the main frame. The welds are then polished, and the frame

is cleaned, painted and inspected. The side panels of Mexican origin, the castors, 0.5U blank, patch panel, Mylar, power shelf support plate, clips, busbar, and brackets are then assembled to the frame. This process, including welding, painting and assembly, takes 90 minutes to complete. The welding and painting processes require a degree of skill, and are performed by skilled technicians. The finished server cabinet is then packaged. You provided a Bill of Materials for scenario that shows 33% of the value of the materials is of Mexican origin one. When labor is included, the parts and labor in Mexico make up 60% of the finished cabinet.

Under this first scenario, the parts that are of Mexican origin are the side panels, screws, nuts, washers, and a leveler foot.

Scenario Two:

The assembly of the server cabinet includes approximately 85–90 parts. The assembly process for scenario two begins with the production of the six metal posts used to construct the main frame. The manufacturing process for the front and rear posts includes blanking/punching, riveting nut, spot welding and bending. The two middle posts are formed by blanking/punching and bending. The six posts, base and top subassembly are then welded together to form the main frame. The welds are then polished, and the frame is cleaned, painted and inspected. The side panels, castors, 0.5U blank, patch panel, Mylar, power shelf support plate, clips, busbar, and brackets are then installed to finish the server cabinet. The assembly process of the server cabinet (including producing six posts, welding, painting, and assembly) takes 140 minutes to complete. Fifty-three percent of the value of the materials is of Mexican origin. The parts, welding, painting, and labor in Mexico make up 70% of the overall value of the finished good.

Under this second scenario, the parts of Mexican origin are the left and right front posts, left and right center posts, left and right rear posts, screws and side panels.

Since Mexico is involved in the processing of the cabinet, NY N303338 considered the origin of the cabinet under the North American Free Trade Agreement ("NAFTA") rules of origin. However, NY N303338 stated, "the cabinet is not subject to the Section 301 trade remedies as provided for under 9903.88.03, HTSUS" without considering whether the parts from China underwent a substantial transformation to become a product of Mexico.

ISSUE:

Whether the computer server cabinet is subject to Section 301 duties under 9903.88.03, HTSUS.

LAW AND ANALYSIS:

When determining the country of origin for purposes of applying current trade remedies under Section 301, the substantial transformation analysis is applicable. The test for determining whether a substantial transformation will occur is whether an article emerges from a process with a new name, character, or use different from that possessed by the article prior to processing. *See Texas Instruments Inc. v. United States*, 69 C.C.P.A. 151 (1982). This determination is based on the totality of the evidence. *See National Hand Tool Corp. v. United States*, 16 C.I.T. 308 (1992), *aff'd*, 989 F.2d 1201 (Fed. Cir. 1993).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *See* Belcrest Linens v. United States, 6 CIT 204 (1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the actual manufacturing process may be relevant when determining whether a substantial transformation has occurred. No one factor is determinative.

In *Carlson Furniture Industries v. United States*, 65 Cust. Ct. 474 (1970), the U.S. Customs Court ruled that U.S. operations on imported chair parts constituted a substantial transformation, resulting in the creation of a new article of commerce. The court determined that because the importer had to perform additional work on the imported chair parts and add materials to create a functional article of commerce, the imported parts were not chairs in an unassembled or knocked-down condition. *Id.* at 478. After importation, the importer assembled, fitted, and glued the wooden parts together, inserted steel pins into the key joints, cut the legs to length and leveled them, and in some instances, upholstered the chairs and fitted the legs with glides and casters. Consequently, the court found that the operations were substantial in nature, and that the processing performed in the United States constituted more than the mere assembly of finished parts. *Id.*

CBP applied the standard established in *Carlson Furniture* in Headquarters Ruling Letter ("HQ") W563456, dated July 31, 2006. In that case, CBP found that certain office chairs assembled in the United States were products of the United States for purposes of U.S. government procurement. The office chairs were assembled from seventy domestic and foreign components. The imported components alone were insufficient to create the finished chairs and substantial additional work and materials were added to the imported components in the United States to produce the finished chairs. In finding that the imported parts were substantially transformed in the United States, CBP stated that the components lost their individual identities when they became part of the chair as a result of the U.S. assembly operations and combination with U.S. components.

Similarly, in HQ 561258, dated April 15, 1999, CBP determined that the assembly of numerous imported workstation components, such as leg brackets, drawer units, and panels, with a U.S.-origin work surface constituted a substantial transformation of the parts into a finished workstation. CBP held that the imported components lost their identity when they were assembled together to form a workstation and classified the finished piece of furniture as U.S.-origin merchandise.

Here, the assembly in scenario one is simple assembly and is not enough to effect a substantial transformation. All the parts that are imported into Mexico are in a prefabricated form with a predetermined use. Additionally, unlike HQ W563456, the components of Chinese origin make up the entire frame of the cabinet and a large portion of the final product. Only the side panels, screws, nuts, washers, and leveler feet, which are all minor parts, are

of Mexican origin. Therefore, the computer server cabinet remains a product of China and is subject to Section 301 duties.

However, the processing in scenario two is much more significant because a number of the fundamental components, such as the six metal posts, are created in Mexico. Fabrication of the metal posts is more than mere assembly as it consists of blanking and punching, riveting, spot welding and bending. It is also noteworthy that the Mexican originating components make up most of the value of the materials, at 53 %, and when Mexican labor is included, the value increases to 70%. Therefore, the processing in Mexico under scenario two constitutes a substantial transformation, and the country of origin of the computer server cabinet in scenario two is Mexico.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 9403.10.00, HTSUS, unless specifically excluded, are subject to an additional 25 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.03, in addition to subheading 9403.10.00, HTSUS, listed above.

The HTSUS is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Note cited above and the applicable Chapter 99 subheading. For background information regarding the trade remedy initiated pursuant to Section 301 of the Trade Act of 1974, you may refer to the relevant parts of the USTR and CBP websites, which are available at https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions and https://www.cbp.gov/trade/remedies/301-certain-products-china respectively.

HOLDING:

Based on the information presented, under scenario one, the origin of the computer server cabinet described in NY N303338 is China and therefore, it is subject to Section 301 duties. Under scenario two, the origin of the computer server cabinet is Mexico and therefore, it is not subject to Section 301 duties. The analysis applying the NAFTA Marking Rules in 19 CFR Part 102 is not applicable to the question of whether the computer server cabinet is subject to Section 301 duties under 9903.88.03, HTSUS, and NY N303338 is hereby MODIFIED 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,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

19 CFR PART 177

REVOCATION OF SEVEN RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF GLASS CONTAINERS IMPORTED WITH LIDS

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

ACTION: Notice of revocation of seven ruling letters, and revocation of treatment relating to the tariff classification of glass containers imported with lids.

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 six ruling letters concerning the tariff classification of glass containers imported with lids 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. 58, No. 07, on February 21, 2024 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 October 1, 2024.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with 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 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 58, No. 07, on February 21, 2024, proposing to revoke seven ruling letters pertaining to the classification of glass containers. 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 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 the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In NY N036984, NY N110556, NY N094595, NY N266863, and NY N260440, CBP classified glass containers with lids in heading 9405, HTSUS, specifically in subheading 9405.50.40, HTSUS, which provides for "Luminaires and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included: Non-electrical luminaires and lighting fittings: Other: Other." In HQ 950426, and HQ 957982, CBP classified the glassware at issue in heading 7013, HTSUS, subheading 7013.99.50, HTSUS, which provides for "Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): Other glassware: Other: Votive-candle holders." CBP has reviewed NY N036984, NY N110556, NY N094595, NY N266863, NY N260440, HQ 950426, and HQ 957982 and has determined the ruling letters to be in error. It is now CBP's position that the subject merchandise is properly classified, in heading 7010, HTSUS, specifically in subheading 7010.90.50, HTSUS, which provides for "Carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass: Other: Other containers (with or without their closures)."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N036984, NY N110556, NY N094595, NY N266863, NY N260440, HQ 950426, and HQ 957982, and is revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ

H285657, 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*.

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H285657

July 11, 2024
OT:RR:CTF:CPMMA H285657 CKG
CATEGORY: Classification
TARIFF NO.: 7010.90.50

MR. WILLIAM BALDWIN
JOEL R. JUNKER & ASSOCIATES
435 MARTIN ST., STE. 3060
BLAINE, WA 98230

RE: Revocation of NY N036984, NY N110556, NY N094595, NY N266863, NY N260440, HQ 950426, and HQ 957982; tariff classification of glassware imported with lid; household decorative article.

DEAR MR. BALDWIN:

This ruling is in reference to New York Ruling Letter (NY) N036984, issued to Olympic Mountain and Marine Products on September 25, 2008, regarding the classification of an article identified as a "Dome-Top Candle Jar" under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N036984, U.S. Customs and Border Protection (CBP) classified the subject article as a candleholder under subheading 9405.50.40, HTSUS, which provides for, in pertinent part, other non-electric lamps and lighting fittings. Since the issuance of that ruling, we have reviewed the classification of substantially identical articles and have determined that NY N036984 is in error.

In addition, CBP has also reviewed NY N110556, dated July 17, 2010, NY N094595, NY N266863, and NY N260440, which involved the classification of substantially identical glassware under subheading 9405.50.40, HTSUS, as well as Headquarter Ruling Letter (HQ) 950426 and HQ 957982, which involved the classification of glass containers as votive candle holders in heading 7013 (subheading 7013.99.50), HTSUS. As with NY N036984, we have determined that the tariff classification of the subject merchandise in these rulings is incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NYN036984 and NY N110556 was published on July 11, 2018, in Volume 52, Number 28 of the *Customs Bulletin*. Two comments were received in response to this notice, and are addressed herein

Since the publication of the notice of proposed revocation in 2018, CBP further determined that NY N094595, NY N266863, NY N260440, HQ 950426, and HQ 957982 are also incorrect and should be revoked. Notice proposing to revoke NY N036984, NY N094595, NY N266863, NY N260440, NY N110556, HQ 950426, and HQ 957982 was published on February 21, 2024, in Volume 58, Number 07 of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

In HQ 957982, CBP classified two styles of cylindrical glass vessels in subheading 7013.99.35, HTSUS, as votive candle holders. The style at issue is approximately 8" tall and 2" in diameter, and made from low quality clear glass, and featuring a fired lip, mold seams and knurling on the bottom. The

estimated cost is between 15 and 20 cents per container. It is imported into the United States empty and then filled with a wick and candle wax.

In HQ 950426, CBP classified cylindrical glass containers in subheading 7013.99.35, HTSUS, as votive candle holders. The containers measure approximately 8 1/2 inches in height and 2 11/16 inches in diameter and are imported into the United States empty and then filled with candle wax. In some cases, the glass containers are silk screened before they are filled with candle wax. The protestant, "Candle Corporation of America", states that the glass containers are designed and used exclusively as a candle container.

In NY N110556, CBP classified "PDQ Mixed Tumblers" in heading 8405, HTSUS. The products are glass containers measuring approximately 3 inches high with an outside diameter of 2¾ inches, of transparent frosted glass, designed for the production of filled candles." They are stated to be in compliance with ASTM F2179, a standard for glass containers that are produced for use as candle vessels.

In NY N036984, CBP classified a "Dome-top Candle Jar" in heading 9405, HTSUS. The jar was described as a clear glass article with a floral frosted design, designed for a filled candle and measuring approximately 4 inches tall with an inside diameter of 3 inches. The jar is flared approximately ½ inch around the base. The candle jar is imported with a frosted glass lid, which is fitted with a plastic seal designed to contain the fragrance from a scented candle. Once imported, the candle jar and lid are transported directly to a packing plant where it is filled with candle wax and a wick, packaged and labeled for retail sale. The article is stated to be in compliance with ASTM F2179.

In NY N266863, the items at issue are as follows: Item HG 1030, which is a 5 ounce glass vessel measuring approximately 2.375 inches tall with a diameter of 3.25 inches; and 3KG, which is a 1.25 ounce glass candle vessel. Upon importation into the United States, the candle holders are sent to the customer's facility where they will be filled with wax and wick, fitted with a matching lid and packaged for retail sale. As imported, this candle holders are disposable vessels made of thin, clear glass and are stated to be in compliance with ASTM F2179.

In NY N260440, CBP classified the following in heading 9405, HTSUS: Item number E3041, a 14.5 oz. glass candle holder. The article is a glass jar candle holder made of thin, clear glass, measuring approximately 3.5 inches high with an outside diameter of 4 inches. Upon importation into the United States, the candle holders are sent to the customer's facility where they will be filled with wax and wick and fitted with a matching lid and packaged for retail sale. This item complies with ASTM F2179.

The style at issue in NY N094595 is a cuplike container made of thin, clear glass and measuring approximately 2 ½ inches high with an outside diameter of 2 ¾ inches. The container is designed to be filled with candle wax. Upon importation into the United States by ARC International, the candle vessels are sent to the customer's facility and filled with wax and a wick and packaged for retail sale. The item complies with ASTM F2179.

ISSUE:

Whether the subject articles are classifiable as other non-electrical lamps and lighting fittings of subheading 9405.50.40, HTSUS, other glass containers for the conveyance or packing of goods under subheading 7010.90.50, HTSUS, or as other glassware of a kind used for indoor decoration under subheading 7013.99.50, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods will 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 will then be applied in order.

The 2024 tariff provisions under consideration in this ruling are set forth below:

7010	Carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods;
7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
7013.37	Other drinking glasses, other than of glass-ceramics:
7013.41	Glassware of a kind used for table (other than drinking glasses) or kitchen purposes, other than of glass-ceramics:
7013.99	Other glassware: Other:
7013.99.35	Votive-candle holders
7013.99.50	Other: Other: Valued over $0.30 but not over $3 each
	* * * *
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included;
	* * * *

Note 1(e) to Chapter 70, HTSUS, excludes "[L]amps or lighting fittings, illuminated signs, illuminated name-plates or the like, having a permanently fixed light source, or parts thereof of heading 9405."

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 94.05 provides, in pertinent part:

(I) LAMPS AND LIGHTING FITTINGS, NOT ELSEWHERE SPECIFIED OR INCLUDED

Lamps and lighting fittings of this group can be constituted of any material (**excluding** those materials described in Note 1 to Chapter 71) and use any source of light (candles, oil, petrol, paraffin (or kerosene), gas, acetylene, electricity, etc.). Electrical lamps and lighting fittings of this heading may be equipped with lamp-holders, switches, flex and plugs, transformers, etc., or, as in the case of fluorescent strip fixtures, a starter or a ballast.

This heading covers in particular:

(1) **Lamps and lighting fittings normally used for the illumination of rooms**, e.g.: hanging lamps; bowl lamps; ceiling lamps; chandeliers; wall lamps; standard lamps; table lamps; bedside lamps; desk lamps; night lamps; water-tight lamps.

...

(6) **Candelabra, candlesticks, candle brackets, e.g., for pianos**.

* * * * *

As Note 1(e) to Chapter 70, HTSUS, excludes articles of heading 9405, HTSUS, the initial issue is whether the subject articles are lamps or lighting fittings classifiable in heading 9405, HTSUS.

In *Pomeroy Collection, Ltd. v. United States*, 893 F. Supp. 2d 1269, at 1281 (Ct. Int'l. Trade 2013) ("*Pomeroy IV*"), the Court of International Trade (CIT) held:

> As an *eo nomine* tariff provision, heading 9405 generally encompasses all forms of the article. *See*, *e.g.*, *Pomeroy* II, 32 CIT at 549, 559 F. Supp. 2d at 1396 (concluding that heading 9405 "is clearly identifiable as an *eo nomine* provision," not a principal use provision); Pl.'s Brief at 6, 15, 16 (stating that heading 9405 is *eo nomine* provision); Def.'s Reply Brief at 5 (same); *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999) (explaining that *eo nomine* provisions ordinarily cover all forms of named article).[1]

In *Pomeroy IV*, the CIT cited to various dictionary definitions to determine the scope of the legal text of heading 9405, HTSUS. Citing *Merriam-Webster's Collegiate Dictionary* (10th edition, 1997), the court noted:

> [A] 'lamp' is defined as 'any of various devices for producing light or sometimes heat'... '[L]ighting' is synonymous with 'illumination,' and 'fitting' is defined as 'a small often standardized part,' *e.g.*, an electrical fitting... Dictionary terms are similarly instructive in interpreting terms such as 'candlestick' and 'candelabra.' One dictionary defines 'candlestick' as 'a holder with a socket for a candle' and defines 'candelabra' as a 'branched candlestick or lamp with several lamps'... [A]nother dictionary defines a 'candlestick as 'a holder with a cup or spike for a candle' and 'candelabrum' as 'a large decorative candlestick having several arms or branches.

Id. at 1283.

[1] "*Pomeroy* II" refers to *Pomeroy Collection, Ltd., v. United States*, 32 CIT at 549, 559 F. Supp. 2d at 1396 (Fed. Cir. 2008).

EN 94.05 lists candelabras, candlesticks, or candle brackets as exemplars of candle holders classified as light fixtures of heading 9405. As discussed by the CIT in *Pomeroy*, these exemplars possess physical features that would serve to hold a candle securely in place such as sockets, cups or spikes. With respect to NY N036984 and NY N110556, we conclude that the instant glass articles do not possess the features required for candle holders of heading 9405, HTSUS - that is, a cup, spike, socket or similar feature that would secure a candle in place. When filled with molten wax, the instant glasses would therefore hold the candle securely in place. However, without a feature specific to candle holders such as those discussed in *Pomeroy*, the instant merchandise is not *eo nomine* provided for in heading 9405, HTSUS.

The instant glass containers possess no particular distinguishing feature that would establish their identity or use as candle holders as opposed to other ordinary glass containers used as conveyance articles or in the home for storage or as drinking glasses. Although the composition of the glasses is not specified in the rulings at issue, the ASTM standard F2179 cited in support of classification in heading 9405, HTSUS, covers annealed soda-lime-silicate glass containers. Annealed soda-lime glass construction is typical of ordinary houseware. *See* https://www.sciencedirect.com/topics/chemistry/soda-lime-glass (last visited, April 6, 2023).

ASTM F2179 describes a method of determining the stress tolerance of annealed glass. Most container glass—drinking glasses, vases, pitchers, etc.—is annealed (a process of slowly cooling hot glass after formation to relieve residual stress introduced during manufacturing), and most container glass is manufactured to the same standard as specified in ASTM F2179 - i.e., to a tempering number of 4 or below. The most relevant factors pertaining to thermal tolerance of glass are the composition, thickness and whether the glass is tempered. In particular, borosilicate glass (which contains boron trioxide) is known to have superior thermal shock resistance as compared to ordinary soda-lime glass. There is no indication that the instant glass containers are constructed of other than ordinary soda-lime glass or that they have been subjected to an additional tempering process.

Therefore, we find that the instant products do not possess any characteristics unique to light fixtures of heading 9405, HTSUS. As the CIT concluded in *Pomeroy*,

> "At the time of importation, none of the articles here contained candles. Therefore, at the time of importation, none of the articles were capable of providing illumination, as contemplated by heading 9405. Nor do any of the articles have physical features that are specifically designed to hold a candle in place – no "sockets," "cups," or "spikes," or anything else remotely akin to the specific features of the items (candelabra, candlesticks, and candle brackets) listed in the Explanatory Notes to heading 9405...the term "candle holder" is synonymous with "candlestick" – an article that not only holds a candle, but holds it securely. If it were otherwise, *any* relatively flat, non-slippery object could at least theoretically be referred to as a "candle holder" for flat-bottomed candles, and thus would be *prima facie* classifiable under heading 9405 – a patently absurd result..."

The court also noted that, as *Pomeroy* had admitted, all of the glass articles at issue therein "can readily be used to hold a wide range of items, including, for example, "colored glass, fruit, or perhaps a wine bottle.'" *See Pomeroy III*

at 1282–1283. For these reasons, the conclusion of the CIT in *Pomeroy* applies also to the instant merchandise. Similarly, the glass articles the subject of NY N266863, NY N260440, NY N266863, HQ 950426, and HQ 957982 are not *prima facie* classifiable as a lamp or lighting fitting of heading 9405, HTSUS.

As the subject articles are not classified in heading 9405, HTSUS, the next determination is whether they are described in Chapter 70. Heading 7013, HTSUS, provides for "[G]lassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)." As the heading text to 7013 specifically excludes glass articles classifiable in heading 7010, HTSUS, we must first consider whether the instant articles are "of heading 7010."

As heading 7010, HTSUS, provides for containers "of a kind used" for the conveyance or packing of goods, it is a "principal use" provision and a classification analysis utilizing Additional U.S. Rule of Interpretation (AUSRI) 1(a) is appropriate. AUSRI 1(a) provides for classification "in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong," and specifies that "the controlling use is the principal use." The CIT has provided indicative factors to apply when determining whether particular merchandise falls within a class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. *See Kraft, Inc, v. United States*, USITR, 16 CIT 483 (June 24, 1992); *G. Heilman Brewing Co. v. United States*, USITR, 14 CIT 614 (Sept. 6, 1990); and *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), *cert. denied*, 429 U.S. 979.

Additionally, in *Primal Lite v. United States*, 15 F. Supp. 2d 915 (CIT 1998); *aff'd* 182 F. 3d 1362 (Fed. Cir. 1999), the CIT, in discussing principal use, held that "it is the use of the class or kind of goods being imported that is controlling, rather than the specific use to which the importation itself is put," i.e., goods need not be actually used in the same manner as the entire class or kind in order to recognized as part of that class or kind. CBP has repeatedly upheld this analysis by defining principal use as the use of the class or kind of the merchandise at issue that exceeds any other use.

The EN to 70.10 provides that the heading "covers all glass containers of the kinds commonly used commercially for the conveyance or packing of liquids or of solid products (powders, granules, etc.). The 2017 online Oxford Dictionary defines the term "conveyance" to mean, in pertinent part, "the action or process of transporting or carrying someone or something from one place to another." *See https://en.oxforddictionaries.com/definition/conveyance* (site last visited December 1, 2017). The same lexicographic source defines, in pertinent part, the term "packing" as "material used to protect fragile goods in transit" and the term "commercial" as "concerned with or engaged in commerce," which is the exchange or buying and selling of commodities.

The CIT has provided more specific guidance with regard to heading 7010, HTSUS. In *Latitudes Int'l Fragrance, Inc. v. United States*, 931 F. Supp. 2d 1247 (Ct. Int'l Trade 2013), in which the CIT reviewed CBP's classification of empty glass "diffuser bottles" that, once imported, were filled with fragranced oil, fitted with stoppers and diffuser reeds, and packaged for sale as "diffuser

kits" used for the dispersion of fragrances in enclosed spaces. *Id.* at 1250. The court determined that the principal use of the diffuser bottles was as vessels for the conveyance of fragranced oils of heading 7010, HTSUS, rather than as glassware for indoor decoration of subheading 7013.99.50, HTUS. The court noted in particular that the diffuser bottles were specially designed to contain the fragranced oil, were sent to market only when filled with the oil, that the price of the bottles with their contents at retail was much higher than the cost of the bottles alone, and that while refill kits for the fragranced oil were available from third party vendors, the plaintiff did not sell any refills itself, and there was no evidence that diffuser bottles were sold empty at retail. Based on this determination, the court concluded that the bottles were properly classified in heading 7010, HTSUS. *Id*. at 1257.

Similarly, in *Dependable Packaging Sols., Inc. v. United States*, No. 10–00330, 2013 Ct. Int'l. Trade LEXIS 28 (Ct. Int'l Trade Feb. 20, 2013), the Court found the fact that the glass vases at issue were designed with a closure was "probative as to . . . [the article's] principal use as a container for the conveyance or packing of goods." *Dependable Packaging, 2013 Ct. Int'l. Trade LEXIS 28, Slip Op. 13–23 at 9 [**15]* (*citing Accurate Plastic Moulding, Inc. v. United States, 26 CIT 1201, 1204 n.3*).

The distinction between products principally used for packaging or conveyance and products principally used as storage articles has also been discussed in numerous CBP rulings. In general, CBP has classified glass containers in heading 7010, HTSUS, where such containers were not sold commercially, were disposable and were not decorative or ornamental. *See e.g.*, HQ 951991, dated March 2, 1993, HQ 958477, dated February 14, 1996; HQ 953952, dated September 21, 1994; and HQ 956470, dated September 28, 1994. In contrast, CBP has consistently held that a glass item with a form that indicates principal use as a storage article is classifiable as table/kitchen glassware in heading 7013, HTSUS, not as a conveyance or packing container in heading 7010, HTSUS. *See e.g.*, HQ H127116, dated January 25, 2012; HQ H032715, dated March 08, 2010; HQ 967204, dated September 8, 2004; HQ 963665, dated April 24, 2000; HQ 087779, dated December 27, 1990. Furthermore, CBP has specifically addressed the classification of glass containers used as candle holders in HQ 088123, dated February 25, 1991, and HQ 951391, dated August 10, 1992, finding that they were classified in heading 7013, HTSUS, based on their principal use as household glassware. In HQ 088123, CBP concluded that "[t]he sample of the imported glass shows it to be a type of drinking glass; nothing in its appearance gives any indication that it is dedicated to any specific use. The fact that it is going to be filled with wax subsequent to importation and used for possible commemorative or religious purposes does not change the classification. While both headings 7010 and 7013 may be considered "use" provisions, it is the principal use, as distinguished from the Actual Use, which controls. The principal use of this class or kind of glass is as a drinking glass."

In summary, the types of containers found in heading 7010, HTSUS, are solely used to convey a product to the consumer who uses the product in the container and then discards the container. If the form of the item does not indicate that it belongs to a class or kind of merchandise that will be principally used in this manner, the product cannot be classified as a container in heading 7010, HTSUS, even if the specific imported article will actually be used this way.

There is no particular physical feature that characterizes or distinguishes conveyance containers for candles; rather, it is household storage jars and drinking glasses that fall within certain typical parameters for size and shape. As the items at issue are all filled with wax and a wick after importation and subsequently used to convey candles to the ultimate consumer, if their physical form indicates that they are not of a class or kind with articles used either as votive candle holders or in the home for decoration, storage, or consumption of food or beverages, then we will consider them to belong the class or kind of articles used for the conveyance of candles.

In HQ 957982 and HQ 950426, CBP classified various styles of glass containers as votive candle holders in subheading 7013.99.35, HTSUS. The style at issue from HQ 957982 is 8" tall with a diameter of 2", with a fired lip, molded seams and knurling on the bottom. The containers at issue in HQ 950426 similarly measure approximately 8 1/2 inches in height and 2 11/16 inches in diameter. The subject articles, in their condition as imported, do not exhibit any features that distinguish them as being for devotional purposes so as to warrant classification as votive-candle holders in subheading 7013.99.35, HTSUS. *See* HQ H275806, dated April 24, 2017, and HQ 088742, dated April 22, 1991. In those rulings, additional information was submitted to CBP after entry that stated that the glass vessels were filled with a wick and poured wax after importation, affixed with religious motifs or labels, and sold predominantly to consumers who use them for devotional purposes. CBP held that while this additional information was informative, it was not determinative of how, at the time of importation, the merchandise was distinguishable as being for devotional purposes. Here too, there is no indicia of use at the time of importation as a votive-candle holder for the glass articles at issue. In their condition as imported, they are merely decorative glass vessels for general home storage.

Furthermore, the containers at issue in HQ 957982 and HQ 950426 are not decorative in nature, nor do they have the physical characteristics of either drinking glasses or other household storage containers; they are taller and narrower than glasses commonly sold as beverage/drinking glasses, and they lack any decorative features. Additionally, they lack a lid for storage and preservation of their contents.

The merchandise at issue in NY N260440 is a 14.5 oz. glass candle measuring approximately 3.5 inches high with an outside diameter of 4 inches. The size and the wide diameter of the article are atypical of articles sold commercially as household storage jars or drinking glasses, whereas the greater width than height is suggestive of use as a candle container. Similarly, Item Number HG 1030, at issue in NY N266863, is wider than it is tall, with a height of 2.375 inches and a diameter of 3.25 inches. With a volume of 5 ounces, item HG 1030 further lacks sufficient capacity to act as a useful household storage article or drinking glass. Similarly, glass container at issue in NY N094595, at approximately 2 ½ inches high with an outside diameter of 2 ¾ inches, is slightly wider than it is tall, lacks a lid, and is smaller than a typical household storage container. The square glass jar at issue in NY N211675 similarly lacks the characteristics of conventional household glassware; its square shape precludes classification as a drinking glass, and lacking a lid, it is unlikely to be used as a storage container. The tumblers classified in NY N110556 are imported with a lid and made of frosted glass. These factors are indicative of their intended use to pack and transport candles.

As the articles at issue in the above-referenced rulings do not belong to the class or kind of articles used for in-home decoration, storage or consumption, and they are used for the conveyance of poured candles and are marketed and sold as filled candles, we find that they belong to the class or kind of goods principally used for the conveyance of goods.

HOLDING:

By application of GRIs 1 and 6, the specified articles at issue in NY N036984, NY N110556, NY N094595, NY N266863, NY N260440, HQ 950426, and HQ 957982 are classified in heading 7010, HTSUS, specifically subheading 7010.90.50, HTSUS, which provides for "Carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass: Other: Other containers (with or without their closures)." The 2024, column one, general rate of duty is Free.

Pursuant to U.S. Note 20(f) to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 7010.90.50, HTSUS, unless specifically excluded, are subject to an additional 25% ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.03, in addition to subheading 7010.90.50, HTSUS.

The HTSUS is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Note cited above and the applicable Chapter 99 subheading. For background information regarding the trade remedy initiated pursuant to Section 301 of the Trade Act of 1974, you may refer to the relevant parts of the USTR and CBP websites, which are available at *https://ustr.gov/issue-areas/enformcement/section-301-investigations/tariff-actions* and *https://www.cbp.gov/trade/remedies/301-certain-products-china* respectively.

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 https://hts.usitc.gov/.

EFFECT ON OTHER RULINGS:

NY N036984, NY N110556, NY N094595, NY N266863, NY N260440, HQ 950426, and HQ 957982 are hereby revoked or modified 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,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A CHEETAH PLUSH STUFFED PILLOW FROM CHINA

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

ACTION: Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to the tariff classification of cheetah Squishmallows®.

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 revocation one ruling letter concerning tariff classification of cheetah Squishmallows® 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 September 1, 2024.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon Stillwell Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: *1625Comments@cbp.dhs.gov*. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon Stillwell at (202) 325–0739.

FOR FURTHER INFORMATION CONTACT: Nicholas Horne, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–7941.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with 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 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revocation 1 ruling letter pertaining to the tariff classification of cheetah Squishmallows®. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N306312, dated October 18, 2019 (Attachment B), this notice also 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 comment period.

Similarly, pursuant to 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 comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N306312, CBP classified cheetah Squishmallows® in heading 9404, HTSUS, specifically in subheading 9404.90.20, HTSUS, which provides for "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not

covered: Other: Pillows, cushions and similar furnishings: Other." CBP has reviewed NY N306312 and has determined the ruling letter to be in error. It is now CBP's position that the cheetah Squishmallows® are properly classified, in heading 4-digit, HTSUS, specifically in subheading 9503.00.00, HTSUS, which provides for "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revocation NY N306312 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H3320361, set forth as Attachment A 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.

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

HQ H330361
OT:RR:CTF:CPMMA H330361 NAH
CATEGORY: Classification
TARIFF NO: 9503.00.00

MS. LATY CHAYKEO
INTERNATIONAL TRADE ANALYST
ASCENA RETAIL GROUP, INC.
112 HERITAGE
PATASKALA, OH 43062

RE: Revocation of NY N306312; Tariff classification of a plush stuffed pillow from China.

DEAR MS. CHAYKEO:

This letter is in reference to New York Ruling Letter ("NY") N306312, dated October 18, 2019, concerning the tariff classification a cheetah pillow that is a member of a merchandise line of stuffed pillows depicting various animals (cat, panda, fox, etc.) referred to as "Squishmallows®." In NY N306312, U.S. Customs and Border Protection ("CBP") classified the cheetah Squishmallows® under heading 9404, Harmonized Tariff Schedule of the United States ("HTSUS"), and specifically under subheading 9404.90.20, HTSUS, which provides for "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Pillows, cushions and similar furnishings: Other."[1] We have reviewed NY N306312 and determined that the ruling is in error. Accordingly, for the reasons set forth below, CBP is revoking NY N306312.

FACTS:

The merchandise at issue was described in NY N306312, as follows:

> The cheetah Squishmallows® is an asymmetrical, oval, plush pillow in the likeness of a forward-facing, cheetah with black applique eyes, an off-white applique belly and an off-white applique snout with a black embroidered nose and mouth. A cheetah-print fabric covers all surfaces, including the ears extending from either side of the "head" and the tail, sewn onto the back. The Squishmallows® measures approximately 18" x 17" x 4" (H x W x D at its deepest) and is stuffed with a polyester fiberfill. We note that the Squishmallows® has neither arms nor legs, and the head and torso form one body part. The company website says that Squishmallows® offer comfort, support and warmth as couch companions, pillow pals, bedtime buddies and travel teammates.

ISSUE:

What is the proper tariff classification of the Squishmallows® cheetah.

[1] The Harmonized Tarriff Schedule of the United States Annotated ("HTSUSA") at the tenth digit level has changed since NY 306312 was decided on October 18, 2019. Those changes have no bearing on this ruling.

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 based on GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

GRI 6 provides that for 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.

The 2024 HTSUS provisions under consideration are as follows:

9404 Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered:

9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

Note 1(x), Chapter 95, HTSUS, excludes from classification in Chapter 95 "tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen linen and similar articles having a utilitarian function (classified according to their constituent material)."

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 HTSUS at the international level, may be utilized. The ENs, while neither dispositive nor legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The ENs to heading 9404, HTSUS, states, in pertinent part, the following:

This heading covers:

...

(B) **Articles of bedding and similar furnishing** which are sprung or stuffed or internally fitted with any material (cotton, wool, horsehair, down, synthetic fibres, etc.), or are of cellular rubber or plastics (whether or not covered with woven fabric, plastics, etc.).

The ENs to heading 9503, HTSUS, states, in pertinent part, the following:

This heading covers:

(D) **Other toys.**

This group covers toys intended essentially for the amusement of persons (children or adults). However, toys which, on account of their design, shape or constituent material, are identifiable as intended exclusively for

animals, e.g., pets, do not fall in this heading, but are classified in their own appropriate heading. This group includes:

...

(i) Toys representing animals or non-human creatures even if possessing predominantly human physical characteristics (e.g., angels, robots, devils, monsters), including those for use in marionette shows.

* * * * *

In NY N306312, dated October 18, 2019, the decision to classify the cheetah Squishmallows® as a pillow under heading 9404, HTSUS, was based on differentiating the Squishmallows® from the "pillow pets" classified in Headquarters Ruling Letter ("HQ") H161002, dated March 30, 2012 (classifying "pillow pets," stuffed articles that depict various types of animals such as unicorns, bumble bees, alligators, cows, dogs, and ducks, under heading 9503, HTSUS) and determining the cheetah Squishmallows® was similar to products addressed in NY N296006, dated April 27, 2018 (classifying a Minnie Mouse Emoji Plush Pillow and the Mickey Mouse Emoji Plush Pillows under heading 9404, HTSUS) and NY N250031, dated February 21, 2014 (classifying plushes designed to appear as daisies or butterflies under heading 9404, HTSUS). However, since NY N306312 was published, CBP examined other Squishmallows® in HQ H325768, dated December 22, 2023, and CBP classified the Squishmallows® as toys. In light of that decision, CBP must reexamine whether the cheetah Squishmallows® is a toy or a pillow.

Note 1(x) to Chapter 95, HTSUS, explicitly excludes utilitarian items from being classified as toys, therefore CBP's examination of the cheetah Squishmallows® must begin with whether it is excluded from Chapter 95, HTSUS. The term "toy" is not defined in the HTSUS, the General Explanatory Notes to Chapter 95, HTSUS, state that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." Insofar as it pertains to toys, the Court of International Trade construes heading 9503, HTSUS, to be a "principal use" provision. *See Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (Ct. Int'l Trade 2000). Thus, to be a toy, the "character of amusement involved [is] that derived from an item which is essentially a plaything." *Wilson's Customs Clearance, Inc. v. United States*, 59 Cust. Ct. 36, C.D. 3061 (1967). In *Processed Plastic Co. v. United States*, 473 F.3d 1164 (Fed. Cir. 2006), the court held that "the principal use of a "toy" is amusement, diversion, or play ... rather than practicality." To assist in the determination of whether an article should be classified as a toy or not, the court in *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33, Cust. Dec. 4688 (1977) stated that "[w]hen amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose incidental to the amusement."

Thus, to be classified as a toy in heading 9503, HTSUS, an article must belong to the same class or kind of goods which have the same principal use as toys.[2] Accordingly, to determine whether an article is included in a particular class or kind of merchandise, CBP considers a variety of factors, often

[2] The legal history of classification of toys under heading 9503, HTSUS, is recounted in depth by CBP in HQ H275175, dated September 5, 2017, and replicated in HQ H325768, dated December 22, 2023.

referred to as the "*Carborundum*" factors, to determine whether articles are classifiable as toys. The factors, relevant here, include: (1) the general physical characteristics of the merchandise; (2) the channels, class or kind of trade in which the merchandise moves (where the merchandise is sold); (3) the expectation of the ultimate purchasers; (4) the environment of the sale (i.e., accompanying accessories and marketing); (5) usage, if any, in the same manner as merchandise which defines the class. *See United States v. Carborundum Co.*, 536 F.2d 373, 377 (Cust. Ct. 1976). While these factors were developed under the Tariff Schedule of the United States (the predecessor to the HTSUS), the courts, and CBP have applied and continue to apply them to the HTSUS. *See, e.g., Minnetonka Brands*, 110 F. Supp. 2d at 1026; *Aromont USA, Inc. v. United States*, 671 F.3d 1310 (Fed. Cir. 2012); *Essex Mfg., Inc. v. United States*, 30 C.I.T. 1 (2006).

In HQ H325768, dated December 22, 2023, CBP carefully examined the definition of "toy" and its use by the Court of International Trade, the application of the relevant primary use factors espoused in *Carborundum*, and the similarity between Squishmallows® and the pillow pets classified in HQ H161002, dated March 30, 2012. Altogether, CBP determined the Squishmallows® addressed in HQ H325768, were properly classified as toys. While the cheetah Squishmallows®, that is the subject of NY N306312, dated October 18, 2019, was not explicitly addressed in HQ H325768, dated December 22, 2023, the products at issue in both rulings are inextricably linked. In both rulings the Squishmallows® at issue were over 12" in height; made of polyester felt and filled with polyester fibers; each is designed without arms or legs, and the head and torso form one body part; the exterior has stitching and print designed to resemble the animal or creature that it represents; each Squishmallows® has three dimensional appendages sewn onto the body, such as, ears, tails, horns, or wings; and each Squishmallows® has a hangtag that creates names and personalities for the figures. While not identical, the Squishmallows® addressed in NY N306312, dated October 18, 2019, and in HQ H325768, dated December 22, 2023, are so similar that the logic underpinning their classification should be the same.

To that end, CBP finds the reasoning in HQ H325768, to be determinative. The application of the *Carborundum* factors to the cheetah Squishmallows® results in its classification under heading 9503, HTSUS, as a toy.

1. The general physical characteristics of the cheetah Squishmallows® are intended to amuse rather than be utilized as a typical pillow: The printed and stitched detailing and the notable extremities are designed to amuse a child and resemble the cheetah animal. The details specifically reduce the merchandise's ability to function as a utilitarian pillow.

2. The channels, class or kind of trade in which the merchandise moves (where the merchandise is sold) is predominantly in the toy sections, aisles and websites of stores and companies, rather than in the bedding or homewares aisles, departments or sections.

3. The expectation of the ultimate purchasers is to provide a child with a named plush toy with which the child can play and bond with like a teddy bear or blanket that many children take everywhere for amusement and emotional comfort.

4. The environment of the sale (i.e., accompanying accessories and marketing) is, as stated in the discussion of factor 2, predominantly in the toy aisles, departments and sections of websites and not in the homewares or bedding departments with other pillows, blankets and bedding.

5. The primary usage of the cheetah Squishmallows® is the amusement of children, in the same manner as merchandise which defines toys classified under heading 9503, HTSUS. The cheetah Squishmallows® is intended to amuse children in the same manner as a teddy bear.

Further, when comparing the cheetah Squishmallows® to the merchandise examined in HQ H161002, dated March 30, 2012, it becomes clear the cheetah Squishmallow is more like a pillow pet than a cushion, whose purpose is to support the body and increase comfort. The cheetah Squishmallows® does not have an accompanying pillowcase, would not correctly fit into a standard pillowcase, and would not be used as a pillow to support a person's head when sleeping. The size of the item, its shape, its depth, its plush squishiness, and its colorful and fun design demonstrate that the cheetah Squishmallows® are designed to amuse, rather than be used for a utilitarian purpose. The article is not of the correct size or flatness to support the head or the body as a utilitarian pillow and it is not designed to provide or increase comfort. It is designed to entice a child to hug and bond with it, similar to the pillow pets, classified in HQ H161002, dated March 30, 2012. The fabric and plush stuffing are extra soft because the cheetah Squishmallows® is intended to be cuddled. Therefore, the cheetah Squishmallows® are not utilitarian items and are not excluded from heading 9503, HTSUS, by Note 1(x) to Chapter 95, HTSUS. Under GRI 1 and 6 the cheetah Squishmallows® is described in and classified under heading 9503, HTSUS and specifically under subheading 9503.00.00, HTSUS. As such, NY N306312, dated October 18, 2019, is in error and is revoked accordingly.

HOLDING:

By application of GRIs 1 and 6, the cheetah Squishmallows®, is classified in heading 9503, HTSUS, and specifically in subheading 9503.00.00, HTSUS, which provides for "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof." The 2024 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY N306312, dated October 18, 2019.

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

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

N306312
October 18, 2019
CLA-2–94:OT:RR:NC:N4:463
CATEGORY: Classification
TARIFF NO.: 9404.90.2000; 9903.88.15

LATY CHAYKEO
INTERNATIONAL TRADE ANALYST
ASCENA RETAIL GROUP, INC.
112 HERITAGE
PATASKALA, OH 43062

RE: The tariff classification of a plush stuffed pillow from China.

DEAR MS. CHAYKEO:

In your letter dated September 10, 2019, you requested a tariff classification ruling. A sample and descriptive literature were submitted.

Per the information submitted, the pillow is part of a merchandise line of stuffed pillows depicting various animals (cat, panda, fox, etc.) referred to as squishmallows.

The cheetah squishmallow is an asymmetrical, oval, plush pillow in the likeness of a forward-facing, cheetah with black applique eyes, an off-white applique belly and an off-white applique snout with a black embroidered nose and mouth. A cheetah-print fabric covers all surfaces, including the ears extending from either side of the "head" and the tail, sewn onto the back. The squishmallow measures approximately 18" x 17" x 4" (H x W x D at its deepest) and is stuffed with a polyester fiberfill. We note that the squishmallow has neither arms nor legs, and the head and torso form one body part. The company website says that squishmallows offer comfort, support and warmth as couch companions, pillow pals, bedtime buddies and travel teammates.

You cite rulings N296006 and N250031 and contend that the squishmallow is a pillow classified in 9404, Harmonized Tariff Schedule of the United States (HTSUS), and not as a toy classifiable in 9503. This ruling is informed by H161002, N296006 and N250031 and is in agreement with your position. We note that in contrast with the goods in H161002, the squishmallow has neither arms nor legs, and the head and torso form only one body part. We note that the squishmallow is closer in appearance and construction to the articles in N296006 and N250031.

The applicable subheading for the subject squishmallow will be 9404.90.2000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Pillows, cushions and similar furnishings: Other." The rate of duty will be 6% ad valorem.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 9404.90.2000, HTSUS, unless specifically excluded, are subject to an additional 15 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.15, in addition to subheading 9404.90.2000, HTSUS, listed above.

The HTSUS is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Note cited

above and the applicable Chapter 99 subheading. For background information regarding the Section 301 trade remedy, you may refer to the relevant parts of the USTR and CBP websites, which are available at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions* and *https://www.cbp.gov/trade/remedies/301-certain-products-china*, respectively.

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 https://hts.usitc.gov/current.

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 Seth Mazze at seth.mazze@cbp.dhs.gov.

Sincerely,

DENISE M. FAINGAR
(for)
STEVEN A. MACK
Director
National Commodity Specialist Division

19 CFR PART 177

REVOCATION OF TWO RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF STEEL T-SECTIONS

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

ACTION: Notice of revocation of two ruling letters, and revocation of treatment relating to the tariff classification of Steel T-sections.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters concerning tariff classification of Steel T-sections 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. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 55, No. 51, on December 29, 2021. One comment was received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 1, 2024.

FOR FURTHER INFORMATION CONTACT: Thomas Dougherty, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–1988.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with 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 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 55, No. 51, on December 29, 2021, proposing to revoke two ruling letters pertaining to the classification of Steel T-sections. 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 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 the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In Headquarters Ruling Letter ("HQ") 965520 and New York Ruling Letter ("NY") 898929, CBP classified Steel T-sections in sub-heading 8431.31, HTSUS, more specifically 8431.31.00, HTSUS, which provides for "Parts suitable for use solely or principally with the machinery of headings 8425 to 8430: Of machinery of heading 8428: Of passenger or freight elevators other than continuous action, skip hoists or escalators." CBP has reviewed HQ 965520 and NY 898929 and has determined the ruling letters to be in error. It is now CBP's position that Steel T-sections are properly classified in subheading 7216.50, HTSUS, more specifically in subheading 7216.50.00, HTSUS, which provides for "Angles, shapes and sections of iron or nonalloy steel: Other angles, shapes and sections, not further worked than hot-rolled, hot-drawn or extruded," and that the articles at issue are subject to Section 232 duties.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking HQ 965520 and NY 898929 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H304529 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*.

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H304529

July 15, 2024
OT:RR:CTF:CPMMA H304529 TJD
CATEGORY: Classification
TARIFF NO.: 7216.50.00; 7216.99.00

MR. JOHN B. PELLEGRINI, ESQ.
MCGUIREWOODS
1251 AVENUE OF THE AMERICAS
20TH FLOOR
NEW YORK, NY 10020–1104

RE: Revocation of HQ 965520 and NY 898929; Tariff classification of Steel T-sections

DEAR MR. PELLEGRINI:

This is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered Headquarters' Ruling Letter ("HQ") 965520, dated July 9, 2002 (issued to Yamato Kogyo (USA) Corporation), and New York Ruling Letter ("NY") 898929, dated July 6, 1994 (issued to Tricoastal Industries, Inc.), regarding the tariff classification of steel T-sections under the Harmonized Tariff Schedule of the United States ("HTSUS").[1] In HQ 965520 and NY 898929, CBP classified the T-sections in heading 8431, HTSUS, specifically in subheading 8431.31.00, HTSUS, which provides for "parts suitable for use solely or principally with the machinery of headings 8425 to 8430: Of machinery of heading 8428: Of passenger or freight elevators other than continuous action, skip hoists or escalators." We have determined that the two CBP rulings are in error and that the correct tariff classification is in heading 7216, HTSUS, specifically under subheading 7216.50.00, HTSUS, which provides for "Angles, shapes and sections of iron or nonalloy steel: Other angles, shapes and sections, not further worked than hot-rolled, hot-drawn or extruded." Accordingly, for the reasons set forth below, we hereby revoke HQ 965520 and NY 898929.

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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice of the proposed action was published in the Customs Bulletin, Volume 55, No. 51, on December 29, 2021. One comment, which is addressed below, was received in response to this notice.

FACTS:

HQ 965520 describes the subject non-alloy steel T-sections as follows:

> The merchandise ... is six types of elevator guide rails: EG 8K, EG 13K, EG 18K, EG 24K, EG 30K and EG 50K. The merchandise consists of T-shaped sections of hot-rolled, non-alloy steel. The guide rails will be imported in various dimensions (height and width) but in a single stan-

[1] We have also considered the tariff classification of the bar ties, which are accessories that enable forklift attachments to be assembled to or removed from the forklift, in NY I81164, dated May 21, 2002, and of the steel frames for forklifts in NY A82738, dated May 13, 1996. We decline to revoke those rulings at this time due to insufficient information.

dard length of 16,437 feet ... [*sic*] The merchandise is used to guide elevator cars as they travel up and down the elevator shaft. The merchandise will be sold in its condition as imported with minor modifications ... [*sic*] As imported, the articles are cut to length and essentially have the same shape as the finished article. The imported articles have no practical use other than as elevator rail guides.

[T]he post-importation modifications will consist of the following: creating a notch in one side of the guide; creating a groove along the opposite side; boring eight bolt holes in the bottom; chamfering the bolt holes; machining the top to adjust the dimensions; and machining to smooth the sides of the vertical runner.

NY 898929 describes the low carbon steel T-sections as follows:

Elevator guide rails are T-shaped rails used to guide elevator cars as they travel up and down the elevator shaftway. The merchandise in question will be imported in two conditions - unfinished and finished.

In the finished condition, a hot rolled "T" section of ordinary low carbon structural steel has undergone processing prior to importation to produce an article to be solely used as an elevator guide rail. Processing includes machining operations such as straightening, planing [*sic*], and milling and painting to prevent rust. The rails weigh from 8 to 30 pounds per foot. Lengths vary from 10 to 20 feet depending upon customer specifications but are generally 16 feet for most applications.

ISSUE:

Whether the subject steel T-sections are classifiable in heading 7216, HTSUS, as angles, shapes and sections of nonalloy steel; or heading 8431, HTSUS, as parts suitable for use solely or principally with elevators.

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. Pursuant to GRI 6, classification at the subheading level uses the same rules, *mutatis mutandis*, as classification at the heading level.

GRI 2(a) states:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

The 2024 HTSUS provisions under consideration are as follows:

7216	Angles, shapes and sections of iron or nonalloy steel:

7216.50.00	Other angles, shapes and sections, not further worked than hot-rolled, hot-drawn or extruded
	Other:
7216.99.00	Other
8428	Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics)
8431	Parts suitable for use solely or principally with the machinery of headings 8425 to 8430:
	Of machinery of heading 8428:
8431.31.00	Of passenger or freight elevators other than continuous action, skip hoists or escalators

Note 1(f) to section XV, HTSUS, states that, "[t]his section does not cover: ... Articles of section XVI (machinery, mechanical appliances and electrical goods)."

Note 2(b) to section XVI, HTSUS, states that parts that are "suitable for use solely or principally with a particular kind of machine ... are to be classified with the machines of that kind or in heading ... 84.31 ...."

Note 1(n) to chapter 72, HTSUS, describe angles, shapes, and sections of chapter 72 as "[p]roducts having a uniform solid cross-section along their whole length which do not conform to any of the definitions at (ij), (k), (l) or (m) above or to the definition of wire."

Additional U.S. note 2 to chapter 72 provides, in pertinent part:

> 2. For the purposes of this chapter, unless the context provides otherwise, the term *"further worked"* refers to products subjected to any of the following surface treatments: polishing and burnishing; artificial oxidation; chemical surface treatments such as phosphatizing, oxalating and borating; coating with metal; coating with nonmetallic substances (e.g., enameling, varnishing, lacquering, painting, coating with plastics materials); or cladding.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The ENs to GRI 2(a) provide, in relevant part:

> (I) The first part of Rule 2 (a) extends the scope of any heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, **provided** that, as presented, it has the essential character of the complete or finished article.
>
> (II) The provisions of this Rule also apply to **blanks** unless these are specified in a particular heading. The term **"blank"** means an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part (e.g., bottle preforms of plastics being intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type

closure, the portion below the threaded end being intended to be expanded to a desired size and shape).

Semi-manufactures not yet having the essential shape of the finished articles (such as is generally the case with bars, discs, tubes, etc.) are not regarded as "blanks" ....

EN 72.16 states, in pertinent part, the following:

Angles, shapes and sections are defined in Note 1 (n) to this Chapter.

The sections most commonly falling in this heading are H, I, T, capital Omega, Z and U (including channels), obtuse, acute and right (L) angles. The corners may be square or rounded, the limbs equal or unequal, and the edges may or may not be "bulbed" (bulb angles or shipbuilding beams).

Angles, shapes and sections are usually produced by hot-rolling, hot-drawing, hot-extrusion or hot-forging or forging blooms or billets....

The products of this heading may have been subjected to working such as drilling, punching or twisting or to surface treatment such as coating, plating or cladding — see Part IV (C) of the General Explanatory Note to this Chapter, **provided** they do not thereby assume the character of articles or of products falling in other headings.

The heavier angles, shapes and sections (e.g., girders, beams, pillars and joists) are used in the construction of bridges, buildings, ships, etc.; lighter products are used in the manufacture of agricultural implements, machinery, automobiles, fences, furniture, sliding door or curtain tracks, umbrella ribs and numerous other articles.

* * *

In *Bauerhin Techs. Ltd. P'ship. v. United States*, 110 F.3d 774 (Fed. Cir. 1997), the United States Court of Appeals for the Federal Circuit ("CAFC") identified two distinct lines of cases defining the word "part." Consistent with *United States v. Willoughby Camera Stores, Inc.*, 21 C.C.P.A. 322, 324 (1933) (citations omitted), one line of cases holds that a part of an article "is something necessary to the completion of that article. . . . [W]ithout which the article to which it is to be joined, could not function as such article." The other line of cases evolved from *United States v. Pompeo*, 43 C.C.P.A. 9, 14 (1955), which held that a device may be a part of an article even though its use is optional and the article will function without it, if the device is dedicated for use upon the article, and, once installed, the article will not operate without it. The definition of "parts" was also discussed in *Rollerblade, Inc. v. United States*, 282 F.3d 1349, 1353 (Fed. Cir. 2002), wherein the CAFC defined parts as "an essential element or constituent; integral portion which can be separated, replaced, etc."[2] This line of reasoning has been applied in previous CBP rulings.[3]

However, before examining whether the goods in question satisfy one or both of the aforementioned tests, we note that they only qualify to be "parts" of the good (*i.e.*, an elevator) if they bear a "direct relationship" to the good, such that the good is the "primary article" of which the item is a

[2] *Id.* at 1353 (citing *Webster's New World Dictionary* 984 (3d College Ed. 1988)).

[3] *See e.g.*, HQ H255093, dated January 14, 2015; HQ H238494, dated June 26, 2014; HQ H027028, dated August 19, 2008.

component.[4] Otherwise, as the U.S. Court of International Trade ("CIT") and its predecessor, the Customs Court, have held, the item will be considered merely a "part" of whatever intermediate part constitutes the primary article.[5]

CBP has consistently adhered to this principle by excluding parts of "primary articles" from HTSUS "parts provisions" where the primary articles themselves are parts classifiable in such provisions. For example, in HQ H169057, dated September 4, 2014, CBP ruled that a front frame designed to reinforce a wind engine, which in turn constituted one of two components of a wind generator, could not be classified as part of the wind generator itself. Similarly, HQ H005091, dated January 24, 2007, excluded from heading 8708, HTSUS, which provides for motor vehicle parts, a trunk assembly that constituted one of several component parts of an automobile trunk lock.[6] In sum, it is not enough that an item will eventually form a portion of another article. Rather the item must be processed to the point where it is no longer recognizable as a profile but instead has the character of a finished part.

As imported, the subject merchandise in HQ 965520 and NY 898929 will need to undergo a total fabrication before it will be ready for assembly in the elevator shaft and recognizable as a finished part. The subject merchandise in HQ 965520 was imported as T-shaped sections in a single standard length of 16.437 feet or 5 meters. The subject merchandise in NY 898929 was imported as T-shaped sections in lengths varying from 10 to 20 feet (generally 16 feet).

Post-importation, the subject merchandise in HQ 965520 will be subjected to the following operations: creating a notch in one side of the guide, creating a groove along the opposite side, boring eight bolt holes in the bottom, chamfering the bolt holes, machining the top to adjust the dimensions, and machining to smooth the sides of the vertical runner. Once these operations are completed, the subject merchandise would then be assembled in the elevator shaft.

CBP has determined that the subject merchandise in HQ 965520 and NY 898929, at importation, are T-shaped sections and not parts of elevators. Even after machining operations such as straightening, planning, milling, and painting to prevent rust, the merchandise remains a T-shaped section. It has not been combined with any other section or the fishplates, brackets, braces control elements, roller clamps or other materials that make the section dedicated to use as a guide rail. Machining operations such as straightening, planning, and milling and painting to prevent rust do not make the sections suitable for use solely with lifting equipment and do not

[4] *See* HQ H255855, dated May 27, 2015.

[5] *See Mitsubishi Elecs. Am. v. United States*, 19 CIT 378, 383 n.3 (1995) ("[A] subpart of a particular part of an article is more specifically provided for as a part of the part than as a part of the whole."); *Liebert v. United States*, 60 Cust. Ct. 677, 686–87 (1968) (holding that parts of clutches, which clutches are in turn parts of winches, are more specifically provided for as parts of clutches than as parts of winches).

[6] *See also* HQ H020958, dated November 28, 2008; HQ 963325, dated September 15, 2000.

cause the subject merchandise to assume the character of articles of heading 8431, HTSUS.[7]

The instant merchandise, which is imported in the form of T-shaped sections of hot-rolled, non-alloy steel in various dimensions, is described by the term "angles, shapes, and sections" set forth in note 1(n) to chapter 72, HTSUS. Heading 7216, HTSUS, includes T-shapes as well as "other" shapes, such as special profiles of non-standard cross-section including those used in the manufacture of machinery and automobiles.[8] T-shapes that have been drilled, punched, twisted, or subjected to surface treatment such as coating, plating or cladding are classifiable in heading 7216, HTSUS.[9]

For similar reasons, the subject steel T-sections are not unfinished guiderails under GRI 2(a). The imported T-shaped sections must be further manufactured to be considered an unfinished guiderail for use with an elevator. As such, the subject T- shaped sections cannot be considered a blank of a guide rail.

Lastly, CBP has previously classified incomplete nonalloy steel profiles in subheadings 7216.50.00 and 7216.99.00, HTSUS. In NY N295858, dated May 3, 2018, and NY N295670, dated April 27, 2018, nonalloy steel profiles, which were further machined, assembled into a frame, and painted after importation, were classified under subheading 7216.50.00, HTSUS. In NY I85271, dated September 13, 2002, steel beams used in construction that did not have the essential character of the finished parts were classified in subheading 7216.99.00, HTSUS. In NY 884276, dated April 21, 1993, painted carbon steel ribbed profile sheeting cut in length ready to be used in roofing and siding applications was classified in heading 7216, HTSUS. Accordingly, the subject merchandise in both HQ 965520 and NY 898929 are properly classified in heading 7216, HTSUS.

In the comment we received, the commenter argues that guiderails are parts of elevators, *i.e.*, solely, and principally suitable for use in elevators and classified in heading 8431, HTSUS. CBP has laid out the two tests applied to determine whether merchandise is considered a "part." The subject merchandise, however, is neither a guiderail nor an incomplete or unfinished guiderail with the essential character of a complete or finished article. The subject merchandise is a T-section of nonalloy steel. Therefore, the subject merchandise is not classified in heading 8431, HTSUS.

Therefore, by application of GRIs 1 and 6, the subject merchandise are steel special profile shapes of heading 7216, HTSUS. The subject steel profile shapes described in HQ 965520 are classified specifically under subheading 7216.50.00, HTSUS, which provides for other angles, shapes and sections of nonalloy steel, not further worked than hot-rolled, hot-drawn or extruded. The subject steel profile shapes described in NY 898929, having been painted and thus further worked, are classified in subheading 7216.99.00, HTSUS, which provides for other angles, shapes and sections of nonalloy steel that is drilled, notched, punched or cambered.

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[7] The ENs to GRI 2(a), *supra*, exclude semi-manufactures not yet having the shape of finished article from classification as unfinished articles under GRI 2(a). In the instant case, the rails in their condition as imported are merely steel T-sections. They do not have the shape of the finished elevator guide rail module. The subject merchandise is imported as T-shaped sections, which are subjected to significant processing to become elevator guide rails forming a module after importation.

[8] *See* EN 72.16.

[9] *See* EN 72.16.

HOLDING:

By application of GRIs 1 and 6, the subject steel T-sections are classified in heading 7216, HTSUS. Specifically, the steel profile shapes in HQ 965520 are classified under subheading 7216.50.00, HTSUS, as "Angles, shapes and sections of iron or nonalloy steel: Other angles, shapes and sections, not further worked than hot-rolled, hot-drawn or extruded." The steel profile shapes in NY 898929 are classified under 7216.99.00, HTSUS, as "Angles, shapes and sections of iron or nonalloy steel: Other: Drilled, notched, punched or cambered" for the reasons explained above. The 2024 column one, general rate of duty is free for both subheadings.

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 at https://hts.usitc.gov/.

EFFECT ON OTHER RULINGS:

HQ 965520, dated July 9, 2002, and NY 898929, dated July 6, 1994, are hereby REVOKED.

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

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Cc: Mr. Tom Cleveland
Tricoastal Industries, Inc.
535 Connecticut Avenue
Norwalk, Connecticut 06854

PROPOSED REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF PAPER WINE BOTTLE CARRIER FROM CHINA

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

ACTION: Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to the tariff classification of Paper Wine Bottle Carrier from China.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of Paper Wine Bottle Carrier 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 September 1, 2024.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon Stillwell, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: *1625Comments@cbp.dhs.gov*. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number, and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon Stillwell at (202) 325–0739.

FOR FURTHER INFORMATION CONTACT: Steven Cotto, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0044.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obli-

gation on CBP to provide the public with 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 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of a Paper Wine Bottle Carrier. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N077475, dated October 15, 2009 (Attachment A), this notice also 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 comment period.

Similarly, pursuant to 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 comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N077475, CBP classified a Paper Wine Bottle Carrier in heading 4823, HTSUS, specifically in subheading 4823.90.86, HTSUS, which provides for "Other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers: Other." CBP has reviewed NY N077475 and has determined the ruling letter to be in error. It is now CBP's position that Paper Wine Bottle Carrier is properly classified, in heading 4819, HTSUS, specifically in subheading 4819.20.00, HTSUS, which provides for "Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files,

letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like: Folding cartons, boxes and cases, of non-corrugated paper or paperboard."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N077475 and to revoke any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H338844, 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.

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

HQ H338844
OT:RR:CTF:CPMMA H338844 SC
CATEGORY: Classification
TARIFF NO: 4819.20.00

MR. TROY D. CRAGO-EDWARDS
ATICO INTERNATIONAL USA, INC.
501 SOUTH ANDREWS AVENUE
FORT LAUDERDALE, FL 33301

RE: Revocation of NY N077475; Tariff Classification of a Paper Wine Bottle Carrier from China

DEAR MR. CRAGO-EDWARDS:

This letter is in reference to New York Ruling Letter (NY) N077475, issued to you on October 15, 2009, concerning the tariff classification of a paper wine bottle carrier from China. In NY N077475, U.S. Customs and Border Protection (CBP) classified the subject merchandise in subheading 4823.90.86, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as "Other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers: Other." We have reviewed NY N077475 and determined that the ruling is in error with respect to the tariff classification of the subject merchandise. Accordingly, for the reasons set forth below, CBP is revoking NY N077475.

FACTS:

The subject merchandise was described in NY N077475 as follows:

> The wine bottle carrier holds six 750 [milliliter] (ml) wine bottles and is constructed of non-corrugated paperboard. The product details state that the material content by weight is 300 [grams/meter squared] (g/m2) facing paper, 127 g/m2 medium (middle) paper and 180 g/m2 liner paper. The item is marketed to retail store clients as packaging for their customers who purchase wine.

ISSUE:

Whether a paper wine bottle carrier from China is classified under subheading 4823.90.86, HTSUSA, as "Other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers: Other: Other: Other: Of coated paper or paperboard" or under subheading 4819.20.00, HTSUSA, as "Carton, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like: Folding cartons, boxes and cases, of non-corrugated paper or paperboard" or under subheading 4819.50.40, HTSUSA, as "Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like: Other packing containers, including record sleeves: Other."

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 the goods cannot be classified solely based on GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

GRI 6 provides that for legal purposes, 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.

* * * * * *

The HTSUS subheadings under consideration are the following:

4819	Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like:
4819.20	Folding cartons, boxes and cases, of corrugated paper or paperboard
	Other:
4819.50	Other packing containers, including record sleeves:
4819.50.40	Other:
	* * *
4823	Other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers:
4823.90	Other:
4823.90.86	Other:

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 48.19 states, in pertinent part, as follows:

> This group covers containers of various kinds and sizes generally used for the packing, transport, storage or sale of merchandise, whether or not also having a decorative value. . .
>
> ***
>
> The heading includes folding cartons, boxes and cases. These are:
>
> - cartons, boxes and cases in the flat in one piece, for assembly by folding and slotting (e.g., cake boxes); and
> - containers assembled or intended to be assembled by means of glue, staples, etc., on one side only, the construction of the container itself providing the means of forming the other sides, although, where ap-

propriate, additional means of fastening, such as adhesive tape or staples may be used to secure the bottom or lid.

***

The articles of this heading may also have reinforcements or accessories of materials other than paper (e.g., textile backings, wooden supports, string handles, corners of metal or plastics).

EN 48.23 states, in pertinent part, as follows:

This heading includes :

(A) Paper and paperboard, cellulose wadding and webs of cellulose fibers, not covered by any of the previous headings of this Chapter:

***

(B) Articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers, not covered by any of the previous headings of this Chapter nor excluded by Note 2 to this Chapter.

Thus the heading includes :

(1) Filter paper and paperboard (folded or not). Generally, these are in shapes other than rectangular (including square), such as circular filter papers and boards.

(2) Printed dials, other than in rectangular (including square) form, for self-recording apparatus.

(3) Paper and paperboard, of a kind used for writing, printing or other graphic purposes, not covered in the earlier headings of this Chapter, cut to shape other than rectangular (including square).

* * * * *

Turning to the subject merchandise, the paper wine carrier from China is meant to hold six 750 ml wine bottles and is constructed of non-corrugated paperboard. The item is marketed to retail store clients as packaging for their customers who purchase wine. The ENs to heading 48.19 provide that "this group covers containers of various kinds and sizes generally used for the packing, transport, storage or sale or merchandise, whether or not also having a decorative value." On the other hand, the ENs to heading 48.23 provide that "this heading includes paper and paperboard, cellulose wadding and webs of cellulose fibers, not covered by any of the previous headings of this Chapter." The wine bottle carrier is directly described by EN 48.19. It is a container, "in the flat in one piece" and it is used for the packing, transport, and sale of wine or similar bottled products after it is "assembl[ed] by folding and slotting. The paper wine carrier is designed for the holding and conveyance of goods from "shops or the like", as required by the terms of heading 4819, HTSUS. Therefore, the language of heading 4819 plainly describes the carrier, and classification under heading 4823, HTSUS, is precluded according to EN 48.23. As such, CBP wrongly classified the subject merchandise in heading 4823, HTSUSA, in NY N077475.

As directed by GRI 6 the classification of the paper wine carrier from China must be done at the subheading level. Based on CBP's ruling history, the carrier is a modified box. While the carrier does have characteristics unlike a typical folding box (e.g., the handle and compartments) and is open-topped, those characteristics do not disqualify it from being a box for purposes of

classification under heading 4819. *See* N318798, dated April 14, 2021 (classifying a paperboard bucket constructed as a five-sided box made of rigid paperboard with a textile ribbon handle in subheading 4819.50.4040, HTSUS); N314007, dated August 28, 2020 (classifying a five sided, open box constructed of rigid paperboard with a square bottom, four trapezoidal sides and a textile ribbon handle inserted through grommeted holes on two opposite sides in subheading 4819.50.4040, HTSUS); N328187, dated October 13, 2022, (classifying a two-piece, heart-shaped, rigid paperboard box and paperboard bucket under subheading 4819.50.4040, HTSUS). The paper wine carrier folds; is a carton, box, or case; and is of non-corrugated paperboard. The paper wine bottle carrier is explicitly provided for under subheading 4819.20. More specifically, the paper wine bottle carrier is correctly classified under 4819.20.00, HTSUSA, as "Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like: Folding cartons, boxes and cases, of non-corrugated paper or paperboard."

HOLDING:

By application of GRIs 1 and 6, the paper wine bottle carrier from China is classified in heading 4819, HTSUS, and specifically in subheading 4819.20.00, HTSUSA, which provides for "Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like: Folding cartons, boxes and cases, of non-corrugated paper or paperboard." The 2024 column one general rate of duty is free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at https://hts.usitc.gov/current.

EFFECT ON OTHER RULINGS:

NY N077475, dated October 15, 2009, is hereby revoked.

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

N077475
October 15, 2009
CLA-2–48:OT:RR:NC:2:234
CATEGORY: Classification
TARIFF NO.: 4823.90.8600

MR. TROY D. CRAGO-EDWARDS
ATICO INTERNATIONAL USA, INC.
501 SOUTH ANDREWS AVENUE
FORT LAUDERDALE, FL 33301

RE: The tariff classification of paper wine bottle carrier from China

DEAR MR. CRAGO-EDWARDS:

In your letter dated September 25, 2009 you requested a tariff classification ruling.

The ruling was requested on a Wine Bottle Carrier, Item Number A071BA00020. A photo, product details and specifications were submitted for our examination. The wine bottle carrier holds six 750 ml wine bottles and is constructed of non-corrugated paperboard. The product details state that the material content by weight is 300 g/m^2 facing paper, 127 g/m^2 medium (middle) paper and 180 g/m^2 liner paper. The item is marketed to retail store clients as packaging for their customers who purchase wine.

The applicable subheading for the paper wine bottle carrier will be 4823.90.8600, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other (non-enumerated) articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers. 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 Patricia Wilson at (646) 733–3037.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

N339616

April 24, 2024
CLA-2:48:OT:RR:NC:N5:130

MEMORANDUM FOR: Director, Commercial & Trade Facilitation Division
Regulations & Rulings
Headquarters, Customs & Border Protection

FROM: Chief, Branch 5
National Commodity Specialist Division

SUBJECT: Classification of paperboard wine bottle carrier

REFERENCE: Request for revocation of NY Ruling N077475

The National Commodity Specialist Division has reviewed New York ruling N077475 (October 15, 2009) and believes that it is incorrect and should be revoked. The product in N077475 was a paperboard carrier for wine bottles. The ruling was discovered during the NCSD's consideration of ruling N339093, for a nearly identical product. A Will Not Rule letter was issued for N339093, in order that N077475 could be reconsidered.

The item under consideration is a paperboard container that is designed to carry six 750ml wine bottles. Ruling N077475 does not provide more information except to indicate that the paperboard non-corrugated and is a lamination of three papers. This construction, however, does not impact classification. We believe that the carrier in N077475 was a folding container, as wine bottle carriers are not efficiently packable in their fully assembled state. Below are some representative images of such carriers. The three images of empty carriers were provided with the submission for N339093; this carrier is clearly foldable. The fourth image is a general representation of such a carrier filled with wine bottles. Such carriers have compartments for six 750ml bottles, as well as a built-in handle. The paperboard is die-cut, folded, and glued into shape. They are generally shipped in flat-folded condition and unfolded into a 3-dimensional carrier at time of use.

Ruling N077475 classified the bottle carrier under subheading 4823.90.8600, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other unspecified articles of paper. Upon reconsideration, however, we believe that the carrier is correctly classifiable as a modified folding box under subheading 4819.20.0040, HTSUS, which provides for Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like: Folding cartons, boxes and cases, of non-corrugated paper or paperboard: Other. Alternatively, it could be classified under 4819.50.4060, HTSUS, which provides for Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like: Other packing containers, including record sleeves: Other: Other: Other.

The Explanatory Notes (ENs) to heading 4819 provide that "This group covers containers of various kinds and sizes generally used for the packing, transport, storage or sale of merchandise, whether or not also having a decorative value." We believe that the wine bottle carrier is directly described by this language. It is a container, and it is used for the packing, transport, and sale of wine or similar bottled products. It is clearly designed for the holding and conveyance of goods. Therefore, the language of heading 4819 plainly describes the carrier, and classification as an "other unspecified article" is not necessary.

The carrier can potentially be classified as a folding box of non-corrugated paper, or as a packing container other than those specifically identified in 4819. While the carrier does have characteristics unlike a typical folding box (e.g., the handle and compartments), we believe that, based on CBP's ruling history, the carrier is a modified box. The fact that the carrier is open-topped does not disqualify it from being a box; Merriam-Webster defines a box as "a rigid typically rectangular container with or without a cover." Furthermore, the handle does not prevent the carrier from being a box; CBP has classified open-topped, five-sided containers with handles (identified as "buckets") as "rigid boxes" in rulings N318798, N314007, and N328187. We believe that the carrier is not specifically excluded from being a box, and therefore, 4819.20.0040, HTSUS, is the correct classification.

We request that the Commercial and Trade Facilitation Division revoke New York ruling N077475 and reclassify the bottle carrier under 4819.20.0040, HTSUS.

If you have any further questions regarding this matter, please contact National Import Specialist Laurel Duvall at laurel.duvall@cbp.dhs.gov. Please send a copy of your reply to this office.

MARK NACKMAN
April 24, 2024

PROPOSED REVOCATION OF FIVE RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF ELECTROMECHANICAL ORAL HYGIENE DEVICES

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

ACTION: Notice of proposed revocation of five ruling letters and proposed revocation of treatment relating to the tariff classification of electromechanical oral hygiene devices.

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 five ruling letters concerning the tariff classification of electromechanical oral hygiene devices 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 September 1, 2024.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Shannon L. Stillwell, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. CBP is also allowing commenters to submit electronic comments to the following email address: *1625Comments@cbp.dhs.gov*. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Arrangements to inspect submitted comments should be made in advance by calling Ms. Shannon L. Stillwell at (202) 325–0739.

FOR FURTHER INFORMATION CONTACT: Suzanne Kingsbury, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at suzanne.kingsbury@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with 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 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke five ruling letters pertaining to the tariff classification of electromechanical oral hygiene devices. Although in this notice, CBP is specifically referring to NY N282485, dated February 8, 2017 (Attachment A), NY H80038, dated March 10, 2001 (Attachment B), NY N219961, dated June 28, 2012 (Attachment C), NY N219968, dated June 28, 2012 (Attachment D), and NY N317507, dated March 3, 2021 (Attachment E), this notice also 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 five identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

Similarly, pursuant to 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 comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N282485, NY H80038, NY N219961, NY N219968 and NY N317507, CBP classified electromechanical oral hygiene devices in heading 8424, HTSUS, specifically in subheading 8424.89.79 (2001),

8424.89.00 (2012), and 8424.89.90 (2021) HTSUS, which provides for "[M]echanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Other appliances: Other." CBP has reviewed these rulings and determined them to be in error. It is now CBP's position that electromechanical oral hygiene devices are properly classified in heading 8509, HTSUS, specifically in subheading 8509.80.50, HTSUS, which provides for "[E]lectro-mechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 85.08; parts thereof: Other appliances: Other.".".

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N282485, NY H80038, NY N219961, NY N219968 and NY N317507 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H331605, set forth as Attachment F 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.

GREGORY CONNOR
for
YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N282485

February 8, 2017
CLA-2–84:OT:RR:NC:N1:405
CATEGORY: Classification
TARIFF NO.: 8424.89.9000

KATHY TROTTA
CONAIR CORPORATION
150 MILFORD ROAD
EAST WINDSOR, NJ 08520

RE: The tariff classification of dental water jet systems from China

DEAR MS. TROTTA:

In your letter dated January 9, 2017, you requested a tariff classification ruling.

The merchandise at issue consists of two models of oral irrigation devices, the Interplak Compact Dental Water Jet (Item WJ3CSR), and the Interplak All-in-One Sonic Water Jet System (Item SWJ1B). Both devices are designed to remove plaque and food debris from a user's teeth by means of a stream of pulsating water.

The Compact Dental Water Jet is a battery operated, portable oral irrigation implement. The device features two color coded jet tips, a 3 foot coil hose, and a 300ml water reservoir. The All-In-One Sonic Water Jet System is an oral irrigation device combined with a sonic toothbrush. The device features an 800ml water tank, a 7 setting pressure control, a water jet tip, and five additional attachments that include toothbrush heads, a gum massager, and a tongue cleaner. The two oral irrigation devices at issue are similar in form and function to those described in New York Ruling Letters H80038 and N219961, dated May 10, 2001 and June 28, 2012 respectively.

The applicable subheading for the Compact Dental Water Jet and the All-In-One Sonic Water Jet System will be 8424.89.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Other appliances: Other: Other. The rate of duty will be 1.8% 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.

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 Evan Conceicao at evan.m.conceicao@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

ATTACHMENT B

NY H80038

May 10, 2001
CLA-2–84:RR:NC:MM:106 H80038
CATEGORY: Classification
TARIFF NO.: 8424.89.7090

MS. GAYLE E. MEAGHER
CHARLES M. SCHAYER & CO.
3839 NEWPORT STREET
P.O. BOX 17769
DENVER, CO 80217

RE: The tariff classification of a hygienic oral irrigator from China.

DEAR MS. MEAGHER:

In your letter dated March 26, 2001, on behalf of Teledyne Water Pik, you requested a tariff classification ruling. You submitted a brochure with your request.

The article in question is the Teledyne Water Pik, model WP-70W, family oral irrigator. You state that the oral irrigator is used to remove plaque from teeth where brushing and flossing can't reach. The article consists of a plastic frosted reservoir for fluid storage and 4 color-coded jet tips. The item is battery operated and is driven by an electric pump. A pulsating jet spray is emitted from the jet tip, to aid in oral hygiene.

The applicable subheading for the Teledyne Water Pik oral irrigator will be 8424.89.7090, Harmonized Tariff Schedule of the United States (HTS), which provides for mechanical appliances for projecting, dispersing or spraying liquids: other. The rate of duty will be 1.8 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patrick J. Wholey at 212–637–7036.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

ATTACHMENT C

N219961

June 28, 2012
CLA-2–84:OT:RR:NC:1:106
CATEGORY: Classification
TARIFF NO.: 8424.89.0000

EMILY LAWSON
DORSEY & WHITNEY LLP
COLUMBIA CENTER
701 FIFTH AVENUE
SUITE 6100
SEATTLE, WASHINGTON 98104–7043

RE: The tariff classification of Water Pik model WP-900 from China

DEAR MS. LAWSON:

In your letter dated May 30, 2012 you requested a tariff classification ruling on behalf of your client Water Pik, Inc. You submitted a detailed description, an electronic disc and pictorial representations.

The merchandise under consideration is the Water Pik model WP-900. The WP-900 contains a Water Flosser and a rechargeable electric toothbrush with a charger. Also included are five irrigator tips for the water flosser, two replacement toothbrush heads and a toothbrush travel case.

Classification of goods in the Harmonized Tariff Schedule of the United States (HTSUS) is governed by the General Rules of Interpretation (GRIs). GRI 3(b) states, in part, that goods put up in sets for retail sale, which cannot be classified by reference to 3(a) are to be classified as if they consisted of the component which give them their essential character.

Pursuant to GRI 3 the WP-700 is a retail set consistent with criteria set forth in the Explanatory Notes. The essential character of model WP-900 is the water flosser component.

The applicable subheading for the Water Pik model WP-900 will be 8424.89.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for mechanical appliances for projecting, dispersing or spraying liquids...: other appliances: other. The rate of duty will be 1.8 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 Matthew Sullivan at (646) 733–3013.

Sincerely,

THOMAS J. RUSSO
Director
National Commodity Specialist Division

ATTACHMENT D

N219968

June 28, 2012
CLA-2–84:OT:RR:NC:1:106
CATEGORY: Classification
TARIFF NO.: 8424.89.0000

EMILY LAWSON
DORSEY & WHITNEY LLP
COLUMBIA CENTER
701 FIFTH AVENUE
SUITE 6100
SEATTLE, WASHINGTON 98104–7043

RE: The tariff classification of Water Pik model WP-700 from China

DEAR MS. LAWSON:

In your letter dated May 30, 2012 you requested a tariff classification ruling on behalf of your client Water Pik, Inc. You submitted a detailed description, an electronic disc and pictorial representations.

The merchandise under consideration is the Water Pik model WP-700. The WP-700 contains a Water Flosser and a non rechargeable electric toothbrush. Also included are four irrigator tips for the water flosser and one replacement toothbrush head for the toothbrush.

Classification of goods in the Harmonized Tariff Schedule of the United States (HTSUS) is governed by the General Rules of Interpretation (GRIs). GRI 3(b) states, in part, that goods put up in sets for retail sale, which cannot be classified by reference to 3(a) are to be classified as if they consisted of the component which give them their essential character.

Pursuant to GRI 3 the WP-700 is a retail set consistent with criteria set forth in the Explanatory Notes. The essential character of model WP-700 is the water flosser component.

The applicable subheading for the Water Pik model WP-700 will be 8424.89.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for mechanical appliances for projecting, dispersing or spraying liquids...: other appliances: other. The rate of duty will be 1.8 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 Matthew Sullivan at (646) 733–3013.

Sincerely,

THOMAS J. RUSSO
Director
National Commodity Specialist Division

ATTACHMENT E

N317507

March 3, 2021
CLA-2–84:OT:RR:NC:N1:105
CATEGORY: Classification
TARIFF NO.: 8424.89.9000; 9903.88.02

GAYLE E. MEAGHER
NATIONAL SALES MANAGER
CHARLES M. SCHAYER & CO.
3839 NEWPORT STREET
DENVER, COLORADO 80207

RE: The tariff classification of a Showerpik from China

DEAR MS. MEAGHER:

In your letter dated January 25, 2021, received by Customs and Border Protection on February 10, 2021, on behalf of your client Water Pik, Inc., you requested a tariff classification ruling. A sample was provided.

The item under consideration is identified as the Showerpik, which is described as a handheld oral irrigation device that attaches to your shower head, enabling a user to floss their teeth while showering. The device consists of a showerhead pipe adapter, a hose, a handheld waterpik assembly (including the valve and spring), flossing tips, and a bracket used for mounting. The brass and chome-plated showerhead pipe adapter connects between a shower pipe and a separately purchased shower head. Once connected, a hose is attached from the adapter, to the handheld waterpik assembly, which sits in a bracket attached to the wall of the shower. The Showerpik uses the water pressure supplied from the shower, which is controlled by a spool valve that turns the device to high flow, low flow or no flow settings. When the high or low flow setting is selected, the water sprays out through the tip and into the user's mouth for flossing.

The applicable subheading for the Showerpik will be 8424.89.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Other appliances: Other." The general rate of duty will be 1.8% ad valorem.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 8424.89.9000, HTSUS, unless specifically excluded, are subject to an additional 25 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.02, in addition to subheading 8424.89.9000, HTSUS, listed above.

The HTSUS is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Note cited above and the applicable Chapter 99 subheading. For background information regarding the trade remedy initiated pursuant to Section 301 of the Trade Act of 1974, you may refer to the relevant parts of the USTR and CBP websites, which are available at https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions and https://www.cbp.gov/trade/remedies/301-certain-products-china respectively.

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 https://hts.usitc.gov/current.

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 Jason Christie at Jason.M.Christie@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

ATTACHMENT F

HQ H331605
OT:RR:CTF:EMAIN H331605 SKK
CATEGORY: Classification
TARIFF NO.: 8509.80.50

KATHY TROTTA
CONAIR CORPORATION
150 MILFORD ROAD
EAST WINDSOR, NJ 08520

RE: Revocation of NYs N282485, H80038, N219961, N219968 and N317507; tariff classification of oral hygiene devices

DEAR MS. TROTTA:

This ruling is in reference to New York Ruling Letter (NY) N282485, issued to you on February 8, 2017, on behalf of Conair Corporation, in which U.S. Customs and Border Protection (CBP) classified two models of oral hygiene devices (personal oral irrigation devices) under heading 8424, specifically subheading 8424.89.90, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "[M]echanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Other appliances: Other." Upon review, we have determined that NY N282485 is in error.

CBP has also undertaken review of NY H80038 (May 10, 2001), NY N219961 (Jun. 28, 2012), NY N219968 (Jun. 28, 2012), and NY N317507 (Mar. 3, 2021), in which CBP classified substantially similar oral hygiene devices as mechanical appliances for spraying liquids under heading 8424, HTSUS. As with NY N282485, CBP has determined that the tariff classification of the articles at issue in H80038, N219961, N219968, and N317507 is incorrect.

CBP is revoking NY N282485, H80038, N219961, N219968, and N317507 pursuant to the analysis set forth below.

FACTS:

NY N282485 classified two models of oral irrigation devices, identified as the Interplak Compact Dental Water Jet (Item WJ3CSR) and the Interplak All-in-One Sonic Water Jet System (Item SWJ1B). Both devices are designed to remove plaque and food from a user's teeth by means of a stream of pulsating water. The Compact Dental Water Jet is a battery-operated, portable oral irrigation device that features two color coded jet tips, 3-foot coil hose, and 300ml water reservoir. The All-In-One Sonic Water Jet System is an oral irrigation device that features an 800ml water tank, 7-setting pressure control, water jet tip, and five attachments that include toothbrush heads, gum massager, and tongue cleaner.

In NY H80038, CBP classified a battery-operated "family oral irrigator" (Teledyne Water Pik WP-70W), consisting of a plastic reservoir for fluids, 4 color-coded jet tips, and electric pump, under subheading 8424.89.70, HTSUS (2001). In NY N219961, CBP classified a retail set consisting of a water flosser and a rechargeable electric toothbrush with charger (Water Pik WP-900) under subheading 8424.89.00, HTSUS (2012). In NY N219968, CBP

classified a retail set consisting of a water flosser and a non-rechargeable electric toothbrush (Water Pik WP-700) under subheading 8424.89.00, HTSUS (2012). In NY N317507, CBP classified a rechargeable handheld oral water flosser that attaches to a shower head under subheading 8424.89.90, HTSUS (2021).

LAW AND ANALYSIS:

Classification under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods will be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. If 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 will then be applied in order.

The following HTS headings are under consideration:

8424 Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof:

8509 Electromechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 8508; parts thereof:

Chapter 84, Note 1(f), excludes, in pertinent part, "Electromechanical domestic appliances of heading 8509...."

Note 4 to Chapter 85 provides, in pertinent part:

> Heading 8509 covers only the following electromechanical machines of the kind commonly used for domestic purposes:
>
> (a) Floor polishers, food grinders and mixers, and fruit or vegetable juice extractors, of any weight;
>
> (b) Other machines provided the weight of such machines does not exceed 20 kg, exclusive of extra interchangeable parts or detachable auxiliary devices....

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 (Aug. 23, 1989).

The Explanatory Note (EN) to 85.09 states, "[T]his heading covers a number of domestic appliances in which an electric motor is incorporated. The term 'domestic appliances' in this heading means appliances normally used in the household."

The devices described in NYs N282485, NY H80038, NY N317507, N219961 and N219968 are electromechanical appliances with self-contained electric motors commonly used in the home for oral hygiene. They weigh less than the 20 kg threshold provided in Note 4(b) to Chapter 85. Thus, the subject articles are described by heading 8509, specifically subheading 8509.80.50, HTSUS, which provides for other electromechanical domestic appliances, with self-contained electric motor and are therefore precluded from classification in heading 8424, HTSUS, by Chapter 84 Note 1(f). This

classification is consistent with NY 852646 (May 25, 1990) in which CBP classified a personal battery-operated portable oral water flosser in subheading 8509.80.00, HTSUS (1990).

HOLDING:

By application of GRIs 1 and 6, the subject oral hygiene devices at issue in NY N282485, NY H80038, NY N219961, NY N219968, and NY N317507 are classified under heading 8509, specifically subheading 8509.80.50, HTSUS, which provides for "[E]lectro-mechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 85.08; parts thereof: Other appliances: Other." The applicable rate of duty is 4.2% *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.

EFFECT ON OTHER RULINGS:

NY N282485, dated February 8, 2017, NY H80038, dated May 10, 2001, NY N219961, dated June 28, 2012, NY N219968 dated June 28, 2012, and NY N317507, dated March 3, 2021, are hereby REVOKED.

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

CC:

Ms. Gayle E. Meagher
Charles M. Schayer & Co.
3839 Newport Street
P.O. Box 17769
Denver, CO 80217

Emily Lawson
Dorsey & Whitney LLP
Columbia Center
701 Fifth Avenue
Suite 6100
Seattle, Washington 98104–7043

Gayle E. Meagher
National Sales Manager
Charles M. Schayer & Co.
3839 Newport Street
Denver, Colorado 80207

U.S. Court of Appeals for the Federal Circuit

ADEE HONEY FARMS, et al., Plaintiffs MONTEREY MUSHROOMS, INC., Plaintiff-Appellant v. UNITED STATES, UNITED STATES CUSTOMS AND BORDER PROTECTION, TROY MILLER, ACTING COMMISSIONER OF U.S. CUSTOMS AND BORDER PROTECTION, Defendants-Appellees

Appeal No. 2022–2105

Appeal from the United States Court of International Trade in No. 1:16-cv-00127-TCS, Senior Judge Timothy C. Stanceu.

HILEX POLY CO., LLC, SUPERBAG LLC, SUCCESSOR TO SUPERBAG CORP., UNISTAR PLASTICS, LLC, COMMAND PACKAGING, LLC, SUCCESSOR TO GRAND PACKAGING INC., D/B/A COMMAND PACKAGING, ROPLAST INDUSTRIES INC., US MAGNESIUM LLC, SUCCESSOR TO MAGNESIUM CORPORATION OF AMERICA, Plaintiffs-Appellants v. UNITED STATES, TROY MILLER, ACTING COMMISSIONER OF U.S. CUSTOMS AND BORDER PROTECTION, UNITED STATES CUSTOMS AND BORDER PROTECTION, Defendants-Appellees

Appeal No. 2022–2106

Appeal from the United States Court of International Trade in No. 1:17-cv-00090-TCS, Senior Judge Timothy C. Stanceu.

AMERICAN DREW, AMERICAN OF MARTINSVILLE, BASSETT FURNITURE INDUSTRIES INC., CAROLINA FURNITURE WORKS, INC., CENTURY FURNITURE LLC, DBA CENTURY FURNITURE INDUSTRIES, HARDEN FURNITURE INC., JOHNSTON TOMBIGBEE FURNITURE MFG. CO., KINCAID FURNITURE CO., INC., L & J G STICKLEY, INC., LA-Z-BOY CASEGOODS, INC., LEA INDUSTRIES, MJ WOOD PRODUCTS, INC., MOBEL INC., PERDUES INC., DBA PERDUE WOODWORKS INC., SANDBERG FURNITURE MFG. CO., INC., STANLEY FURNITURE LLC, SUCCESSOR TO STANLEY FURNITURE CO., INC., T COPELAND AND SONS, INC., TOM SEELY FURNITURE LLC, VAUGHAN-BASSETT FURNITURE COMPANY, INC., VERMONT QUALITY WOOD PRODUCTS, LLC, WEBB FURNITURE ENTERPRISES, INC., Plaintiffs-Appellants v. UNITED STATES, UNITED STATES CUSTOMS AND BORDER PROTECTION, TROY MILLER, ACTING COMMISSIONER OF U.S. CUSTOMS AND BORDER PROTECTION, Defendants-Appellees

Appeal No. 2022–2114

Appeal from the United States Court of International Trade in No. 1:17-cv-00086-TCS, Senior Judge Timothy C. Stanceu.

Decided: July 15, 2024

ADAM H. GORDON, The Bristol Group PLLC, Washington, DC, argued for plaintiff-appellant Monterey Mushrooms, Inc. Also represented by JENNIFER MICHELE SMITH-VELUZ.

JEREMY MICHAEL BYLUND, King & Spalding LLP, Washington, DC, argued for plaintiffs-appellants American Drew, American of Martinsville, Bassett Furniture Industries Inc., Carolina Furniture Works, Inc., Century Furniture LLC, Command Packaging, LLC, Harden Furniture Inc., Hilex Poly Co., LLC, Johnston Tombigbee Furniture Mfg. Co., Kincaid Furniture Co., Inc., L & J G Stickley, Inc., La-Z-Boy Casegoods, Inc., Lea Industries, MJ Wood Products, Inc., Mobel Inc., Perdues Inc., Roplast Industries Inc., Sandberg Furniture Mfg. Co., Inc., Stanley Furniture LLC, Superbag LLC, T Copeland and Sons, Inc., Tom Seely Furniture LLC, Webb Furniture Enterprises, Inc., Unistar Plastics, LLC, US Magnesium LLC, Vaughan-Bassett Furniture Company, Inc. and Vermont Quality Wood Products, LLC. Also represented by DANIEL SCHNEIDERMAN, JAMES MICHAEL TAYLOR, JEFFREY MARK TELEP; MARTHA BANNER BANKS, Atlanta, GA; ISHAM CASON HEWGLEY, IV, Houston, TX.

BEVERLY A. FARRELL, International Trade Field Office, United States Department of Justice, New York, NY, argued for defendants-appellees. Also represented by BRIAN M. BOYNTON, PATRICIA M. MCCARTHY, JUSTIN REINHART MILLER; SUZANNA KAY HARTZELL-BALLARD, Office of Assistance Chief Counsel, United States Customs and Border Protection, Indianapolis, IN.

Before LOURIE, STOLL, and CUNNINGHAM, *Circuit Judges*.

CUNNINGHAM, *Circuit Judge*.

This appeal originates from three decisions by the United States Court of International Trade denying Plaintiffs' motions for judgment on the agency record and entering judgment in favor of the United States, the United States Customs and Border Protection ("Customs"), and the Commissioner of Customs (collectively "Appellees" or "Defendants"). *Adee Honey Farms v. United States*, 582 F. Supp. 3d 1286, 1299 (Ct. Int'l Trade 2022) ("*Adee Final Decision*"); *Hilex Poly Co. v. United States*, 581 F. Supp. 3d 1319, 1331 (Ct. Int'l Trade 2022); *Am. Drew v. United States*, 579 F. Supp. 3d 1372, 1384 (Ct. Int'l Trade 2022).[1] We affirm the Court of International Trade's judgment for the reasons explained below.

[1] The Court of International Trade's decisions in all three cases (as well as earlier orders discussed below) are nearly identical in all relevant respects. *Hilex* and *American Drew* were consolidated before the Federal Circuit prior to oral arguments. *Hilex*, No. 2022–2106, Consolidation Order. *Adee* and *Hilex* are consolidated by order issued concurrently with this decision. We refer primarily to the Court of International Trade's decisions in *Adee* in this opinion.

I. BACKGROUND

This case concerns the Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA"),[2] which amended the Tariff Act of 1930. Pub. L. No. 106–387, §§ 1001–1003, 114 Stat. 1549A-1, 1549A-72–75 (codified at 19 U.S.C. § 1675c (2000) (repealed 2006)). The CDSOA provides for the distribution of "[d]uties assessed pursuant to a countervailing duty order, an antidumping duty order, or a finding under the Antidumping Act of 1921," 19 U.S.C. § 1675c(a), and "interest earned on such duties," *id*. § 1675c(e)(2), to "affected domestic producers for qualifying expenditures," *id*. § 1675c(a). The present dispute concerns the distribution of interest associated with antidumping and countervailing duties under the statute.

Under the CDSOA, the Commissioner of Customs "shall establish . . . a special account with respect to each [antidumping order or finding or countervailing duty order]." *Id*. § 1675c(e)(1). The Commissioner of Customs is then required to "deposit into the special accounts, all antidumping or countervailing duties (*including interest earned on such duties*) that are assessed . . . under the antidumping order or finding or the countervailing duty order with respect to which the account was established." *Id*. § 1675c(e)(2) (emphasis added). The statute directs the Commissioner of Customs to "distribute all funds (*including all interest earned on the funds*) from assessed duties received in the preceding fiscal year to affected domestic producers based on the certifications described in paragraph (2)." *Id*. § 1675c(d)(3) (emphasis added).

There are two types of interest under the Tariff Act relevant to this appeal. Section 1677g in the Tariff Act[3] provides for interest payments based on antidumping and countervailing duties finally assessed on imported merchandise. 19 U.S.C. § 1677g. Upon the entry of merchandise into the United States, the importer must deposit "the amount of duties and fees estimated to be payable on such merchandise," *id*. § 1505(a), including any estimated antidumping or countervailing duties, *id*. §§ 1671e(a)(3), 1673e(a)(3). Section 1677g requires refunds on overpayments and the payment of interest on underpayments of estimated antidumping and countervailing duties deposited

[2] The CDSOA is also referred to as the Byrd Amendment. *E.g., Adee Final Decision* at 1288. Although the CDSOA was repealed in 2006, it remains in effect for certain antidumping and countervailing duties assessed on entries made before October 1, 2007. *See* Deficit Reduction Act of 2005, Pub. L. No. 109–171, § 7601, 120 Stat. 4, 154–55 (2006), *amended by* Claims Resolution Act of 2010, Pub. L. No. 111–291, § 822, 124 Stat. 3064, 3163, *amended by* Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111–312, § 504, 124 Stat. 3296, 3308. All references to 19 U.S.C. § 1675c are to the 2000 version of the U.S. Code.

[3] We refer to all provisions by their section number as codified, rather than their section number within the Tariff Act.

compared to the duties finally assessed. *Sharp Elecs. Corp. v. United States*, 124 F.3d 1447, 1449 (Fed. Cir. 1997); 19 U.S.C. § 1677g; *see also id*. §§ 1671f, 1673f (explaining that any underpayment of antidumping or countervailing duties is to be collected (or any overpayment refunded) along with § 1677g interest). Under § 1505(b) of the Tariff Act, "[d]uties, fees, and interest determined to be due upon liquidation . . . are due 30 days after issuance of the bill for such payment." 19 U.S.C. § 1505(b). Delinquency interest accrues on any "unpaid balance" that remains after this 30-day payment period. *Id*. § 1505(d). Unlike § 1677g interest, delinquency interest does not apply specifically to antidumping and countervailing duties. The CDSOA did not change these provisions.

In September 2001, Customs published its Final Rule implementing the CDSOA. Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers, 66 Fed. Reg. 48546 (Sept. 21, 2001) ("Final Rule") (codified at 19 C.F.R. pts. 159, 178). In the preamble to the Final Rule, Customs explained that "only interest charged on antidumping and countervailing duty funds themselves, pursuant to the express authority in 19 U.S.C. [§] 1677g, will be transferred to the special accounts and be made available for distribution under the CDSOA." *Id*. at 48550. Customs did not include delinquency interest assessed after liquidation in its distributions under the CDSOA. *Adee Final Decision* at 1292.

Plaintiffs-Appellants are affected domestic producers entitled to receive certain distributions under the CDSOA. *Id*. at 1288. In 2016 or 2017, plaintiffs separately sued Customs in the Court of International Trade under 28 U.S.C. § 1581(i),[4] alleging that the agency acted unlawfully by withholding delinquency interest from distributions under the CDSOA. J.A. 29; J.A. 4267–68; *Hilex* J.A. 130; *Hilex* J.A. 3710–11.[5] Plaintiffs alleged Customs' practice of excluding delinquency interest from CDSOA distributions first came to light in 2014. J.A. 4270–73.

The Court of International Trade issued three key decisions at issue in this appeal in each of the underlying cases. First, in June 2020, the Court of International Trade granted in part and denied in part the government's motions for failure to state a claim upon which relief can be granted. *See Adee Honey Farms v. United States*, 450 F. Supp. 3d 1365, 1367 (Ct. Int'l Trade 2020) ("*Adee Partial Dismissal Order*");

[4] Section 1581(i) gives the Court of International Trade exclusive jurisdiction over civil actions against the United States, its agencies, or its officers, arising out of any U.S. law providing for "tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue." 28 U.S.C. § 1581(i)(1)(B).

[5] "J.A." refers to the joint appendix filed in *Adee*, No. 22–2105, and "*Hilex* J.A." refers to the joint appendix filed in *Hilex*, No. 22–2106.

Hilex Poly Co. v. United States, 450 F. Supp. 3d 1390, 1392 (Ct. Int'l Trade 2020); *Am. Drew v. United States*, 450 F. Supp. 3d 1378, 1380 (Ct. Int'l Trade 2020). The government asserted "all of plaintiffs' claims are time-barred" based on the applicable two-year statute of limitations, 28 U.S.C. § 2636(i), because the Final Rule—"the agency decision being challenged in this litigation"—was published in September 2001, over a decade before the earliest complaint was filed. *Adee Partial Dismissal Order* at 1371. Plaintiffs asserted their claims could not have accrued until Customs' practice of excluding delinquency interest came to light several years later because the Final Rule did not sufficiently inform the public of Customs' decision. *Id*. at 1374–75. The Court of International Trade rejected plaintiffs' argument, finding the Final Rule did give adequate notice of Customs' decision. *Id*. at 1373–74, 1376. However, the Court of International Trade also determined that under Federal Circuit precedent, a claim for each CDSOA distribution accrues annually. *Id*. at 1376–77. Thus, plaintiffs could challenge the exclusion of delinquency interest from distributions made within the two-year period prior to filing the complaint. *Id*. The Court of International Trade accordingly dismissed claims relating to earlier distributions falling outside this two-year period. *Id*. at 1378.

Second, in June 2022, the Court of International Trade denied plaintiffs' motions to reconsider its partial dismissal of claims as time barred. *Adee Honey Farms v. United States*, 577 F. Supp. 3d 1362, 1364 (Ct. Int'l Trade 2022) ("*Adee Reconsideration Order*"); *Hilex Poly Co. v. United States*, 577 F. Supp. 3d 1372, 1373–74 (Ct. Int'l Trade 2022); *Am. Drew v. United States*, 577 F. Supp. 3d 1367, 1368 (Ct. Int'l Trade 2022). Plaintiffs asserted that the administrative record—made available after the earlier decision— showed that Customs "initially intended to distribute delinquency interest" and "changed its mind about including delinquency interest in the CDSOA distributions at some point between the publication of the proposed rule and the Final Rule," but the agency failed to explain or provide notice of this change. *Adee Reconsideration Order* at 1365. The Court of International Trade rejected this argument, explaining that regardless of what the administrative record contained, "the Final Rule gave notice to interested parties that Customs had reached a decision on the type or types of interest it would . . . distribute to [affected domestic producers]." *Id*. at 1366.

Finally, the Court of International Trade issued its June 2022 decisions denying plaintiffs' motions for judgment on the agency record and entering judgment for the government. *Adee Final Decision* at 1299; *Hilex Poly Co. v. United States*, 581 F. Supp. 3d 1319, 1331

(Ct. Int'l Trade 2022); *Am. Drew v. United States*, 579 F. Supp. 3d 1372, 1384 (Ct. Int'l Trade 2022). In these decisions, the court adopted the agency's interpretation of the CDSOA and held that the statute did not require Customs to distribute delinquency interest. *Adee Final Decision* at 1298–99. The Court of International Trade accordingly denied plaintiffs' motions, concluding that they had not demonstrated that they were entitled to delinquency interest in their distributions. *Id*. at 1288, 1299.

Appellants timely appealed. We have jurisdiction under 28 U.S.C. § 1295(a)(5).

II. STANDARD OF REVIEW

"When reviewing a Court of International Trade decision in an action initiated under 28 U.S.C. § 1581(i), this court applies the standard of review set forth in 5 U.S.C. § 706." *PS Chez Sidney, L.L.C. v. U.S. Int'l Trade Comm'n*, 684 F.3d 1374, 1379 (Fed. Cir. 2012). "Accordingly, we review questions of law, including the interpretation of statutory provisions, to determine whether agency actions or conclusions are 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'" *Id*. (quoting 5 U.S.C. § 706).

III. DISCUSSION

Before this court, Appellants argue the Court of International Trade erred by dismissing claims for distributions received more than two years before filing suit. *Adee* Appellant's Br. 46; *see also id*. at 47–49; *Hilex* Appellants' Br. 63; *see also id*. at 64–71.[6] Appellants also assert that the CDSOA requires Customs to include delinquency interest in its distributions to producers. *Adee* Appellant's Br. 16–17; *see also id*. at 18–29; *Hilex* Appellants' Br. 27; *see also id*. at 28–44. As explained below, we disagree.

A.

To avoid a time bar, an action under 28 U.S.C. § 1581(i) must be brought "within two years after the cause of action first accrues." 28 U.S.C. § 2636(i). A claim accrues when suit can be filed. *See SKF USA, Inc. v. U.S. Customs & Border Prot*., 556 F.3d 1337, 1348 (Fed. Cir. 2009). However, "a claim does not accrue until the aggrieved party reasonably should have known about the existence of the claim." *St. Paul Fire & Marine Ins. Co. v. United States*, 959 F.2d 960, 964 (Fed. Cir. 1992). Here, Appellants assert that they could not have known

[6] "*Adee* Appellant's Brief" refers to the opening brief filed in *Adee*, No. 22–2105, and "*Hilex* Appellants' Brief" refers to the opening brief filed in *Hilex*, No. 22–2106. We follow the same naming convention for other briefs.

about Customs' decision to exclude delinquency interest until over a decade after the Final Rule was promulgated because neither the Rule nor its annual CDSOA reports provided notice of Customs' decision to exclude delinquency interest. *Adee* Appellant's Br. 47–49; *Hilex* Appellants' Br. 63–65. Because the Court of International Trade properly found that the Final Rule gave adequate notice of Customs' decision, we conclude that the Court of International Trade did not err by dismissing the claims outside the two-year statutory period as untimely.

Customs communicated its decision regarding the exclusion of delinquency interest both in the operative text of the Final Rule and in the preamble. First, the operative text explains that "funds in [special accounts] are not interest-bearing unless specified by Congress. . . . Therefore, no interest will accrue in these accounts. However, statutory interest charged on antidumping and countervailing duties at liquidation will be transferred to the Special Account, when collected from the importer." 19 C.F.R. § 159.64. The express inclusion of "interest charged . . . at liquidation" in CDSOA distributions implies the exclusion of delinquency interest—which is charged after liquidation. *See United States v. Vonn*, 535 U.S. 55, 65 (2002) (recognizing the principle that "expressing one item of a commonly associated group or series excludes another left unmentioned"). The preamble to the Rule specifically states that "only interest charged on antidumping and countervailing duty funds themselves, pursuant to the express authority in 19 U.S.C. [§] 1677g, will be transferred to the special accounts and be made available for distribution under the CDSOA." Final Rule, 66 Fed. Reg. at 48550.

Appellants argue that the only portion of the September 2001 Final Rule that could possibly provide notice of Customs' decision is the preamble, and this statement—in context—does not provide adequate notice. *See Adee* Appellant's Br. 47–48; *Hilex* Appellants' Br. 67–68. Appellants contend that the text of the preamble appears in response to comments suggesting that clearing and special accounts "establishe[d] under the CDSOA should be interest-bearing accounts"—"an entirely different subject." *Hilex* Appellants' Br. 68 (first citing Final Rule, 66 Fed. Reg. at 48550); *Adee* Appellant's Br. 47–48. Hilex likens this case to *MCI Telecomms. Corp. v. F.C.C.*, 57 F.3d 1136 (D.C. Cir. 1995), in which the D.C. Circuit held the agency failed to provide adequate notice in a proposed rulemaking where it had communicated a policy change only "in the background section of the proposed rule via a footnote appended to a paragraph about a different topic." *Hilex* Appellants' Br. 68–70 (citing *MCI*, 57 F.3d at 1142).

These arguments are unpersuasive. The explanatory text in the preamble appears in the main text in the only section of the preamble addressing the distribution of interest and plays a supporting role to the operative text. Unlike in *MCI*, the relevant text is not in a footnote to a paragraph about a different topic. *See MCI*, 57 F.3d at 1142 (noting the agency "could hardly have done a better job" of "hid[ing] in the most unlikely place its 'notice'"). This case also differs from *MCI* because both the preamble and the operative text communicate Customs' decision regarding the exclusion of delinquency interest from distribution. *See Hillsborough Cnty., Fla. v. Automated Med. Lab'ys, Inc.*, 471 U.S. 707, 718 (1985) (noting agencies "can speak through a variety of means, including regulations, preambles, interpretive statements, and responses to comments"). Although the relevant preamble text appears in response to another interest-related question, a party affected by the decision "reasonably should have known" about Customs' decision by reading the preamble in conjunction with the operative text. *St. Paul Fire*, 959 F.2d at 964. Together, the preamble and operative text give adequate notice.

Appellants also assert that the Final Rule could not have provided adequate notice because it did not reflect the agency's change in position between the Proposed and Final Rule. *Adee* Appellant's Br. 40–41; *Hilex* Appellants' Br. 66–67. Specifically, Appellants argue that Customs had originally planned to distribute delinquency interest, *Adee* Appellant's Br. 40–41 (citing J.A. 4187–88), then changed its mind, *id.* at 41; *see also id.* at 14 (citing J.A. 4256). *See Hilex* Appellants' Br. 66–67. Appellants assert that the small changes in language between the Proposed and Final Rule[7] were insufficient to document this change. *See id.* We disagree.

The record merely establishes that Customs "*consider[ed]* possible methods" for the distribution of delinquency interest. *See* J.A. 4188 (emphasis added).[8] Considering how the agency could distribute delinquency interest does not mean the agency had decided it would. Thus, the record does not establish that Customs had decided to distribute delinquency interest and communicated this decision in the Proposed Rule. Nor does the administrative record change what the Final Rule communicates: only § 1677g interest was to be distributed. The continuity between the Proposed and Final Rule indicates Customs never changed this public position.

[7] The operative text of the Proposed Rule was nearly identical to the Final Rule. *Compare* Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers, 66 Fed. Reg. 33920, 33926 ("Proposed Rule"), *with* Final Rule, 66 Fed. Reg. at 48554.

[8] "1505 interest" in the underlying record refers to delinquency interest, which is charged under 19 U.S.C. § 1505(d).

We hold that the Final Rule provided adequate notice. Therefore, we conclude the Court of International Trade did not err by dismissing the claims outside the two-year statutory period as untimely.

B.

Next, we turn to whether the CDSOA requires Customs to distribute delinquency interest to affected producers. Appellants argue that the Court of International Trade erred because the statute unambiguously requires the distribution of delinquency interest. *See Adee* Appellant's Br. 16–17, 31; *Hilex* Appellants' Br. 27, 45. We hold that—after resorting to the traditional tools of statutory interpretation—the CDSOA unambiguously excludes delinquency interest from distribution, and we affirm accordingly. *See Loper Bright Enters. v. Raimondo*, 603 U.S. ___, ___ (2024) (slip op. at 23) ("[C]ourts use every tool at their disposal to determine the best reading of the statute and resolve [any] ambiguity.").

We begin our analysis with the text of the CDSOA. *Republic of Sudan v. Harrison*, 139 S. Ct. 1048, 1055–56 (2019). Our analysis focuses on two key statutory sections: § 1675c(e)(2) and § 1675c(d)(3). 19 U.S.C. § 1675c(e)(2), (d)(3). We discuss each section in turn.

Section 1675c(e)(2) directs Customs to deposit into each special account "all antidumping or countervailing duties (including interest *earned on* such duties) that are *assessed . . . under* the antidumping order or finding or the countervailing duty order with respect to which the account was established." *Id.* § 1675c(e)(2) (emphasis added). The placement of the parenthetical and the word "including" explain that the term "duties"—as used in the provision—encompasses "interest." *Chickasaw Nation v. United States*, 534 U.S. 84, 89 (2001) ("To 'include' is to 'contain' or 'comprise as part of a whole.'") (citation omitted). Therefore, the phrase "that *are assessed . . . under* the antidumping order or finding or the countervailing duty order" applies to both the "duties" and "interest earned on such duties."[9] *Id.* § 1675c(e)(2) (emphasis added). The statute also states that only duties and interest "earned on" these duties are deposited into special accounts for distribution. Accordingly, only interest that is "earned on" antidumping or countervailing duties *and* "assessed under" the associated antidumping order or finding or countervailing duty order is deposited into the special accounts under § 1675c(e)(2). The only remaining question is what types of interest are "earned on"

[9] We reject the assertion that the phrase "are assessed . . . under" does not apply to "interest" because the subject of the sentence must be the plural "duties." *See Adee* Appellant's Reply Br. 10. Because "duties" includes "interest," the plural phrase properly applies to both.

antidumping or countervailing duties and "assessed under" antidumping or countervailing duty orders, and whether they include delinquency interest.

To understand what types of interest fit these criteria, we look to other provisions of the Tariff Act at the time the CDSOA was enacted. *See United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988) (explaining that a provision ambiguous in isolation may be clarified by the remainder of the statutory scheme). The statutory scheme shows that only § 1677g interest, not delinquency interest, meets these criteria.

Section 1677g interest is uniquely associated with antidumping and countervailing duties. Section 1677g interest is paid on the difference between estimated antidumping or countervailing duties deposited and duties finally assessed and owed under an antidumping or countervailing duty order. *Timken Co. v. United States*, 37 F.3d 1470, 1474 (Fed. Cir. 1994); *see* 19 U.S.C. §§ 1677g, 1671f(b), 1673f(b). Thus, it is "earned on" duties "assessed under" an antidumping order or finding or countervailing duty order. Section 1677g interest begins to accrue only after the "publication of a countervailing or antidumping duty order" or "finding under the Antidumping Act, 1921." 19 U.S.C. § 1677g. Thus, § 1677g interest can also said to be "assessed under" an antidumping order or finding or countervailing duty order.

Delinquency interest fits very differently into the statutory scheme and is not assessed under an antidumping or countervailing duty order. Unlike § 1677g interest, delinquency interest is not specifically associated with antidumping or countervailing duties and appears under a general provision of the Tariff Act applying broadly to "duties, fees, and interest." *See* 19 U.S.C. § 1505(d). Delinquency interest is only assessed and charged after the final assessment of duties and thus is not part of the assessment of any antidumping or countervailing duties. *Compare United States v. Am. Home Assurance Co.*, 857 F.3d 1329, 1337 (Fed. Cir. 2017) ("[Section] 1505(d) interest must inherently be assessed after liquidation . . . ."), *with Norsk Hydro Can., Inc. v. U.S.*, 472 F.3d 1347, 1359–60 (Fed. Cir. 2006) (explaining that the assessment of countervailing duties occurs at liquidation). Any delinquency interest charged is assessed under this general provision of the Tariff Act, not under an antidumping order or finding or countervailing duty order.

The other key CDSOA provision, § 1675c(d)(3), follows a similar structure, instructing Customs to "distribute all funds (including all interest earned on the funds) from assessed duties received in the preceding fiscal year to affected domestic producers . . . ." 19 U.S.C. § 1675c(d)(3). Generally, "funds" are defined as "available pecuniary

resources." *Webster's Third New International Dictionary of the English Language* 921 (3d ed. 2002); *see also Bayer AG v. Housey Pharms., Inc.*, 340 F.3d 1367, 1371 (Fed. Cir. 2003) ("Dictionaries of the English language provide the ordinary meaning of words used in statutes."). Under the CDSOA, the only sources of "funds" for each special account are deposits made under § 1675c(e)(2). Thus, in the context of the statute, "funds . . . from assessed duties" refers to what is deposited in each special account under § 1675c(e)(2). See 19 U.S.C. § 1675c(e)(3) (referring to the "distribution of the funds in a special account"); *Adee* Oral Arg. at 4:50–5:24, https://oralarguments.cafc.uscourts.gov/default.aspx?fl=22–2105_12052023.mp3 (Appellant conceding "funds" in § 1675c(d)(3) and "duties" deposited under § 1675c(e)(2) are the same corpus, based on the text of § 1675c(e)(3)).

The parenthetical then explains that these funds include all the associated interest received and deposited under § 1675c(e)(2), but no other interest. As explained earlier, the use of a parenthetical and the word "including" indicate that "all interest earned on the funds" is part of the "funds" to be distributed. *See Chickasaw Nation*, 534 U.S. at 89. Here, both must also come from "assessed duties received in the preceding fiscal year." 19 U.S.C. § 1675c(d)(3). The parenthetical does not expand the scope of funds to be distributed; rather, "that which is within [the parentheses] is meant simply to be illustrative, hence redundant." *Chickasaw Nation*, 534 U.S. at 89. In context, § 1675c(d)(3) therefore directs Customs to distribute a subset of funds deposited in the special accounts—funds "received in the preceding fiscal year." It does not include any additional interest that is not deposited under § 1675c(e)(2).[10]

Appellants argue the modifier "all" in § 1675c(d)(3) undercuts this statutory interpretation. *See* 19 U.S.C. § 1675c(d)(3) ("*all* interest earned on the funds") (emphasis added); *Adee* Appellant's Br. 22–23; *Hilex* Appellants' Br. 42–43. Hilex asserts that "'all interest' in fact means . . . all interest"—that is, including delinquency interest. *Hilex* Appellants' Br. 63. However, "a statute's meaning does not always turn solely on the broadest imaginable definitions of its component words. Linguistic and statutory context also matter." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 523 (2018) (internal quotation marks and citation omitted). The context—placement after the word "including" inside the parenthetical—cabins the meaning of "all interest" to interest deposited under § 1675c(e)(2).

Appellants are also incorrect that such a construction "effectively

[10] Hilex asserts that reading § 1675c(e)(2) before § 1675c(d)(3) improperly "disregard[s] the sequential order of statutory provisions." *Hilex* Appellants' Br. 38. Regardless of the order in which the provisions are read, § 1675c(e)(2) provides important context that helps define "funds" in § 1675c(d)(3).

read[s] the word 'all' out of the CDSOA." *Adee* Appellant's Br. 23; *see Hilex* Appellants' Br. 40. Section 1677g provides that interest be charged to importers on underpayment of duties finally owed, while interest is to be paid to importers when they overpay with their estimated deposit. 19 U.S.C. § 1677g(a). The use of the phrase "all interest" is best understood as a command that Customs should distribute the entirety of the interest it collects from importers for underpayments, without deducting the interest it pays to importers for overpayments.[11] *See Life Techs. Corp. v. Promega Corp*., 580 U.S. 140, 146 (2017) ("'All' means the entire quantity . . . ."). Thus, "all" does not mean "all types of interest" or require the inclusion of delinquency interest, and the Court of International Trade's interpretation does not read "all" interest out of the statute.

The text and structure of the CDSOA and the broader Tariff Act show that delinquency interest is excluded from distributions under the CDSOA. Because the text yields a clear answer, we need not consider legislative history. *Milner v. Dep't of Navy*, 562 U.S. 562, 574 (2011) ("Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it."). Even if we were to take legislative history into account, it does not contradict the interpretation based on the statutory text and structure. The legislative history Appellants cite speaks only to the general purpose of the statute and does not mention interest at all. *See Adee* Appellant's Br. 30 (first citing 145 CONG. REC. S497 (daily ed. Jan. 19, 1999) (statement of Sen. DeWine); then citing CONG. REC. H9708 (daily ed. Oct. 11, 2000) (statement of Rep. Johnson); and then citing 146 CONG. REC. S10697 (daily ed. Oct. 18, 2000) (statement of Sen. Byrd)); *Hilex* Appellants' Br. 12–13 (citing same). These statements regarding the overarching goals of the CDSOA "are too general to provide much support for [Appellants'] reading of the [disputed] terms" and "do little to bolster their argument on the narrow question presented here." *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 303 (2006). Accordingly, they do not lead us to question the unambiguous meaning of the statute.

Appellants and the government also assert their preferred interpretation is supported by the subsequent enactment of the Trade Facilitation and Trade Enforcement Act of 2015 ("TFTEA"), Pub. L. No. 114–125, § 605, 130 Stat. 122, 187–88 (codified at 19 U.S.C. §

[11] In the Final Rule, Customs adopted this interpretation, noting that the payment of interest to importers for overpayment "is not a part of, and therefore does not reduce, the computation of the continued dumping and subsidy offset [to be distributed]." 66 Fed. Reg. at 48550. The CDSOA's Congressional sponsors specifically lauded Customs for this interpretation, stating that "any other construction of the Act would significantly undermine its purpose." J.A. 4068.

4401). *Adee* Appellant's Br. 30 n.7; *Hilex* Appellants' Br. 19–20; *Adee* Appellees' Br. 34–35, 38, 40. The TFTEA expressly provides that delinquency interest paid by sureties after October 1, 2014 must be distributed via the CDSOA. 19 U.S.C. § 4401(c). The fact that the Tariff Act as amended by the TFTEA expressly provides for the distribution of some delinquency interest implies that other delinquency interest is not to be included. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 467 (2001) ("We have therefore refused to find implicit in ambiguous sections of the [statute] an authorization to consider costs that has elsewhere, and so often, been expressly granted."). It also provides some limited evidence that the prior version of the Tariff Act did not already provide for the allocation of delinquency interest.

On the other hand, Appellants cite evidence in the Congressional record that Congress enacted the TFTEA to partially correct what it saw as Customs' failure to follow the direction of the CDSOA to distribute all interest. *See Hilex* Appellants' Br. 19–20 (citing 162 CONG. REC. S843 (daily ed. Feb 11, 2016) (statement of Sen. Thune) (explaining that the TFTEA was enacted to "correct[Customs'] misreading of the law")). But this kind of "[p]ost-enactment legislative history . . . is not a legitimate tool of statutory interpretation. . . . Permitting the legislative history of subsequent [ ] legislation to alter the meaning of a statute would set a dangerous precedent." *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 242 (2011). For the reasons above, the TFTEA does not lead us to deviate from our interpretation of the CDSOA.

In sum, the CDSOA unambiguously excludes delinquency interest from distribution to affected producers.

IV. CONCLUSION

We have considered Appellants' remaining arguments, and we do not find them persuasive. For the above reasons, we affirm the Court of International Trade's partial dismissal and entry of judgment for the government. Appellants' claims for distributions predating their complaints by more than two years are time barred, and all of Appellants' claims fail because the statute unambiguously supports Customs' practice of excluding delinquency interest.

AFFIRMED

Slip Op. 24–80

ELYSIUM TILES, INC., AND ELYSIUM TILE FLORIDA, INC., Plaintiffs, v. UNITED STATES, Defendant, and THE COALITION FOR FAIR TRADE IN CERAMIC TILE, Defendant-Intervenor.

Before: Jane A. Restani, Judge
Court No. 23–00041

[Remanding Commerce's Final Scope Ruling regarding whether a product is covered by antidumping duty and countervailing duty orders on ceramic tile from the People's Republic of China.]

Dated: July 18, 2024

David J. Craven, Craven Trade Law LLC, of Chicago, IL, argued for plaintiffs Elysium Tiles, Inc. and Elysium Tile Florida, Inc.

Christopher A. Berridge, Trial Attorney, Commercial Litigation Branch, U.S. Department of Justice, of Washington, DC, argued for the defendant. With him on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, and *L. Misha Preheim*, Assistant Director. Of counsel on the brief was *Vania Y. Wang*, Office of Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, DC.

David M. Spooner, Barnes & Thornburg, LLP, of Washington, DC, argued for defendant-intervenor The Coalition for Fair Trade in Ceramic Tile. With him on the brief was *Nicholas A. Galbraith*.

OPINION AND ORDER

Restani, Judge:

This action is a challenge to the final scope ruling of the United States Department of Commerce ("Commerce") regarding composite tile imported by Elysium Tiles, Inc. and Elysium Florida Tile, Inc. (collectively, "Elysium"). The final scope ruling found that Elysium's compsite tile is included in the antidumping duty ("AD") and countervailing duty ("CVD") orders on ceramic tile from the People's Republic of China (collectively, the "Orders"). *Final Scope Ruling on Elysium's Composite Tile*, P.R. 40 (Jan. 25, 2023) ("*Scope Ruling*"). The composite tile in question consists of a base layer of porcelain tile, a layer of epoxy, and a thin top layer of marble. *Id.* at 4. Commerce ruled that the marble layer is a "decorative feature," and is thus within the scope of the Orders. *Id.* at 8. Elysium assert the marble layer is more than mere decoration, and that the composite tile is therefore not within the scope of the Orders. The United States

("Government") and the Coalition for Fair Trade in Ceramic Tile (the "Coalition") ask that the court sustain Commerce's scope ruling.

Additionally, Elysium challenge Commerce's actions after an *ex parte* meeting between Commerce and a domestic tile producer, Florida Tile, Inc ("Florida Tile"). Elysium contend both that the meeting was improper, and that the summary memorandum, placed on the record in compliance with 19 U.S.C. § 1677f, was inadequate. For the following reasons, the court remands Commerce's final scope ruling as unsupported by substantial evidence and not in accordance with law.

BACKGROUND

I. Antidumping and Countervailing Duty Orders

On June 1, 2020, Commerce issued antidumping and countervailing duty orders on ceramic tile from the People's Republic of China. *Ceramic Tile From the People's Republic of China: Antidumping Duty Order*, 85 Fed. Reg. 33,089 (Dep't Commerce June 1, 2020); *Ceramic Tile From the People's Republic of China: Countervailing Duty Order*, 85 Fed. Reg. 33,119 (Dep't Commerce June 1, 2020) (collectively, the "Orders"). Commerce defined the scope of the Orders, in relevant part, as follows:

> The merchandise covered by [these Orders] is ceramic flooring tile, wall tile, paving tile, hearth tile, porcelain tile, mosaic tile, flags, finishing tile, and the like (hereinafter ceramic tile). Ceramic tiles are articles containing a mixture of minerals including clay (generally hydrous silicates of alumina or magnesium) that are fired so the raw materials are fused to produce a finished good that is less than 3.2 cm in actual thickness. All ceramic tile is subject to the scope regardless of end use, surface area, and weight, regardless of whether the tile is glazed or unglazed, regardless of the water absorption coefficient by weight, regardless of the extent of vitrification, and regardless of whether or not the tile is on a backing. Subject merchandise includes ceramic tile with decorative features that may in spots exceed 3.2 cm in thickness and includes ceramic tile "slabs" or "panels" (tiles that are larger than 1 meter^2 (11 ft.^{2})).
>
> Subject merchandise includes ceramic tile that undergoes minor processing in a third country prior to importation into the United States. Similarly, subject merchandise includes ceramic tile produced that undergoes minor processing after importation into the United States. Such minor processing includes, but is not limited to, one or more of the following: Beveling, cutting,

> trimming, staining, painting, polishing, finishing, additional firing, or any other processing that would otherwise not remove the merchandise from the scope of [these Orders] if performed in the country of manufacture of the in-scope product.
>
> Subject merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheadings of heading 6907: 6907.21.1005, 6907.21.1011, 6907.21.1051, 6907.21.2000, 6907.21.3000, 6907.21.4000, 6907.21.9011, 6907.21.9051, 6907.22.1005, 6907.22.1011, 6907.22.1051, 6907.22.2000, 6907.22.3000, 6907.22.4000, 6907.22.9011, 6907.22.9051, 6907.23.1005, 6907.23.1011, 6907.23.1051, 6907.23.2000, 6907.23.3000, 6907.23.4000, 6907.23.9011, 6907.23.9051, 6907.30.1005, 6907.30.1011, 6907.30.1051, 6907.30.2000, 6907.30.3000, 6907.30.4000, 6907.30.9011, 6907.30.9051, 6907.40.1005, 6907.40.1011, 6907.40.1051, 6907.40.2000, 6907.40.3000, 6907.40.4000, 6907.40.9011, and 6907.40.9051. Subject merchandise may also enter under subheadings of headings 6914 and 6905: 6914.10.8000, 6914.90.8000, 6905.10.0000, and 6905.90.0050. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of [these Orders] is dispositive.

Ceramic Tile From the People's Republic of China, 85 Fed. Reg. 33,089, 33,117 (Dep't Commerce June 1, 2020) ("*Scope Order Appendix*").

II. Description of Merchandise

Drawing from the scope ruling application submitted by Elysium, Commerce proceeded with the following description of the merchandise:

> The product at issue is composite tile made of multiple layers of material. The base layer is made from porcelain, a vitrified ceramic. The middle layer consists of an aviation grade epoxy which is used to permanently bond the base layer to the top layer. The top layer consists of marble. The tile is approximately 12 to 15 mm thick. The tile is produced in six sizes – 300 by 300 mm, 300 by 600 mm, 600 by 600 mm, 800 by 400 mm, 800 by 800 mm, and 1200 by 600 mm.

Scope Ruling at 4.

III. Scope Inquiry Proceedings

Elysium initially filed a scope application on April 11, 2022. *Scope Ruling Application*, C.R. 1, P.R. 1 (Apr. 11, 2022). Commerce rejected the application on May 12, 2022, because it determined that the Coalition, a party entitled to service, was not properly served. *Denial of Scope Application*, P.R. 5 (May 12, 2022). On May 24, 2022, Elysium refiled its scope application with an explanation regarding service. *Request to Reconsider and Scope Application*, C.R. 2, P.R. 8 (May 24, 2022); *Request to Reconsider and Scope Application* at Attachment II, C.R. 2, P.R. 8 (May 24, 2022) ("*Scope Ruling Application*"). On June 2, 2022, Commerce initiated its scope inquiry to determine whether Elysium's composite tile is covered by the Orders. *Initiation of Scope Inquiry*, P.R. 15 (June 2, 2022).

On September 20, 2022, Commerce officials conducted an *ex parte* visit to the production facilities of Florida Tile, a member of the Coalition. *Florida Tile Visit Memorandum*, P.R. 26 (Sept. 26, 2022) ("*Ex Parte Memo*"). On September 26, 2022, Commerce placed a memorandum documenting the September 20, 2022, visit on the record of the instant proceedings. *Id.* The memorandum listed the date and location of the visit, an extremely sparse list of events, and a list of participants in the meeting. *Id.* at 1–2. On October 11, 2022, Elysium filed an objection to the September 20, 2022, *ex parte* visit and requested an *ex parte* meeting with Commerce. *Objection to Meeting, Request for Further Detail and Request for Meeting* at 1–3, P.R. 32 (Oct. 11, 2022). Commerce did not reply to the objection or grant an *ex parte* meeting to Elysium.

On January 25, 2023, Commerce issued a final scope ruling, determining that the composite tile imported by Elysium is within the scope of the Orders. *Scope Ruling* at 1. This action followed.

JURISDICTION & STANDARD OF REVIEW

The court has jurisdiction pursuant to 28 U.S.C. § 1581(c) (2018) and 19 U.S.C. § 1516a(a)(2)(B)(vi) (2018). Section 1516a(a)(2)(B)(vi) provides for judicial review of a determination of "whether a particular type of merchandise is within the class or kind of merchandise described in an . . . antidumping or countervailing duty order." 19 U.S.C. § 1516a(a)(2)(B)(vi). In conducting its review, the court must set aside any determination, finding, or conclusion found "to be unsupported by substantial evidence on the record, or otherwise not in accordance with law." *Id.* § 1516a(b)(1)(B)(i).

DISCUSSION

I. *Commerce's Ex Parte Communication Memorandum was Inadequate*

Elysium primarily argues that the *ex parte* memorandum failed to "provide an adequate summary of matters discussed."[1] Pl. Elysium Br. in Supp. of its Rule 56.2 Mot. for J. on the Agency R. at 7, ECF No. 26 (Aug. 31, 2023) ("Elysium Br."). Elysium assert that there was "no meaningful opportunity to address the facts presented" in the meeting due to the inadequate memorandum, and that the *ex parte* meeting "allowed petitioner to provide 'secret' information and argument about the purported production process," giving an "impression of favoritism." *Id.* at 22–23, 26. Elysium ultimately claim that Commerce's scope ruling process was "compromised" because of the "decision to hold an improper *ex parte* meeting," along with the insufficiency of the memorandum provided. *Id.* at 24–25.

The government argues that Commerce "adequately summarized" the visit and complied with 19 U.S.C. § 1677f(a)(3). Def. United States Br. in Supp. of its Rule 56.2 Mot. for J. on the Agency R. at 13, ECF No. 35 (Dec. 13, 2023) ("Gov. Br."). The government contends that the memorandum was filed because Florida Tile is a member of the Coalition, and that 19 U.S.C. § 1677f(a)(3) required documentation be placed on the record. Gov. Br. at 13. The government asserts that the "simplest" explanation for the lack of information is that there was no information relating to the proceeding presented or discussed, and that "had factual information or arguments been exchanged, Elysium would have been informed of this exchange in the summary . . . and would have had a chance to respond." *Id.* at 14.

19 U.S.C. § 1677f(a)(3) (2018) governs *ex parte* meetings, and lists requirements for additions to the record following such meetings. It states, in relevant part:

> (3) Ex parte meetings.
>
> The administering authority and the Commission shall maintain a record of any ex parte meeting between—
>
> (A) interested parties or other persons providing factual information in connection with a proceeding, and

[1] Elysium argue that Commerce's denial of a requested *ex parte* meeting with Elysium following the September 20 visit with Florida Tile was improper. Elysium Br. at 24. Elysium fails to adequately support this assertion with any precedent, regulation, or statute requiring such a meeting, and the relevant statute makes no reference to such a requirement. *See id.* at 24; 19 U.S.C. 1677f(a)(3).

> (B) the person charged with making the determination, or any person charged with making a final recommendation to that person in connection with that proceeding,
>
> *if information relating to that proceeding was presented or discussed* at such meeting. The record of such an ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted . . . .

19 U.S.C. § 1677f(a)(3) (emphasis added).

As written, this statute requires a summary of the meeting *only if* information relating to the proceeding was presented or discussed. *See id.* The statute does not, however, explicitly describe the depth or breadth required of a summary. *See id.* The court has previously held that such summaries do not need to be a "complete and fulsome discussion." *Valeo N. Am., Inc. v. United States*, 610 F. Supp. 3d 1322, 1342–43 (CIT 2022). In the context of Enforce and Protect Act ("EAPA") investigations, however, the court has held that summaries of confidential information should contain "enough context and [] provide sufficient summaries to determine what type of information was redacted" and is thus unavailable to an opposing party. *CEK Grp. LLC v. United States*, 633 F. Supp. 3d 1369, 1377 (CIT 2023). At a minimum, where information is redacted or otherwise unavailable to the parties, a summary of the matters discussed or submitted must be included in order to allow rebuttal by the opposing party. *See Royal Brush Mfg. v. United States*, 75 F.4th 1250, 1262 (Fed. Cir. 2023) (referring generally to the right to rebuttal when officials have "received new and material information by means of *ex parte* communications"). "[P]arties are entitled to know when and how information was conveyed; they should not have to rely on subtle judgments by Commerce . . . about whether factual information is important . . . or is even useful to the agency or to the parties." *Nippon Steel Corp. v. United States*, 24 CIT 1158, 1165, 118 F. Supp. 2d 1366, 1373 (2000). A substantive summary will therefore provide sufficient context as to the type of information conveyed in order to allow an opposing party to decide if there is something to rebut.

After visiting Florida Tile's production facilities, Commerce placed a memorandum summarizing the visit on the record. *Ex Parte Memo*. The memorandum states, in its entirety:

> On September 20, 2022, Department of Commerce officials visited the Lawrenceburg, Kentucky production facilities of Florida Tile, Inc. (Florida Tile), a member of the petitioning party in the above-referenced proceedings. Our visit included a tour of

> Florida Tile's operations and a question and answer session with Florida Tile employees. A list of participants is contained in the Attachment.

Ex Parte Memo at 1. A list of participants was also attached. *Id.* at 2.

This summary is plainly insufficient. A scope determination may examine, among other factors, how an item is produced. *See* 19 C.F.R. § 351.225 (2024). Information about how the domestic industry produces ceramic tile, as well as information on the variety of products produced by the domestic industry, is information for Commerce to consider in determining whether Elysium's product falls within scope. *See, e.g.*, *Ceramic Tile from the People's Republic of China: Scope Decision Memorandum for the Final Determinations* at 4, A-570–108, C-570–109 (March 30, 2020) ("*Scope Decision Memorandum*") (placed on the record by Elysium in C.R. 4, P.R. 10 on May 24, 2022) (finding that a product was intended to be in scope because a similar product was made by domestic producers). During the tour of the production facility, Commerce presumably learned what type of processing Florida Tile conducts and gained hands on experience with that type of processing and whether it appeared to be "minor."[2]

Further, the summary does not even state whether it was Commerce or Florida Tile asking or answering questions. *See Ex Parte Memo*. Both could be problematic, but it is certainly difficult for Elysium to properly address either without knowing which occurred. In the case where Commerce asked questions, it could have gained insight into processes relevant to the scope determination. In the alternative, answering questions from employees provides Commerce with an opportunity to gain additional perspectives on issues such as processing. While it is not necessary to include a transcript of the session, a substantive summary would indicate at least the the types of questions asked, as well as the role the parties played in the question and answer session.

The government's assertion that the memorandum was only included because interested parties met is unpersuasive. A memorandum is required "if information relating to the proceeding was presented or discussed." 19 U.S.C. § 1677f(a)(3). If there were no information relating to the proceeding presented or discussed at the September 20 meeting, then Commerce should either not have

[2] As discussed later, the definition of "minor processing" is a critical component to this scope determination. *See infra* pp. 13–18.

included a purported summary of the meeting in the record,[3] or reported that no information was exchanged in its memorandum, in accordance with the plain statutory requirements. *See id.* Accordingly, absent an indication otherwise, the court presumes that information was exchanged, meaning that a substantive summary of the *ex parte* meeting must be provided.

The government contends that Elysium must demonstrate material prejudice, because "procedural irregularities by an administrative agency are not per se prejudicial." Gov. Br. at 12 (quoting *Timken Co. v. Regan*, 4 CIT 174, 179, 552 F. Supp. 47, 52 (1982)). The government contends that Elysium's arguments are mere speculation and are otherwise unsupported by the record. *Id.* at 12. It further asserts that a traditional "harmless error" analysis should be applied. *Id.* at 12; *see also Suntec Indus. Co. v. United States*, 857 F.3d 1363, 1368–72 (Fed. Cir. 2017) (stating that a person seeking relief "has the burden of showing prejudice caused by the error"). Harmless error analysis, however, is inapplicable in this situation, as procedural due process violations arising from *ex parte* communications are "not subject to the harmless error test" when new and material information is introduced. *Id.* (quoting *Stone v. F.D.I.C.*, 179 F.3d 1368, 1377 (Fed. Cir. 1999)). The government seems to ask Elysium to perform the impossible task of showing that they were prejudiced by material information that Elysium cannot determine exists. Elysium does not need to demonstrate how it was prejudiced in this situation; the insufficiency of the memorandum requires remediation before the matter may be addressed by the plaintiff and reviewed by the court.

II. *Commerce's Ruling is Not Supported by Substantial Evidence*

Elysium argue that the porcelain base and marble layer are each "raw materials" used to create the composite tile, with the porcelain serving as the backing for the marble. Elysium Br. at 28. Thus, Elysium contend, the composite tile is not within the scope because (1) the marble layer creates a functionally different product as compared to the porcelain backing alone; (2) firing the "raw materials" would destroy the tile; and (3) major processes occur to obtain the marble layer. *Id.* at 3–4.

Under Elysium's view of the composite tile, the tile is clearly out of scope. If the scope language is unambiguous, then "the plain meaning

[3] The court notes, however, that parties should not have to rely on subtle judgments by Commerce as to what information is important. *Nippon Steel Corp.*, 24 CIT at 1165, 118 F. Supp. 2d at 1373. Here, the tour alone could provide information in need of rebuttal. *See supra* at pp. 8.

of the language governs." *OMG, Inc. v. United States*, 972 F.3d 1358, 1363 (Fed. Cir. 2020) (citation omitted). Here, the scope language defines "[c]eramic tiles [as] articles containing a mixture of minerals . . . that are fired so the raw materials are fused to produce a finished good." *Scope Order Appendix*. Assuming arguendo that the raw materials are the porcelain, epoxy, and marble layer as Elysium describes, firing them would destroy the epoxy and fail to produce a "finished good." Elysium Br. at 4.

This is not, however, the government's interpretation. Instead, the government argues raw materials go into making the porcelain, which is fired, and then the marble serves as a decoration. Gov. Br. at 6. Under the scope language, ceramic tile may have decorative features, and undergo "minor processing in a third country" such as "painting, polishing, finishing, . . . or any other processing that would otherwise not remove the merchandise from the scope of the Orders if performed in the country of manufacture of the in-scope product."[4] *Scope Order Appendix*. The government asserts that the porcelain tile itself is the "finished good" described by the language of the scope, and that the marble is a decorative feature that was added via minor processing. *See* Gov. Br. at 6. This theory is not supported by the plain language of the scope, and as set out below, Commerce failed to support its theory with (k)(1) sources or (k)(2) factors.

A. Legal Standard

When questions arise as to whether a particular product is covered by the scope of an AD or CVD order, Commerce will initiate and conduct a scope inquiry and issue a scope ruling to determine whether or not the product is covered. 19 C.F.R. § 351.225(a) (2022).[5] The first step in the inquiry is consideration of the language of the Orders. *See Shenyang Yuanda Aluminum Indus. Eng'g Co. v. United States*, 776 F.3d 1351, 1356 (Fed. Cir. 2015) ("Scope language is the 'cornerstone' of any scope determination."). If the scope language is unambiguous, then "the plain meaning of the language governs." *OMG, Inc.*, 972 F.3d at 1363.

If the scope language is ambiguous, as is likely here, Commerce may utilize the primary interpretive sources listed under paragraph (k)(1) of section 351.225 ("(k)(1) sources") to help it determine the

[4] Although written somewhat convolutedly the court concludes this language is intended to convey that wherever such minor processing is performed it does not affect scope and the parties do not appear to dispute this.

[5] Commerce recently revised its scope regulations, and the changes took effect April 24, 2024. *See Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws*, 89 Fed. Reg. 20766 (Dep't Commerce Mar. 25, 2024). The court cites to the prior regulations that were in effect when Elysium submitted its complete scope application.

meaning of the language of the scope. 19 C.F.R. § 351.225(k); *see Meridian Prods., LLC v. United States*, 851 F.3d 1375, 1381–82 (Fed. Cir. 2017). The (k)(1) sources include the descriptions of the merchandise considered by Commerce and the International Trade Commission ("ITC") when crafting the scope, as well as previous determinations made by Commerce and the ITC. *See* 19 C.F.R. § 351.225(k)(1)(i).[6] If Commerce "determines that the sources under paragraph (k)(1) of this section are not dispositive," Commerce will then consider the factors under paragraph (k)(2) of the section ("(k)(2) factors"). 19 C.F.R. § 351.225(k)(2)(i). The (k)(2) factors include (A) the physical characteristics of the product; (B) the expectations of the ultimate user; (C) the ultimate use of the product; (D) the channels of trade in which the product is sold; and (E) the manner in which the product is advertised and displayed.[7] *Id.* Finally, "[i]f merchandise contains or consists of two or more components and the product at issue in the scope inquiry is a component of that merchandise as a whole," Commerce may adopt the analysis described under paragraph (k)(3) of this section ("(k)(3) analysis"). *Id.* § 351.225(k)(3). The (k)(3) analysis goes on to consider factors such as whether the "component product would otherwise be covered by the scope," whether the "component product's inclusion . . . results in its exclusion from the scope," and if not, factors such as the "practicability of separating" the components, the value, and the ultimate function. *Id.*

Put simply, the (k)(1) sources assist Commerce in interpreting the scope language, the (k)(2) factors assist Commerce in determining if the language describes the product at issue, and the (k)(3) analysis assists Commerce in considering situations where in-scope components are combined with out-of-scope components. All of Commerce's analysis, however, must be done in such a way that the scope is not changed, and that the order is not interpreted in a manner contrary to its terms. *Eckstrom Indus., Inc. v. United States*, 254 F.3d 1068, 1072 (Fed. Cir. 2001).

Here, Commerce stated that the (k)(1) sources were determinative, and that consideration of the (k)(2) factors was not necessary. *Scope Ruling* at 7. Yet, Commerce only referenced two (k)(1) sources. *Id.* at 8–9. Instead, Commerce relied upon information about the purpose, function, and physical characterics of the product, all of which are

[6] Although they are not determinative when conflicting with the primary interpretive sources listed by § 351.225(k)(1), Commerce may also look to secondary interpretive sources such as any other determinations of the Secretary or the Commission not identified above, Customs rulings or determinations, industry usage, dictionaries, and any other relevant record evidence. 19 C.F.R. § 351.225(k)(1)(ii).

[7] While interpreting a previous version of this regulation, the Federal Circuit has referred to sources that contain information about these factors as "(k)(2) sources." *Sunpreme Inc. v. United States*, 946 F.3d 1300, 1306 (Fed. Cir. 2020).

(k)(2) factors. *Id.* at 8; *see, e.g.*, *Saha Thai Steel Pipe Pub. Co. v. United States*, 101 F.4th 1310, 1329–31 (Fed. Cir. 2024) (referring to physical characteristics only when necessary for direct comparison to a characteristic described in the (k)(1) source). For the purposes of this opinion, the court assumes arguendo that Commerce found it necessary to consider (k)(2) factors.

B. The Parties' Focus on the Word "Decorative" is Misplaced

Elysium argue that the marble is more than "mere" decoration as the marble provides the "physical characteristics of natural stone" to the product. Elysium Br. at 34–35. The government contends that the marble is decorative, as regardless of any physical characteristics, the marble layer is indended "to look pretty or attractive" and partially serves a decorative function. Gov. Br. at 19–20 (citation omitted).

The scope language here does not contain clear exclusionary language. Additionally, it uses general terms further rendered unclear by nonexclusive examples. Some phrases are clearly misstated. For example, the scope "includes ceramic tile with decorative features that may in spots exceed 3.2 cm in thickness . . . ." *Scope Order Appendix*. At oral argument, all parties agreed with the court that this clause can *not* be understood to mean that subject merchandise includes decorative features of 3.2 cm or more themselves, but rather that if the ceramic tile is made greater than 3.2 cm in thickness by certain decoration, the tile is still in scope. For example, if a ceramic tile is 3.1 cm in thickness, and then receives a 2 mm thick coat of paint, it would still be in scope despite the decoration causing the final product to have a thickness of 3.3 cm. *See also supra* n.4.

Clearly the phrase "decorative features" was meant only as an example of something that could affect the thickness of the final product without impacting the dimensional limitation in the the scope description. This reading is confirmed by the lack of evidence on the record defining "decorative feature." Had the scope language been intended to target decoration with ceramic backing, there would be evidence of this before the ITC or Commerce and the (k)(1) sources would support such an interpretation. In absence of such evidence, the court must conclude that because the product does not exceed 3.2

cm, whether or not the marble is a decorative feature is irrelevant to the scope.[8]

This interpretation is confirmed by the structure of the scope description. The first paragraph clearly defines all ceramic tiles as "articles containing a mixture of minerals including clay . . . that are fired so the raw materials are fused to produce a finished good that is less than 3.2 cm in actual thickness." *Scope Order Appendix*. The first paragraph then goes on to clarify that differences in end use, surface area, weight, glaze, water absorption coefficient, and vitrification are irrelevant. *Id.* The second paragraph allows for minor processing to occur without taking the product out of scope, and provides a non-exhaustive list of examples of such minor processing. *Id.* The third paragraph provides non-determinative guidelines that specify which subheadings of the Harmonized Tariff Schedule of the United States these products are presumed to fall under. *Id.*

The "decorative features" line is part of the first paragraph, clarifying, as explained, that decorative features cannot be used to render a product out of scope because of the thickness added by a decorative feature.[9] *See id.* Such language does not expand the scope to include all instances where the ceramic tile is used as a backing for decoration, or other additions.

Finally, record evidence, which Commerce failed to reference in its ruling, confirms this interpretation. In the *Scope Decision Memorandum*, Commerce considered whether handmade tile was excluded from the scope of the Orders. *Scope Decision Memorandum* at 9. In its consideration, Commerce focused on the technique being used to apply the decoration, rather than the decoration itself. *Id.* at 10–11. Specifically, Commerce determined that the relevant question was not *what* decoration was being added, but *how* the decoration was added.[10] *Id.* Similarly, here, the determinative question is not whether the marble layer is decoration, but rather whether the pro-

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[8] Elysium made several arguments to show that the marble was not merely decoration. *See* Elysium Br. at 35. Yet, these definitions of decorative would result in items likely contemplated by the orders being excluded from the scope. For example, a company could paint ceramic with gold, thereby dramatically increasing the price. Further, the gold-painted tile would feel like gold, share some physical properties with gold, and be purchased as a replacement for gold flooring. Yet, the product would be painted ceramic tile—a product explicitly described by the scope language. Accordingly, the court rejects Elysium's arguments regarding decoration.

[9] Commerce specifically relied upon this line in the *Scope Decision Memorandum* to find that cracked glass decoration did not take a product out of scope despite it causing the product's thickness to exceed 3.2 cm in spots. *Scope Decision Memorandum* at 11.

[10] In this instance, Commerce determined that painting a tile by hand rather than through an automated process did not take a product out of the scope. *Scope Decision Memorandum* at 11.

cess of applying the layer is so intensive that it goes beyond "minor processing" to the degree that it brings the product out of scope.

C. The Evidence Does Not Indicate that the Gluing and Splitting of the Marble Slab is "Minor Processing"

Elysium argue that gluing two porcelain tiles to a marble slice, creating a "biscuit," and then slicing the marble in the middle to form two composite tiles, is not a "minor" operation. Elysium Br. at 31. The government asserts that so long as each process is minor, there is no limit to the number of minor processes that would remove Elysium's composite tile from the scope. Gov. Br. at 17–18.

There is no evidence on the record defining "minor processing" beyond the examples given in the scope description. *See Scope Order Appendix*. The scope description does specify, however, that "one or more" of the listed examples may occur without bringing the product out of scope. *Id.* Accordingly, the court concludes that the scope includes products that have undergone any number of minor processes, so long as the minor processes do not change the product so significantly that it cannot be considered to be the product intended to be described in the first paragraph of the scope description.[11] *See id.* Next, as indicated, the scope includes a non-exhaustive list of types of minor processing such as: "[b]eveling, cutting, trimming, staining, painting, polishing, finishing, [and] additional firing." *Scope Order Appendix*. Thus, the court concludes that the scope includes these enumerated processes, as well as processes of a similar nature.

Turning to the product at hand, Elysium's process starts with the sandwiching of two porcelain tiles around a 6 mm thick marble layer, creating a "biscuit" glued together with an epoxy. Elysium Br. at 14–18. Then, the biscuit is split in half, resulting in two composite tiles with a 3 mm marble top layer. *See id.* at 18. This process requires specialized equipment, and must be conducted at a facility designed for the creation of composite tile. *Id.* at 31–34.

Elysium's processes as described are neither enumerated in the scope description, nor are they so similar to the enumerated processes such that they can be easily considered to be "minor processing." Although the number of steps is not determinative, the complexity of Elysium's processes exceeds the complexity of the processes described

[11] In the Coalition's case brief during Commerce's investigation, it referred to products clearly outside of the scope such as "ceramic tile that is already incorporated into furniture; trivets; tile coasters; ceramic tile parts of stoves or fireplaces; . . . and ceramic baking stones and hotplates." *Scope Case Brief of the Coalition for Fair Trade in Ceramic Tile* at 13, A-570–108, C-570–109 (October 14, 2019) (placed on the record by Elysium in C.R. 4, P.R. 10 on May 24, 2022). Although record evidence does not define the process of creating these products, some of them, such as tile coasters, are presumably created through a series of minor processes such as cutting and trimming tile into the appropriate size and shape.

in the scope language. Record evidence indicates that the minor processes described by the scope language can occur "on the job site." *Ceramic Tile Products from the People's Republic of China, Petition for Antidumping and Countervailing Duties* at 12, Inv. Nos. 701-TA-621 and 731-TA-1447 (April 10, 2019) (ITC Petition) (placed on the record by Elysium in C.R. 4, P.R. 10 on May 24, 2022). There is no evidence cited to the court, however, to indicate that the processes Elysium uses can be performed anywhere other than at a specialized facility. Without some evidence that Commerce or the ITC contemplated processes of this complexity as nonetheless "minor," the court is unconvinced Elysium's process can be so considered.

D. Finally, Commerce's Consideration of Key Evidence was Unreasonable

The government asserts that Commerce properly found the composite tiles to be substantially similar to ceramic tiles. *See* Gov. Br. at 6. Elysium contend that the composite tile is differentiated as it "possesses key physical qualities of the marble" and its value comes from the use of real marble rather than simply the look of marble. Elysium Br. at 28, 35.

In its ruling, Commerce places significant reliance on the fact that the composite tile is used for the same purpose, functions in the same way, and shares key physical characteristics with ceramic tile. *Scope Ruling* at 8. Yet, these purposes, functions, and characteristics are shared, to some extent, by all flooring options. To highlight the difference between ceramic and composite tile, Elysium points to a table it submitted comparing ceramic, marble, and composite tile. *Scope Ruling Application* at 5–6. The table plainly shows the composite tile is a middle ground between ceramic and solid marble tile on all fronts. *See, e.g.*, *Scope Ruling Application* at 5–6 ("Water Absorption. Ceramic Tile: Non-Porous and Non-Absorbent. Traditional Marble: Marble is porous and subject to staining. Composite Marble Tile: The base is non-porous and non-absorbent, while the top surface is absorbent."). Yet, Commerce relied on this table to show that composite tile is like ceramic tile and therefore should be found to be within scope. *Scope Ruling* at 8. The problem with this interpretation is that table equally supports the opposite conclusion that the composite tile is like marble tile rather than ceramic tile. A single piece of evidence cannot

support one conclusion if it is equally authoritative in its support of an opposite conclusion.[12]

The table plainly indicates that composite tile exists as an ambiguous middle ground between ceramic and marble tile. There are no calculations or values to indicate that the composite tile is more like marble, or more like ceramic. The table is ambiguous, and does not support Commerce's interpretation that it indicates the composite tile is essentially ceramic tile with marble decoration. Commerce's use of the table as evidence that the composite tile is within scope is plainly unreasonable.

CONCLUSION

To support its ruling, Commerce must either show under a (k)(1) analysis that the scope language contemplates products such as marble composite tile, or that under the (k)(2) factors the marble composite tile truly is considered a form of ceramic tile in purpose, function, advertising, and use.[13] Commerce failed to do so here and therefore its ruling is not supported by substantial evidence.[14] Further, the lack of a substantive summary of the *ex parte* meeting allegedly held "in connection" with the proceedings renders the determination not in accordance with the law.

For the foregoing reasons, the court remands to Commerce for a determination consistent with this opinion. The remand determination shall be issued within 90 days hereof. Comments may be filed 30 days thereafter and any response 15 days thereafter.

Dated: July 18, 2024
New York, New York

/s/ *Jane A. Restani*
JANE A. RESTANI, JUDGE

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[12] Although the evidence as a whole can support two inconsistent conclusions under the substantial evidence standard, it is limited by what "reasonable minds might accept as adequate to support a conclusion." *Fleming v. Escort Inc.*, 774 F.3d 1371, 1375 (Fed. Cir. 2014) (citation omitted). Reasonable minds may accept inconsistent conclusions from evidence as a whole, but not from a single piece of evidence that provides equal support for each conclusion.

[13] Elysium argue that the "finished good" contemplated by the orders is the composite tile, not the porcelain backing that Commerce considered in its scope ruling. Elysium Br. at 28. The court need not address this argument as assuming arguendo that Commerce is right, its ruling is still not supported by substantial evidence. Nevertheless, based on the plain language of the scope, the court is unconvinced that these Orders consider porcelain tile, when used as a backing for another product, to be a "finished good."

[14] On remand, Commerce should consider all issues relating to minor processing and the nature of the product at hand, whether addressed here or or not. Further, Elysium waived or did not exhaust a claim for (k)(3) consideration, but if Commerce finds it relevant it should consider it.

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