U.S. Customs and Border Protection

PROPOSED MODIFICATION OF A RULING LETTER AND MODIFICATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN WHEELS AND HUBS FOR TRUCKS AND TRAILERS

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

ACTION: Notice of proposed modification of a ruling letter, and proposed modification of treatment relating to the tariff classification of a certain wheels and hubs for trucks and trailers.

SUMMARY: Pursuant to section 625(c), 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), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify a ruling letter concerning tariff classification of certain wheels and hubs for trucks and trailers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to modify any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before October 18, 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: Julio Ruiz-Gomez, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0736.

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 modify a ruling letter pertaining to the tariff classification of certain wheels and hubs for trucks and trailers. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) H85742, dated December 7, 2001 (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 modify 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 H85742, CBP classified certain spoke wheels for truck steering axles, spoke wheels for trailers, hubs for truck drive axles, and

hubs for trailers were classified under statistical reporting number 8708.70.60, HTSUS (2001), which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Road wheels and parts and accessories thereof: For other vehicles: Parts and accessories." CBP has reviewed NY H85742 and has determined the ruling letter to be in error with respect to the hubs for truck drive axles, hubs for trailers, and spoke wheels for trailers.

It is now CBP's position that the hubs for trucks should be classified under subheading 8708.99.68, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other: Other parts of power trains." The hubs and wheels for trailers should be classified under subheading 8716.90.50, HTSUS, which provides for "Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Parts: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY H85742 as indicated above and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (HQ) H310555, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke or modify any treatment previously accorded by CBP to substantially identical transactions.

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

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

Attachments

ATTACHMENT A

NY H85742
December 7, 2001
CLA-2–87:RR:NC:MM:101 H85742
CATEGORY: Classification
TARIFF NO.: 8708.70.6030, 8708.70.6060

MR. MIKE M. KRASSICK
WEBB WHEEL PRODUCTS, INC.
2310 INDUSTRIAL DRIVE, S.W.
CULLMAN, ALABAMA 35055

RE: The tariff classification of truck and trailer Wheels and Hubs from China or South Korea

DEAR MR. KRASSICK:

In your letter dated November 5, 2001 you requested a tariff classification ruling.

You submitted specification sheets and literature of various wheels and hubs that you state will be sold to the truck and trailer OEM markets, as well as the aftermarket.

The wheels and hubs will be made of iron. The wheels are identified on your drawings as spoke wheels that are bolted into the brake drums. Your drawings indicate that the hubs will be imported *without* the inner bearing cup and the outer bearing cup.

The applicable subheading for the Wheels will be 8708.70.6030, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Road wheels and parts and accessories thereof: For other vehicles: Parts and accessories- ...Wheel rims for vehicles of subheading 8701.20 or heading 8702, 8703, 8704, or 8705. The rate of duty will be 2.5% ad valorem. The 2002 rate of duty will be 2.5% ad valorem.

The applicable subheading for the Hubs will be 8708.70.6060, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Road wheels and parts and accessories thereof: For other vehicles: Parts and accessories... Other. The rate of duty will be 2.5% ad valorem. The 2002 rate of duty will be 2.5% 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 Robert DeSoucey at 646–733–3008.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

ATTACHMENT B

HQ H310555
OT:RR:CTF:EMAIN H301555 JRG/TPB
CATEGORY: Classification
TARIFF Nos.: 8708.70.60; 8708.99.68; 8716.90.50

MR. MIKE M. KRASSICK
WEBB WHEEL PRODUCTS, INC.
2310 INDUSTRIAL DRIVE, S.W.
CULLMAN, ALABAMA 35055

Re: Modification of NY H85742; Classification of truck and trailer wheels and hubs from China or South Korea

DEAR MR. KRASSICK:

The following is our decision regarding reconsideration of New York Ruling Letter (NY) H85742, dated December 7, 2001, issued to your company, Webb Wheel Products, Inc., regarding the tariff classification of certain wheels and hubs for trucks and trailers under the Harmonized Tariff Schedule of the United States (HTSUS).

In that ruling letter, certain spoke wheels for truck steering axles, spoke wheels for trailers, hubs for truck drive axles, and hubs for trailers were classified under statistical reporting number 8708.70.60, HTSUS (2001), which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Road wheels and parts and accessories thereof: For other vehicles: Parts and accessories."

Upon review of NY H85742, we find that while the classification of the spoke wheels for trucks is correct, the classification of the spoke wheels for trailers, hubs for trucks, and hubs for trailers is incorrect. As such, for the reasons set forth below, NY H85742 is modified with respect to the classification of the spoke wheels for trailers, hubs for trucks, and hubs for trailers.

FACTS:

The subject merchandise was described in NY H85742 as follows:

> The wheels and hubs will be made of iron. The wheels are identified on your drawings as spoke wheels that are bolted into the brake drums. Your drawings indicate that the hubs will be imported without the inner bearing cup and the outer bearing cup.

ISSUE:

What is the classification of the wheels and hubs for trucks and trailers?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
8708.70	Road wheels and parts and accessories thereof:
	For other vehicles:
8708.70.60	Parts and accessories...
	* * *
	Other parts and accessories:
8708.99	Other:
	Other:
	Other:
8708.99.68	Other parts for power trains...
	* * *
8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.90	Parts:
8716.90.50	Other...

The text of heading 8708, HTSUS, requires a product to be a part or an accessory for vehicles of headings 8701 through 8705. Trailers, however, are classified in heading 8716, HTSUS, which provides for trailers and semi-trailers. As a result, no parts or accessories for such trailers can be classified in heading 8708, HTSUS.

Legal Note 3 to section XVII states

> References in Chapters 86 to 88 to 'parts' or 'accessories' do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

The wheels and hubs at issue are not designed for interchangeable use with motor vehicles and trailers. Rather, each model corresponds to its specific use. The hubs for motor vehicle use are very much distinguishable from the hubs used on trailers by name and physical characteristics. Therefore, they must be classified separately.

Further, we note that wheel hubs (or axle hubs, or hubs) are not wheels, nor parts or accessories to wheels. Wheel hubs are installed on the drive axle of the vehicle, and wheels are then installed on the hubs. In fact, hubs for vehicles of headings 8701 to 8705 are listed separately from those wheels in the HTSUS, in subheading 8708.99. In HQ H013123, dated April 14, 2008, CBP determined that "[a] wheel hub is the component upon which the wheel is mounted. It fits over the wheel bearings and is also mounted to the brakes. A brake disc, or rotor, usually made of cast iron, is connected to the wheel or the axle." As a result, wheel hubs designed for truck use are classified in subheading 8708.99, HTSUS, which provides for other parts and accessories of vehicles of headings 8701 to 8705. The ten digit subheading is determined based on the design of the hub. CBP has ruled on this several times in the past. *See, e.g.*, NY F86222 (May 17, 2000), NY G85197 (December 18, 2000), NY N007897 (March 14, 2007), NY N022275 (February 6, 2008), NY N118639 (September 3, 2010), and NY N137737 (January 6, 2011).

The hubs for trucks are for drive axles, which makes them parts of power trains. As such, they are classified in subheading 8708.99.68, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other parts of power trains...."

Lastly, the wheels and hubs for trailers are classified under subheading 8716.90.50, HTSUS, which provides for "Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Parts: Other."

HOLDING:

By application of GRIs 1 and 6, the hubs for trucks are classified in subheading 8708.99.68, HTSUS, which provides "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other parts of power trains...." The general, column one rate of duty for merchandise classified under this subheading is 2.5% *ad valorem*.

The hubs and wheels for trailers are classified under subheading 8716.90.50, HTSUS, which provides for "Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Parts: Other...." The general rate, column one of duty for merchandise under this subheading is 3.1% *ad valorem*.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheadings 8708.70.60, 8708.99.68, and 8716.90.50, 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 the subheadings 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 World Wide Web at https://hts.usitc.gov/current.

EFFECT ON OTHER RULINGS:

New York Ruling Letter H85742, dated December 7, 2001, is hereby MODIFIED with respect to the classification of the spoke wheels for trailers, hubs for trucks, and hubs for trailers.

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF THREE RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE APPLICABILITY OF THE GENERALIZED SYSTEM OF PREFERENCES (GSP) TO INCANDESCENT STRING LIGHTS

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

ACTION: Notice of proposed revocation of three ruling letters and proposed revocation of treatment relating to the applicability of Generalized System of Preferences (GSP) to incandescent string lights.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke three ruling letters concerning the applicability of GSP to certain incandescent string lights. 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 October 18, 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: 1625 *Comments@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: Robert Dinerstein, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0132.

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 three ruling letters pertaining to eligibility of string lights for the GSP. Although in this notice, CBP is specifically referring to Headquarters Ruling Letters (HQ) H303773, dated June 13, 2019 (Attachment A); HQ H303816 dated June 14, 2019 (Attachment B); and New York Ruling Letter (NY) N299944, dated August 24, 2018 (Attachment C), 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 rulings identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should 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 HQ H303773, CBP pointed out that the glass tubes made into bulbs in China retained their Chinese origin, based on HQ 557796, dated June 3, 1994, which determined that the Chinese assembly of bulbs made in Macau did not result in a substantial transformation. This finding was also applied in HQ H303816 and NY N299944. It is now CBP's position that while the light bulbs are an important component of the string lights, the more significant work of forming the lamp bases and sockets, by using polypropylene pellets and injection molding them, is being performed in the beneficiary country. Therefore, in HQ H303816, CBP has determined that the light bulbs are

substantially transformed in the Philippines, and in HQ H303773 and NY N299944, CBP has determined that the light bulbs are substantially transformed in Cambodia, where such processing takes place. As such, in HQ H303816, the string lights will be considered a product of the Philippines, and in HQ H303773 and NY N299944, the string lights will be considered a product of Cambodia. Therefore, the string lights could be eligible for the preferential tariff treatment under the GSP.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke these rulings and to revoke any other ruling not specifically identified to reflect the analysis contained in the ruling HQ H304419 set forth as Attachment D to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

HQ H303773
June 13, 2019
OT:RR:CTF:VS H303773 CMR
CATEGORY: Classification

MS. MARGIE HSIEH
WILLIS ELECTRIC CO., LTD.
8F NO. 310, SEC. 4 ZHONGXIAO
EAST ROAD DA'AN DISTRICT
TAIPEI N/A 10694
TAIWAN

RE: Incandescent string lights; Generalized System of Preferences

DEAR MS. HSIEH:

This is in response to your request on behalf of your company, Willis Electric Co., Ltd., for a determination of whether the incandescent string lights qualify for preferential duty treatment under the Generalized System of Preferences (GSP).

FACTS:

You reference five items in your ruling request: (1) 150-count Incandescent Steady-on Miniature Christmas Net Lights – Clear (#779320); (2) 150-count Incandescent Steady-on Miniature Christmas Net Lights – Multicolor (#779319); (3) 300-count Incandescent Steady-on Miniature Christmas Icicle Light String – Clear (#3752); (4) 25-count Incandescent Steady-on C9 Christmas Light String – Clear (#99506); and, (5) 25-count Incandescent Steady-on C9 Christmas Light String – Ceramic Multicolor (#99505). The production process for all of the string lights is substantially similar and incorporates components from Cambodia and China. Underwriters Laboratories (UL) labels from the United States are attached to each string light after assembly.

The production process for the various string lights begins in Cambodia with inserting Chinese-origin polypropylene pellets into an injection molding machine to produce lamp bases, lamp holders, and wire clips by melting the polypropylene and forming the components. After the lamp base and lamp holder components are produced, Chinese-origin bulbs are inserted into them. The insulated copper wire, which is obtained from both China (80%) and Cambodia (20%), is cut to length, peeled as necessary, and brass terminals, imported from China on spools, are attached at the ends of the wire. The light bulbs in lamp bases and lamp holders are assembled with the processed insulated wire to create incomplete string lights. Insulated copper wire is cut, peeled as necessary, and brass terminals are attached to the ends to create plug wires. Plugs, which are obtained from both China (40%) and Cambodia (60%), are attached to the plug wires. The wires undergo twisting. The plug wires are connected to incomplete string lights. The wires are combined to form the icicle light string, or linked with wire clips and PVC wire (which is source from China (20%) and Cambodia (80%)) to form net strings. The completed string lights are tested, inspected, labeled with UL labels and caution labels, and packaged in Cambodian-origin packaging materials with a Cambodian produced instruction manual and a packet of replacement parts (spare fuse, spare bulbs, plastic bag) imported from China.

The C9 string lights differ slightly in their production. After the lamp bases and lamp holders are produced in Cambodia, the insulated copper wire undergoes wire cutting, peeling and connection to the plug. The lamp holder contains the terminal, which is assembled inside the lamp holder and then connected to the insulated copper wire. The C9 bulbs are screwed into the lamp holders on the string light. The string light is packaged using a plastic bulb holder (produced in Cambodia). The string light is tested, labeled and packaged.

ISSUE:

Whether the incandescent string lights are eligible for duty-free treatment under the GSP.

LAW AND ANALYSIS:

Under the GSP, eligible products the growth, product, or manufacture of a designated beneficiary developing country (BDC) which are imported directly into the U.S. qualify for duty-free treatment if the sum of (1) the cost or value of the material produced in a BDC, plus (2) the direct costs involved in processing the eligible article in the BDC, is not less than 35 percent of the appraised value of the article at the time it is entered into the U.S. *See* Section 10.176(a), Customs and Border Protection (CBP) Regulations (19 CFR 10.176(a)).

As stated in General Note 4, Harmonized Tariff Schedule of the United States (HTSUS), Cambodia is a designated BDC. In addition, items 1, 2, and 3 are classifiable under subheading 9405.40.84, HTSUS, which provides for "[l]amps and lighting fittings . . .: Other electric lamps and light fittings: Other: Other." Items 4 and 5 are classifiable under subheading 9405.30.00, HTSUS, which provides for "Lamps and light fittings . . .: Lighting sets of a kind used for Christmas trees. Articles classified under these subheadings are eligible for duty-free treatment under the GSP provided that they are a "product of" Cambodia, are "imported directly" and satisfy the 35 percent value-content requirement.

The cost or value of materials which are imported into the BDC to be used in the production of the article, as in this case, may be included in the 35 percent value-content computation only if the imported materials undergo a double substantial transformation in the BDC. That is, the non-Cambodian components must be substantially transformed in Cambodia into a new and different intermediate article of commerce, which is then used in Cambodia in the production of the final imported article – the incandescent string lights. *See* Section 10.177(a), CBP Regulations (19 CFR 10.177(a)), and *Azteca Milling Co. v. United States*, 703 F. Supp. 949 (CIT 1988), aff'd, 890 F.2d 1150 (Fed. Cir. 1989).

The test for determining whether a substantial transformation has occurred 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 CCPA 152, 681 F.2d 778 (1982). In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. 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 pri-

mary considerations in such cases. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

In Headquarters Ruling Letter (HQ) 557796, dated June 3, 1994, this office considered the country of origin of Christmas tree light sets imported from Macau. As a part of the production of the light sets in Macau, the bulbs were formed from three-inch glass tubes, and the lamp bases and lamp supports (holders) were formed by injection molding.

In this case, as in HQ 557796, certain components are formed from plastic pellets into components of the light set. These plastic components, namely, the lamp bases, lamp holders, and wire clips, were substantially transformed into products of Cambodia as a result of the injection molding process performed in Cambodia. However, unlike the glass tubes made into bulbs in HQ 557796, the Chinese origin bulbs in this case retain their origin.

As in Energizer Battery, Inc. v. United States, 190 F. Supp. 3d 1308 (2016), the bulbs have a pre-determined end-use as parts and components of the light set when imported into Cambodia and do not undergo a change in use due to the assembly process in Cambodia. As the string light sets at issue, produced as described herein, have not been determined to be a product of Cambodia, they are not eligible for duty-free treatment under the Generalized System of Preferences (GSP) program.

HOLDING:

The string light sets at issue are not products of Cambodia. With the exception of the lamp holders, lamp bases, and wire clips, which became products of Cambodia through the processing of the Chinese-origin plastic pellets in Cambodia, the bulbs of the light set are not substantially transformed in Cambodia and retain their origin. Therefore, the light sets will not be eligible for preferential tariff treatment under the GSP.

Please note that 19 C.F.R. § 177.9(b)(1) provides that "[e]ach ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling letter by a CBP field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the ruling was based."

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without a copy of this ruling, it should be brought to the attention of the CBP officer handling the transaction.

Sincerely,

MONIKA R. BRENNER,
Chief
Valuation & Special Classification Branch

ATTACHMENT B

HQ H303816

June 14, 2019
OT:RR:CTF:VS H303816 CMR
CATEGORY: Classification

MR. ANTHONY KRIZE
204 SPRING HILL ROAD
TRUMBULL, CT 06611

RE: Incandescent string lights; Generalized System of Preferences

DEAR MR. KRIZE:

This is in response to your request on behalf of your client, H.S. Craft Manufacturing Corporation, for a country of origin ruling for incandescent string lights and a determination of whether the string lights qualify for preferential duty treatment under the Generalized System of Preferences (GSP).

FACTS:

The string light sets at issue consist of 16 styles using incandescent miniature lamps. You indicate that the manufacturing process and sets are identical in construction and nature, differing only by the color and total number of bulbs. Each item is comprised of a cord connector, electric wires, contacts, fuses, a lamp holder and lamp base, light bulbs and an Underwriters Laboratories (UL) label. All components are purchased from the Philippines except for (1) the light bulbs, (2) copper terminals, (3) plug and end connector parts, (4) polypropylene pellets, (5) ties for packaging, and (6) spare parts (spare lamps, fuses, etc.), which are obtained from China. The UL labels are from the United States.

The manufacturing process in the Philippines is described as follows:

1. Inserting Chinese-origin polypropylene pellets into an injection molding machine to produce lamp bases and lamp holders by melting the polypropylene and forming the components.
2. Dyeing the Chinese-origin bulbs, if needed, using paint of Philippine origin.
3. Connecting the bulbs to the lamp bases and lamp holders to make the lamps.
4. The Philippine-origin wire is cut to length and the Chinese-origin copper terminals are attached.
5. The light bulbs in lamp bases and lamp holders are assembled with the processed insulated wire to create incomplete light strings.
6. The incomplete light strings wires are twisted.
7. Terminals are connected to the ends of twisted wire and then the processed wire is connected to Chinese-origin plugs.
8. The completed string lights are bundled and tied with tie wires from China.

9. The string lights are tested, labeled with the UL labels from the United States and packed for shipment.

ISSUE:

Whether the various string light sets assembled in the Philippines of Chinese and Philippine components are eligible for duty-free treatment under the GSP.

LAW AND ANALYSIS:

Under the GSP, eligible products the growth, product, or manufacture of a designated beneficiary developing country (BDC) which are imported directly into the U.S. qualify for duty-free treatment if the sum of (1) the cost or value of the material produced in a BDC, plus (2) the direct costs involved in processing the eligible article in the BDC, is not less than 35 percent of the appraised value of the article at the time it is entered into the U.S. *See* Section 10.176(a), Customs and Border Protection (CBP) Regulations (19 CFR 10.176(a)).

As stated in General Note 4, Harmonized Tariff Schedule of the United States (HTSUS), the Philippines is a designated BDC. In addition, the string light sets at issue are classifiable under subheading 9405.30.00, HTSUS, which provides for "Lamps and light fittings . . .: Lighting sets of a kind used for Christmas trees. Articles classified under this subheading are eligible for duty-free treatment under the GSP provided that they are a "product of" Cambodia, are "imported directly", and satisfy the 35 percent value-content requirement.

The cost or value of materials which are imported into the BDC to be used in the production of the article, as in this case, may be included in the 35 percent value-content computation only if the imported materials undergo a double substantial transformation in the BDC. That is, the non-Cambodian components must be substantially transformed in Cambodia into a new and different intermediate article of commerce, which is then used in Cambodia in the production of the final imported article – the incandescent string lights. *See* Section 10.177(a), CBP Regulations (19 CFR 10.177(a)), and *Azteca Milling Co. v. United States*, 703 F. Supp. 949 (CIT 1988), *aff'd*, 890 F.2d 1150 (Fed. Cir. 1989).

The test for determining whether a substantial transformation has occurred 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 CCPA 152, 681 F.2d 778 (1982). In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. 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, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

In Headquarters Ruling Letter (HQ) 557796, dated June 3, 1994, this office considered the country of origin of Christmas tree light sets imported from Macau. As a part of the production of the light sets in Macau, the bulbs were formed from three-inch glass tubes, and the lamp bases and lamp supports (holders) were formed by injection molding.

In this case, as in HQ 557796, certain components are formed from plastic pellets into components of the light set. These plastic components, namely, the lamp bases, and lamp holders were substantially transformed into products of the Philippines as a result of the injection molding process performed in the Philippines. However, unlike the glass tubes made into bulbs in HQ 557796, the Chinese origin bulbs in this case retain their origin.

As in *Energizer Battery, Inc. v. United States,* 190 F. Supp. 3d 1308 (2016), the bulbs have a pre-determined end-use as parts and components of the light set when imported into Cambodia and do not undergo a change in use due to the assembly process in Cambodia. As the string light sets at issue, produced as described herein, have not been determined to be a product of the Philippines, they are not eligible for duty-free treatment under the Generalized System of Preferences (GSP) program.

HOLDING:

The string light sets at issue are not products of the Philippines. With the exception of the lamp holders and lamp bases, which became products of the Phillipines through the processing of the Chinese-origin plastic pellets in the Philippines, the bulbs of the light set are not substantially transformed in the Philippines and retain their origin. Therefore, the light sets will not be eligible for preferential tariff treatment under the GSP.

Please note that 19 C.F.R. § 177.9(b)(1) provides that "[e]ach ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling letter by a CBP field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the ruling was based."

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without a copy of this ruling, it should be brought to the attention of the CBP officer handling the transaction.

Sincerely,

MONIKA R. BRENNER,
Chief
Valuation & Special Classification Branch

ATTACHMENT C

N299944

August 24, 2018
CLA-2 OT:RR:NC:N4:410
CATEGORY: Country of Origin

MR. LONG VU
CUSTOMS COMPLIANCE MANAGER
WALGREEN CO.
304 WILMOT ROAD
MS #3163
DEERFIELD, IL 60015

RE: The country of origin determination of light sets. Correction to Ruling Number N299828

DEAR MR. VU:

This replaces Ruling Number N299828, dated August 15, 2018, which contained an error. The ruling contained an incorrect statement that the Christmas tree light sets does constitute a substantial transformation. A complete corrected ruling follows:

This is in response to your letter dated August 6, 2018, requesting a country of origin determination for six products identified as "Indoor/Outdoor Light Sets," imported from Cambodia. The samples will be returned to you.

The six products are the Walgreens' Items Code ("WIC") 347599, 347693, 781075, 781076, 781077 and 781079. These are light sets used for Christmas trees, featuring miniature incandescent bulbs.

According to the information submitted, each item is comprised of the following components: a Cord Connector, Electric Wires, Lead Contacts, Fuses, Light Bulbs, Color Boxes, UL labels and a Carton Box. The packing materials (carton boxes) are from Cambodia, the UL labels from United States (U.S.) and all the remaining components purchased from China.

You described the Cambodian's assembly operation processing steps as follows:

1) Making Lamp Husks/Lamp Bases from Flame Retardant Polypropylene pellets
2) Connect the Main Strings with Copper Contacts
3) Assemble with Current Taps & Cord Connectors
4) Plug & Wire Assembly
5) Make the Unilateral Wire - putting together the Lamp, Lamp Husk, Wire and Copper Contacts
6) Assemble the Main Strings with the Lamp Husks
7) Twist the Main Strings and the Unilateral Strings Together
8) Test the Light Sets
9) Tidy up the Light Sets and
10) Perform the Final Inspection & Packing

Section 134.1(b), Customs Regulations (19 C.F.R. § 134.1(b)), defines "country of origin" as the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin".

The assembly operations performed in Cambodia does not substantially transform the Chinese and U.S. originating components into Cambodian

products. With the exception of the Lamp Husk/Lamp Base, which were made of Chinese Flame Retardant Polypropylene pellets, the assembly in Cambodia of the individual components to produce the finished Christmas light sets does not create a new and different article of commerce with a distinct character and use that is not inherent in the components imported into Cambodia.

Based on the information submitted, we are of the opinion that the processing performed in Cambodia with respect to the Christmas tree light sets does not constitute in a substantial transformation of all of the imported materials into "products of" Cambodia. Therefore, as the "product of" requirement has not been satisfied, the Christmas tree light sets are not eligible for duty-free treatment under the Generalized System of Preferences (GSP). The country of origin of the Christmas tree light sets imported into the U.S. will be China.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR Part 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 Hope Abada at hope.abada@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

ATTACHMENT D

HQ H304419
OT:RR:CTF:VS H304419 RSD
CATEGORY: CLASSIFICATION

JOHN P. FONDER, ESQ.
CHRISTENSEN, FONDER & DARDI
33 SOUTH SIXTH STREET, SUITE 4540
MINNEAPOLIS, MN 55402

RE: Revocation of HQ H303773, HQ H303816, and NY N299944; Incandescent string lights; Generalized System of Preferences (GSP)

DEAR MR. FONDER:

This is in response to your letters, dated June 26, 2019, and November 12, 2019, on behalf of the Willis Electric Co. Ltd. (Willis) of Taiwan, requesting reconsideration of Headquarters Ruling Letter (HQ) H303773, dated June 13, 2019, with respect to U.S. Customs and Border Protection's (CBP) determination of whether incandescent string lights imported directly from Cambodia qualified for preferential duty treatment under the Generalized System of Preferences (GSP). A meeting was held on October 29, 2019, with you, a co-counsel, an executive from Willis, and members of my staff to discuss your request for reconsideration. We have also received a number of samples of three different types of string lights and other alternative products that use lights bulbs that are similar to the light bulbs used in the string lights. This letter also concerns the following rulings:

In HQ H303816, dated June 14, 2019, the string light sets at issue were found not to be products of the Philippines because the bulbs of the light sets were not substantially transformed in the Philippines and retained their origin. Furthermore, in NY N299944, dated August 24, 2018, CBP determined that light sets assembled in Cambodia using Chinese and U.S. components, including lamp husks/bases made from imported polypropylene pellets, did not result in a substantial transformation.

We have reconsidered these rulings and now believe that they are incorrect. For the reasons that follow, we hereby revoke HQ H303773, HQ H303816, and NY N299944.

FACTS:

In your reconsideration request, you state that the facts set forth in HQ H303773 are basically correct with one omission. HQ H303773 concerned five items: (1) 150-count Incandescent Steady-on Miniature Christmas Net Lights – Clear (#779320); (2) 150-count Incandescent Steady-on Miniature Christmas Net Lights – Multicolor (#779319); (3) 300-count Incandescent Steady-on Miniature Christmas Icicle Light String – Clear (#3752); (4) 25-count Incandescent Steady-on C9 Christmas Light String – Clear (#99506); and, (5) 25-count Incandescent Steady-on C9 Christmas Light String – Ceramic Multicolor (#99505). The production process for all of the string lights is substantially similar and incorporates components from Cambodia and China. After assembly, Underwriters Laboratories (UL) labels from the United States are attached to each string light.

The production process for the various string lights begins in Cambodia with inserting Chinese-origin polypropylene pellets into an injection molding machine to produce lamp bases, lamp holders, and wire clips by melting the

polypropylene and forming the components. After the lamp base and lamp holder components are produced, Chinese-origin bulbs are inserted into them. The insulated copper wire, which is obtained from both China (20%) and Cambodia (80%), is cut to length, peeled as necessary, and brass terminals, imported from China on spools, are attached at the ends of the wire. The light bulbs in lamp bases and lamp holders are assembled with the processed insulated wire to create incomplete string lights. Insulated copper wire is cut, peeled as necessary, and brass terminals are attached to the ends to create plug wires. Plugs, which are obtained from both China (40%) and Cambodia (60%), are attached to the plug wires. The wires undergo twisting. The plug wires are connected to incomplete string lights. The wires are combined to form the icicle light string or linked with wire clips and PVC wire (which is sourced from China (20%) and Cambodia (80%)) to form net strings. The completed string lights are tested, inspected, labeled with UL labels and caution labels, and packaged in Cambodian-origin packaging materials with a Cambodian produced instruction manual and a packet of replacement parts (spare fuse, spare bulbs, plastic bag) imported from China.

The C9 string lights differ slightly in their production. After the lamp bases and lamp holders are produced in Cambodia, the insulated copper wire undergoes wire cutting, peeling and connection to the plug. The lamp holder contains the terminal, which is assembled inside the lamp holder and then connected to the insulated copper wire. The C9 bulbs are screwed into the lamp holders on the string light. The string light is packaged using a plastic bulb holder (produced in Cambodia). The string light is tested, labeled and packaged.

You claim that the facts as stated in HQ H303773 fail to sufficiently indicate the production processes that occur in one country, Cambodia.

HQ H303816 and NY N299944 discussed similar assembly processes, including making lamp husks/lamp bases from polypropylene pellets.

ISSUE:

Whether the incandescent string lights are eligible for duty-free treatment under the GSP.

LAW AND ANALYSIS:

Under the GSP, eligible articles grown, produced, or manufactured in a designated beneficiary developing country (BDC), which are imported directly into the customs territory of the United States from a BDC, may receive duty-free treatment if the sum of (1) the cost or value of materials produced in the BDC, plus (2) the direct costs of the processing operations performed in the BDC, is equivalent to at least 35 percent of the appraised value of the article at the time of entry into the United States. *See* 19 U.S.C. § 2463(a)(2)(A).

As stated in General Note 4, Harmonized Tariff Schedule of the United States (HTSUS), Cambodia is a designated BDC. In addition, at the time HQ H303773 was issued, items 1, 2, and 3 were classifiable under subheading 9405.40.84, HTSUS. Items 4 and 5 were classifiable under subheading 9405.30.00, HTSUS. We note that the classification of these articles has changed, but the new subheadings still remain eligible for GSP, although at this time, Congress has not renewed the GSP. Nonetheless, for purposes of discussing the other requirements of the GSP, articles classified under these

subheadings are eligible for duty-free treatment under the GSP provided that they are a "product of" Cambodia, are "imported directly" and satisfy the 35 percent value-content requirement.

The cost or value of materials which are imported into the BDC to be used in the production of the article, as in this case, may be included in the 35 percent value-content computation only if the imported materials undergo a double substantial transformation in the BDC. That is, the non-Cambodian components must be substantially transformed in Cambodia into a new and different intermediate article of commerce, which is then used in Cambodia in the production of the final imported article – the incandescent string lights. *See* Section 10.177(a), CBP Regulations (19 CFR 10.177(a)), and *Azteca Milling Co. v. United States*, 703 F. Supp. 949 (CIT 1988), *aff'd*, 890 F.2d 1150 (Fed. Cir. 1989).

The test for determining whether a substantial transformation has occurred 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 CCPA 152, 681 F.2d 778 (1982). In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. 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, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

In *Energizer Battery, Inc. v. United States*, 190 F. Supp. 3d 1308 (2016), the Court of International Trade (CIT) interpreted the meaning of the term "substantial transformation" as used in the Trade Agreements Act of 1979 (TAA) for purposes of government procurement. *Energizer* involved the determination of the country of origin of a flashlight, referred to as the Generation II flashlight, under the TAA. All the components of the Generation II flashlight were of Chinese origin, except for a white LED and a hydrogen getter. The components were imported into the United States where they were assembled into the finished Generation II flashlight.

The court reviewed the "name, character and use" test in determining whether a substantial transformation had occurred and reviewed various court decisions involving substantial transformation determinations. The court noted, citing, *Uniroyal, Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026 (1982), *aff'd*, 702 F.2d 1022 (Fed. Cir. 1983) (imported shoe uppers added to an outer sole in the United States were the "very essence of the finished shoe" and the character of the product remained unchanged and did not undergo substantial transformation in the United States) that when "the post-importation processing consists of assembly, courts have been reluctant to find a change in character, particularly when the imported articles do not undergo a physical change." *Energizer* at 1318. In addition, the court noted that "when the end-use was pre-determined at the time of importation, courts have generally not found a change in use." *Energizer* at 1319, citing as an example, *National Hand Tool Corp. v. United States,* 16 C.I.T. 308 (1992),

aff'd, 989 F.2d 1201 (Fed. Cir. 1993). Furthermore, courts have considered the nature of the assembly, i.e., whether it is a simple assembly or more complex, such that individual parts lose their separate identities and become integral parts of a new article.

In reaching its decision in the *Energizer* case, the court expressed the question as one of whether the imported components retained their names after they were assembled into the finished Generation II flashlights. The court found "[t]he constitutive components of the Generation II flashlight do not lose their individual names as a result [of] the post-importation assembly." The court also found that the components had a pre-determined end-use as parts and components of a Generation II flashlight at the time of importation and did not undergo a change in use due to the post-importation assembly process. Finally, the court did not find the assembly process to be sufficiently complex as to constitute a substantial transformation. Thus, the court found that Energizer's imported components did not undergo a change in name, character, or use because of the post-importation assembly of the components into a finished Generation II flashlight. The court determined that China, the source of all but two components, was the correct country of origin of the finished Generation II flashlights under the government procurement provisions of the TAA.

In HQ H303773, CBP pointed out that the glass tubes made into bulbs in China retained their Chinese origin based on HQ 557796, dated June 3, 1994, which determined that the Chinese assembly of bulbs made in Macau did not result in a substantial transformation. Upon further consideration, we believe HQ 557796 can be distinguished from the facts in this case because in HQ 557796, none of the components assembled in China were made there, and only assembly processes took place. This is similar to the findings in HQ H304093, dated June 13, 2019, where all of the major components were imported and assembled in the Philippines, including pre-made Chinese lamp husks/holders, and no substantial transformation occurred in the Philippines. *See also* NY N300781, dated September 28, 2018; and HQ 734182, dated February 17, 1993 (Taiwanese components assembled in China into light strings was not a substantial transformation).

However, where the lamp husks/holders are made in the country where the string lights are assembled, a substantial transformation has been found. In NY N301616, dated December 4, 2018, Chinese plastic granules were made into lamp holders/lamp husks in Cambodia, the Chinese incandescent light bulbs were connected to the lamp holders/lamp husks, wires were cut to length, and the lamp socket, plug and connector were assembled, and all components (lamp, lamp husks, wires, copper contacts/terminals) were assembled to make a finished light string. In that decision, CBP found that the assembly in Cambodia of the individual components to produce the finished string light sets created a new and different article of commerce with a distinct character and use that was not inherent in the components imported into Cambodia and the light string was considered a product of Cambodia. On the other hand, NY N299944 considered similar facts where the lamp husks/holders were made in Cambodia and the assembly of the string lights also occurred there, but no substantial transformation into a product of Cambodia was found.

After reviewing the samples of the string lights, we are of the view that while the light bulbs are a significant component of the string lights, impor-

tant work is performed in forming the lamp bases and sockets, by using polypropylene pellets and injection molding them in the beneficiary country. Therefore, more processes beyond those in *Energizer* are performed, such that the string lights may be considered a "product of" Cambodia. This decision follows those determinations made in HQ H304093, NY N300781, and HQ 734182.

Therefore, we find that the country of origin of the finished string lights is Cambodia, and the string light sets may be eligible for preferential tariff treatment under the GSP, provided the 35 percent value content requirement is satisfied. We note, however, that the bulbs may not be counted towards the 35 percent value content requirement, as they will not undergo a double substantial transformation in Cambodia.

HOLDING:

Based on information available, we find that the country of origin of the string light sets is Cambodia. Therefore, the string light sets directly exported from Cambodia to the United States may be eligible for the preferential tariff treatment under the GSP, provided the 35 percent value content requirement is satisfied.

EFFECT ON OTHER RULINGS:

HQ H303733, HQ H303816, and NY N299944 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

AGENCY INFORMATION COLLECTION ACTIVITIES:

Extension; Create/Update Importer Identity Form (CBP Form 5106)

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

ACTION: 30-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than September 30, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Please submit written comments and/or suggestions in English. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (89 FR 45911) on May 24, 2024, allowing for a 60-day comment period. This notice allows for an additional 30

days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Create/Update Importer Identity Form.

OMB Number: 1651–0064.

Form Number: 5106.

Current Actions: This submission will extend the collection authority with an increase in the estimated numbers of respondents and annual burden. No change to the information collected or method of collection.

Type of Review: Extension (w/change).

Affected Public: Businesses.

Abstract: The collection of the information on the "Create/Update Importer Identity Form", commonly referred to as "CBP Form 5106," is the basis for establishing bond coverage, release and entry of merchandise, liquidation, and the issuance of bills and refunds. Members of the trade community use the Create/Update Importer Identification Form to register an entity as an Importer of Record (IOR) in the Automated Commercial Environment (ACE). Registering as IOR with CBP is required if an entity intends to transact Customs business and be involved as an importer, consignee/ ultimate consignee, any individual or organization involved as a party, such as 4811 party, or sold to party on an informal or formal entry. The number used to identify an IOR is either an Internal Revenue Service (IRS) Employer Identification Number (EIN), a Social Security Number (SSN), or a CBP-Assigned Number. Collecting this information

from the importer enables CBP to verify the identity of the importers and meet regulatory requirements for collecting information.

Each person, business firm, government agency, or other organization shall file CBP Form 5106 with the first formal entry or request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. This form is also filed for the ultimate consignee for whom an entry is being made.

CBP Form 5106 is authorized by 19 U.S.C 1484 and 31 U.S.C. 7701 and provided for by 19 CFR 24.5. The current version of the form is accessible on the CBP Forms website.

Type of Information Collection: Importer ID Import Record (Form 5106).

Estimated Number of Respondents: 432,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 432,000.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 324,000.

Dated: August 27, 2024.

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

AGENCY INFORMATION COLLECTION ACTIVITIES:

Extension; Crewman's Landing Permit (CBP Form I–95)

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

ACTION: 30-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than September 30, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Please submit written comments and/or suggestions in English. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (89 FR 45911) on May 24, 2024, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance

with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Crewman's Landing Permit (CBP Form I–95).

OMB Number: 1651–0114.

Form Number: I–95.

Current Actions: This submission will extend the collection's expiration date with an increase to the number of respondents and responses received, resulting in an increased burden. No change to the information collected or method of collection.

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: CBP Form I–95, *Crewman's Landing Permit,* is prepared and presented to CBP by the master or agent of vessels and aircraft arriving in the United States for nonimmigrant crewmembers applying for landing privileges. This form is provided for by 8 CFR 251.1(c) which states that, with certain exceptions, the master, captain, or agent must present this form to CBP for each nonimmigrant crewmember on board. In addition, pursuant to 8 CFR 252.1(e), CBP Form I–95 serves as the physical evidence that a nonimmigrant crewmember has been granted a conditional permit to land temporarily, and it is also a prescribed registration form under 8 CFR 264.1 for crewmembers arriving by vessel or air. CBP Form I–95 is authorized by section 252 of the Immigration and Nationality Act of 1952, Public Law 82–414, 66 Stat. 163, as amended (8 U.S.C. 1282) and is accessible at: *https://www.cbp.gov/sites/default/files/assets/documents/2018-Nov/CBP%20Form%20I-95.pdf.*

Type of Information Collection: Form I–95.

Estimated Number of Respondents: 1,072,428.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 1,072,428.

Estimated Time per Response: 4 minutes.

Estimated Total Annual Burden Hours: 71,853.

Dated: August 27, 2024.

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

AGENCY INFORMATION COLLECTION ACTIVITIES:

Extension; Crew's Effects Declaration (Form 1304)

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

ACTION: 30-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than September 30, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Please submit written comments and/or suggestions in English. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (89 FR 45910) on May 24, 2024, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance

with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Crew's Effects Declaration.

OMB Number: 1651–0020.

Form Number: Form 1304.

Current Actions: This submission will extend the expiration date with a change to the information collection. The burden hour estimates were adjusted to reflect accurate usage.

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: CBP Form 1304, *Crew's Effects Declaration,* was developed through an agreement by the International Maritime Organization (IMO) in conjunction with the United States and various other countries. The form is used as part of the entrance and clearance of vessels pursuant to the provisions of 19 CFR 4.7 and 4.7a, 19 U.S.C. 1431, and 19 U.S.C. 1434. CBP Form 1304 is completed by the master of the arriving vessel to record and list the crew's effects that are onboard the vessel. This form is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=1304.*

The CBP Form 1304 is part of the Vessel Entrance and Clerance System (VECS) Public Test currently on-going. The paper Form 1304 is not required if submissions are made in VECS, on a voluntary basis.

Once public testing is done, PRA approval and rulemaking will make VECS permanent.

Type of Information Collection: Form 1304.

Estimated Number of Respondents: 1,678.

Estimated Number of Annual Responses per Respondent: 52.

Estimated Number of Total Annual Responses: 87,256.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 87,256.

Dated: August 27, 2024.

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

AGENCY INFORMATION COLLECTION ACTIVITIES:

New Collection of Information; Global Interoperability Standard (GIS)

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

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 4, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0NEW in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

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

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Global Interoperability Standard (GIS).

OMB Number: 1651–0NEW.

Form Number: N/A.

Current Actions: New Collection of Information.

Type of Review: New Collection of Information.

Affected Public: Businesses.

Abstract: A batch of crude oil from Canada can take days to cross the United States border and travel through the North American pipeline network, leaving no easily identifiable starting point for monitoring timely entry and entry summary filing. Moreover, Canadian crude oil is actively traded as a commodity while in transit though the North American pipeline network, so ownership (which impacts the right to make entry) may not be known to CBP until well after the commodity crosses the border.

Further, the need for confidentiality of transactional data among private parties means there are limitations on CBP's and the trade's visibility into product origin traceability through the supply chain to establish Free Trade Agreement (FTA) eligibility. The absence of a system or technology capable of tracking changes in ownership and destination of pipeline-borne goods such as crude oil, from wellhead to refinery, has resulted in CBP creating a patchwork of policies for data collection from carriers and importers over the decades.

The Silicon Valley Innovation Program (SVIP), part of the Department of Homeland Security's Science and Technology Directorate, helps develop and find new technologies that strengthen national security with the goal of reshaping how government and industry work together to find cutting-edge solutions to problems such as those involved in pipeline-borne goods. A private company SVIP participant has a platform to document the movement (including ownership

changes) of crude oil. The platform will monitor Canadian crude oil, a continuous flow commodity, using global interoperability standards (GIS) adopted by test participants who will supply the GIS data to the platform where CBP will be able to view the data in near real time. GIS data utilizes decentralized identifiers (DIDs) and verifiable credentials (VCs) to help in identifying legitimate products and associated companies to build a transparent supply chain.

A transparent supply chain will be achieved in the platform through the recordation of bi-lateral transaction data at each step in a supply chain, allowing for dynamic updates of ownership and destination information, securing it from disclosure to unauthorized parties, and making this data available to CBP in near real time while creating an immutable chain of custody from wellhead to refinery.

If successful, the test could result in the ability to potentially eliminate all port-level paper processes as well as create an automation environment in which pre-arrival data collection, in-bond tracking, and Free Trade Agreement compliance traceability no longer pose issues.

Therefore, the purpose of the test is to measure the usefulness and accuracy of the platform's global interoperability standards with a view toward resolving any issues prior to determining next steps, which could include implementing new policies and regulations leading to the integration of GIS data with the Automated Commercial Environment (ACE) for Canadian crude oil and other pipeline commodities for entry purposes.

Therefore, the purpose of the test is to measure the usefulness and accuracy of the platform's global interoperability standards with a view toward resolving any issues prior to determining next steps, which could include implementing new policies and regulations leading to the integration of GIS data with the Automated Commercial Environment (ACE) for Canadian crude oil and other pipeline commodities for entry purposes.

This collection of information is authorized by 19 U.S.C. 1411 National Customs Automation Program.

Type of Information Collection: Non-Standard PDF.

Estimated Number of Respondents: 24.

Estimated Number of Annual Responses per Respondent: 12.

Estimated Number of Total Annual Responses: 288.

Estimated Time per Response: 4 hours.

Estimated Total Annual Burden Hours: 19.

Dated: August 27, 2024.

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

U.S. Court of International Trade

Slip Op. 24–99

UNDER THE WEATHER, LLC, Plaintiff, v. UNITED STATES, Defendant.

Before: Timothy M. Reif, Judge
Court No. 21–00211

[Granting defendant's partial motion to dismiss for failure to state a claim.]

Dated: September 5, 2024

Alena Augusta Eckhardt and *Heather L. Jacobson*, Nakachi, Eckhardt & Jacobson, P.C., of Seattle, WA, argued for plaintiff Under the Weather, LLC.

Luke Mathers, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of New York, N.Y., argued for defendant United States. With him on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, and *Patricia M. McCarthy*, Director. Of counsel on the brief were *Yelena Slepak* and *Emma Tiner*, Office of the Assistant Chief Counsel, International Trade Litigation, U.S. Customs and Border Protection.

OPINION

Reif, Judge:

Before the court is the partial motion to dismiss of the United States ("defendant"). Plaintiff Under the Weather, LLC ("plaintiff") brought the instant action to contest the denial of administrative protest 2704–20–127807 ("'807 Protest"). Pl.'s Compl. ("Compl.") ¶ 1, ECF No. 17. In count II of plaintiff's complaint, plaintiff asserts that a prior protest approval of U.S. Customs and Border Protection ("Customs") constituted a "prior decision" and therefore required notice and comment procedures to be modified or revoked. *Id.* ¶¶ 40–41 (citing 19 U.S.C. § 1625(c)). Because, plaintiff maintains, the "protest review decision" on which the denial of the '807 Protest was based "effectively revoked" the previous protest approval "without following the notice and comment requirements" of § 1625(c), plaintiff contends that the protest review decision is void and without legal effect. *Id.* Defendant has filed a partial motion to dismiss, arguing that the prior protest approval to which plaintiff points was not entitled to the procedural protections of § 1625(c). Def.'s Mot. to Dismiss ("Def. Br.") at 6, ECF No. 22. Defendant argues, therefore, that as to count II plaintiff has failed to state a claim upon which relief may be granted. *Id.*; *see* USCIT R. 12(b)(6).

For the reasons discussed below, the court grants defendant's partial motion to dismiss.

BACKGROUND

Plaintiff imports see-through pop-up tent "pods." Compl. ¶ 6; Pl.'s Ex. 2 ("HQ H311492"), at 1–2; Def. Br. at 2. From 2010, when plaintiff began importing the pods, until September 2018, plaintiff imported its pods duty free as "backpacking tents" under the tariff subheading 6306.22.1000, HTSUS.[1] Compl. ¶ 9.

On September 5, 2018, Customs issued a CF-29 Notice of Action Taken, in which Customs disagreed with plaintiff's classification of 12 of its entries and "rate-advanced"[2] the entries as "other" tents under subheading 6306.22.9030, HTSUS, which carried a duty of 8.8 percent. *Id.* ¶ 10; Def. Br. at 2–3. Then, on April 9, 2019, plaintiff filed protest 2704–19–102919 ("'919 Protest"), contesting Customs' classification of plaintiff's 12 entries. Compl. ¶ 11. In that protest, plaintiff argued that its pods are classifiable correctly as "backpacking tents" under subheading 6306.22.1000, HTSUS. *Id.* The '919 Protest was processed by the Center of Excellence and Expertise for Apparel, Footwear & Textiles (the "Center"). *Id.* ¶ 15; Def. Br. at 3. On June 13, 2019, a supervisory import specialist ("specialist") at the Center requested from plaintiff entry packets for the protested entries, which plaintiff provided the following day. Compl. ¶ 12. Then, on June 20, 2019, the specialist requested "additional information and documentation in order to identify the specific tent models at issue" and "any literature" showing that plaintiff's pods were "in fact backpacking tents." *Id.* ¶ 13; Def. Br. at 3–4. On July 22, 2019, plaintiff responded with a letter and documentation "providing the requested information for all entries." Compl. ¶ 13.

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[1] In entering its pods as "backpacking tents," plaintiff relied on Treasury Decision 86–163, which was issued in 1986 and created guidelines for classifying tents, including backpacking tents, under the Harmonized Tariff Schedule of the United States ("HTSUS"). Def. Br. at 2.

[2] An entry is rate-advanced "when it is 'liquidate[d] at a higher rate' than the rate associated with the claimed classification." *United States v. Sterling Footwear, Inc.*, 41 CIT __, __ n.11, 279 F. Supp. 3d 1113, 1122 n.11 (2017)
(alteration in original) (quoting *United States v. Horizon Prods. Int'l, Inc.*, 39 CIT __, __, 82 F. Supp. 3d 1350, 1354 (2015)).

On October 10, 2019, Customs approved the '919 Protest.[3] *Id.* ¶ 14. The Customs decision approving plaintiff's protest consisted of only two lines[4]:

Decision	Approved
Comments	Protest has been approved based upon received documents.

Pl.'s Ex. 1 ("'919 Protest Approval").

After the approval of the '919 Protest, plaintiff resumed entering its pods duty free as backpacking tents and filed for "Post Summary Corrections"[5] of pods entered while the '919 Protest was pending. Compl. ¶ 16.

On November 19, 2019, however, an import specialist once again requested additional information from plaintiff with respect to entry WUG-0188371–8, which was a subsequent entry of pods of the same models reviewed in the '919 Protest. *Id.* ¶ 17. In an email response, counsel for plaintiff directed Customs to its prior decision in Protest '919. *Id.* ¶ 18.

On December 17, 2019, plaintiff filed Protest 2704–19–107436 ("'436 Protest"). *Id.* ¶ 21. The '436 Protest concerned eight entries of models of pods identical to the entries in the '919 Protest. *Id.* Plaintiff did not apply for further review of the '436 Protest "on the understanding that the Protest was merely an administrative vehicle to bring entries into conformity with CBP's decision in [the '919 Protest]." *Id.* ¶ 22. On January 24, 2020, Customs issued a CF-29 Notice of Proposed Action with respect to entry WUG-0188371–8 and 21

[3] Prior to Customs' approval of the '919 Protest, plaintiff applied for further review. Compl. ¶ 15. An "application for further review" allows an importer to request that Customs' Headquarters — meaning Regulations & Rulings ("R&R") — review a protest "in lieu of review by the Center director." *See* 19 C.F.R. §§ 174.23, 174.24, 174.25, 174.26, 177.1(d)(6) (stating that "Headquarters Office" refers to "Regulations and Rulings"), 177.2(b)(2)(ii)(B) (stating that "[o]nly the Headquarters Office will prepare final decisions under . . . § 174.23 (Further Review of Protests)"); *see also* 19 U.S.C. § 1515(a). Customs "will publish" the ensuing "protest review decision . . . in the Customs Bulletin or otherwise make [the protest review decision] available for public inspection." 19 C.F.R. § 174.32; *see also* 19 U.S.C. § 1625(a). However, the Center director may still conduct "a preliminary examination . . . for the purpose of determining whether the protest may be allowed in full." 19 C.F.R. § 174.23. If the Center director "is satisfied that the claim is valid, he shall allow the protest." *Id.* § 174.26(a). In the instant case, no further review of the '919 Protest occurred because the Center director allowed the protest. Compl. ¶¶ 14–15; Def. Br. at 5; *see also* 19 C.F.R. § 174.26(a).

[4] The statute and Customs' regulations require that Customs provide "reasons" when Customs denies a protest but not when Customs allows a protest. *See* 19 U.S.C. § 1515(a); 19 C.F.R. §§ 174.29, 174.30(a). When Customs allows a protest, Customs need only "refund any duties . . . found to have been collected in excess[.]" 19 C.F.R. § 174.29.

[5] A Post Summary Correction allows an importer "to electronically correct entry summary data presented to and accepted by [Customs]." *Post Summary Corrections*, U.S. Customs and Border Prot. (last modified May 15, 2024), https://www.cbp.gov/trade/programs-administration/entry-summary/post-summary-correction.

separate entries of the pods, including 15 entries for which plaintiff had filed Post Summary Corrections. *Id.* ¶ 19. In that notice, Customs stated its position that the subject pods were classifiable under subheading 6306.22.9030, HTSUS. *Id.*

In a conference call of March 20, 2020, with specialists from the Center, the specialists informed counsel for plaintiff that the Center had received guidance from a National Import Specialist that the subject pods were classifiable under subheading 6306.22.9030, HTSUS. *Id.* ¶ 20. The specialists explained that Customs would classify plaintiff's pods in accordance with that guidance and without regard to the decision in the '919 Protest.[6] Id.

In a subsequent conference call, a Supervisory Liquidation Specialist from the Center of Excellence and Expertise for Base Metals recommended that plaintiff file a new protest with application for further review for the seven entries subject to the '436 Protest that were still eligible for amendment. *Id.* ¶ 24.

On May 19, 2020, counsel for plaintiff filed the '807 Protest, which protested seven of the eight entries included in the '436 Protest. *Id.* ¶ 25. Plaintiff then withdrew the '436 Protest and applied for further review of the '807 Protest. *Id.*

On October 30, 2020, Customs issued HQ H311492. *Id.* ¶ 29. HQ H311492 was in response to plaintiff's application for further review of the '807 Protest and stated that (1) the subject merchandise was classified properly under subheading 6306.22.9030, HTSUS; and (2) 19 U.S.C. § 1625(c) did not apply because Customs' approval of the '919 Protest was not a "decision" under that subsection. *Id.* Customs then denied the '807 Protest. *Id.*; *see also* HQ 311492.

Plaintiff then sought review in this court of Customs' protest review decision HQ H311492, alleging that "it effectively revoked the prior decision of [the '919 Protest] contrary to law without following the notice and comment requirements of 19 U.S.C. § 1625(c)." *Id.* ¶ 41.

On July 25, 2024, the court held oral argument. *See* Oral Arg. Tr., ECF No. 31.

JURISDICTION AND STANDARD OF REVIEW

The Court exercises exclusive jurisdiction over all civil actions commenced under section 515 of the Tariff Act of 1930, 19 U.S.C. § 1515, to contest protests denied by Customs, 28 U.S.C. § 1581(a), and

[6] Also in the conference call of March 20, 2020, the specialists stated that the Center would deny the '436 Protest, as Customs had determined that the subject merchandise was classifiable under subheading 6306.22.9030, HTSUS. Compl. ¶ 23. In response, counsel for plaintiff asked whether it would be possible to amend the '436 Protest to apply for further review. *Id.* However, during that call, parties learned that one of the entries subject to the '436 Protest was more than 180 days past liquidation and therefore no longer eligible for further review. *Id.*

reviews such actions de novo. 28 U.S.C. § 2640(a)(1) ("The Court of International Trade shall make its determinations upon the basis of the record made before the court ..... ").

In a USCIT Rule 12(b)(6) motion for failure to state a claim, "any factual allegations in the complaint are assumed to be true and all inferences are drawn in favor of the plaintiff." *Env't One Corp. v. United States*, 47 CIT __, __, 627 F. Supp. 3d 1349, 1355 (2023) (quoting *Amoco Oil Co. v. United States*, 234 F.3d 1374, 1376 (Fed. Cir. 2000)); *see generally* USCIT R. 12(b)(6).

In deciding a Rule 12(b)(6) motion, the court may consider documents "incorporated by reference or integral to the claim, items subject to judicial notice, [and] matters of public record." *A & D Auto Sales, Inc. v. United States*, 748 F.3d 1142, 1147 (Fed. Cir. 2019) (alterations in original) (quoting 5B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1357 (3d ed. 2004)).

"A court may properly dismiss a claim pursuant to [USCIT] Rule 12(b)(6) only if Plaintiffs' allegations of fact are not 'enough to raise a right to relief above the speculative level.'" *VoestAlpine USA Corp. v. United States*, 46 CIT __, __, 578 F. Supp. 3d 1263, 1276 (2022) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). To survive a motion to dismiss, plaintiff's complaint must contain sufficient factual material to "state a claim to relief that is plausible on its face."[7] *Twombly*, 550 U.S. at 570.

DISCUSSION

I. Interpretation of 19 U.S.C. § 1625(c)

Parties disagree as to the scope of "prior interpretive ruling or decision" in § 1625(c)(1) in relation to the phrase "interpretive ruling . . . or protest review decision" in § 1625(a). Therefore, the court considers first the correct interpretation of "prior interpretative ruling or decision" in 19 U.S.C. § 1625(c)(1).

A. Legal framework

19 U.S.C. § 1625 is titled "Interpretive rulings and decisions; public information." 19 U.S.C. § 1625(a) determines when Customs is re-

[7] In its briefing, plaintiff asserts that under USCIT Rule 12(b)(6), "[d]ismissal . . . is appropriate only where 'it appears beyond doubt that no set of facts can be proven that would entitle the plaintiff to relief.'" Pl.'s Resp. Opp'n Def.'s Mot. to Dismiss ("Pl. Br.") at 2, ECF No. 23 (quoting *Conley v. Gibson*, 335 U.S. 41, 48 (1957)). However, in *Twombly*, 550 U.S. at 562–63, the Supreme Court abrogated *Conley's* "no set of facts" pleading standard. *Id.* ("[T]his famous observation has earned its retirement. The phrase is best forgotten as an incomplete, negative gloss on an accepted pleading standard."). To survive a USCIT Rule 12(b)(6) motion to dismiss, plaintiff is required to plead "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570.

quired to publish in the Customs Bulletin or otherwise make available for public inspection certain rulings and decisions:

> Within 90 days after the date of issuance of any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision under this chapter with respect to any customs transaction, the Secretary shall have such ruling or decision published in the Customs Bulletin or shall otherwise make such ruling or decision available for public inspection.

Section 1625(c) sets out when Customs is required to provide notice and invite public comment:

> A proposed interpretive ruling or decision which would—
>
> (1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or
>
> (2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions;
>
> shall be published in the Customs Bulletin. The Secretary shall give interested parties an opportunity to submit, during not less than the 30-day period after the date of such publication, comments on the correctness of the proposed ruling or decision. After consideration of any comments received, the Secretary shall publish a final ruling or decision in the Customs Bulletin within 30 days after the closing of the comment period. The final ruling or decision shall become effective 60 days after the date of its publication.

In 19 C.F.R. §§ 177.10(a) and 177.12(a)-(b), Customs elaborates on the meaning of § 1625(a) and (c). In § 177.10(a), Customs states that it shall publish or otherwise make available for public inspection within 90 days "any interpretive decision," which Customs defines to "include[] any ruling letter, internal advice memorandum, or protest review decision." Meanwhile, in § 177.12(a)-(b), Customs discusses "[m]odification or revocation of interpretive rulings, protest review decisions, and previous treatment of substantially identical transactions":

> (a) General. An interpretive ruling, which includes an internal advice decision . . . or a holding or principle covered by a protest review decision . . . if found to be in error or not in accord with the current views of Customs, may be modified or revoked by an interpretive ruling issued under this section. A modification or

> revocation under this section must be carried out in accordance with the notice procedures set forth in paragraph (b) . . . .
>
> (b) Interpretive rulings or protest review decisions. Customs may modify or revoke an interpretive ruling or holding or principle covered by a protest review decision. However, when Customs contemplates the issuance of an interpretive ruling that would modify or revoke an interpretive ruling or holding or principle covered by a protest review decision which has been in effect for 60 or more calendar days, [the notice and comment requirements of § 177.12(b)(1)-(2)] will apply.

B. Analysis

The court addresses first parties' disagreement as to the scope of § 1625(c) and whether "prior interpretive ruling or decision" in § 1625(c) is coextensive with "interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision" in § 1625(a).

Plaintiff begins by noting that in § 1625(c) Congress used different language than in § 1625(a). Pl. Br. at 3. Specifically, § 1625(a) requires that "any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision" be published or otherwise made available within 90 days after the issuance of the interpretive ruling or protest review decision.

Meanwhile, plaintiff observes, § 1625(c)(1) requires Customs to publish notice and invite public comment on "[a] proposed interpretive ruling or decision which would . . . modify . . . or revoke a *prior interpretive ruling or decision*." 19 U.S.C. § 1625(c)(1) (emphasis supplied); Pl. Br. at 5. Plaintiff asserts that the phrase "prior interpretive ruling or decision" in § 1625(c) carries a different meaning — and a broader scope — than "interpretive ruling . . . or protest review decision" in § 1625(a). Pl. Br. at 3–4. According to plaintiff, "the use of *different* language with regard to decisions — 'protest review decision' in § 1625(a) versus merely 'decision' in § 1625(c) — must be understood to have different meanings." *Id.* at 4 (citing *Russello v. United States*, 464 U.S. 16, 23 (1983)). Plaintiff argues on this basis that "the universe of items that must be published prior to issuance per § 1625(a) must differ in some way from the universe of items subject to notice and comment proceedings prior to modification or revocation per § 1625(c)." *Id.* So, plaintiff cites two decisions of this Court and concludes that there are "decisions" that "do not require publication upon issuance but do require notice and comment procedures before they may be modified or revoked." *Id.* at 4–5 (citing *Am. Fiber & Finishing, Inc. v. United States*, 39 CIT __, __, 121 F. Supp. 3d 1273,

1279 (2015); *Kahrs Int'l, Inc. v. United States*, 33 CIT 1316, 1353, 645 F. Supp. 2d 1251, 1285 (2009)).

Defendant responds that "§ 1625(c)(1)'s phrase 'prior interpretive ruling or decision' refers back to § 1625(a)'s longer phrase 'interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision.'" Def.'s Reply Supp. Mot. to Dismiss ("Def. Reply Br.") at 2, ECF No. 24 (citing *Cal. Indus. Prods., Inc. v. United States*, 436 F.3d 1341, 1351 (Fed. Cir. 2006)). According to defendant, therefore, the two phrases "should be construed consistently." *Id.* Defendant maintains that any "prior interpretive ruling or decision" that is "subject to revocation" under § 1625(c)(1) was required also to be published or otherwise made available for public inspection when originally issued under § 1625(a). *Id.*

The court concludes that "a prior interpretive ruling or decision" in § 1625(c)(1) refers back to "interpretive ruling . . . or protest review decision" in § 1625(a). Therefore, the same universe of "decisions" subject to notice and comment upon revocation or modification was required also to be published or otherwise made available under § 1625(a). There are no "decisions" within the scope of § 1625 that require notice and comment to be modified or revoked but were not subject to the public inspection requirement upon issuance.

The statute's text is clear that "prior interpretive ruling or decision" in subsection (c)(1) is a reference to — and is shorthand for — "interpretive ruling . . . or protest review decision" in subsection (a). Indeed, this is evident in both the provision's heading and in the texts of subsections (a) and (c).[8] The heading of § 1625 refers to "[i]nterpretive rulings and decisions" — an indication that Congress wanted the phrase to carry the same meaning under both (a) and (c). Moreover,

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[8] The previous version of § 1625 concerned only "[p]ublication of decisions" and stated:

> Within 120 days after issuing any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision) under this Act with respect to any customs transaction, the Secretary shall have such decision published in the Customs Bulletin or shall otherwise make such decision available for public inspection.

Customs Procedural Reform and Simplification Act of 1978 ("the 1978 Act"), Pub. L. No. 95–410, § 112, 92. Stat. 888, 898.

Although the previous version of § 1625 did not contain a notice and comment requirement for a prior precedential decision to be revoked, the legislative history of that act indicated that publication upon revocation of a previously published decision was Customs policy: "[I]t will be the policy of the Customs service to publish in the Customs Bulletin rulings of general interest . . . including rulings that supersede, revoke, modify, or amend previously published rulings, or that affect multiple importers of the same merchandise, or merchandise imported through several ports." H.R. Rep. No. 95–621, at 19 (1977). The Customs Modernization Act amended § 1625 to its current version and added the notice and comment procedures to modify or revoke a "prior interpretive ruling or decision." *See* Pub. L. No. 103–182, § 623, 107 Stat. 2057, 2186 (1993). The phrase "interpretive ruling or decision" replaced "precedential decision," although the newly amended § 1625 retained ruling letters, internal advice memoranda and protest review decisions as examples.

Congress in subsections (a) and (c) referred to "ruling or decision" repeatedly. For example:

> Within 90 days after the date of issuance of any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision under this chapter . . . , the Secretary shall have such *ruling or decision* published in the Customs Bulletin . . . .

19 U.S.C. § 1625(a) (emphasis supplied); *see also id.* § 1625(c) (referring to "proposed *ruling or decision*" and "final *ruling or decision*") (emphases supplied).

The identical shorthand reference throughout both subsections to "ruling or decision" — and not, e.g., "such ruling or protest review decision" in § 1625(a) — is a further indication that "interpretive ruling or decision" used in § 1625(c) carries the same meaning as the full phrase used to begin subsection (a). Such an interpretation is in keeping with the "well-settled" rule of statutory interpretation that "words appearing in a statute should be read consistently: a particular word appearing multiple times in a statutory provision should be given the same reading, unless there is a clear Congressional intent to the contrary." *Timex V.I., Inc. v. United States*, 157 F.3d 879, 884 (Fed. Cir. 1998). Moreover, "[s]tatutes should be interpreted 'as a symmetrical and coherent regulatory scheme.'" *Mellouli v. Lynch*, 575 U.S. 798, 809–10 (2015) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)). On this point, plaintiff has offered no explanation to support plaintiff's assertion that Congress intended for the revocation of a Customs "decision" to require notice and comment under subsection (c)(1) even though that same decision was not subject to the public inspection requirement of subsection (a).

Plaintiff maintains that decisions of this Court and the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") support plaintiff's interpretation. Pl. Br. at 4–5 (first quoting *Am. Fiber & Finishing*, 39 CIT at __, 121 F. Supp. 3d at 1279 (stating that "decision" in § 1625(c) includes, "but is not limited to, a protest review decision"); then quoting *Kahrs*, 33 CIT at 1353, 645 F. Supp. 2d at 1285 ("[A] 'protest review decision' is to be included among the larger category of otherwise generic Customs' 'decision[s].'")); *see also Cal. Indus. Prods.*, 436 F.3d at 1351 ("In short, 'decision' in the phrase 'ruling or decision' in 19 U.S.C. § 1625(c), includes a 'protest review decision.'").

The cases on which plaintiff relies hold only that "decision" in § 1625(c) "includes" but is not limited to protest review decisions, which Customs' regulations and decisions of this Court indicate is true also of § 1625(a). *See* 19 C.F.R. § 177.10(a) ("[A]n interpretive decision

includes any ruling letter, internal advice memorandum, or protest review decision.") (emphasis supplied); *S. Shrimp All. v. United States*, 33 CIT 560, 582, 617 F. Supp. 2d 1334, 1355 (2009). Plaintiff has pointed to no decisions in which this Court or the Federal Circuit held that subsection (c) carried a different scope than subsection (a). Instead, the decisions that plaintiff cites have stated that the separate subsections should be construed consistently.

For example, in *California Industrial Products*, the Federal Circuit considered whether Customs issued an "interpretive ruling or decision" under § 1625(c) that "modif[ied] the treatment previously accorded by the Customs Service to substantially identical transactions" under § 1625(c)(2).[9] 436 F.3d at 1349–50. There, plaintiff filed a drawback claim, and in response, Customs issued a Headquarters Ruling letter denying plaintiff's claim. *Id.* at 1346–47. Then, plaintiff filed a request for further review of Customs' denial of plaintiff's drawback claim. *Id.* at 1347. In response, Customs issued "a protest review decision," which relied on Customs' previous Headquarters Ruling and affirmed Customs' denial of plaintiff's drawback claim. *Id.* Customs argued before the court that none of Customs' actions in that case constituted an "interpretive ruling or decision" under § 1625(c). *Id.* at 1349. But the Federal Circuit read § 1625(c) in conjunction with § 1625(a) and disagreed with Customs' interpretation:

> Thus, [in § 1625(a)] "interpretive ruling" is expressly defined as "including any ruling letter, or internal advice memorandum." At the same time, two lines later, the text refers back to the previously noted "interpretive ruling . . . or protest review decision" as "such ruling or decision." "[I]nterpretive ruling . . . or protest review decision" and the later shorthand reference to that phrase ("such ruling or decision") should be construed consistently in section 1625. In short, "decision" in the phrase "ruling or decision" in 19 U.S.C. § 1625(c), includes a "protest review decision."

Id. at 1351 (internal citations omitted).

Because plaintiff was appealing from a Customs "protest review decision" — and because "interpretive ruling . . . or protest review decision" and "interpretive ruling or decision" should be "construed

[9] Under Customs' regulations, a "treatment previously accorded" under § 1625(c)(2) requires that there is evidence that (1) there was an "actual determination by a Customs officer regarding the facts and issues involved in the claimed treatment"; (2) the Customs officer making the determination "was responsible for the subject matter on which the determination was made"; and (3) "[o]ver a 2-year period immediately preceding the claim of treatment, Customs consistently applied that determination on a national basis as reflected in liquidations of entries . . . with respect to all or substantially all of that person's Customs transactions involving materially identical facts and issues." 19 C.F.R. § 177.12(c)(1)(i).

consistently" — Customs was required to follow the notice and comment procedures of subsection (c).[10] *Id.*; *see also Int'l Custom Prods. v. United States*, 748 F.3d 1182, 1188 (Fed. Cir. 2014) ("Although *California Industrial Products* shows that an interpretive ruling *includes* ruling letters and internal advice memoranda, such documents are exemplary, not exhaustive."). In fact, the Federal Circuit's instruction that the phrases "should be construed consistently" entails that the requirements of subsection (c) are coextensive with the requirements of subsection (a).

Then, in *Kahrs*, this Court addressed whether certain denied protests and CF-29s (notices of action taken) were "prior interpretive ruling[s] or decision[s]" under § 1625(c)(1). 33 CIT at 1352–53, 645 F. Supp. 2d at 1284–86. The government in *Kahrs* argued that § 1625(c) "covers *only* 'interpretive rulings' and 'protest review decisions.'" *Id.* at 1352–53, 645 F. Supp. 2d at 1285. However, the Court cited the Federal Circuit's statement in *California Industrial Products* that "the terms of § 1625(c) should [be] read consistently with the terms of § 1625(a)." *Id.* at 1352, 645 F. Supp. 2d at 1284. The Court concluded:

> [A] "protest review decision" is to be included among the larger category of otherwise generic Customs' [sic] "decision[s]."

Id. at 1353, 645 F. Supp. 2d at 1285 (second alteration in original) (citing *Int'l Custom Prods., Inc. v. United States*, 32 CIT 302, 309, 549 F. Supp. 2d 1384, 1393 (2008)).

The Court concluded, as a result, that "the text of *§ 1625* covers interpretive rulings, ruling letters, internal advice memoranda, protest review decisions, or decisions that are the functional equivalent of interpretive rulings or decisions." *Id.* at 1353, 549 F. Supp. 2d at 1285 (emphasis supplied) (citing 19 U.S.C. § 1625(c); 19 C.F.R. § 177.12). In applying that interpretation to the facts of that case, the Court held that two "denied protests" were not "within the ambit of the covered rulings or decisions of § 1625." *Id.*; *see infra* Section II.B.2.

Therefore, the cases to which plaintiff cites do not support plaintiff's position that § 1625(c) covers a wider array of Customs actions than subsection (a). Instead, the cases support the position that subsections (a) and (c) should be construed consistently, such that the requirements of § 1625(a) and (c) are applied to the same set of Customs determinations.

In sum, the court concludes that "interpretive ruling or decision" under § 1625(c) refers back to and mirrors the scope of "interpretive

[10] The Federal Circuit concluded also that the Headquarters Ruling on which the denial and subsequent protest review decision were based was an "interpretive ruling." *Cal. Indus. Prods.*, 436 F.3d at 1351. So, Customs was required to follow notice and comment procedures for two reasons in that case. *Id.*

ruling (including any ruling letter, or internal advice memorandum) or protest review decision" in § 1625(a). As a result, only interpretive rulings, protest review decisions or their "functional equivalent[s]" are subject to the procedural requirements of § 1625(c)(1).

II. Whether plaintiff has stated a claim upon which relief can be granted

Plaintiff asserts that the '919 Protest approval was the "'functional equivalent' of the exemplar interpretive rulings and decisions enumerated in the statute." Compl. ¶ 40. The court turns to this question next.

A. Legal framework

19 U.S.C. § 1625(c)(1) requires that Customs publish notice of and give interested parties an opportunity to respond to "[a] proposed interpretive ruling or decision which would . . . modify . . . or revoke a prior interpretive ruling or decision" in effect for at least 60 days. Whether a determination is subject to the requirements of § 1625 "depends on its substance, not its form." *Am. Fiber & Finishing*, 39 CIT at __, 121 F. Supp. 3d at 1280 (citing *Int'l Custom Prods.*, 748 F.3d at 1187–88).

The legislative history of § 1625 states: "[I]mporters have a right to be informed about customs rules and regulations, as well as interpretive rulings, and to expect certainty that the Customs Service will not unilaterally change the rules without providing importers proper notice and an opportunity for comment." S. Rep. No. 103–189, at 64 (1993)); *see also* H.R. Rep. No. 103–361, pt. 1, at 124 (1993), *reprinted in* 1993 U.S.C.C.A.N. 2552, 2674 (stating that § 1625 "will provide assurances of transparency concerning Customs rulings and policy directives"); *Int'l Custom Prods.*, 748 F.3d at 1187 (citing *Precision Specialty Metals, Inc. v. United States*, 25 CIT 1375, 1391, 182 F. Supp. 2d 1314, 1328 (2001)).

This Court has held that "the text of § 1625 covers interpretive rulings, ruling letters, internal advice memoranda, protest review decisions, *or decisions that are the functional equivalent of interpretive rulings or decisions*." *Kahrs*, 33 CIT at 1353, 645 F. Supp. 2d at 1285 (emphasis supplied). In determining whether a Customs determination is subject to § 1625, the Federal Circuit has considered whether the determination in question "resulted from the considered deliberations of [R&R]."[11] *Int'l Custom Prods.*, 748 F.3d at 1188.

Courts have considered also whether the determination in question

[11] Customs regulations provide that the term "'Headquarters Office,' as used [therein], means the Regulations and Rulings, Office of International Trade at Headquarters, U.S. Customs and Border Protection, Washington, DC." 19 C.F.R. § 177.1(c)(6).

had prospective effect. *See id.* (holding that notice of action was subject to § 1625(c) because it applied the HTSUS "to the specific facts of all pending and future white sauce entries"); *see also Kahrs*, 33 CIT at 1353, 645 F. Supp. 2d at 1285 (stating that Customs' determinations were not subject to § 1625(c) because they "[did] not require that [merchandise] be classified henceforth under a particular tariff heading"). This Court has also stated that a Customs determination is subject to § 1625 "'if it 'interprets and applies the provisions of the Customs and related laws to a specific set of facts.'" *Am. Fiber & Finishing*, 39 CIT at __, 121 F. Supp. 3d at 1280 (footnotes omitted).

B. Analysis

To succeed on its claim that Customs violated the requirements of § 1625(c), plaintiff is required to establish that (1) a "proposed interpretive ruling or decision" (2) "modified or revoked" (3) a "prior interpretive ruling or decision" (4) without first completing the notice and comment procedures of § 1625(c). Parties do not dispute that HQ H311492 qualifies as a "proposed interpretive ruling or decision" and that, if the approval of the '919 Protest was "a prior interpretive ruling or decision," HQ H311492 effectively revoked the approval by classifying identical merchandise differently. However, parties dispute whether the approval of the '919 Protest qualifies as a "prior interpretive ruling or decision."

"[T]he text of § 1625 covers interpretive rulings, ruling letters, internal advice memoranda, protest review decisions, or decisions that are the functional equivalent of interpretive rulings or decisions." *Kahrs*, 33 CIT at 1353, 645 F. Supp. 2d at 1285. Plaintiff does not contend that the approval of the '919 Protest was one of the listed items in § 1625: an interpretive ruling, a ruling letter, an internal advice memorandum or a protest review decision. Instead, plaintiff argues that the protest approval was the "functional equivalent" of those exemplar interpretive rulings and decisions. Compl. ¶ 40.

The court concludes for three reasons that the protest approval was not the "functional equivalent" of an interpretive ruling or decision under § 1625.

1. Whether the '919 Protest was the result of "considered deliberations"

The court addresses first whether the '919 Protest resulted from "considered deliberations." Parties agree that a Customs determination may qualify as a "interpretive ruling or decision" if it resulted from the considered deliberations of Customs. *Int'l Custom Prods.*, 748 F.3d at 1188. However, parties disagree as to whether that requirement was satisfied here.

Defendant contends that plaintiff has failed to "plausibly allege" that the '919 Protest was the result of considered deliberations. Def. Reply Br. at 9–10. According to defendant, only R&R can conduct the "considered deliberations" necessary to render a Customs determination subject to § 1625(c). *Id.* Because the Center made the determination in the instant case — and because plaintiff has not alleged any involvement of R&R — defendant argues that plaintiff has failed to state a plausible claim for which relief can be granted. *Id.* (citing *Int'l Custom Prods.*, 748 F.3d at 1188).

Plaintiff responds that it has plausibly alleged that the '919 Protest was the result of considered deliberations because plaintiff included in its complaint: (1) plaintiff's arguments before Customs; (2) Customs' two separate requests for additional information; and (3) the statement in the protest approval that the protest "has been approved based upon received documents." Pl. Br. at 18 (citing Compl. ¶¶ 11–14). Plaintiff notes that it needed allege only "enough fact [sic] to raise a reasonable expectation that discovery will reveal evidence," *id.* (quoting *Twombly*, 550 U.S. 545), a standard that plaintiff insists it met in its complaint. As to R&R, plaintiff argues that the involvement of R&R is a relevant fact — but not a necessary condition — in determining whether a Customs decision was the result of considered deliberations. *Id.* at 20. According to plaintiff, the facts alleged in the complaint "indicate that the documents and classification arguments provided by [p]laintiff in its initial protest and in response to [Customs'] supplemental requests were reviewed, considered, and formed the basis for [Customs'] decision." *Id.* at 18.

The court concludes that plaintiff has failed to plausibly allege that the '919 Protest approval resulted from "considered deliberations" because plaintiff has not alleged the deliberations of R&R in the approval. Instead, plaintiff has alleged that the approval of the '919 Protest involved only the Center.

To start, the statute and Customs' regulations establish that an "interpretive ruling or decision" under § 1625 requires the "considered deliberations" of R&R. Section 1625 does not define an "interpretive ruling or decision," but it does provide examples. The exemplar "interpretive rulings and decisions" in § 1625 are ruling letters, internal advice memoranda and protest review decisions. Only R&R

has the authority to issue each of these examples.[12] *See* 19 C.F.R. § 177.1(d)(1) ("A 'ruling' is a written statement issued by the Headquarters Office . . . ."); *id* § 177.12(a) (stating that "[a]n interpretive ruling . . . includes an internal advice decision . . . or a holding or principle covered by a protest review decision"); *id.* § 177.11(a) ("Advice or guidance as to the interpretation or proper application of the Customs and related laws . . . may be requested by Customs Service field offices *from the Headquarters Office* ....."") (emphasis supplied); *id.* § 174.26(b)(1) (stating that a protest "for which an application for further review was filed" and which the "Center director decides . . . should be denied in whole or in part" is "reviewed by the Commissioner of Customs or his designee"); *id.* § 177.2(b)(2)(ii)(B) (stating that "only the Headquarters Office will prepare . . . [protest review decisions]"); *Assistant Commissioner of Customs, Office of Regulations and Rulings, et al.: Performance of Functions*, 34 Fed. Reg. 8,208 (Dep't of Treasury May 27, 1969) (delegating "[d]ecisions relating to . . . classification" to the "Assistant Commissioner of Customs, Office of Regulations and Rulings," within "the headquarters office"). Therefore, plaintiff's position that a Center-level protest approval — issued without the deliberations of R&R — may be subject to the requirements of § 1625 is inconsistent with the statute and Customs' regulations.

In addition, decisions of the Federal Circuit support the conclusion that the deliberations of R&R are required to trigger the requirements of § 1625. For example, in *International Custom Products*, 748 F.3d at 1188–89, the Federal Circuit addressed whether a "notice of action" could be an "interpretive ruling or decision" under § 1625(c). In that case, the notice of action reclassified plaintiff's entries of white sauce, stating that "all . . . of [plaintiff's] pending entries . . . and all future entries, would be classified" under a different tariff subheading than Customs had previously classified the white sauce under a

[12] The legislative history of the 1978 Act is consistent with defendant's position that only decisions issued with the deliberations of R&R may be subject to the requirements of § 1625. In describing the "present law," the Senate report stated: "The Customs Service Office of Regulations and Rulings in Washington issues notices, letters, rulings, and written advice to customs officers and importers." S. Rep. No. 95–778, at 21. Likewise, the House report stated: "The Customs Service considers a 'ruling' to be a written statement issued by the Headquarters Office of Regulations and Rulings . . . that interprets and applies the provisions of the Customs and related laws to a specific set of facts. A ruling differs from an 'information letter,' which is a written statement issued by the Headquarters Office . . . ." H.R. Rep. No. 95–621, at 19. In the 1978 Act, Congress determined to "enact into law part of [Customs'] existing regulations," which would ensure that importers would be aware of "the Customs Service [sic] interpretation of the law." S. Rep. No. 95–778, at 22. This legislative history establishes that the Congress that enacted the original § 1625 — which set out the listed exemplars that the 1993 amendments retained — was concerned primarily with rulings and decisions promulgated by R&R.

Ruling Letter issued six years earlier. *Id.* at 1183–84. Customs argued that notices of action "can never be an 'interpretive ruling or decision' and therefore cannot trigger the procedural protections of § 1625(c)." *Id.* at 1188.

The Federal Circuit disagreed and affirmed the decision of the USCIT that held that the notice of action in that case qualified as an "interpretive ruling or decision" under subsection (c). *Id.* at 1189. Critically, the Federal Circuit observed that the notice of action "resulted from the considered deliberations of [R&R], which determined that the Ruling Letter did not apply to the Entry." *Id.* at 1188 (citing *Int'l Custom Prods., Inc. v. United States*, 32 CIT at 309, 549 F. Supp. 2d at 1392 (describing Customs' "months-long deliberative process" resulting in the notice of action, which "represented the agency's formal position")). And, contrary to plaintiff's position, the deliberations of R&R were core to the Federal Circuit's holding. *See Int'l Custom Prods.*, 748 F.3d 1183 (noting that R&R "is responsible for reviewing and issuing ruling letters"), 1188 ("Although the Notice of Action was not issued by [R&R], it resulted from the considered deliberations of [R&R] ..... "), 1189 (noting again that the notice of action "was issued after relevant [R&R] deliberation" and therefore "subject to § 1625(c)'s procedures").

By contrast, in the instant case plaintiff has alleged the involvement only of the Center. *See generally* Compl. Accordingly, the '919 Protest approval was not the result of "considered deliberations" of R&R, and for this reason was not a "prior interpretive ruling or decision" under § 1625(c)(1).

Moreover, excluding the approval of the '919 Protest from the requirements of § 1625(c) is consistent with the statutory scheme. Under plaintiff's theory, every protest determination regarding the classification of merchandise would be subject to the requirements of § 1625(c). Had Congress wanted to subject a typical protest approval or denial to the requirements of § 1625(c), Congress knew how to do so, as Congress referred to those precise decisions elsewhere in the Customs Modernization Act. *See, e.g.*, Pub. L. No. 103–182, § 613(a), 107 Stat. 2057, 2174 (1993) (stating that "a protest against the decision to exclude..... merchandise which has not been allowed or denied in whole or in part [within 30 days] shall be treated as having been denied"); *see id.* at § 617, 107 Stat. 2057, 2180 (referencing separately a "protest" and then "an application for further review"); *Nat'l Org. of Veterans' Advocs., Inc. v. Sec'y of Veterans Affs.*, 981 F.3d 1360, 1386 (Fed. Cir. 2020) (quoting *Animal Legal Def. Fund v. U.S. Dep't of Agric.*, 789 F.3d 1206, 1217 (11th Cir. 2015) ("Where Congress knows how to say something but chooses not to, its silence is control-

ling.")). Instead, Congress selected only certain types of Customs rulings and decisions — each of which involves the participation of R&R and therefore may be assumed to reflect Customs' official policy. That Congress elected not to include expressly in § 1625 a Center-level "allowed" or "denied" protest is "powerful evidence," *id.* at 1385, that Congress did not intend for such determinations to be governed by § 1625.

2. Whether the '919 Protest had prospective effect

The court examines next whether the '919 Protest had prospective effect such that plaintiff and the interested public were entitled "to expect certainty" that Customs "w[ould] not unilaterally change" the classification "without providing . . . proper notice and an opportunity for comment." *Int'l Custom Prods.*, 748 F.3d at 1187 (citing *Precision Specialty Metals*, 25 CIT at 1391, 182 F. Supp. 2d at 1328).

Defendant argues that to qualify for the procedural protections of § 1625, the determination in question is required to contain a "classification directive: a requirement that all future entries of the same merchandise by the same importer be classified in a particular way." Def. Reply Br. at 10–11 (*comparing Int'l Custom Prods.*, 748 F.3d at 1187–88, *and Am. Fiber & Finishing*, 39 CIT at __ n.27, 121 F. Supp. 3d at 1280 n.27, *with Kahrs*, 33 CIT at 1353, 645 F. Supp. 2d at 1285). Because the '919 Protest approval contained no such directive, defendant asserts that the protest could not have been a "prior interpretive ruling or decision" under § 1625(c)(1). *Id.*

Plaintiff responds with two points. First, plaintiff argues that the cases on which defendant relies do not establish a rule that the determination in question must state expressly that the decision applies to future entries. Pl. Br. at 13–14. On this point, plaintiff notes that the exemplar interpretive rulings and decisions in § 1625 often do not provide specifically for prospective application. *Id.* at 11. Second, plaintiff contends that Customs' approval of '919 Protest was "inherently applicable" to all future entries of plaintiff's tent pods, and, as such, no express classification directive was necessary. *Id.* at 10.

The entry-specific approval of the '919 Protest was not an "interpretive ruling or decision" subject to § 1625 also because the approval did not direct plaintiff that future imports of the subject merchandise be classified according to that approval.

The legislative history of the Customs Modernization Act, which added the procedural protections of subsection (c) to § 1625, made clear by utilizing repeatedly the words "rules," "regulations" and

"rulings," that the notice and comment and transparency provisions of that section were to apply to rulings with prospective effect:

> [The Customs Modernization Act] implements the concept of "informed compliance," which is premised on the belief that importers have a right to be informed about customs rules and regulations, as well as interpretive rulings, and to expect certainty that the Customs Service will not unilaterally change the rules without providing importers proper notice and an opportunity for comment.

S. Rep. No. 103–189, at 64 (1993); *see also* H.R. Rep. No. 103–361, pt. 1, at 124 (1993) (stating that § 1625 "will provide assurances of transparency concerning Customs rulings and policy directives").

This legislative history reveals that § 1625(c)'s "notice and comment requirements are intended to ensure that the interested public has notice of a proposed change in Customs' policy and to allow the public to make comments on the appropriateness of the change and to modify any current practices that were based in reliance on Customs' earlier policy." *Sea-Land Serv., Inc. v. United States*, 239 F.3d 1366, 1373 (Fed. Cir. 2001). In enacting § 1625(c), Congress was concerned principally with the ability of the interested public to stay abreast of Customs regulations and policy with the potential for *prospective* application — not with entry-specific, Center-level protest approvals like that in the '919 Protest.

In addition, in deciding whether § 1625 applies, the Federal Circuit and this Court have considered whether a Customs determination *stated* that it would be applied prospectively. In *International Custom Products*, the government maintained that the notice of action at issue could not be subjected to § 1625 because the notice of action was "an 'entry-specific document' that is 'mailed only to the importer,' and has no effect on a prior policy or ruling by Customs." *Int'l Custom Prods.*, 748 F.3d at 1187. However, the Federal Circuit concluded that the government's reasoning would "elevate form over substance" and frustrate the intent of Congress to provide transparency to importers when Customs changes its policy. *Id.* Importantly, the court disagreed with the government's characterization of the notice of action as "entry-specific":

> Contrary to the "entry-specific document" the Government describes, the Notice of Action in this case "applied to *all*" pending and future entries of white sauce. . . . This broad proclamation effectively revoked the classification set forth in the Ruling Letter. . . . The Notice of Action's reclassification of all pending and future white sauce entries after over six years of ICP's reliance

> on the Ruling Letter was just the type of "change [in] the rules" that § 1625(c) was designed to address.

Id. (alteration in original); *see also Kahrs*, 33 CIT at 1353, 645 F. Supp. 2d at 1285 (stating that two protest denials "[did] not fall within the ambit of" § 1625 because "there [was] no directive set out by the[] denied protests that require Kahrs to classify its merchandise under 4418.30.00 HTSUS").

By contrast, the '919 Protest approval contained no such "broad proclamation," *Int'l Custom Prods.*, 748 F.3d at 1187, but instead stated only: "Protest has been approved based upon received documents." Compl ¶ 14; '919 Protest Approval. Therefore, the '919 Protest approval is not a "prior interpretive ruling or decision," as it lacked a directive that future entries of the subject merchandise be classified consistent with that approval.

Plaintiff maintains that the decision to approve the '919 Protest was "inherently applicable to future entries of the MyPod, OriginalPod, and XLPod." Pl. Br. at 10. But, if the '919 Protest approval were "inherently applicable" to future entries and therefore subject to § 1625(c), then so is every Customs decision to allow or deny a protest based on the classification of merchandise. As stated, such a result is plainly contrary to the language and legislative history of the statute. *See supra* Section II.B.1.

Plaintiff notes moreover that "[m]any of the very exemplar rulings and decisions named in § 1625 do not expressly state that the subject merchandise 'must be classified henceforth'" under a particular tariff classification. *Id.* at 11. However, the task for the court is to determine whether the '919 Protest approval was the "*functional equivalent*" of one of the exemplar rulings and decisions listed in § 1625. Those exemplar rulings and decisions are issued by Customs' Headquarters Office and, as such, reflect the "official position" of Customs. *Int'l Custom Prods.*, 748 F.3d at 1186 (citing 19 C.F.R. § 177.9(a)). For that reason, including a prospective classification directive in such a ruling or decision would be superfluous. But, in determining whether a ruling or decision not enumerated in the statute and not designated for decision by Customs' Headquarters Office is functionally equivalent to the examples that Congress provided, decisions of the Federal Circuit and this Court require that the court consider whether the Customs determination at issue contains a directive that the subject merchandise be classified under a particular subheading. If so, then importers would be entitled "to expect certainty that . . . Customs [would] not unilaterally change the rules without providing importers proper notice and an opportunity for comment," S. Rep. No. 103–189,

at 64, and, as a consequence, § 1625 would apply. The lack of such a directive in Customs' approval of the '919 Protest is a further indication that the approval was not a "prior interpretive ruling or decision" under § 1625(c)(1).

3. Whether the '919 Protest is "interpretive"

The court considers next whether the '919 Protest was "interpretive." This Court has held that to qualify for the procedural protections of § 1625(c), the determination in question must be "interpretive." *Kahrs*, 33 CIT at 1353, 645 F. Supp. 2d at 1285–86.

Defendant asserts that the approval of the '919 Protest was not interpretive because the approval "did not quote the HTSUS, apply the General Rules of Interpretation, cite Treasury Decision 86–163 (which governs the classification of tents), or apply [Customs'] interpretation to any of the facts at issue." Def. Br. at 12 (citing *Int'l Custom Prods.*, 748 F.3d at 1188). Defendant relies on *Southern Shrimp Alliance* for the proposition that "prior interpretive rulings or decisions" under § 1625 "will . . . 'bear indicia' of interpretation 'on their face.'" *Id.* (quoting *S. Shrimp All.*, 33 CIT at 584, 617 F. Supp. 2d at 1356). According to defendant, if the one-line protest approval at issue in the instant case is interpretive, "then every other protest determination is interpretive, too." Def. Reply Br. at 8.

Plaintiff argues that *Southern Shrimp Alliance*, which addressed the meaning of "interpretive ruling" under § 1625(a), is inapposite. Pl. Br. at 14. Plaintiff adds that the protest approval in the instant case was "inherently interpretive" and therefore qualifies as an "interpretive ruling or decision" under § 1625(c). *Id.*

Customs' approval of the '919 Protest was not "a prior interpretive ruling or decision" also because the approval was not, in fact, interpretive. A Customs decision may be an "interpretive ruling or decision" if it "interprets and applies the provisions of the Customs and related laws to a specific set of facts." *Am. Fiber & Finishing*, 39 CIT at __, 121 F. Supp. 3d at 1280 (citing 19 C.F.R. § 177.1(d)(1)); *Kahrs*, 33 CIT at 1353, 645 F. Supp. 2d at 1285–86 (stating that neither Customs cargo examinations nor the liquidation of merchandise were "'interpretive' rulings or decisions under § 1625(c)"). In *International Custom Products*, 748 F.3d at 1188, the Federal Circuit held that the notice of action, which identified the subject merchandise as well as the relevant tariff subheadings, "was an interpretive document applying the HTSUS to the specific facts of all pending and future white sauce entries."

By contrast, the instant protest approval stated only: "Protest has been approved based on received documents." Compl. ¶ 14; *see also* '919 Protest Approval. That one sentence statement did not "interpret[] and appl[y] the provisions of the Customs and related laws to a specific set of facts." 19 C.F.R. § 177.1(d)(1); *see also Interpret*, Merriam-Webster Online Dictionary (last visited July 10, 2024), https://www.merriam-webster.com/dictionary/interpret (defining "interpret" as "to explain or tell the meaning of"). The statement did not identify the merchandise, explain the meaning of the relevant tariff subheadings or otherwise provide the interested public with guidance as to Customs' position — the position on which the interested public would presumably be commenting during revocation proceedings. *See* 19 U.S.C. § 1625(c). Plaintiff's position that the '919 Protest approval was subject to subsection (c)(1) because it was "inherently interpretive" — a phrase that plaintiff leaves undefined — would subject every protest determination pertaining to the classification of merchandise to the requirements of § 1625(c), a result contrary to the language and legislative history of the statute. Therefore, the '919 Protest approval was not a "prior interpretive ruling or decision" also because it was not interpretive.

Plaintiff notes that Customs "is not required to provide any detail at all when approving protests." Pl. Br. at 17 (citing 19 C.F.R. § 174.29); *see also* 19 U.S.C. § 1515(a) (requiring Customs to provide reasons when denying protests but not when approving protests). Therefore, plaintiff cautions that a decision from this court holding that the one-line protest approval was not interpretive would "[have] troubling implications," *id.* at 16, because it would "effectively mean that no protest approval that was not the result of [an application for further review] can ever qualify as a 'decision' for purposes of § 1625(c)." *Id.* at 17. Plaintiff continues that "[s]uch a blanket rule directly contradicts" the Federal Circuit's instruction against "elevat[ing] form over substance," *Int'l Custom Prods.*, 748 F.3d at 1187, and "would create an exception large enough to swallow the rule." Pl. Br. at 17 (quoting *Int'l Custom Prods.*, 32 CIT at 308, 549 F. Supp. 2d at 1391). At oral argument, plaintiff asserted that such a result "provides an incentive" for Customs to issue decisions without a rationale and thereby "avoid the statute entirely." Oral Arg. Tr. at 34:11–19.

Plaintiff's alarum is unwarranted. Congress addressed plaintiff's concern in § 1625(c)(2). Subsection (c)(2) requires that Customs provide notice and comment procedures before issuing a proposed interpretive ruling or decision that would "have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions." Under 19 C.F.R. § 177.12(c)(1)(i), "a

treatment was previously accorded by Customs" if there was "an actual determination by a Customs officer" that Customs "consistently applied . . . on a national basis . . . with respect to all or substantially all" of an importer's transactions "involving materially identical facts and issues." In *Kent International, Inc. v. United States*, 17 F.4th 1104, 1110 (Fed. Cir. 2021), a case in which Customs approved 14 of plaintiff's protests, the Federal Circuit held that those "approved protests" constituted "'actual determinations' that [were] proper for consideration in assessing the treatment previously accorded." *See also Kent Int'l, Inc. v United States*, 44 CIT __, __, 466 F. Supp. 3d 1361, 1363 (2020) (noting that over a two-year period Customs approved 14 of plaintiff's protests and nine requests for post-entry amendments); *Kent Int'l, Inc. v. United States*, 48 CIT __, __, 628 F. Supp. 3d 1294, 1304–05 (2023) ("In the court's view, there is little doubt that Plaintiff has identified a set of operative facts based on CBP's protest . . . approvals that give rise to a claim for treatment for the classification of the subject merchandise. . . . Customs violated that treatment in issuing the 2015 Ruling without the notice and comment required by 19 U.S.C. § 1625(c).").[13] Accordingly, plaintiff's position that excluding protest approvals from the purview of § 1625(c)(1) would allow Customs to "avoid the statute entirely," Oral Arg. Tr. at 34:11–19, is unsupported.

In sum, the '919 Protest approval was not a "prior interpretive ruling or decision" under § 1625(c)(1).

CONCLUSION

For the reasons discussed above, it is hereby

ORDERED that defendant's partial motion to dismiss is **GRANTED**.

Dated: September 5, 2024
New York, New York

/s/ Timothy M. Reif
TIMOTHY M. REIF, JUDGE

[13] At oral argument, plaintiff stated that it "was declaring its shipment[s] for eight years" according to its preferred tariff subheading and indicated that this "establishes the treatment" under § 1625(c)(2). Oral Arg. Tr. at 39:12–40:20. However, plaintiff's complaint does not assert a cause of action under subsection (c)(2). *See* Compl. Moreover, the complaint alleges only a single protest approval prior to Customs issuing HQ H311492. *Id.* "The touchstone of the treatment previously accorded inquiry is the consistency of *Customs* decisions with respect to the subject merchandise." *Kent Int'l, Inc.*, 17 F.4th at 1109. Entries "'admitted pursuant to representations by the importer'. . . . without examination or Customs officer review . . . do not reflect 'treatment' by Customs." *Id.* Accordingly, plaintiff's belated assertion that its eight years of entries imported pursuant to plaintiff's declared rate — without examination by Customs — established a "claim of treatment" under § 1625(c)(2) fails.

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