

# U.S. Customs and Border Protection



## COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 7 2016)

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

**SUMMARY:** The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in July 2016. The last notice was published in the CUSTOMS BULLETIN on July 13, 2016.

Corrections or updates may be sent to: Intellectual Property Rights Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 90 K Street, NE., 10th Floor, Washington, D.C. 20229–1177, or via email at [iprrquestions@cbp.dhs.gov](mailto:iprrquestions@cbp.dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** LaVerne Watkins, Paralegal Specialist, Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade at (202) 325–0095.

CHARLES R. STEUART

*Chief,*

*Intellectual Property Rights Branch  
Regulations & Rulings, Office of Trade*

## CBP IPR RECORDATION — JULY 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 09-00214	07/15/2016	03/22/2026	Tony & the kids!	Beach Body LLC	No
COP 09-00214	07/15/2016	03/22/2026	Tony & the kids!	Beach Body LLC	No
COP 09-00233	07/15/2016	02/14/2028	TEN MINUTE TRAINER EXERCISE KIT.	Beach Body LLC.	No
COP 09-00233	07/15/2016	02/14/2028	TEN MINUTE TRAINER EXERCISE KIT.	Beach Body LLC.	No
COP 09-00234	07/15/2016	03/22/2026	P90X extreme home fitness kit.	Beach Body LLC	No
COP 09-00234	07/15/2016	03/22/2026	P90X extreme home fitness kit.	Beach Body LLC	No
COP 09-00235	07/15/2016	11/13/2027	Hip Hop Abs (January 2007)	BEACHBODY, LLC	No
COP 09-00235	07/15/2016	11/13/2027	Hip Hop Abs (January 2007)	BEACHBODY, LLC	No
COP 09-00237	07/15/2016	03/22/2026	Yoga booty ballet live kit.	BEACHBODY, LLC	No
COP 09-00237	07/15/2016	03/22/2026	Yoga booty ballet live kit.	BEACHBODY, LLC	No
COP 09-00239	07/15/2016	03/22/2026	Turbo jam live! Kit.	BEACHBODY, LLC	No
COP 09-00239	07/15/2016	03/22/2026	Turbo jam live! Kit.	BEACHBODY, LLC	No
COP 09-00240	07/21/2016	10/27/2029	Slim in 6.	Beachbody, LLC	No
COP 09-00240	07/21/2016	10/27/2029	Slim in 6.	Beachbody, LLC	No
COP 10-00116	07/21/2016	05/21/2030	Kathy Smith's project you!	Beachbody, LLC	No
COP 10-00116	07/21/2016	05/21/2030	Kathy Smith's project you!	Beachbody, LLC	No
COP 10-00179	07/27/2016	10/07/2030	INSANITY EXERCISE KIT	Beachbody, LLC	No
COP 10-00179	07/27/2016	10/07/2030	INSANITY EXERCISE KIT	Beachbody, LLC	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 11-00096	07/15/2016	07/11/2030	TURBOFIRE Intense Cardio Conditioning.	BEACHBODY, LLC	No
COP 11-00096	07/15/2016	07/11/2030	TURBOFIRE Intense Cardio Conditioning.	BEACHBODY, LLC	No
COP 12-00102	07/15/2016	02/23/2030	BRAZIL BUTT LIFT KIT	Beachbody, LLC	No
COP 12-00102	07/15/2016	02/23/2030	BRAZIL BUTT LIFT KIT	Beachbody, LLC	No
COP 16-00125	07/07/2016	07/07/2036	House of Staunton ornate chess knight	Frank A. Camaratta, Jr.	No
COP 16-00126	07/15/2016	06/06/2033	True Timber HTC.	TRUE TIMBER OUTDOORS HOLDING COMPANY, LLC	No
COP 16-00127	07/15/2016	03/16/2030	TRUE TIMBER MC2 SNOW	ALTON CHRIS SELLARS	No
COP 16-00128	07/15/2016	08/25/2035	True Timber Kanati.	True Timber Outdoors Holding Company, LLC	No
COP 16-00129	07/15/2016	05/15/2036	FIRE EMBLEM FATES	Nintendo of America Inc.	No
COP 16-00130	07/19/2016	07/19/2036	Sky Ripperz	KMA Concepts Limited	No
COP 16-00131	07/19/2016	07/19/2036	Bows & Arrows	KMA Concepts Limited	No
COP 16-00132	07/21/2016	07/21/2036	LOBSTER IN THE SEA	KEVIN NOH	No
COP 16-00133	07/21/2016	07/21/2036	BLOOM TOWN.	KEVIN NOH	No
COP 16-00134	07/21/2016	07/21/2036	BEACH FLIP FLOP PARTY.	KEVIN NOH	No
COP 16-00135	07/21/2016	07/21/2036	SOUTHERN PINEAPPLE INC.	KEVIN NOH	No
COP 16-00136	07/21/2016	07/21/2036	VINE STAR	KEVIN NOH	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
COP 16-00137	07/26/2016	07/26/2036	POKKEN TOURNAMENT (US Commercial Packaging)	Nintendo of America Inc.	No
TMK 00-00237	07/15/2016	06/12/2026	W STYLIZED	Board of Regents of the University of Wisconsin System	No
TMK 00-00237	07/15/2016	06/12/2026	W STYLIZED	Board of Regents of the University of Wisconsin System	No
TMK 00-00238	07/15/2016	09/20/2025	WISCONSIN BADGERS	Board of Regents of the University of Wisconsin	No
TMK 00-00238	07/15/2016	09/20/2025	WISCONSIN BADGERS	Board of Regents of the University of Wisconsin	No
TMK 00-00372	07/15/2016	09/18/2026	SEIKO	SEIKO HOLDINGS KABUSHIKI KAISHA TA SEIKO HOLDINGS CORPORATION	No
TMK 00-00372	07/15/2016	09/18/2026	SEIKO	SEIKO HOLDINGS KABUSHIKI KAISHA TA SEIKO HOLDINGS CORPORATION	No
TMK 01-00001	07/21/2016	02/18/2018	Modern Lamp Design	LIFESPAN BRANDS LLC	No
TMK 01-00001	07/21/2016	02/18/2018	Modern Lamp Design	LIFESPAN BRANDS LLC	No
TMK 01-00002	07/21/2016	03/16/2018	LAVA	LIFESPAN BRANDS LLC	No
TMK 01-00002	07/21/2016	03/16/2018	LAVA	LIFESPAN BRANDS LLC	No
TMK 02-00071	07/29/2016	08/06/2016	Design	HAND2MIND, INC.	No
TMK 02-00071	07/29/2016	08/06/2016	Design	HAND2MIND, INC.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 02-00120	07/20/2016	09/18/2026	SACRAMENTO KINGS AND DESIGN	Sacramento Kings L.P.	No
TMK 02-00120	07/20/2016	09/18/2026	SACRAMENTO KINGS AND DESIGN	Sacramento Kings L.P.	No
TMK 02-00296	07/21/2016	01/02/2027	D and Design	Detroit Tigers, Inc.	No
TMK 02-00296	07/21/2016	01/02/2027	D and Design	Detroit Tigers, Inc.	No
TMK 02-00649	07/06/2016	12/22/2017	ETL VERIFIED and Design	INTERTEK TESTING SERVICES NA, INC.	No
TMK 02-00649	07/06/2016	12/22/2017	ETL VERIFIED and Design	INTERTEK TESTING SERVICES NA, INC.	No
TMK 02-00652	07/06/2016	04/17/2025	ETL LISTED and Design	INTERTEK TESTING SERVICES NA, INC.	No
TMK 02-00652	07/06/2016	04/17/2025	ETL LISTED and Design	INTERTEK TESTING SERVICES NA, INC.	No
TMK 02-00771	07/15/2016	12/08/2022	LOS VASCOS	VINA LOS VASCOS S.A.	No
TMK 02-00771	07/15/2016	12/08/2022	LOS VASCOS	VINA LOS VASCOS S.A.	No
TMK 03-00023	07/21/2016	10/06/2026	CUBS and Design	Chicago Cubs Baseball Club, LLC	No
TMK 03-00023	07/21/2016	10/06/2026	CUBS and Design	Chicago Cubs Baseball Club, LLC	No
TMK 04-00994	07/06/2016	06/12/2026	NHL	National Hockey League	No
TMK 04-00994	07/06/2016	06/12/2026	NHL	National Hockey League	No
TMK 04-01036	07/15/2016	06/08/2018	BROTHER	BROTHER INDUSTRIES, LTD.	No
TMK 04-01036	07/15/2016	06/08/2018	BROTHER	BROTHER INDUSTRIES, LTD.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 04-01095	07/15/2016	07/23/2026	Helmet Design	CINCINNATI BENGALS INC.	No
TMK 04-01095	07/15/2016	07/23/2026	Helmet Design	CINCINNATI BENGALS INC.	No
TMK 05-00165	07/21/2016	10/13/2024	Swoosh Design	Nike, Inc.	No
TMK 05-00165	07/21/2016	10/13/2024	Swoosh Design	Nike, Inc.	No
TMK 05-00411	07/15/2016	08/27/2026	DOLCE (stylized)	DOLCE WINERY INC.	No
TMK 05-00411	07/15/2016	08/27/2026	DOLCE (stylized)	DOLCE WINERY INC.	No
TMK 05-00595	07/27/2016	05/07/2025	Converse All Star Chuck Taylor (Ankle Patch & Design)	CONVERSE INC.	No
TMK 05-00595	07/27/2016	05/07/2025	Converse All Star Chuck Taylor (Ankle Patch & Design)	CONVERSE INC.	No
TMK 05-00655	07/15/2016	10/16/2026	RUFFLES	FRITO-LAY NORTH AMERICA, INC.	No
TMK 05-00655	07/15/2016	10/16/2026	RUFFLES	FRITO-LAY NORTH AMERICA, INC.	No
TMK 05-00875	07/06/2016	11/30/2024	REFRON	AIRGAS, INC.	No
TMK 05-00875	07/06/2016	11/30/2024	REFRON	AIRGAS, INC.	No
TMK 06-00304	07/27/2016	07/16/2026	MAGNUM	CHURCH & DWIGHT CO., INC.	No
TMK 06-00304	07/27/2016	07/16/2026	MAGNUM	CHURCH & DWIGHT CO., INC.	No
TMK 06-00873	07/15/2016	01/10/2026	Helmet Design	ATLANTA FALCONS FOOTBALL CLUB, LLC	No
TMK 06-00873	07/15/2016	01/10/2026	Helmet Design	ATLANTA FALCONS FOOTBALL CLUB, LLC	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 06-01119	07/26/2016	06/07/2026	SILKYKNIT	Miss Elaine, Inc.	No
TMK 06-01119	07/26/2016	06/07/2026	SILKYKNIT	Miss Elaine, Inc.	No
TMK 06-01197	07/07/2016	07/19/2025	INTERTEK ETL SANITATION LISTED & DESIGN	Intertek Testing Services NA, Inc.	No
TMK 06-01197	07/07/2016	07/19/2025	INTERTEK ETL SANITATION LISTED & DESIGN	Intertek Testing Services NA, Inc.	No
TMK 06-01277	07/20/2016	09/06/2026	INDIANA PACERS	PACERS BASKETBALL, LLC	No
TMK 06-01277	07/20/2016	09/06/2026	INDIANA PACERS	PACERS BASKETBALL, LLC	No
TMK 06-01279	07/19/2016	09/06/2026	DALLAS MAVERICKS	Dallas Basketball Limited	No
TMK 06-01279	07/19/2016	09/06/2026	DALLAS MAVERICKS	Dallas Basketball Limited	No
TMK 07-00466	07/27/2016	10/04/2026	STUSSY	Stussy, Inc.	No
TMK 07-00466	07/27/2016	10/04/2026	STUSSY	Stussy, Inc.	No
TMK 07-01004	07/15/2016	06/19/2026	HUMALOG	Eli Lilly and Company	No
TMK 07-01004	07/15/2016	06/19/2026	HUMALOG	Eli Lilly and Company	No
TMK 07-01080	07/27/2016	08/11/2026	MISS ELAINE	MISS ELAINE, INC.	No
TMK 07-01080	07/27/2016	08/11/2026	MISS ELAINE	MISS ELAINE, INC.	No
TMK 08-00911	07/06/2016	11/01/2026	PARABOLA DESIGN	Celgene Corporation	No
TMK 08-00911	07/06/2016	11/01/2026	PARABOLA DESIGN	Celgene Corporation	No
TMK 08-00960	07/15/2016	07/20/2026	LASER	KARAYA (JERSEY)	No
TMK 08-00960	07/15/2016	07/20/2026	LASER	KARAYA (JERSEY)	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/TmK/TmM	Owner Name	GM Restricted
TMK 08-01200	07/15/2016	06/28/2026	AVANDIA	SMITHKLINE BEECHAM	No
TMK 08-01200	07/15/2016	06/28/2026	AVANDIA	SMITHKLINE BEECHAM	No
TMK 09-00677	07/06/2016	09/17/2026	HERCULES	HCC HOLDINGS, INC.	No
TMK 09-00677	07/06/2016	09/17/2026	HERCULES	HCC HOLDINGS, INC.	No
TMK 10-00660	07/15/2016	07/18/2026	BIG BAMBÚ CIGARETTE PAPER PURE HEMP WITH DESIGN	BAMBU Sales, Inc.	No
TMK 10-00660	07/15/2016	07/18/2026	BIG BAMBÚ CIGARETTE PAPER PURE HEMP WITH DESIGN	BAMBU Sales, Inc.	No
TMK 11-01120	07/06/2016	07/04/2026	UNITED STATES POSTAL SERVICE and Design	United States Postal Service	No
TMK 11-01120	07/06/2016	07/04/2026	UNITED STATES POSTAL SERVICE and Design	United States Postal Service	No
TMK 12-00079	07/15/2016	10/26/2025	H Design	Honda Giken Kogyo Kabushiki Kaisha	No
TMK 12-00079	07/15/2016	10/26/2025	H Design	Honda Giken Kogyo Kabushiki Kaisha	No
TMK 12-01163	07/15/2016	07/10/2026	GG (Stylized)	Gucci America, Inc.	No
TMK 12-01163	07/15/2016	07/10/2026	GG (Stylized)	Gucci America, Inc.	No
TMK 12-01184	07/15/2016	07/10/2026	GG (Stylized)	Gucci America, Inc.	No
TMK 12-01184	07/15/2016	07/10/2026	GG (Stylized)	Gucci America, Inc.	No
TMK 12-01206	07/15/2016	07/10/2026	GG	Gucci America, Inc.	No
TMK 12-01206	07/15/2016	07/10/2026	GG	(REGISTRANT) Gucci America, Inc.	No



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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 14-00937	07/27/2016	07/25/2026	Design Only	Ferrari S.p.A.	No
TMK 14-00937	07/27/2016	07/25/2026	Design Only	Ferrari S.p.A.	No
TMK 16-00674	07/06/2016	01/13/2019	Vancouver Canucks "C" logo	VANCOUVER CANUCKS LIMITED PART-NERSHIP	No
TMK 16-00675	07/06/2016	01/23/2023	Winnipeg Jets "jet" logo	Winnipeg Jets Hockey Club Limited Partnership	No
TMK 16-00676	07/06/2016	04/14/2024	SMARTFLEX	SAMSONITE IP HOLDINGS S.A.R.L.	No
TMK 16-00677	07/06/2016	02/24/2020	TOGO	Reset USA Corporation	No
TMK 16-00678	07/06/2016	05/17/2025	BUCKY BADGER design	Board of Regents of the University of Wisconsin System	No
TMK 16-00679	07/06/2016	02/04/2025	NHL	National Hockey League	No
TMK 16-00680	07/06/2016	01/02/2022	APC	Landing Products, Inc.	No
TMK 16-00681	07/06/2016	09/14/2021	WHI INTERTEK and Design	Intertek Testing Services NA, Inc.	No
TMK 16-00682	07/06/2016	06/29/2018	LONZEST	LONZA LTD.	No
TMK 16-00683	07/06/2016	05/14/2024	BUCKEYES	The Ohio State University	No
TMK 16-00684	07/06/2016	03/01/2026	Design (pneumatic hand-operated tool)	Guardair Corporation	No
TMK 16-00685	07/06/2016	12/11/2024	OHIO STATE UNIVERSITY	The Ohio State University	No
TMK 16-00686	07/06/2016	03/26/2020	META	LONZA LTD.	No
TMK 16-00687	07/06/2016	07/13/2019	FIBERAID	LONZA AG (LONZA LTD.)	No
TMK 16-00688	07/06/2016	08/10/2024	CARNIFEED	Lonza Ltd.	No

## CBP IPR RECORDATION — JULY 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 16-00689	07/06/2016	05/25/2023	O	THE OHIO STATE UNIVERSITY	No
TMK 16-00690	07/06/2016	12/09/2017	O OHIO STATE (Stylized)	The Ohio State University	No
TMK 16-00691	07/06/2016	03/10/2023	O (stylized)	THE OHIO STATE UNIVERSITY	No
TMK 16-00692	07/06/2016	07/19/2024	CARNIKING	Lonza Ltd.	No
TMK 16-00693	07/07/2016	05/28/2022	ETL SANITATION LISTED INTERTEK and Design	Intertek Testing Services NA, Inc.	No
TMK 16-00694	07/07/2016	04/20/2025	DIMENSION	EGRANDBUY INC	No
TMK 16-00695	07/07/2016	08/17/2026	PATRIOT	Omni United (S) Pte Ltd.	No
TMK 16-00696	07/07/2016	03/13/2026	Bio-Oil and Design	GENEVA LABORATORIES LIMITED	No
TMK 16-00697	07/07/2016	03/24/2024	BIO-OIL	Geneva Laboratories Limited	No
TMK 16-00698	07/07/2016	09/17/2023	DESIGN ONLY	YOSHIDA METAL INDUSTRY CO., LTD.	No
TMK 16-00699	07/07/2016	08/24/2026	MICROKNIFE180	Tristar Products, Inc.	No
TMK 16-00700	07/15/2016	03/02/2025	Togo	Roset USA Corporation	No
TMK 16-00701	07/15/2016	01/23/2023	555	Paper Plus Connection, Inc.	No
TMK 16-00702	07/15/2016	01/30/2018	MALIE	MALIE, INC.	No
TMK 16-00703	07/15/2016	08/26/2025	BID, BLUFF & BUY	E3Publishing, LLC	No
TMK 16-00704	07/15/2016	08/24/2026	NES Design (Color)	Nintendo of America Inc.	No
TMK 16-00705	07/15/2016	06/19/2025	MICHIGAN STATE	Board of Trustees of Michigan State University	No

## CBP IPR RECORDATION — JULY 2016

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TMK 16-00706	07/15/2016	07/19/2026	GO GREEN GO WHITE	Board of Trustees of Michigan State University	No
TMK 16-00707	07/15/2016	03/29/2018	MICHIGAN STATE SPARTANS	BOARD OF TRUSTEES OF MICHIGAN STATE UNIVERSITY	No
TMK 16-00708	07/15/2016	03/30/2025	SPARTY	Board of Trustees of Michigan State University	No
TMK 16-00709	07/15/2016	05/13/2017	TROIWAY and Design	TROPICAL FOODS COMPANY, INC.	No
TMK 16-00710	07/15/2016	03/03/2026	GRUFF SPARTY	BOARD OF TRUSTEES OF MICHIGAN STATE UNIVERSITY	No
TMK 16-00711	07/15/2016	06/18/2024	BOOTS	Garza, Reynaldo	No
TMK 16-00712	07/15/2016	08/24/2026	SISARINA	Sisarina, Inc.	No
TMK 16-00713	07/15/2016	09/14/2026	ACTIV-WEDGE	Pilates Therapeutics LLC	No
TMK 16-00714	07/15/2016	10/02/2025	SPARTAN HELMET LOGO	BOARD OF TRUSTEES OF MICHIGAN STATE UNIVERSITY	No
TMK 16-00715	07/15/2016	09/07/2026	TUBSHROOM	Price Master Corporation	No
TMK 16-00716	07/15/2016	05/01/2021	RELIAMARK	KAMAN INDUSTRIAL TECHNOLOGIES CORPORATION	No
TMK 16-00717	07/15/2016	11/30/2021	REGENISTEM	Arch Personal Care Products, L.P. Arch PCI, Inc.	No
TMK 16-00718	07/15/2016	08/25/2022	BROTHER (Stylized)	Brother Industries, Ltd.	No

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TMK 16-00719	07/15/2016	12/07/2024	DESIGN ONLY	AmSafe, Inc.	No
TMK 16-00720	07/15/2016	06/29/2026	OMADINE	Arch Chemicals, Inc.	No
TMK 16-00721	07/15/2016	09/02/2025	ZINC OMADINE	Arch Chemicals, Inc.	No
TMK 16-00722	07/15/2016	01/09/2018	DESIGN ONLY	Ariat International, Inc.	No
TMK 16-00723	07/15/2016	03/24/2024	GLOBAL SAI	Yoshida Metal Industry Co., Ltd.	No
TMK 16-00724	07/15/2016	04/10/2026	REVISION	REVISION MILITARY INC.	No
TMK 16-00725	07/15/2016	04/19/2026	GLOBAL NI and Design	YOSHIDA METAL INDUSTRY CO., LTD.	No
TMK 16-00726	07/15/2016	05/24/2024	DESIGN ONLY	YOSHIDA METAL INDUSTRY CO., LTD.	No
TMK 16-00727	07/15/2016	06/23/2024	DESIGN ONLY	YOSHIDA METAL INDUSTRY CO., LTD.	No
TMK 16-00728	07/15/2016	11/03/2020	illesteva (Stylized)	Sildan, Inc.	No
TMK 16-00729	07/15/2016	05/26/2023	C.H. HANSON	C. H. Hanson Company	No
TMK 16-00730	07/15/2016	04/09/2021	GLOBAL	YOSHIDA METAL INDUSTRY CO., LTD.	No
TMK 16-00731	07/15/2016	10/01/2023	DESIGN ONLY	YOSHIDA METAL INDUSTRY CO., LTD.	No
TMK 16-00732	07/15/2016	07/07/2025	AOT	Kiraco, LLC	No
TMK 16-00733	07/15/2016	03/25/2018	Columbus Blue Jackets Star & Flag logo	COLHOC	No
TMK 16-00734	07/18/2016	12/09/2024	DESIGN ONLY (Palm Tree)	SOHO APPAREL GROUP, INC.	No
TMK 16-00735	07/19/2016	06/10/2019	AWESOME FLOSS	Lorch, Leonard G.	No
TMK 16-00736	07/19/2016	12/09/2024	FOREO	FOREO Ltd.	No
TMK 16-00737	07/19/2016	12/04/2023	LEE	THE H. D. LEE COMPANY, INC.	No
TMK 16-00738	07/19/2016	02/04/2025	FOREO	FOREO Ltd.	No

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TMK 16-00739	07/19/2016	02/04/2019	RIDERS	The H.D. Lee Company, Inc.	No
TMK 16-00740	07/19/2016	09/24/2017	Lee (stylized)	H. D. LEE COMPANY, INC., THE	No
TMK 16-00741	07/19/2016	05/26/2023	CFA INSTITUTE and Design	CFA Institute	No
TMK 16-00742	07/19/2016	02/10/2026	CFA SOCIETY	CFA Institute	No
TMK 16-00743	07/19/2016	03/04/2022	CHARTERED FINANCIAL ANALYST	CFA INSTITUTE	No
TMK 16-00744	07/19/2016	10/15/2018	LELO	LELO GmbH	No
TMK 16-00745	07/19/2016	04/17/2022	LELO	LELO GmbH	No
TMK 16-00746	07/19/2016	06/20/2022	LELO	LELO GmbH	No
TMK 16-00747	07/19/2016	07/12/2026	LELO	LELO GmbH	No
TMK 16-00748	07/19/2016	03/06/2026	BIOVERT	Arch Personal Care Products, L.P.	No
TMK 16-00749	07/19/2016	07/19/2026	FUJI ENVIROMAX	Fuji Batteries, Inc.	No
TMK 16-00750	07/19/2016	05/14/2022	LELO	LELO Inc.	No
TMK 16-00751	07/19/2016	09/23/2025	FUJI ENVIROMAX	Fuji Batteries Inc.	No
TMK 16-00752	07/19/2016	03/22/2026	LUNA	FOREO Ltd	No
TMK 16-00753	07/19/2016	11/04/2019	WET HEAD	RUDELL DESIGN LLC	No
TMK 16-00754	07/19/2016	12/18/2022	GOPOLE	AR2 Products LLC	No
TMK 16-00755	07/20/2016	01/09/2022	CFA	CFA INSTITUTE	No
TMK 16-00756	07/20/2016	11/25/2025	SWALLOWTAIL	Bigelow Mountain Partners, LLC	No
TMK 16-00757	07/20/2016	12/15/2025	BRS BENEFITS & RISK SOLUTIONS and Design	Benefits & Risk Solutions, Inc.	No

## CBP IPR RECORDATION — JULY 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 16-00758	07/20/2016	11/25/2025	PACIFIC PREMIER DATAVAULT	Pacific Premier Bancorp, Inc.	No
TMK 16-00759	07/20/2016	10/14/2025	CRIOLLO 100% PURO 100% CRIOLLO and Design	Superior Dairy Corp.	No
TMK 16-00760	07/20/2016	04/23/2017	CFA INSTITUTE	CFA INSTITUTE	No
TMK 16-00761	07/20/2016	10/12/2026	THE MASTER'S HAMMER AND CHISEL	Beachbody, LLC	No
TMK 16-00762	07/20/2016	02/17/2026	PAID IN AMERICA	Kathleen Allen	No
TMK 16-00763	07/20/2016	09/30/2025	FAIRPOINTE CAPITAL	Fairpointe Capital, LLC	No
TMK 16-00764	07/20/2016	05/16/2026	BTC GEMS	Bhansali, Amit	No
TMK 16-00765	07/20/2016	11/04/2025	PERNCLIFF	Brite Stars, LLC	No
TMK 16-00766	07/20/2016	07/26/2026	ERIN CONDREN	EC Design LLC	No
TMK 16-00767	07/20/2016	05/16/2026	ORCA & design	Outdoor Recreation Company of America LLC	No
TMK 16-00768	07/20/2016	05/23/2026	PINK STARDUST RECORDS and Design	Grant, Shannon E.	No
TMK 16-00769	07/20/2016	05/16/2026	IRON TRIANGLE BREWING COMPANY	Iron Triangle Brewing Company	No
TMK 16-00770	07/20/2016	06/08/2026	ORCA POD	Outdoor Recreation Company of America, LLC	No
TMK 16-00771	07/20/2016	05/23/2026	PRIVATE EYE SAURUS	Donoso, Larry A.	No
TMK 16-00772	07/20/2016	05/16/2026	FUELCHEX	Shipley Energy Company	No
TMK 16-00773	07/20/2016	05/16/2026	DISPENSARY	Hare, Josh	No
TMK 16-00774	07/20/2016	05/16/2026	SLOSS MUSIC & ARTS FESTIVAL	Birmingham Festival Ventures, LLC	No

## CBP IPR RECORDATION — JULY 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 16-00775	07/20/2016	05/16/2026	SLOSS FEST	Birmingham Festival Ventures, LLC	No
TMK 16-00776	07/20/2016	11/04/2025	FIRST STANDARD FINANCIAL	First Standard Financial Company, LLC	No
TMK 16-00777	07/20/2016	05/16/2026	FANTASTIC CAFE & Design	Fantastic Cafe No. 1	No
TMK 16-00778	07/21/2016	10/05/2026	Q PARTS and design	Q-PARTS CORP	No
TMK 16-00779	07/21/2016	08/31/2026	WASHINGTON WIZARDS and BALL DESIGN	Washington Bullets, L.P.	No
TMK 16-00780	07/21/2016	07/26/2026	LUCI BAGS DESIGN	Luci Bags LLC	No
TMK 16-00781	07/22/2016	10/05/2021	INSTAX	FUJIFILM Corporation	No
TMK 16-00782	07/22/2016	06/16/2020	CARBO	CARBO Ceramics Inc.	No
TMK 16-00783	07/22/2016	06/14/2026	CARBO CERAMICS	Carbo Ceramics Inc.	No
TMK 16-00784	07/26/2016	06/06/2022	FUJIFILM	FUJIFILM Corporation	No
TMK 16-00785	07/26/2016	06/14/2026	CARBO CERAMICS	Carbo Ceramics Inc.	No
TMK 16-00786	07/26/2016	08/26/2019	CARBO HYDROPROP	CARBO Ceramics Inc.	No
TMK 16-00787	07/26/2016	08/31/2026	V-SLOT	Carew, Mark	No
TMK 16-00788	07/26/2016	05/02/2026	OPENBUILDS	Openbuilds, LLC	No
TMK 16-00789	07/26/2016	07/23/2022	ACCUCAST	CARBO CERAMICS INC.	No
TMK 16-00790	07/26/2016	09/28/2026	DOMAINE DE LA MORDORÉE	Kysela Pere et Fils, Ltd.	No
TMK 16-00791	07/26/2016	11/30/2024	CARBO PROP	CARBO CERAMICS INC.	No
TMK 16-00792	07/26/2016	11/30/2024	CARBOACCUCAST	CARBO CERAMICS INC.	No
TMK 16-00793	07/26/2016	06/11/2018	TANALITH	Arch Timber Protection Limited	No

## CBP IPR RECORDATION — JULY 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 16-00794	07/26/2016	09/07/2026	Luminor Watch Design (Bridge)	Officine Panerai AG	No
TMK 16-00795	07/26/2016	01/06/2020	INTECO	INTIMATE CO., L.L.C.	No
TMK 16-00796	07/26/2016	10/19/2026	G DESIGN	BELL SPORTS, INC.	No
TMK 16-00797	07/26/2016	04/15/2023	TRUMP	DTTM OPERATIONS LLC	No
TMK 16-00798	07/26/2016	09/10/2023	LONGMASTER	KIMBER IP, LLC	No
TMK 16-00799	07/26/2016	01/13/2026	STAR SHOWER	PROMETHEUS BRANDS LLC	No
TMK 16-00800	07/27/2016	10/14/2025	BOBBER	AR2 Products LLC	No
TMK 16-00801	07/27/2016	02/07/2017	TRUETIMBER	TRUE TIMBER OUTDOORS HOLDING COMPANY, LLC	No
TMK 16-00802	07/27/2016	09/28/2026	amiibo Logo (Color) & Design	Nintendo of America Inc.	No
TMK 16-00803	07/27/2016	06/08/2026	BEAR CREEK	Bear Creek Design Group LLC	No
TMK 16-00804	07/27/2016	06/15/2026	THE FASHIONISTA'S DIARY	The Fashionista's Diary, LLC	No
TMK 16-00805	07/27/2016	06/08/2026	Blossom and Design	Blossom Kitchen & Bath Supply Corporation	No
TMK 16-00806	07/27/2016	06/01/2026	MINISTRY OF SUPPLY	Ministry Of Supply Inc.	No
TMK 16-00807	07/27/2016	06/01/2026	FRONT DOOR PHOTOGRAPHY	Front Door Photography	No
TMK 16-00808	07/27/2016	06/15/2026	TRANSITIONING FAMILIES and Design	Bailey, Rebecca	No
TMK 16-00809	07/27/2016	02/25/2019	ALC	DFT, Inc.	No
TMK 16-00810	07/27/2016	06/08/2026	King Poke plus Design	Nishina, Kotaro	No
TMK 16-00811	07/27/2016	06/08/2026	PIPERWAI	PiperWai, LLC	No



## CBP IPR RECORDATION — JULY 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 16-00812	07/27/2016	05/23/2026	ARSENAL MEDICAL	Arsenal Medical, Inc.	No
TMK 16-00813	07/27/2016	06/15/2026	LAS GEMELAS	Twins Twins LLC	No
TMK 16-00814	07/27/2016	06/15/2026	MADDEN	Red Bear, Inc.	No
TMK 16-00815	07/27/2016	05/16/2026	PLANET LABS	Planet Labs Inc.	No
TMK 16-00816	07/27/2016	06/08/2026	TAGONOMY	Orions Digital Systems, Inc.	No
TMK 16-00817	07/27/2016	03/30/2025	DURABLA	DFT Inc.	No
TMK 16-00818	07/28/2016	06/11/2024	STUSSY	Stussy, Inc.	No
TMK 16-00819	07/28/2016	04/10/2019	EXCALIBUR	DFT Inc.	No
TMK 16-00820	07/28/2016	08/14/2025	WLC	DFT INC.	No
TMK 16-00821	07/28/2016	05/08/2025	SCV	DFT Inc.	No
TMK 16-00822	07/28/2016	10/05/2026	ACCU-CHART	Accu-Chart Plus Health Care Systems, Inc.	No
TMK 16-00823	07/28/2016	09/25/2022	DSV	DFT, INC.	No
TMK 16-00824	07/28/2016	12/09/2017	DFT	DFT INC.	No
TMK 16-00825	07/28/2016	02/05/2026	GLC	DFT INC.	No
TMK 16-00826	07/28/2016	10/16/2025	CARBOPROP	CARBO CERAMICS INC.	No
TMK 16-00827	07/28/2016	03/09/2019	CARBOTAG	Carbo Ceramics Inc.	No
TMK 16-00828	07/28/2016	06/09/2023	ECONOPROP	CARBO CERAMICS INC.	No
TMK 16-00829	07/28/2016	10/19/2026	FUSION	CARBO Ceramics Inc.	No
TMK 16-00830	07/28/2016	05/02/2026	BULBHEAD	Bulbhead.Com, LLC	No
TMK 16-00831	07/28/2016	08/27/2017	DLC	DFT, INC.	No

## CBP IPR RECORDATION — JULY 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 16-00832	07/28/2016	12/09/2016	PDC	DFT INC.	No
TMK 16-00833	07/28/2016	08/12/2019	HYDROPROP	Carbo Ceramics Inc.	No
TMK 16-00834	07/28/2016	01/02/2023	IPROP	CARBO Ceramics Inc.	No
TMK 16-00835	07/28/2016	12/30/2024	KRYPTOSPHERE	CARBO Ceramics Inc.	No
TMK 16-00836	07/29/2016	01/07/2025	MORE SPACE TO FLOW	CARBO Ceramics Inc.	No
TMK 16-00837	07/29/2016	12/06/2021	NRT	CARBO Ceramics Inc.	No
TMK 16-00838	07/29/2016	03/22/2026	STIMPRO	CARBO Ceramics Inc.	No
TMK 16-00839	07/29/2016	09/28/2025	PROP	CARBO CERAMICS INC.	No
TMK 16-00840	07/29/2016	06/22/2026	AC/DC plus design	Leitsephein Presse B.V.	No
TMK 16-00841	07/29/2016	06/01/2026	SMART CHOICES	Gemini Communications, Inc.	No
TMK 16-00842	07/29/2016	06/29/2026	THE NOBLEMEN	Alfred B Midgett	No
TMK 16-00843	07/29/2016	05/16/2026	NUT-N-FANCY THE PERFECT PISTA-CHIO	Rea, Jeffrey	No
TMK 16-00844	07/29/2016	06/15/2026	EASY'S SMOKE SHOP THE FINEST GLASS IN TOWN and Design	EASY'S SS IP HOLDINGS, LLC	No
TMK 16-00845	07/29/2016	04/14/2024	SCALEGUARD	CARBO Ceramics Inc.	No
TMK 16-00846	07/29/2016	05/23/2026	PERFECT METABOLISM	Vance, Sara	No
TMK 16-00847	07/29/2016	07/04/2020	WOLMAN	ARCH WOOD PROTECTION, INC.	No
TMK 16-00848	07/29/2016	06/29/2026	MOGO RODENT EXTINGUISHER	The Ratvac	No
TMK 16-00849	07/29/2016	05/01/2021	CARBONBOND	CARBO Ceramics Inc.	No

## CBP IPR RECORDATION — JULY 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 16-00850	07/29/2016	11/02/2025	Medusa Head	Gianni Versace S.p.A.	No
TMK 16-00851	07/29/2016	06/01/2026	ZIKRAYET	Dabky, Inc.	No
TMK 16-00852	07/29/2016	01/05/2025	CARBOECONOPROP	CARBO CERAMICS INC.	No
TMK 16-00853	07/29/2016	06/29/2026	OPTIMAZE	Optimize, Inc.	No
TMK 16-00854	07/29/2016	06/29/2026	TAHOE	Nor-Cal Controls ES, Inc.	No
TMK 16-00855	07/29/2016	07/30/2026	FRACPRO	STRATAGEN, INC.	No
TMK 16-00856	07/29/2016	02/21/2019	POLYALDO	LONZA INC.	No
TMK 16-00857	07/29/2016	06/29/2026	FLOUR + WATER	Ne Times Restaurant Group, Inc.	No
TMK 16-00858	07/29/2016	07/19/2026	JOHN HANLEY TRANSFORMATION + SUSTAINABILITY	John Hanley	No
TMK 16-00859	07/29/2016	05/23/2026	WORK HARD STAY HARD	Documentary Recordings Inc.	No
TMK 16-00860	07/29/2016	12/22/2025	JUUL	PAX LABS, INC.	No
TMK 16-00861	07/29/2016	06/08/2026	Suntava & Design	Suntava, Inc.	No
TMK 16-00862	07/29/2016	08/03/2026	H T (Stylized)	Hammer Time Apparel, LLC	No
TMK 16-00863	07/29/2016	06/01/2026	EZHOOK	Fabric Innovations, Inc.	No
TMK 16-00864	07/29/2016	02/19/2024	PAX	PAX LABS, INC.	No
TMK 16-00865	07/29/2016	12/22/2025	PAX2	PAX LABS, INC.	No
TMK 16-00866	07/29/2016	07/08/2024	X (Stylized & Design)	PAX LABS, INC.	No
TMK 95-00427	07/06/2016	07/01/2026	PANDA BRAND	LEE KUM KEE COMPANY LIMITED	No
TMK 95-00427	07/06/2016	07/01/2026	PANDA BRAND	LEE KUM KEE COMPANY LIMITED	No

## CBP IPR RECORDATION — JULY 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 96-00159	07/19/2016	03/16/2026	INSTALITE	E. GLUCK CORPORATION	No
TMK 96-00159	07/19/2016	03/16/2026	INSTALITE	E. GLUCK CORPORATION	No
TMK 96-00724	07/06/2016	07/01/2026	INTEGRA	HONDA GIKEN KOGYO KABUSHIKI KAISHA DBA HONDA MOTOR CO., LTD.	No
TMK 96-00724	07/06/2016	07/01/2026	INTEGRA	HONDA GIKEN KOGYO KABUSHIKI KAISHA DBA HONDA MOTOR CO., LTD.	No

## GENERAL NOTICE

### 19 CFR PART 177

#### REVOCAION OF ONE RULING LETTER AND REVOCAION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF DION® 9100

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

**ACTION:** Notice of revocation of one ruling letter and revocation of treatment relating to the tariff classification of Dion® 9100.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of Dion® 9100 under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 18, on May 4, 2016. No comments supporting the proposed revocation were received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 17, 2016.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 50, No. 18, on May 4, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of Dion® 9100. As stated in the proposed notice, this action will cover New York Ruling Letter ("NY") N051856, dated February 23, 2009, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In NY N051856, CBP classified Dion®9100 in heading 3907, HTSUS, specifically in subheading 3907.91.50, HTSUS, which provides for "Polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms: Other polyesters: Unsaturated: Other." CBP has reviewed NY N051856 and has determined the ruling letter to be in error. It is now CBP's position that Dion® 9100 is properly classified, by operation of GRIs 1 and 6, in heading 3907, HTSUS, specifically in subheading 3907.20.00, HTSUS, which provides for "Polyac-

etals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms: Other polyethers.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N051856 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H116109, set forth as Attachment A to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 20, 2016

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H116109

June 20, 2016

CLA-2 OT:RR:CTF:TCM H116109 NCD

CATEGORY: Classification

TARIFF NO.: 3907.20.0000

MARK DUBOIS

PRODUCT SAFETY MANAGER

REICHHOLD, INC.

P.O. BOX 13582

RESEARCH TRIANGLE PARK

NORTH CAROLINA 27709

RE: Revocation of NY N051856; classification of Dion® 9100

DEAR MR. DUBOIS:

This letter is in reference to the electronic request, filed June 28, 2010 on behalf of Reichhold, Inc. (“Reichhold”), for reconsideration of New York Ruling Letter (NY) N051856, dated February 23, 2009. NY N051856 was issued to Reichhold by U.S. Customs and Border Protection (CBP) in response to Reichhold’s February 11, 2009 request for a ruling as to the proper classification of the Dion® 9100 under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N051856, have determined that it is incorrect, and, for the reasons set forth below, are revoking that ruling.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 18, on May 4, 2016. No comments were received in response to the notice.

**FACTS:**

In NY N051856, CBP stated as follows with regard to Reichhold’s original ruling request and the merchandise at issue:

Dion 9100 is described as an unsaturated polyester resin manufactured from epoxy resin, bisphenol A and methacrylic acid. The resin will be imported in the form of a liquid prepolymer as a 60–70% solution in styrene for use in building fiberglass reinforced tanks, pipes and other plastic parts.

Based upon the provided description, CBP classified the Dion® 9100 in subheading 3907.91.50, HTSUS, which provides for “Polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms: Other polyesters: Unsaturated.”

On June 10, 2010, prior to filing the instant reconsideration request, Reichhold submitted to CBP a series of diagrams depicting the chemical synthesis by which the Dion® 9100 is manufactured (see figures 1 and 2 below). The diagrams were forwarded to CBP’s Laboratories and Scientific Services Directorate (LSSD) for technical analysis. LSSD provided the following description of the diagrams:

The structure forwarded to our office shows a molecule with epoxide terminating units and a repeating internal structure (between 3 and 10 functionalized repeating units) that is reacted with methacrylate to form



the final product with vinyl ester terminating units. Information on this product notes it is a "Bisphenol-A epoxide based vinyl ester resin..."

Upon additional review of the diagrams, LSSD noted with respect to the Dion® 9100 in its final state:

Since between three and ten ether-function monomer units are present, versus the two terminating carboxylic ester units, the polyether units predominate...the chemical in question is obtained from an epoxide (epoxide-terminating groups are found in the chemical prior to reacting with methacrylate, as previously noted) and ether-functional groups are readily visible in the polymer chain.

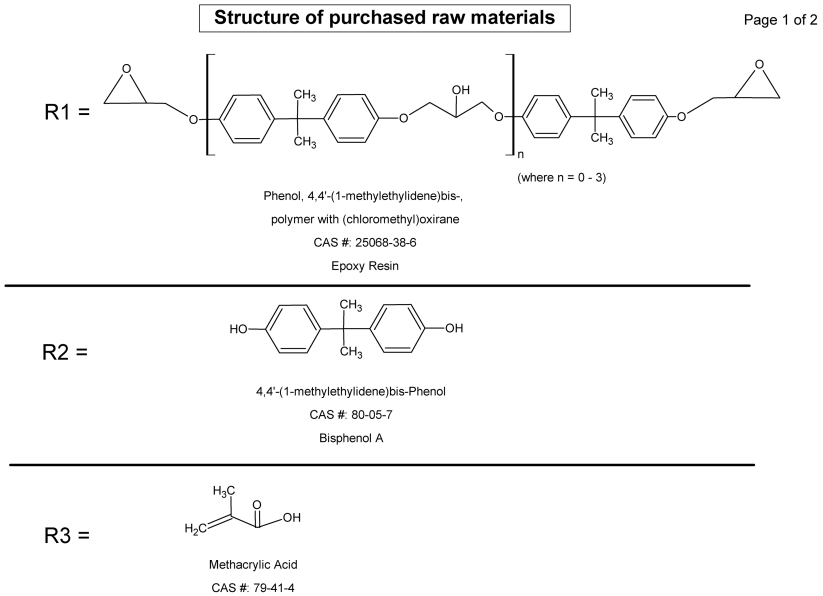


Figure 1

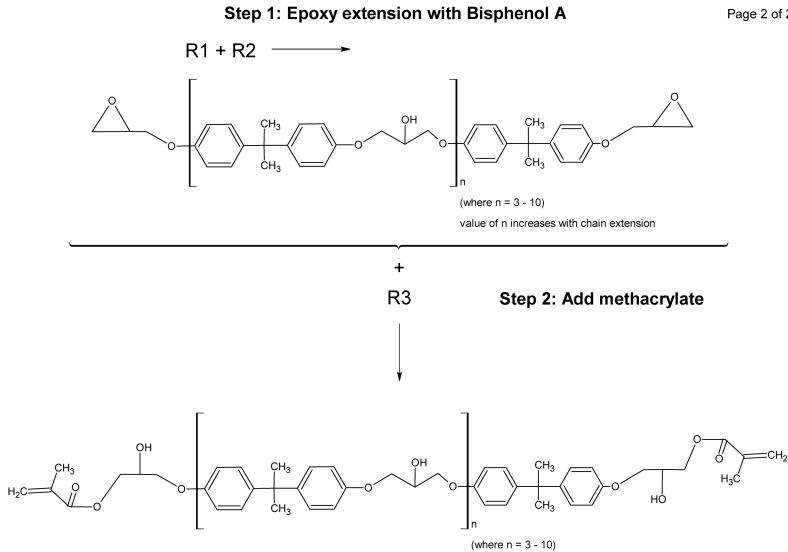


Figure 2

**ISSUE:**

Whether the Dion® 9100 is properly classified as an “other polyether” of subheading 3907.20.00, HTSUS, as an “epoxide resin” of subheading 3907.30.00, HTSUS, or as an “unsaturated polyester resin” of subheading 3907.91.50, HTSUS.

**LAW AND ANALYSIS:**

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and

are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

<b>3907</b>	Polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms:
3907.20.00	Other polyethers
3907.30.00	Epoxide resins
	Other polyesters:
3907.91	Unsaturated:
3907.91.50	Other

As an initial matter, we consider whether Dion® 9100 is properly classified in heading 3907, HTSUS, which describes, *inter alia*, epoxide resins, “other” polyethers, and “other” polyesters in primary forms. Interpretation of heading 3907 is governed by Note 3 to Chapter 39, which states, in relevant part, as follows:

Headings 39.01 to 39.11 apply only to goods of a kind produced by chemical synthesis, falling in the following categories...

(c) Other synthetic polymers with an average of at least 5 monomer units....

With respect to “chemically modified” polymers, Note 5 to Chapter 39 states as follows:

Chemically modified polymers, that is those in which only appendages to the main polymer chain have been changed by chemical reaction, are to be classified in the heading appropriate to the unmodified polymer. This provision does not apply to graft copolymers.

While a definition of “polymer” is absent from the HTSUS, the General EN to Chapter 39 describes “polymers” within the meaning of Notes 4 and 5 to Chapter 39 as “molecules which are characterised by the repetition of one or more types of monomer units.” *See also* Richard J. Lewis, Sr., HAWLEY’S CONDENSED CHEMICAL DICTIONARY 1013 (15th ed. 2007) (defining “polymer” as “a macromolecule formed by the chemical union of five or more identical combining units called monomers”) [hereinafter HAWLEY’S]<sup>1</sup>. As to the specific types of polymers classifiable in heading 3907, EN 39.07 provides as follows:

This heading covers:

\*\*\*

(2) **Other polyethers.** Polymers obtained from epoxides, glycols or similar materials and characterised by the presence of ether-functions in the polymer chain. They are not to be confused with the polyvinyl ethers of heading 39.05, in which the ether-functions are substituents on the

<sup>1</sup> It is well-established that when a tariff term is not defined by the HTSUS or its legislative history, its correct meaning is its common or commercial meaning, which can be ascertained through reference to “dictionaries, scientific authorities, and other reliable information sources and lexicographic and other materials.” *See Rocknell Fastener, Inc. v. United States*, 267 F.3d 1354 (Fed. Cir. 2001).

polymer chain. The most important members of this group are poly(oxyethylene) (polyethylene glycol), polyoxypropylene and polyphenylene oxide (PPO) (more correctly named poly(dimethylphenylene-oxide)). These products have a variety of uses, PPO being used, like the polyacetals, as engineering plastics, polyoxypropylene as an intermediate for polyurethane foam...

(3) **Epoxide resins.** Polymers made, for example, by condensing epichlorohydrin (1-chloro-2,3-epoxypropane) with bisphenol A (4,4'-isopropylidenediphenol), novolak (phenolic) resins or other polyhydroxy compounds or by epoxidising unsaturated polymers. Whatever the basic structure of the polymer, these resins are characterised by the presence of reactive epoxide groups which allow them to be readily cross-linked at the time of use, e.g. by the addition of an amino compound, an organic acid or anhydride, a boron trifluoride complex or an organic polymer...

\*\*\*

(5) These polymers are characterised by the presence of carboxylic ester functions in the polymer chain and are obtained, for example, by condensation of a polyhydric alcohol and a polycarboxylic acid...

The diagram provided by Reichhold indicates that the Dion® 9100 contains between three and ten repeating ether-function units as its sole repeating monomer unit. The Dion® 9100 can consequently be described as a polymer of ether-function units. EN 39.07 instructs that polymers characterized by the presence of ether functions in the polymer chain are to be described as “other polyethers” for purposes of classification in heading 3907. Moreover, EN 39.07 describes such “other polyethers” as having been obtained from epoxides. In this case, epoxides form the reactive terminating units of the polymer chain with which the methacrylate is reacted to produce the Dion® 9100. In effect, by operation of Note 3 to Chapter 39, and consistent with the General EN to Chapter 39 and EN 39.07, the Dion® 9100 is properly classified as “other polyethers” in heading 3907.

As to the proper classification of the Dion® 9100 at the subheading level, Subheading Note 1 to Chapter 39 states, in pertinent part, as follows:

1. Within any one heading of this chapter, polymers (including copolymers) are to be classified according to the following provisions...
  - (b) Where there is no subheading named “Other” in the same series:
    - (1) Polymers are to be classified in the subheading covering polymers of that monomer unit which predominates by weight over every other single comonomer unit. For this purpose, constituent monomer units of polymers falling in the same subheading shall be taken together. Only the constituent comonomer units of the polymers in the series under consideration are to be compared.<sup>2</sup>
    - (2) Chemically modified polymers are to be classified in the subheading appropriate to the unmodified polymer.

The EN to Subheading Note 1 expounds on the note as follows:

<sup>2</sup> Note 4 to Chapter 39 provides that “copolymers’ covers all polymers in which no single monomer unit contributes 95% or more by weight to the total copolymer content.”

A subheading named “Other” does not include subheadings such as “Other polyesters” and “Of other plastics”.

The expression “in the same series” applies to subheadings of the same level, namely, one-dash subheadings (level 1) or two-dash subheadings (level 2) (see the Explanatory Note to General Interpretative Rule 6).<sup>3</sup>

In the instant case, the series in which the subheadings under consideration fall contains the subheading “other polyethers” but is devoid of any subheading entitled simply “Other.” Therefore, Subheading Note 1(b) governs classification of the Dion® 9100 at the subheading level. As described above, the structure representing Dion® 9100 contains between three and ten ether-function units as its sole repeating monomer units. By contrast, it does not contain a single repetition of the reactive epoxide units, let alone five such repetitions, or any carboxylic acid esters whatsoever. *See* EN 39.07. By logical necessity, then, the ether units predominate by weight for purposes of Subheading Note 1(b)(1), to the effect that the Dion® 9100 must be classified in the subheading covering the ether units’ composite polymer. Again, polymers consisting of ether-functions are described as “other polyethers” for tariff classification purposes, particularly where, as here, they originate from epoxides. Therefore, the Dion® 9100 is properly classified in subheading 3907.20.00.

We have also considered whether the Dion® 9100 is classifiable in subheading 3907.30.00. To this end, we note that Subheading Note 1(b)(2) to Chapter 39 requires classification of chemically modified polymers in the subheading appropriate to the unmodified polymer, and Note 5 defines “chemically modified polymers” as “those in which only appendages to the main polymer chain have been changed by chemical reaction.” However, while the unreacted polymer chain depicted in Figure 1 is labelled “epoxy resin,” it actually lacks the repeating epoxide monomer units required for description as such. *See* EN 39.07; HAWLEY’S at 507 (noting in defining “epoxy resins” that “[t]he reactive epoxies form a tight, cross-linked polymer network...”). In its unmodified state, just as in its reacted state, the Dion® 9100 is in fact a polymer of ether-function units. Therefore, it cannot be classified in subheading 3907.30.00.

### **HOLDING:**

By application of GRIs 1 and 6, the Dion® 9100 is properly classified in heading 3907, HTSUS, specifically in subheading 3907.20.0000, HTSUSA

<sup>3</sup> The EN to GRI 6 provides, in relevant part, as follows:

- (II) For the purposes of Rule 6, the following expressions have the meanings hereby assigned to them:
- (a) “subheadings at the same level”: one-dash subheadings (level 1) or two-dash subheadings (level 2).

Thus, when considering the relative merits of two or more one-dash subheadings within a single heading in the context of Rule 3(a), their specificity or kinship in relation to a given article is to be assessed solely on the basis of the texts of the competing one-dash subheadings. When the one-dash subheading that is most specific has been chosen and when that subheading is itself subdivided, then, and only then, shall the texts of the two-dash subheadings be taken into consideration for determining which two-dash subheading should be selected.

(Annotated), which provides for: “Polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms: Other polyethers.” The 2015 column one general rate of duty is 6.1% ad valorem.

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

#### **EFFECT ON OTHER RULINGS:**

New York Ruling Letter N051856, dated February 23, 2009, is hereby REVOKED in accordance with the above analysis.

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

*Sincerely,*

ALLYSON MATTANAH

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



### **PROPOSED REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF SHEET STRAPS**

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

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

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of sheet straps under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATES:** Comments must be received on or before September 16, 2016.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10<sup>th</sup> Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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

### **SUPPLEMENTARY INFORMATION:**

#### **BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of sheet straps identified as “Snug Straps”. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) D84225, dated December 3, 1998 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rul-

ings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY D84225, CBP classified "Snug Straps" made from polyester elastic material and latex rubber elastic that are secured with metal alligator clips in heading 7326, HTSUS, specifically in subheading 7326.90.85, HTSUS, which provides for "Other articles of iron or steel: Other: Other: Other." CBP has reviewed NY D84225 and has determined the ruling letter to be in error. It is now CBP's position that the sheet straps are properly classified, by operation of GRI 1, in heading 6307, HTSUS, specifically in subheading 6307.90.9889, HTSUS, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY D84225 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H058921, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 27, 2016

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments



## [ATTACHMENT A]

NY D84225

December 3, 1998

CLA-2-73:RR:NC:SP:115 D84225

CATEGORY: Classification

TARIFF NO.: 7326.90.8585

MR. DAVID BLUESTEIN  
DRAKE-BLUESTEIN, INC.  
8541 THYS COURT  
SACRAMENTO, CA 95828

RE: The tariff classification of metal snug straps from China.

DEAR MR. BLUESTEIN:

In your letter dated November 4, 1998, you requested a tariff classification ruling.

The submitted samples are identified as snug straps. They are made of 70% latex rubber elastic material, 30% polyester elastic material, a polypropylene plastic slide and nickel-plated steel (alligator clips grip) grippers. This article is designed with an elastic strip that measures approximately 1/2 inch wide and approximately 4 inches long. The elastic strip has a nickel-plated steel gripper on each end. Your letter of inquiry states that these snug straps adjust from 6 inches to 24 inches. The snug straps can be used for holding articles firmly in place without making holes, such as bed sheets, blankets, mattress pads, ironing board covers, furniture covers, sport socks, mitten to jackets and more. This item is blister packaged in sets of four.

The applicable subheading for the snug straps will be 7326.90.8585, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of iron or steel: other:

other. The rate of duty will be 3.5 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Melvyn Birnbaum at 212-466-5487.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H058921  
CLA-2 RR:CTF:TCM H058921 HvB  
CATEGORY: Classification  
TARIFF NO: 6307.90.9889

DAVID BLUESTEIN  
DRAKE-BLUESTEIN, INC.  
8440 ROVANA CIR  
STE 100  
SACRAMENTO CA 95828

RE: Revocation of New York Ruling Letter (NY) D84225; classification of sheet straps

DEAR MR. BLUESTEIN:

This is in reference to New York Ruling Letter (NY) D84225, dated December 3, 1998. In NY D84225, U.S. Customs Service classified “metal snug straps” identified as “Snug Straps” in heading 7326, which provides for “Other Articles of Iron or Steel.” For the reasons set forth below, we have determined that the classification of the sheet straps in heading 7326, of the Harmonized Tariff System of the United States (HTSUS), was incorrect.

**FACTS:**

In NY D84225, we described the snug straps as follows:

They are made of 70% latex rubber elastic material, 30% polyester elastic material, a polypropylene plastic slide and nickel-plated steel (alligator clips grip) grippers. This article is designed with an elastic strip that measures approximately 1/2 inch wide and approximately 4 inches long. The elastic strip has a nickel-plated steel gripper on each end. Your letter of inquiry states that these snug straps adjust from 6 inches to 24 inches. The snug straps can be used for holding articles firmly in place without making holes, such as bed sheets, blankets, mattress pads, ironing board covers, furniture covers, sport socks, mitten to jackets and more. This item is blister packaged in sets of four.

**ISSUE:**

Whether the subject merchandise is classifiable as an other made up textile article under heading 6307, HTSUS, or as an other article of iron or steel in heading 7326, HTSUS.

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

<b>6307</b>	Other made up articles, including dress patterns:		
6307.90:	Other:		
	Other:		
6307.90.98:			Other. . .
	*	*	*
<b>7326</b>	Other articles of iron or steel		
	Other parts and accessories:		
7326.90	Other:		
		Other:	
		Other:	
7326.90.85:			Other.
	*	*	*

Note 7 to Section XI, which covers Chapter 63, states the following:  
 For the purposes of this section, the expression “made up” means:

\*\*\*

(b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets);

\*\*\*

\* \* \*

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

EN 63.07 provides, in pertinent part:

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

EN 73.26 provides in pertinent part:

This heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling or perforating **other than** articles included in the preceding headings of this Chapter or covered by Note 1 to Section XV or included in **Chapter 82** or **83** or more specifically covered elsewhere in the Nomenclature.

\* \* \* \* \*

The instant snug straps are designed to fit across a corner of a sheet and hold it in place, and are made of textile and rubber with metal clips. In NY

D84225, we classified the instant snug straps in heading 7326, HTSUS. However, the ENs for heading 7326 state, in relevant part, as follows:

This heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling or perforating other than articles included in the preceding headings of this Chapter . . . or more specifically covered elsewhere in the Nomenclature.

The snug straps consist of textile elastic straps that have metal clips. Inasmuch as the subject “Sheet Straps” have a significant textile (1/2 inch x 4 inch) elastic component, we find that the article is not similar to those enumerated in the EN for heading 7326, *e.g.*, horseshoes, tree climbing irons, articles of wire, tool boxes, which are all articles of iron or steel that have been manufactured by forging, punching, cutting, etc. The ENs for heading 6307 provide, in relevant part, as follows:

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

In particular, the ENs for heading 6307 specifically include a variety of textile housekeeping articles and domestic use accessories which are similar to the subject “Sheet Straps”, *e.g.*, cleaning cloths, domestic laundry or shoe bags, and flat protective sheets. *See, e.g.*, NY N259415, dated December 15, 2014 (classifying a “pop-up storage container made from textile and metal) and Headquarters Ruling Letter (HQ) HQ 950036, dated November 5, 1991 (classifying a tarpaulin). The articles enumerated in the EN to heading 6307 are very similar to the subject “Sheet Straps” in that they are textile articles which are used in the home.

In view of the foregoing, pursuant to a GRI 1 and Note 7 to Section X, we find that the subject article is classifiable in heading 6307, HTSUS, as an other made up textile article. Furthermore, we find that this is consistent with HQ W968369, dated May 14, 2009, in which we classified substantially similar sheet straps in heading 6307. Similarly, our decision is consistent with HQ 961926, dated March 21, 2000, in which we classified a textile ornamental shoe clip in heading 6307, HTSUS. *See also* NY N015633, dated August 24, 2007 (classifying a vacuum harness in heading 6307) and NY 814429, dated September 11, 1995 (classifying a camera neck strap in heading 6307).

#### **HOLDING:**

By application of GRI 1, the instant Snug Straps” are classified in sub-heading 6307.90.9889, HTSUS, which provides for “Other made up articles, including dress patterns: other: other: other: other.” The 2016 column one, general rate of duty is 7% *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

NY D84225, dated December 3, 1998 is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



**PROPOSED REVOCATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF PLASTIC FIBER OPTIC  
PRODUCTS FROM JAPAN**

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

**ACTION:** Notice of proposed revocation of one ruling letter, and revocation of treatment relating to the tariff classification of plastic fiber optic products from Japan.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning the tariff classification of plastic fiber optic products from Japan under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATES:** Comments must be received on or before September 16, 2016.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10<sup>th</sup> Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Dwayne Rawlings, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0092.

## SUPPLEMENTARY INFORMATION:

### BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of plastic fiber optic products from Japan. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N247006, dated January 9, 2014 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of

reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N247006, CBP classified plastic fiber optic products from Japan in heading 9001, HTSUS, specifically in subheading 9001.10.00, HTSUS, which provides for “Optical fibers, optical fiber bundles and cables.” CBP has reviewed NY N247006 and has determined the ruling letter to be in error. It is now CBP’s position that the plastic fiber optic products are properly classified, by operation of GRI 1, in heading 8544, HTSUS, specifically in subheading 8544.70.00, HTSUS, which provides for “Optical fiber cables.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N247006 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H251018, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 27, 2016

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

October 31, 2013

CLA-2-90:OT:RR:NC:N4:414

CATEGORY: Classification

TARIFF NO.: 9001.10.0030

Ms. SANDRA LISS FRIEDMAN  
BARNES, RICHARDSON & COLBURN, LLP  
475 PARK AVENUE SOUTH  
NEW YORK, NY 10016

RE: The tariff classification of plastic fiber optic products from Japan

DEAR Ms. FRIEDMAN:

In your letter dated August 29, 2013, received by this office on October 21, 2013, you requested a tariff classification ruling on behalf of Mitsubishi International Corporation. Sample pieces of five fiber optic products were furnished with your request for a ruling. The five items are plastic optical fiber products. The optical fiber contained in each product has a core of polymethyl-methacrylate resin and fluorinated polymer cladding and each of the products has a polyethylene jacket. None of the products has a strength member.

Item SH 6001-2.2 is composed of a single 1.5 mm optical fiber covered by a black polyethylene jacket. The overall diameter of the product is 2.2 mm and the jacket has a thickness of 0.35 mm. This product is used mostly in sensor applications. It is also commonly used for “prisoner at home bracelets.”

BH 4001 is composed of a single 1 mm optical fiber covered by a black polyethylene jacket. The product has an overall diameter of 2.2 mm and the jacket has a thickness of 0.6 mm. This product has generic applications, but for high temperature situations. The main customer for this product utilizes it as a data media for their operational instruments within a locomotive.

GH 4001-1000-TR is identical to BH 4001, other than the fact that it has a clear polyethylene jacket. This product has a specific application and is primarily used by electric utility companies to detect system sparks.

Item SH 4002 is described as a “figure-eight” design composed of two 1 mm optical fibers, each covered by a black polyethylene jacket. In appearance, this item consists of side by side single strands of optical fiber individually covered by a black jacket. The product has an overall diameter of 4.4 mm and each jacketed fiber has an overall diameter of 2.2 mm. The jacket has a thickness of 0.6 mm. This product has generic applications, however the main customers are in the medical industry. It is used as a media for instrument control.

Item SH 6002 is described as a “figure-eight” design composed of two 1.5 mm optical fibers, each covered by a black polyethylene jacket. In appearance, this item consists of side by side single strands of optical fiber individually covered by a black jacket. The product has an overall diameter of 6 mm and each jacketed fiber has an overall diameter of 3 mm. The jacket has a thickness of 0.75 mm. This product is used primarily as a sensor media and the main customer is a medical instrument producer.

You suggested classification under subheading 8544.70.000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for optical fiber cable composed of individually sheathed fibers. The National Import Specialist responsible for subheading 8544.70.000, HTSUS, states that items SH



6001-2.2, BH 4001, GH 40011000-TR, SH 4002 and SH 6002 are not classified as optical fiber cables under subheading 8544.70.00, HTSUS. In order to be classified as optical fiber cables under subheading 8544.70.00, HTSUS, the article must pass a twofold test. First the fibers, which are composed of a core surrounded by a cladding, must be individually sheathed. The sheathing is a protective layer that surrounds "EACH" fiber. Second, the individually sheath fibers must be assembled into a cable. CBP has determined that a cable would include an outer protective jacket that surrounds all of the sheathed fibers as well as strength members (aramid yarn fiber). The items concerned are plastic fibers (core and cladding) that are surrounded by a protective plastic buffering layer or sheathing. The products concerned do not pass the twofold test; they are only sheathed fibers, they are not assembled into a cable. They lack an outer jacket and they lack strength members. The applicable subheading for items SH 6001-2.2, BH 4001, GH 4001-1000-TR, SH 4002, and SH 6002 will be 9001.10.0030, HTSUS, which provides for Optical fibers for transmission of voice, data or video communications. The rate of duty will be 6.7 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Barbara Kiefer at (646) 733-3019.

*Sincerely,*

GWENN KLEIN KIRSCHNER

*Acting Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H251018  
CLA-2 OT:RR:CTF:TCM H251018 DSR  
CATEGORY: Classification  
TARIFF NO.: 8544.70.00

Ms. SANDRA LISS FRIEDMAN  
BARNES RICHARDSON & COLBURN LLP  
475 PARK AVENUE SOUTH  
NEW YORK, NY 10016

RE: Revocation of NY N247006; tariff classification of plastic fiber optic products from Japan

DEAR Ms. FRIEDMAN:

This is in response to your letter, dated January 9, 2014, requesting reconsideration of New York Ruling Letter (NY) N247006, dated October 31, 2013. NY N247006 pertains to the tariff classification under the 2013 Harmonized Tariff Schedule of the United States (HTSUS) of plastic optical fiber products used to transmit light. The ruling classified the products in subheading 9001.10.00, HTSUS, which provides for optical fibers for transmission of voice, data or video communications. The corresponding, column one general rate of duty was 6.7 percent *ad valorem*.

We have reviewed the tariff classification of the merchandise and have determined that the cited ruling is incorrect. Therefore, NY N247006 is revoked for the reasons set forth in this ruling.

**FACTS:**

The five items are designated as SH 6001–2.2, BH 4001, GH 4001–1000-TR, SH 4002 and SH 6002. None of the items contains strength members. Item SH 6001–2.2 is composed of a single 1.5 mm plastic optical fiber core with fluorinated polymer cladding, and covered by a black polyethylene jacket. The overall diameter of the product is 2.2 mm and the jacket has a thickness of 0.35 mm. This product is used mostly in sensor applications. It is also commonly used for “prisoner at home bracelets.”

Item BH 4001 is composed of a single 1 mm plastic optical fiber core with fluorinated polymer cladding, and covered by a black polyethylene jacket. The product has an overall diameter of 2.2 mm and the jacket has a thickness of 0.6 mm. This product has generic applications, but for high temperature situations. The main customer for this product utilizes it as a data media for its operational instruments within a locomotive.

Item GH 4001–1000-TR is identical to BH 4001, other than the fact that it has a clear polyethylene jacket. This product has a specific application and is primarily used by electric utility companies to detect system sparks.

Item SH 4002 is described as a “figure-eight” design composed of two 1 mm plastic optical fibers (each with fluorinated polymer cladding) and covered by a black polyethylene jacket. The individually jacketed fibers are joined together lengthwise. In appearance, this item consists of side-by-side single strands of optical fiber individually covered by a black jacket. The product has an overall diameter of 4.4 mm and each jacketed fiber has an overall diameter of 2.2 mm. The jacket has a thickness of 0.6 mm. This product has generic applications, however the main customers are in the medical industry. It is used as a media for instrument control.

Item SH 6002 is described as a “figure-eight” design composed of two 1.5 mm plastic optical fibers (each with fluorinated polymer cladding) and covered by a black polyethylene jacket. The individually jacketed fibers are joined together lengthwise. In appearance, this item consists of side-by-side single strands of optical fiber individually covered by a black jacket. The product has an overall diameter of 6 mm and each jacketed fiber has an overall diameter of 3 mm. The jacket has a thickness of 0.75 mm. This product is used primarily as a sensor media and the main customer is a medical instrument producer.

#### ISSUE:

Whether the subject items are classified under heading 8544, HTSUS, which provides, in pertinent part, for optical fiber cable composed of individually sheathed fibers; or are instead classified under heading 9001, HTSUS, which provides, in pertinent part, for optical fibers, optical fiber bundles, and optical fiber cables other than those of heading 8544.

#### 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. In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

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

- |                   |   |
|-------------------|---|
| <b>8544</b>       | Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors:<br>* * * |
| <b>8544.70.00</b> | Optical fiber cables:<br>* * *  |
| <b>9001</b>       | Optical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked:         |
| <b>9001.10.00</b> | Optical fibers, optical fiber bundles and cables:<br>* * * *  |

Heading 9001, HTSUS, provides, in relevant part, for optical fibers, optical fiber bundles and optical fiber cables (other than those of heading 8544, HTSUS). Thus, if the subject items are classifiable at heading 8544, they cannot be classifiable at heading 9001, HTSUS.

EN 85.44 states that optical fiber cables of heading 8544, HTSUS, are made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors. EN 85.44 does not exclude optical fiber cables containing a single optical fiber strand. EN 90.01(B) states that, optical fibers classifiable under heading 9001, consist of “concentric layers of glass or plastics of different refractive indices. Those drawn from glass have a very thin coating of plastics, invisible to the naked eye, which renders the fibers less prone to fracture. ... They are used to make optical fiber bundles and optical fiber cables.” EN 90.01(C) states that optical fiber bundles “may be rigid, in which case the fibers are agglomerated by a binder along their full length, or they may be flexible, in which case they are bound only at their ends.” EN 90.01 concludes by stating that optical fiber cables of heading 9001, HTSUS, “... consist of a sheath containing one or more optical fiber bundles, the fibers of which are not individually sheathed.”

It is evident that whether optical fibers are individually sheathed is at least one determinative factor regarding the applicability of headings 8544 or 9001, HTSUS. If an individual optical fiber is sheathed, or an item is composed of individually sheathed optical fibers, then that fiber and item cannot be classified in heading 9001, HTSUS.

With regard to the meaning of the term “individually sheathed,” the term must be construed in accordance with its common and commercial meanings because neither the legal notes or heading texts, nor the Harmonized Commodity Description and Coding System Explanatory Notes, provide guidance as to the meaning of the expression. *See Nippon Kogasku (USA), Inc., v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable resource materials.

Generally, a typical optical fiber is comprised of three main components -- the core, cladding and coating. The cladding surrounds the core and has a lower refractive index that enables it to contain the light. The coating is typically colorless and very thin, and makes the fiber less prone to fracture by absorbing the chocks, nicks, scrapes and moisture that could damage the cladding. *See Andrew Oliviero and Bill Woodward, The Complete Guide to Copper and Fiber-Optic Networking*, Chapters 8 and 21 (Sybex 5<sup>th</sup> Ed., 2014) (discusses typical composition of a fiber optic strands and cable). In HQ 963016, dated April 3, 2001, we examined the meaning of “individually sheathed” and noted that the mere application of a thin primary inking or coating applied to a fiber optic strand primarily for color-coding would not constitute a “sheath” for purposes of heading 8544, HTSUS. Additionally, we have noted that the noun “sheath” is considered a “close fitting protective covering.” HQ 965593, dated July 16, 2003 (*citing Cambridge International Dictionary of English*, March 1995, and *Webster’s Third New International Dictionary*, 1965). Also, the verb “sheathe,” from which the term “sheathed” derives, means “to cover or encase.” Examples of sheathes include, of course, scabbards for swords, but also close fitting dresses and encapsulating coverings. Thus, the terms “sheath” or “sheathed” connote the active process of covering with something that protects. Moreover, the terms “cover” and “coat” are acceptable synonyms for the term “sheath.” *See Roget’s International Thesaurus*, 3d. Ed. (1962). It is therefore evident that an optical fiber is aptly

considered to be “individually sheathed” if a protective covering surrounds that individual fiber’s core, cladding and coating.

Our reconsideration of NY N247006 does not end there. With regard to the meaning of the term optical fiber “cable,” NY N247006 noted that CBP had developed a definition that required all such cables to include strength members. For instance, in HQ 964883 (September 14, 2001), CBP addressed the classification of certain jacketed plastic optical fibers with connectors. In determining the common and commercial meaning of the term “cable,” CBP relied on a meaning reflected in David R. Goff, *Fiber Optic Reference Guide* 153 (Kimberly S. Hansen ed., Focal Press 1<sup>st</sup> ed. 1996), in which the term “cable,” in reference to optical fiber cable, was defined as “[o]ne or more optical fibers enclosed within protective covering(s) and strength members.” The ruling also noted that another optical fiber cable industry glossary defined “cable” as “[a]n assembly of optical fibers and other material providing mechanical and environmental protection and optical insulation of the waveguides.” See Lascomm, Fiber Optic Division, *Fiber Optic Glossary*, [www.lascomm.com](http://www.lascomm.com), 3/28/01.<sup>1</sup> CBP thus concluded that all optical fiber cable must contain strength members. Compare HQ 966619 (October 31, 2003) (individually sheathed *glass* fiber optical cable assemblies containing strength members classified in heading 8544, HTSUS, and those glass fiber optical assemblies without strength members classified in heading 9001, HTSUS).

#### **HOLDING:**

By application of GRI 1, the subject items identified as SH 6001–2.2, BH 4001, GH 4001–1000-TR, SH 4002 and SH 6002 are classifiable under heading 8544, HTSUS. Specifically, they are classifiable under subheading 8544.70.00, HTSUS, which provides for “Optical fiber cables.” The column one, general rate of duty is “Free.” Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided at [www.usitc.gov/tata/hts](http://www.usitc.gov/tata/hts).

#### **EFFECT ON OTHER RULINGS:**

NY N247006, dated October 31, 2013, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

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<sup>1</sup> This source is apparently no longer accessible via the Internet.

**PROPOSED REVOCATION OF FOUR RULING LETTERS  
AND REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF PHOTOMASK PELLICLES**

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

**ACTION:** Notice of proposed revocation of four ruling letters and revocation of treatment relating to the tariff classification of photo-mask pellicles.

**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 four ruling letters concerning tariff classification of photo-mask pellicles under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATES:** Comments must be received on or before September 16, 2016.

**ADDRESSES:** Written comments are to be addressed to the U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10<sup>th</sup> Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are

**“informed compliance”** and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke four ruling letters pertaining to the tariff classification of photomask pellicles. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter (“HQ”) H055635, dated November 23, 2009 (Attachment A), HQ H055636, dated November 23, 2009 (Attachment B), HQ H031396, dated January 5, 2010 (Attachment C), and New York Ruling (“NY”) N121378, dated September 30, 2010, this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the four identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In HQ H055635, HQ H055636, HQ H031396, and NY N121378, CBP classified photomask pellicles in heading 8486, HTSUS, specifically in subheading 8486.90.00, HTSUS, which provides for “Ma-

chines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; machines and apparatus specified in Note 9 (C) to this chapter; parts and accessories: Parts and accessories.” CBP has reviewed HQ H055635, HQ H055636, HQ H031396, and NY N121378, and has determined the ruling letters to be in error. It is now CBP’s position that photo-mask pellicles are properly classified, by operation of GRIs 1 and 3(b), in heading 3926, HTSUS, specifically in subheading 3926.90.99, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke HQ H055635, HQ H055636, HQ H031396, and NY N121378, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H266971, set forth as Attachment E to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 27, 2016

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments



## [ATTACHMENT A]

HQ H055635

November 23, 2009

CLA-2 OT:RR:CTF:TCM H055635 RM

CATEGORY: Classification

TARIFF NO.: 8486.90.00

Ms. DEMETRIUS D. JONES  
YUSEN GLOBAL LOGISTICS  
691 AIRPORT S. PARKWAY  
COLLEGE PARK, GA 30349

RE: Revocation of New York Ruling Letter I87349, dated October 29, 2002;  
Classification of Pellicles

DEAR Ms. JONES:

This is in reference to New York Ruling Letter (“NY”) I87349, dated October 29, 2002, issued to you on behalf of Mitsui Chemicals America, Inc., concerning the tariff classification of pellicles. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the pellicles under heading 9002, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for: “Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked; parts and accessories thereof.” We have reviewed the ruling and found this classification to be incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on August 27, 2009, in the *Customs Bulletin*, Volume 43, No. 35. One comment was received in support of the proposed action.

**FACTS:**

In NY I87349, we described the merchandise as follows:

The Mitsui pellicles consist of a membrane of nitrocellulose, modified cellulose, or fluoropolymer mounted on a frame of aluminum alloy. Pellicles provide a high level of cleanliness and have excellent optical properties. Pellicles are used with the photomask in a photolithography process to transfer reduced-sized patterns from the photomask to sensitized semiconductor wafers and materials.<sup>1</sup> The pellicles are applied to photomasks during the lithography process in order to protect the photomask.

<sup>1</sup> Photolithography is a multi-step process that creates integrated circuit patterns on semiconductor wafers. The process is as follows: a photomask is fed into a step-and-repeat aligner which shines ultraviolet light through the transparent areas of the mask and onto a wafer coated with photoresist. The exposed photoresist hardens and becomes impervious to etchants. The unexposed photoresist is subjected to an etch process and removed using chemical solvents, leaving a nitride pattern on the wafer in the exact design of the mask. The resulting pattern is then repeatedly “stepped” (i.e., projected repeatedly across wafer’s surface), one die at a time, until full coverage is achieved. A typical IC requires twenty to forty individual steps. See *Microchip Fabrication: A Practical Guide to Semiconductor Processing* by Peter Van Zant (McGraw Hill, 5th ed, pp. 198-203, 241-279). See also <http://www.infras.com/Tutorial/sld005.htm>.

In addition to protecting the photomask, pellicles transmit more than 99 percent of light from the photolithography process in a uniform way.

We have since received information indicating that the pellicles at issue do not reflect light.<sup>2</sup> They merely transmit the light that shines through them. According to the *Semiconductor Equipment and Materials International (“SEMI”) International Standards: Compilation of Terms* (available at [www.semi.org](http://www.semi.org), updated November 2008), a “pellicle” is:

[A] thin, optically transparent film typically of a polymer, attached to and supported by a frame, and attached to a photomask [an opaque plate with holes that contains the patterns to be reproduced on a substrate] (also known as a “reticle”). Its purpose is to seal out contaminants and reduce the printed effects caused by contamination in the image plane of an optical exposure system with a minimum decrease in the quality of optical transmission.

Technical information on pellicles, available on the website of a leading supplier ([www.mliusa.com/technology-paper.htm](http://www.mliusa.com/technology-paper.htm)), explains that there are two types: “soft” pellicles, made of transparent fluorocarbon-based polymers, and “hard” pellicles, made of quartz glass. The pellicles at issue are soft pellicles.

#### ISSUE:

Whether the pellicles are classified under heading 9002, HTSUS, as optical elements, or under heading 8486, HTSUS, as parts of machines of a kind used solely or principally for the manufacture of semiconductor devices.

#### 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 2009 HTSUS provisions under consideration are as follows:

<b>8486</b>	Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; machines and apparatus specified in Note 9 (C) to this chapter; parts and accessories:
8486.90.00	Parts and accessories ...
<b>9002</b>	Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked; parts and accessories thereof:
9002.90	Other:

<sup>2</sup> The pellicles at issue are not “pellicle mirrors,” devices that split a beam of light in two whereby one half is reflected and the other is transmitted.

Other:

9002.90.95

Other ...

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

Subject to note 1 to this section, note 1 to chapter 84 and note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the heading of Chapter 84 or 85 (other than headings 84.09, 84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.22, 85.29, 85.38 and 85.48) are in all cases to be classified in their respective headings;
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 are to be classified in heading 8517.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to heading 8486, HTSUS, provide, in part:

This heading covers machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays ...

\* \* \*

**(B) MACHINES AND APPARATUS FOR THE MANUFACTURE OF SEMICONDUCTOR DEVICES OR OF ELECTRONIC INTEGRATED CIRCUITS**

This heading covers machines and apparatus for the manufacture of semiconductor devices or of electronic integrated circuits such as:

\* \* \*

- (4) **Lithography equipment**, which transfer the circuit designs to the photoresist-coated surface of the semiconductor wafer such as:
  - (b) **Equipment for exposing the photoresist coated wafer with the circuit design** (or a part thereof):
    - (i) **Using a mask or reticle and exposing the photoresist to light** (generally ultraviolet) or, in some instances, X-rays:
      - (a) **Contact printers** ...
      - (b) **Proximity aligners** ...
      - (c) **Scanning aligners** ...

- (d) **Step and repeat aligners**, which use projection techniques to expose the wafer a portion at a time. Exposure can be by reduction from the mask to the wafer or 1:1. Enhancements include the use of an excimer laser.

\* \* \*

### (E) PARTS AND ACCESSORIES

**Subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading includes parts and accessories for the machines and apparatus of this heading. Parts and accessories falling in this heading thus include, *inter alia*, work or tool holders and other special attachments which are solely or principally used for the machines and apparatus of this heading.

The ENs to heading 9002, HTSUS, provide, in part:

**With the exception** of ophthalmic lenses (which when mounted constitute spectacles, lorgnettes or the like of **heading 90.04**), this heading covers the articles referred to in Items (B), (C) and (D) of the Explanatory Note to heading 90.01 when in a permanent mounting (viz., fitted in a support or frame, etc.) suitable for fitting to an apparatus or instrument.

The ENs to heading 9001, HTSUS, provide, in part:

This heading covers:

(D) **Optical elements of any material other than glass, whether or not optically worked, not permanently mounted ...**

**Optical elements are manufactured in such a way that they produce a required optical effect. An optical element does more than merely allow light (visible, ultraviolet or infrared) to pass through it, rather the passage of light must be altered in some way, for example, by being reflected, attenuated, filtered, diffracted, collimated, etc.** (Emphasis added).

\* \* \*

Some of the optical elements listed above (lenses, prisms, etc.) may be colored, or coated with an anti-reflection film of cryolite, calcium or magnesium fluoride, etc. This does not affect their classification in this heading.

Heading 9002, HTSUS, provides in part for “Optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus ....” CBP has held, consistent with EN 90.01 (incorporated by reference into EN 90.02), that an “optical element” is one that produces an optical effect. *See, e.g.,* HQ 966475, dated October 23, 2003. That is, it must “[do] more than merely allow light (visible, ultraviolet or infrared) to pass through it, rather, the passage of light must be altered in some way, for example, by being reflected, attenuated, filtered, diffracted, collimated, etc.” *See* EN 90.01. *See also* NY N049895, dated February 10, 2009. The pellicles at issue do not alter (e.g., reflect, attenuate, filter, diffract or collimate) the light that passes through them. To the contrary, they are intentionally designed to reduce their

reflectivity and to optimize light transmission. As such, we conclude that they are not “optical elements” of heading 9002, HTSUS.

Heading 8486, HTSUS, provides, in relevant part, for: “Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; ... parts and accessories.” It is undisputed that the subject pellicles are “parts” of a kind used solely with lithography equipment which transfer integrated circuit designs to the photoresist-coated surface of a semiconductor wafer. See *Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774, 777 (Fed. Cir. 1997) (“[A]n imported item dedicated solely for use with another article is a ‘part’ of that article within the meaning of the HTSUS”). Specifically, they are parts of step-and-repeat aligners. See EN 84.86 (B)(4)(b)(i)(d).

Note 2(b) to Section XVI, HTSUS, provides that parts which are not included in any of the headings of Chapters 84 or 85 (except for some headings not relevant here), and are suitable for use solely or principally with a particular kind of machine, are classified with that machine. The pellicles at issue are not specifically described in either Chapter. As such, we find that they are classified under heading 8486, in subheading 8486.90, HTSUS, as parts of machines and apparatus of a kind used solely for the manufacture of integrated circuits.

#### **HOLDING:**

By application of GRI 1 and Note 2(b) to Section XVI, the subject pellicles are classified under heading 8486, HTSUS, specifically in subheading 8486.90.00, which provides for: “Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; ... parts and accessories: Parts and accessories.” The 2009 column one, general rate of duty is: Free.

#### **EFFECT ON OTHER RULINGS:**

NY I87349, dated October 29, 2002, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the *Customs Bulletin*.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## [ATTACHMENT B]

HQ H055636

November 23, 2009

CLA-2 OT:RR:CTF:TCM H055636 RM

CATEGORY: Classification

TARIFF NO.: 8486.90.00

GARTH ATCHLEY  
SENIOR MANAGER  
EXPEDITERS TRADEWIN LLC  
150 RARATIN CENTER PARKWAY  
EDISON, NJ 08837

RE: Revocation of New York Ruling Letter G88540, dated April 12, 2001;  
Classification of Pellicles

DEAR MR. ATCHLEY:

This is in reference to New York Ruling Letter (“NY”) G88540, dated April 12, 2001, issued to you on behalf of Dupont Photomasks, Inc., concerning the tariff classification of pellicles. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the pellicles under heading 9002, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for: “Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked; parts and accessories thereof.” We have reviewed the ruling and found this classification to be incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on August 27, 2009, in the *Customs Bulletin*, Volume 43, No. 35. One comment was received in support of the proposed action.

**FACTS:**

In NY G88540, we described the merchandise as follows:

The pellicle is an ultra-thin piece of plastic film that is mounted on a plastic frame. The plastic film is composed of modified fluoropolymer, Teflon or nitrocellulose. The pellicle covers a photomask to provide a contaminant-free environment for the photomask. The photomask is a quartz or glass plate containing precision images of integrated circuits. The photomask and the pellicle are used in a photolithography process to transfer reduced-sized patterns from the photomask to sensitized semiconductor wafers and materials.<sup>1</sup> Pellicles have optical properties that allow the pellicles to transmit and to reflect light. The main optical

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<sup>1</sup> Photolithography is a multi-step process that creates integrated circuit patterns on semiconductor wafers. The process is as follows: a photomask is fed into a step-and-repeat aligner which shines ultraviolet light through the transparent areas of the mask and onto a wafer coated with photoresist. The exposed photoresist hardens and becomes impervious to etchants. The unexposed photoresist is subjected to an etch process and removed using chemical solvents, leaving a nitride pattern on the wafer in the exact design of the mask. The resulting pattern is then repeatedly “stepped” (i.e., projected repeatedly across wafer’s surface), one die at a time, until full coverage is achieved. A typical IC requires twenty to forty individual steps. See *Microchip Fabrication: A Practical Guide to Semiconductor*

function of the pellicle is to transmit light. Pellicles are manufactured to various optical wavelengths required for semiconductor manufacturing.

As examples, the G-line operates at 436 nanometers and the H-line operates at 365 nanometers. The pellicle is used in an optical application in the photolithography process by transmitting light from the stepper through the photomask onto the sensitized semiconductor wafer.

We have since received information indicating that the pellicles at issue do not reflect light.<sup>2</sup> They merely transmit the light that shines through them. According to the *Semiconductor Equipment and Materials International* (“SEMI”) *International Standards: Compilation of Terms* (available at [www.semi.org](http://www.semi.org), updated November 2008), a “pellicle” is:

[A] thin, optically transparent film typically of a polymer, attached to and supported by a frame, and attached to a photomask [an opaque plate with holes that contains the patterns to be reproduced on a substrate] (also known as a “reticle”). Its purpose is to seal out contaminants and reduce the printed effects caused by contamination in the image plane of an optical exposure system with a minimum decrease in the quality of optical transmission.

Technical information on pellicles, available on the website of a leading supplier ([www.mliusa.com/technology-paper.htm](http://www.mliusa.com/technology-paper.htm)), explains that there are two types: “soft” pellicles, made of transparent fluorocarbon-based polymers, and “hard” pellicles, made of quartz glass. The pellicles at issue are soft pellicles.

#### **ISSUE:**

Whether the pellicles are classified under heading 9002, HTSUS, as optical elements, or under heading 8486, HTSUS, as parts of machines of a kind used solely or principally for the manufacture of semiconductor devices.

#### **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 2009 HTSUS provisions under consideration are as follows:

- 8486**      Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; machines and apparatus specified in Note 9 (C) to this chapter; parts and accessories:

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*Processing* by Peter Van Zant (McGraw Hill, 5th ed, pp. 198-203, 241-279). See also <http://www.infras.com/Tutorial/sld005.htm>.

<sup>2</sup> The pellicles at issue are not “pellicle mirrors,” devices that split a beam of light in two whereby one half is reflected and the other is transmitted.

8486.90.00	Parts and accessories ...
<b>9002</b>	Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked; parts and accessories thereof:
9002.90	Other:
	Other:
9002.90.95	Other ...

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

Subject to note 1 to this section, note 1 to chapter 84 and note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

- (c) Parts which are goods included in any of the heading of Chapter 84 or 85 (other than headings 84.09, 84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.22, 85.29, 85.38 and 85.48) are in all cases to be classified in their respective headings;
- (d) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 are to be classified in heading 8517.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to heading 8486, HTSUS, provide, in part:

This heading covers machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays ...

\* \* \*

**(B) MACHINES AND APPARATUS FOR THE MANUFACTURE OF SEMICONDUCTOR DEVICES OR OF ELECTRONIC INTEGRATED CIRCUITS**

This heading covers machines and apparatus for the manufacture of semiconductor devices or of electronic integrated circuits such as:

\* \* \*

**(5) Lithography equipment**, which transfer the circuit designs to the photoresist-coated surface of the semiconductor wafer such as:

- (c) **Equipment for exposing the photoresist coated wafer with the circuit design** (or a part thereof):



- (i) **Using a mask or reticle and exposing the photoresist to light** (generally ultraviolet) or, in some instances, X-rays:
  - (e) **Contact printers ...**
  - (f) **Proximity aligners ...**
  - (g) **Scanning aligners ...**
  - (h) **Step and repeat aligners**, which use projection techniques to expose the wafer a portion at a time. Exposure can be by reduction from the mask to the wafer or 1:1. Enhancements include the use of an excimer laser.

\* \* \*

#### (E) PARTS AND ACCESSORIES

**Subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading includes parts and accessories for the machines and apparatus of this heading. Parts and accessories falling in this heading thus include, *inter alia*, work or tool holders and other special attachments which are solely or principally used for the machines and apparatus of this heading.

The ENs to heading 9002, HTSUS, provide, in part:

**With the exception** of ophthalmic lenses (which when mounted constitute spectacles, lorgnettes or the like of **heading 90.04**), this heading covers the articles referred to in Items (B), (C) and (D) of the Explanatory Note to heading 90.01 when in a permanent mounting (*viz.*, fitted in a support or frame, etc.) suitable for fitting to an apparatus or instrument.

The ENs to heading 9001, HTSUS, provide, in part:

This heading covers:

(D) **Optical elements of any material other than glass, whether or not optically worked, not permanently mounted ...**

**Optical elements are manufactured in such a way that they produce a required optical effect. An optical element does more than merely allow light (visible, ultraviolet or infrared) to pass through it, rather the passage of light must be altered in some way, for example, by being reflected, attenuated, filtered, diffracted, collimated, etc.** (Emphasis added).

\* \* \*

Some of the optical elements listed above (lenses, prisms, etc.) may be colored, or coated with an anti-reflection film of cryolite, calcium or magnesium fluoride, etc. This does not affect their classification in this heading.

Heading 9002, HTSUS, provides in part for “Optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus ...” CBP has held, consistent with EN 90.01 (incorporated by reference into EN 90.02), that an “optical element” is one that produces an optical effect. *See, e.g.*, HQ 966475, dated October 23, 2003. That is, it must “[do] more than

merely allow light (visible, ultraviolet or infrared) to pass through it, rather, the passage of light must be altered in some way, for example, by being reflected, attenuated, filtered, diffracted, collimated, etc.” See EN 90.01. See also NY N049895, dated February 10, 2009. The pellicles at issue do not alter (e.g., reflect, attenuate, filter, diffract or collimate) the light that passes through them. To the contrary, they are intentionally designed to reduce their reflectivity and to optimize light transmission. As such, we conclude that they are not “optical elements” of heading 9002, HTSUS.

Heading 8486, HTSUS, provides, in relevant part, for: “Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; ... parts and accessories.” It is undisputed that the subject pellicles are “parts” of a kind used solely with lithography equipment which transfer integrated circuit designs to the photoresist-coated surface of a semiconductor wafer. See *Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774, 777 (Fed. Cir. 1997) (“[A]n imported item dedicated solely for use with another article is a ‘part’ of that article within the meaning of the HTSUS”). Specifically, they are parts of step-and-repeat aligners. See EN 84.86 (B)(4)(b)(i)(d).

Note 2(b) to Section XVI, HTSUS, provides that parts which are not included in any of the headings of Chapters 84 or 85 (except for some headings not relevant here), and are suitable for use solely or principally with a particular kind of machine, are classified with that machine. The pellicles at issue are not specifically described in either Chapter. As such, we find that they are classified under heading 8486, in subheading 8486.90, HTSUS, as parts of machines and apparatus of a kind used solely for the manufacture of integrated circuits.

#### **HOLDING:**

By application of GRI 1 and Note 2(b) to Section XVI, the subject pellicles are classified in heading 8486, HTSUS, specifically in subheading 8486.90.00, which provides for: “Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; ... parts and accessories: Parts and accessories.” The 2009 column one, general rate of duty is: Free.

#### **EFFECT ON OTHER RULINGS:**

NY G88540, dated April 12, 2001, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the *Customs Bulletin*.

*Sincerely,*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

## [ATTACHMENT C]

HQ H031396

January 5, 2010

CLA-2 OT:RR:CTF:TCM H031396 RM

CATEGORY: Classification

TARIFF NO.: 8486.90.00

PORT DIRECTOR

PORT OF ANCHORAGE

U.S. CUSTOMS AND BORDER PROTECTION

605 W. FOURTH AVENUE, ROOM 203

ANCHORAGE, AK 99501

Attn: Ms. Caroline Takaki

RE: Tariff Classification of Photolithography Pellicles; Internal Advice 08/010

DEAR PORT DIRECTOR:

This is in response to the memorandum from your office, dated June 2, 2008, forwarding with comments the Request for Internal Advice initiated by Shin-Etsu Microsi, Inc., dated January 31, 2008, regarding the tariff classification of certain photolithography pellicles under the Harmonized Tariff Schedule of the United States (“HTSUS”).

**FACTS:**

At issue are various models of photolithography pellicles imported by Shin-Etsu Microsi, specifically: PL6A2HF-AXN-6, PL6HF-AXN-6, PL6A2HF-A2N-6, PL6N2HF-A2G, and PL6A2HF-EXN.<sup>1</sup> Requester indicated that all models are “soft pellicles,” i.e., thin, optically transparent covers made of fluorocarbon-based polymers (e.g., nitrocellulose) that are placed over a photomask<sup>2</sup> during the photolithography process to shield it from dust and other contaminants.<sup>3</sup> They do not alter or in any way affect the light that flows through them.<sup>4</sup>

The Port of Anchorage believes that the merchandise is classified under heading 9002, HTSUS, as “Other optical elements, of any material, mounted,

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<sup>1</sup> Photolithography is a multi-step process that creates integrated circuit (“IC”) patterns on semiconductor wafers. The process is as follows: a photomask is fed into a step-and-repeat aligner which shines ultraviolet light through the transparent areas of the mask and onto a wafer coated with photoresist. The exposed photoresist hardens and becomes impervious to etchants. The unexposed photoresist is subjected to an etch process and removed using chemical solvents, leaving a nitride pattern on the wafer in the exact design of the mask. The resulting pattern is then repeatedly “stepped” (i.e., projected repeatedly across wafer’s surface), one die at a time, until full coverage is achieved. A typical IC requires twenty to forty individual steps. See Peter Van Zant, *Microchip Fabrication: A Practical Guide to Semiconductor Processing* (pp. 198-203, 241-279, McGraw-Hill ed. (5th ed. 2004)).

<sup>2</sup> A photomask (also known as a “reticle”) is an opaque plate with holes that contains the patterns to be reproduced on a substrate.

<sup>3</sup> The website of a leading supplier ([www.mliusa.com/technology-paper.htm](http://www.mliusa.com/technology-paper.htm)) explains that there are two types of pellicles: “soft,” made of transparent fluorocarbon-based polymers, and “hard,” made of quartz glass.

<sup>4</sup> The pellicles at issue are not “pellicle mirrors,” devices that split a beam of light in two, whereby one half is reflected and the other is transmitted.



- (f) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 are to be classified in heading 8517.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to heading 8486, HTSUS, provide, in part:

This heading covers machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays ...

**(B) MACHINES AND APPARATUS FOR THE MANUFACTURE OF SEMICONDUCTOR DEVICES OR OF ELECTRONIC INTEGRATED CIRCUITS**

This heading covers machines and apparatus for the manufacture of semiconductor devices or of electronic integrated circuits such as:

...

- (6) Lithography equipment**, which transfer the circuit designs to the photoresist-coated surface of the semiconductor wafer such as:

- (d) Equipment for exposing the photoresist coated wafer with the circuit design** (or a part thereof):

- (i) Using a mask or reticle and exposing the photoresist to light** (generally ultraviolet) or, in some instances, X-rays:

**(i) Contact printers** ...

**(j) Proximity aligners** ...

**(k) Scanning aligners** ...

- (l) Step and repeat aligners**, which use projection techniques to expose the wafer a portion at a time. Exposure can be by reduction from the mask to the wafer or 1:1. Enhancements include the use of an excimer laser.

**(E) PARTS AND ACCESSORIES**

**Subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading includes parts and accessories for the machines and apparatus of this heading. Parts and accessories falling in this heading thus include, *inter alia*, work or tool holders and other special attachments which are solely or principally used for the machines and apparatus of this heading.

Heading 8486, HTSUS, provides, in relevant part, for: “Machines and apparatus of a kind used solely or principally for the manufacture of semi-

conductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; ... parts and accessories.” The subject pellicles are “parts” of a kind used solely with lithography equipment, which transfers integrated circuit designs to the photoresist-coated surface of a semiconductor wafer. See *Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774, 777 (Fed. Cir. 1997) (“[A]n imported item dedicated solely for use with another article is a ‘part’ of that article within the meaning of the HTSUS.”). Specifically, they are parts of step-and-repeat aligners. See EN 84.86 (B)(4)(b)(i)(d).

Note 2(b) to Section XVI, HTSUS, provides that parts which are not included in any of the headings of Chapters 84 or 85 (except for some headings not relevant here), and that are suitable for use solely or principally with a particular kind of machine, are to be classified with that machine. The pellicles at issue are not specifically described in either Chapter. As such, we find that they are classified under heading 8486, in subheading 8486.90, HTSUS, as parts of machines and apparatus of a kind used solely for the manufacture of integrated circuits.

**HOLDING:**

By application of GRI 1 and Note 2(b) to Section XVI, HTSUS, the subject pellicles are classified in heading 8486, HTSUS, specifically in subheading 8486.90.00, which provides for: “Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; ... parts and accessories: Parts and accessories.” The 2010 column one, general rate of duty is Free.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## [ATTACHMENT D]

N121378

September 30, 2010

CLA-2-84:OT:RR:NC:1:104

CATEGORY: Classification

TARIFF NO.: 8486.90.0000

MR. CRAMER HEGEMAN  
KM ACT CORP.  
2340 WEST BRAKER LANE, SUITE A  
AUSTIN, TX 78758

RE: The tariff classification of a pellicle from Korea.

DEAR MR. HEGEMAN:

In your letter dated August 25, 2010, you requested a tariff classification ruling.

The submitted sample is referred to as a pellicle. You have stated it is made of Polymer film attached by gluing it to an aluminum frame. The pellicle is used in the photolithography step in the manufacturing of microelectronic "chips." It is placed on top of photomasks to prevent contamination reaching the critical section of the photomask surface and prevent silicon wafer defect.

The applicable subheading for the pellicle will be 8486.90.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; machines and apparatus specified in Note 9 (C) to this chapter; parts and accessories: Parts and accessories. The rate of duty will be free.

You stated in your request that you were "...notified recently that the current HTS code being used, 9010.90.9000 at 2.9% was changed to a new number..." Heading 8486 came into existence with the implementation of the 2007 HTSUS, effective February 3, 2007.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patricia O'Donnell at (646) 733-3011.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT E]

HQ H266971  
CLA-2 OT:RR:CTF:TCM H266971 NCD  
CATEGORY: Classification  
TARIFF NO.: 3926.90.9995

DEMETRIUS D. JONES  
YUSEN GLOBAL LOGISTICS  
691 AIRPORT S. PARKWAY  
COLLEGE PARK, GA 30349

Re: Revocation of HQ H055635, dated November 23, 2009, HQ H055636, dated November 23, 2009, HQ H031396, dated January 5, 2010, and NY N121378, dated September 30, 2010; Classification of photomask pellicles

DEAR MS. JONES:

This is in reference to Headquarters Ruling Letter (HQ) H055635, issued to you on November 23, 2009, involving classification of photomask pellicles under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed HQ H055635, determined that it is incorrect, and, for the reasons set forth below, are revoking that ruling.

We have also reviewed HQ H055636, dated November 23, 2009, HQ H031396, dated January 5, 2012, and New York Ruling Letter (NY) N121378, all of which similarly involve classification of photomask pellicles under the HTSUS. As with HQ H055635, we have determined that those rulings are incorrect and are accordingly revoking them.

**FACTS:**

At issue in HQ H055635, HQ H055636, HQ H031396, and NY N121378 alike are photomask pellicles, which consist of ultra-thin plastic films mounted to frames of various materials. *See SEMICONDUCTOR EQUIP. AND MATERIALS INT'L, SEMI INTERNATIONAL STANDARDS: COMPILATION OF TERMS 172 (2008) (defining "pellicle")*. The frames of the pellicles at issue in HQ H055635 and NY N121378 are of aluminum alloy, and the frames of the pellicles at issue in HQ H055636 are of plastic. The material of the pellicle frames in HQ H031396 is not identified in the ruling, but our research indicates that this material is aluminum alloy. *See U.S. Patent No. 5,834,143 (filed Nov. 21, 1996) (issued Nov. 10, 1998)*.

Pellicles function as protective covers for photomasks, which are quartz substrates onto which unique circuitry patterns have been etched. When placed in a photolithography device such as a stepper or aligner, a photomask filters ultraviolet light projected by the device onto an underlying wafer, to the effect that the patterns displayed on the wafer correspond to those etched onto the photomask. These patterns are subsequently etched into the wafer, which is then incorporated into an integrated circuit.

A photomask pellicle is effectively joined with a photomask by the adhesion of its frame to the photomask substrate (see Figure 1 below). When so attached, a pellicle seals out dust and other contaminants from the photomask, thereby preventing potential distortion of the patterns projected upon the underlying wafers. Its optical properties are such that most of the ultraviolet light projected by the photolithography device passes through evenly, and only a minimal portion of this light is reflected. Notably, the pellicle



attaches only to the photomask, and is not joined with the photolithography equipment with which the photomask is used.

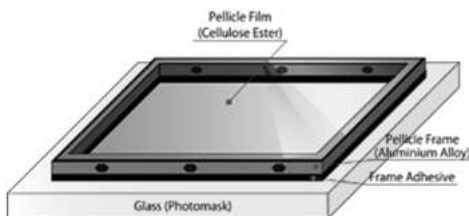


Figure 3<sup>1</sup>

The photomask pellicles at issue in HQ H055635, HQ H055636, HQ H031396, and NY N121378 were classified by CBP in heading 8486, HTSUS. They were specifically classified in subheading 8486.90.00, HTSUS, which provides for: “Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; machines and apparatus specified in Note 9 (C) to this chapter; parts and accessories: Parts and accessories.”

#### ISSUE:

Whether the subject photomask pellicles are classified as “other articles of plastic” in heading 3926, HTSUS, as “other articles of aluminum” in heading 7616, HTSUS, or as “parts of machines and apparatus of a kind used solely for the manufacture of electronic integrated circuits” in heading 8486, HTSUS.

#### LAW AND ANALYSIS:

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

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

<sup>1</sup> Finex Co, Ltd., Pellicle Remount, <http://www.finex-tech.com.tw/english/service/service01.htm> (last visited May 17, 2016).

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

The 2016 HTSUS provisions under consideration are as follows:

<b>3926</b>	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.99	Other
<b>7616</b>	Other articles of aluminum:
	Other:
7616.99	Other:
7616.99.50	Other
<b>8486</b>	Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; machines and apparatus specified in Note 9 (C) to this chapter; parts and accessories:
8486.90.00	Parts and accessories

As stated above, the subject photomask pellicles in the rulings at issue were classified in heading 8486, HTSUS, which provides, *inter alia*, for parts of machines and apparatus of a kind used solely for the manufacture of electronic integrated circuits. EN 84.86 provides, in relevant part, as follows:

(B) **MACHINES AND APPARATUS FOR THE MANUFACTURE OF SEMICONDUCTOR DEVICES OR OF ELECTRONIC INTEGRATED CIRCUITS**

This group covers machines and apparatus for the manufacture of semiconductor devices or of electronic integrated circuits such as:

\*\*\*

- (4) **Lithography equipment**, which transfer the circuit designs to the photoresist-coated surface of the semiconductor wafer such as:

\*\*\*

- (b) **Equipment for exposing the photoresist coated wafer with circuit design** (or a part thereof):
- (i) **Using a mask or reticle and exposing the photoresist to light** (generally ultraviolet) or, in some instances, X-rays:

\*\*\*

- (c) **Scanning aligners**, which use projection techniques to expose a continuously moving slit across the mask and wafer.

- (d) **Step and repeat aligners**, which use projection techniques to expose the wafer a portion at a time. Exposure can be by reduction from the mask to the wafer or 1:1. Enhancements include the use of an excimer laser.

\*\*\*

### (E) PARTS AND ACCESSORIES

**Subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading includes parts and accessories for the machines and apparatus of this heading. Parts and accessories falling in this heading thus include, *inter alia*, work or tool holders and other special attachments which are solely or principally used for the machines and apparatus of this heading.

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

Under both of the above-described tests, a part must be “joined” to an article, in some way or another, and “integral” to that article’s continued use. See *Rollerblade, Inc. v. United States*, 282 F.3d 1349, 1354 (Fed. Cir. 2002) (noting, in concluding that inline skating pads are not parts, that “the roller skates work in the same manner whether the skater wears the protective gear or not”). Thus, the pellicles can only be described as parts of heading 8486, HTSUS, if they attach to, and enable the operation of, machines and apparatus of a kind used solely for the manufacture of electronic integrated circuits. See EN 84.86 (“Parts and accessories falling in this heading thus include, *inter alia*, work or tool holders and other special *attachments*.” (emphasis added)). EN 84.86 states that such machines or apparatus include lithography equipment, such as scanners and steppers, used to transfer circuit designs from a photomask to an underlying wafer. However, the EN does not list photomasks as such machines or apparatus. For this reason and several others, we determined in HQ H264336, dated March 15, 2016, that photomasks themselves cannot be described as machines or apparatus of heading 8486.

Here, the subject photomask pellicles are not actually “joined” with scanners, steppers, or any other kind of equipment enumerated in EN 84.86. Rather, they are attached to photomasks, which, as we held in HQ H264336,

are not machines or apparatus of heading 8486. Moreover, the pellicles certainly are not “integral” to the operation of photolithography equipment, insofar as their removal from this equipment, along with the photomasks to which they are attached, does not inhibit or cease the equipment’s functioning. As we noted in HQ H264336, these machines continue to project light after a given photomask is removed. As such, the subject photomask pellicles cannot be described as parts of machines and apparatus of a kind used solely for the manufacture of electronic integrated circuits. They consequently fall outside the scope of heading 8486, HTSUS.

We next consider heading 3926, which provides, *inter alia*, for “other articles of plastic.” The General EN to Chapter 39 states, in pertinent part, as follows:

**Plates, sheets, film, foil and strip of heading 39.20 or 39.21**

The expression “plates, sheets, film, foil and strip”, used in headings 39.20 and 39.21 is defined in Note 10 to the Chapter.

Such plates, sheets, etc., whether or not surface-worked (including squares and other rectangles cut therefrom), with ground edges, drilled, milled, hemmed, twisted, framed or otherwise worked or cut into shapes other than rectangular (including square), are generally classified in **headings 39.18, 39.19 or 39.22 to 39.26**.

EN 39.26 states, in pertinent part, as follows:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14.

According to the above-cited ENs, plastic articles, including plastic frames and plastic film that has been “worked” by virtue of having been framed, are classified in heading 3926 if not described elsewhere in the HTSUS. *Cf.* HQ 964780, dated January 31, 2002 (classifying plastic sheets with diagonal cuts in heading 3926); NY N106616, dated June 7, 2010 (classifying protective plastic iPad frame in heading 3926); and NY 802111, dated October 3, 1994 (classifying plastic overhead transparencies with single rounded edges in heading 3926). As stated above, the photomask pellicles at issue consist of thin plastic films mounted to plastic or aluminum frames. The plastic film and plastic frames cannot be classified anywhere but in heading 3926, HTSUS, and are therefore articles of that heading. In effect, the pellicles at issue in HQ H055636, the frames of which are plastic, are articles of plastic that are *prima facie* classified in heading 3926, HTSUS. However, because the pellicles of HQ H055635, HQ H031396, and NY N121378 contain non-plastic materials, in the form of the aluminum frames, they are described only in part by heading 3926, HTSUS, and are therefore not classifiable there solely by reference to GRI 1.

We accordingly consider heading 7616, HTSUS, which provides for “other articles of aluminum.” EN 76.16 provides, in pertinent part, as follows:

This heading covers all articles of aluminium **other than** those covered by the preceding headings of this Chapter, or by Note 1 to Section XV, or articles specified or included in **Chapter 82 or 83**, or more specifically covered elsewhere in the Nomenclature.

Similar to heading 3926, HTSUS, heading 7616 covers aluminum articles, including frames, that do not fall within more specific headings of the HTSUS. See NY N186281, dated October 12, 2011; NY N139353, dated January 13, 2011; and NY N044024, dated November 20, 2008 (all classifying aluminum frames in heading 7616). In HQ H055636, HQ H031396, and NY N121378, the pellicles at issue consist of plastic films mounted to aluminum frames. These frames are not described elsewhere within Chapter 73 or the HTSUS, and are consequently articles of heading 7616, HTSUS. However, because the pellicles in those rulings also contain non-aluminum material, in the form of the plastic films, they are described only in part by heading 7616. They therefore cannot be classified there solely by application of GRI 1.

As such, the pellicles of HQ H055636, HQ H031396, and NY N121378 are classified, pursuant to GRI 3(b), “as if they consisted of the material...which gives them their essential character.” See *Home Depot USA, Inc. v. United States*, 491 F.3d 1334, 1336 (Fed. Cir. 2007). With respect to “essential character” for purposes of GRI 3(b), EN (VIII) to GRI 3(b) states as follows:

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

While application of the “essential character test” requires a fact-intensive analysis, courts have consistently applied some or all of the factors listed in the above-cited EN in identifying various articles’ essential characters. See *Alcan Food Packaging (Shelbyville) v. United States*, 771 F.3d 1364, 1367 (Fed. Cir. 2014); *Home Depot USA, Inc. v. United States*, 491 F.3d 1334, 1337 (Fed. Cir. 2007). More recent court decisions have emphasized the importance of the last of these listed factors, i.e., the role of the constituent materials or components in relation to the use of the goods, in determining essential character. See *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1337–1338 (Ct. Int’l Trade 2005); *Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278, 12951356 (Ct. Int’l Trade 2006), *aff’d* 491 F.3d 1334 (Fed. Cir. 2007). Consistent with this, CBP has previously ruled, with all other factors being equal, that a composite good’s essential character is imparted by the material that most directly enables the good’s promoted use, rather than any materials that serve structural or support functions. See, e.g., HQ H250830, dated February 22, 2015 (finding that a camping tent’s essential character was imparted by its textile canopy, rather than its steel frame, because only the former could “provide temporary shade and minimal cover for users in fair weather”); and HQ H056243, dated September 2, 2009 (ruling that the steel wire, rather than the plastic frame, of a clothing hanger imparted the article’s essential character because the former “performs the principal function of the device”).

Here, the relative bulks, weights, and values of the plastic films and aluminum frames in HQ H055636, HQ H031396, and NY N121378 are unknown. In the absence of such information, and in view of the courts’ recent treatment of GRI 3(b), the pellicles’ “essential character” is imparted by the material that plays the greatest role in relation to the pellicles’ use. As stated above, the pellicles’ sole use is as protective sealants for photomasks that

prevent distortion of the circuitry patterns projected onto the underlying photomasks. The plastic film functions as the actual sealant for this end, keeping dust and other contaminants away from the photomask's surface. In contrast, the aluminum frame secures the plastic film to the photomask but contributes only minimally, if at all, to the protection of the photomask. Therefore, consistent with our analyses in HQ H250830 and HQ H056243, we conclude that the plastic film imparts the essential character of the pellicles. As a result, the pellicles at issue in HQ H055636, HQ H031396, and NY N121378 are classified in heading 3926, HTSUS.<sup>2</sup>

**HOLDING:**

By application of GRIs 1 and 3(b), the instant photomask pellicles are classified in heading 3926, HTSUS, specifically in subheading 3926.90.9995, HTSUS (Annotated), which provides for: "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other." The column one, general rate of duty is 5.3% *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

HQ H055635, dated November 23, 2009, HQ H055636, dated November 23, 2009, HQ H031396, dated January 5, 2010, and NY N121378, dated September 30, 2010 are hereby REVOKED in accordance with the above analysis.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**CC:** Garth Atchley  
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Expeditors Tradewin LLC  
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Port Director  
Port of Anchorage  
U.S. Customs and Border Protection  
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Cramer Hegeman  
KM ACT Corp.  
2340 West Braker Lane, Suite A  
Austin, TX 78758

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<sup>2</sup> We note, however, that if entered unframed, the plastic film may be classified by application of GRI 1 in headings of Chapter 39 other than heading 3926, such as, for example, headings 3920 or 3921, HTSUS.

**PROPOSED MODIFICATION OF ONE RULING LETTER  
AND MODIFICATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF HOLE SAW KITS FOR DOOR  
LOCKSET INSTALLATION**

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

**ACTION:** Notice of proposed modification of one ruling letter and modification of treatment relating to the tariff classification of hole saw kits for door lockset installation.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter concerning the tariff classification of hole saw kits for door lockset installation 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.

**DATES:** Comments must be received on or before September 16, 2016.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10<sup>th</sup> Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **“informed compliance”** and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of hole saw kits for door lockset installation. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) J82340, dated March 25, 2003 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two 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 notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to modify any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In ruling letter NY J82340, CBP classified two hole saw kits for door lockset installation under heading 8207, HTSUS, which provides



for “Interchangeable tools for handtools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screwdriving), including dies for drawing or extruding metal, and rock drilling or earth boring tools; base metal parts thereof.” CBP has reviewed ruling letter NY J82340 and has determined the ruling letter to be in error. It is now CBP’s position that the hole saw kits for door lockset installation described in the attached ruling letter are properly classified, by operation of GRIs 1 and 3(b), in heading 8202, HTSUS, specifically in subheading 8202.99.00, HTSUS, which provides for “Handsaws, and metal parts thereof; blades for saws of all kinds (including slitting, slotting or toothless saw blades), and base metal parts thereof: Other saw blades, and parts thereof: Other (including parts).”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify ruling letter NY J82340 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H251432, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to modify any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 27, 2016

GREG CONNOR  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

NY J82340

March 25, 2003

CLA-2-82:RR:NC:1:104 J82340

CATEGORY: Classification

TARIFF NO.: 8207.50.2080; 8207.50.6000;  
8204.12.0000

MR. CHRIS CAMMACK  
IRWIN INDUSTRIAL TOOL COMPANY  
108 SOUTH PEAR STREET  
P.O. BOX 337  
DEWITT, NE 68341

RE: The tariff classification of lock installation kits and adjustable wrench parts from China

DEAR MR. CAMMACK:

In your letter dated March 13, 2003 you requested a tariff classification ruling.

The Metal/Wood Door Lock Installation Kit, Part # 17104, consists of two bi-metal hole saws, one center drill and mandrel, and one plastic jig packaged in a plastic clamshell. The drill bit is made of M2 high speed steel (HSS).

The Wood Door Lock Installation Kit, Part # 17105, consists of two carbon steel hole saws, one center drill and mandrel, and one plastic jig in a plastic clamshell. The drill bit is made of C1045 carbon steel.

Samples of both kits have been provided and will be returned per your request. You suggest classification in subheading 8207.50.6000 noting NY ruling H80305 of May 23, 2001 which classified a door lock installation kit as a GRI 3 (c) set. We concur with your classification for the Wood Door Lock Installation Kit, Part # 17105. The Metal/Wood Door Lock Installation Kit, Part # 17104, is also a GRI 3 (c) set however it meets the terms of the more specific subheading 8207.50.2080.

The final 3 items are aluminum die cast parts of an adjustable wrench. Samples have also been provided. The parts are made of A380 aluminum. The two pieces marked "Vise Grip" on the side will be bolted together around a steel bar to make a tool handle. The remaining piece will slide on the steel bar the handles are bolted to and will be the bottom jaw of an adjustable wrench.

You suggest classification under HTS subheading 7616.99.5060 as aluminum castings. The subheading provides for other articles of aluminum: other: other: other. Since these items are parts of an adjustable wrench of heading 8204, they are more specifically provided for in that heading.

The applicable subheading for the Metal/Wood Door Lock Installation Kit, Part # 17104, will be 8207.50.2080, Harmonized Tariff Schedule of the United States (HTS), which provides for interchangeable tools for handtools, whether or not power operated or for machine tools ...: tools for drilling, other than rock drilling, and parts thereof: with cutting part containing by weight over 0.2 percent of chromium, molybdenum, or tungsten or over 0.1 percent of vanadium. The rate of duty will be 5 percent.

The applicable subheading for the Wood Door Lock Installation Kit, Part # 17105, will be 8207.50.6000, HTS, which provides for interchangeable tools for handtools, whether or not power operated or for machine tools ...: tools for

drilling, other than rock drilling, and parts thereof: other: not suitable for cutting metal, and parts thereof: for handtools, and parts thereof. The rate of duty will be 5.2 percent.

The applicable subheading for the adjustable wrench parts will be 8204.12.0000, HTS, which provides for hand operated spanners and wrenches, and parts thereof: adjustable, and parts thereof. The rate of duty will be 9 percent.

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 Losche at 646733-3011.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H251432  
CLA-2 OT:RR:CTF:TCM H251432 LWF  
CATEGORY: Classification  
TARIFF NO.: 8202.99.00

JOHN HIGINBOTHOM  
SR. MANAGER, CUSTOMS & BROKERAGE  
IRWIN INDUSTRIAL TOOLS DIVISION  
NEWELL RUBBERMAID  
3 GLENLAKE PARKWAY  
ATLANTA, GA 30328

Re: Modification of New York Ruling Letter (NY) J82340, dated March 25, 2003; tariff classification of hole saw kits for door lockset installation

DEAR MR. HIGINBOTHOM:

This letter is in response to your request, dated March 6, 2014, that U.S. Customs and Border Protection (CBP) reconsider New York Ruling Letter (NY) J82340, issued to Irwin Industrial Tool Co. (now doing business as Newell Rubbermaid) on March 25, 2003, concerning the tariff classification of certain hole saw kits for door lockset installation under the Harmonized Tariff Schedule of the United States (HTSUS).

Specifically, you assert that in ruling letter NY J82340, CBP incorrectly classified the hole saw kits under heading 8207, HTSUS, which provides for “Interchangeable tools for handtools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screwdriving), including dies for drawing or extruding metal, and rock drilling or earth boring tools; base metal parts thereof.” Your request for reconsideration contains new information concerning the value and material role of the component pieces of the lock installation kits, and you ask that CBP classify the kits, by application of GRI 3(b), under heading 8202, which provides for “Handsaws, and metal parts thereof; blades for saws of all kinds (including slitting, slotting or toothless saw blades), and base metal parts thereof.”

Based on the information contained in your request, CBP has reviewed ruling letter NY J82340 and finds the ruling to be incorrect. Accordingly, for the reasons set forth below, CBP is hereby modifying ruling letter NY J82340 with respect to the classification of hole saw kits for door lockset installation.

**FACTS:**

In ruling letter NY J82340, CBP described the merchandise at issue as two styles of lock installation kits: the “Metal/Wood Door Lock Installation Kit, Part #17104” and the “Wood Door Lock Installation Kit, Part #17105” (the “Metal/Wood Door Kit” and “Wood Door Kit,” respectively). The Metal/Wood Door Kit consists of 2 bi-metal hole saws, 1 mandrel, 1 router bit, 1 double-sided jig, and 3 plastic templates. Similarly, the “Wood Door Kit” consists of 2 carbon steel hole saws, 1 mandrel, 1 router bit, 1 double-sided jig, and 3 plastic templates. Each Kit is designed to enable a user to cut holes in a wood or metal door, to facilitate the installation of door locksets into the door. The component articles of each Kit are packaged together in a plastic clamshell, and in their condition as imported, the Kits are suitable for sale directly to users without repacking.

In its reconsideration request letter, dated March 6, 2014, Newell Rubbermaid provides additional information concerning the material role and cost of the component pieces of the Metal/Wood Door Kit and the Wood Door Kit. Specifically, Newell Rubbermaid states that among the component pieces of the Metal/Wood Door Kit, the 2 bi-metal hole saws represent approximately 46% of the weight and 57% of the cost of the Kit, while each of the remaining component articles (mandrel, router bit, jig, and templates) individually account for less than 23% of the weight and 24% of the cost of the Kit. Similarly, among the component pieces of the Wood Door Kit, the 2 carbon hole saws represent approximately 34% of the weight and 32% of cost of the Kit, while the remaining component articles (mandrel, router bit, jig, and templates) individually account for less than 28% of the weight and 23% of the cost of the Kit.

#### ISSUE:

Whether the Metal/Wood Door Kit and the Wood Door Kit are classifiable, by application of GRI 3(b), under heading 8202, HTSUS, as parts of saws, or by application of GRI 3(c), under heading 8207, HTSUS, as tools for power-operated handtools.

#### LAW AND ANALYSIS:

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

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

In this case, CBP will reference the following HTSUS headings to determine the proper classification of Newell Rubbermaid's Metal/Wood Door Kit and Wood Door Kit:

- |      |  |
|------|--|
| 8202 | Handsaws, and metal parts thereof; blades for saws of all kinds (including slitting, slotting or toothless saw blades), and base metal parts thereof:  |
| 8207 | Interchangeable tools for handtools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screwdriving), including dies for drawing or extruding metal, and rock drilling or earth boring tools; base metal parts thereof: |

\* \* \* \* \*

As an initial matter, CBP observes that the Metal/Wood Door Kit and Wood Door Kit each consist of a variety of individual component articles that are,

*prima facie*, classifiable in two or more headings. Specifically, the Metal/Wood Door Kit consists, in relevant part, of 2 bi-metal hole saws of heading 8202, HTSUS, and a mandrel of heading 8207, HTSUS. Similarly, the Wood Door Kit includes 2 carbon steel hole saws of heading 8202, HTSUS, as well as a mandrel described by heading 8207, HTSUS. Consequently, because the Kits consist of component articles classifiable under two or more headings, CBP finds that the Kits cannot be classified solely on the basis of GRI 1 and that the remaining GRIs must be applied.

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

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

[...]

- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

\* \* \* \* \*

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

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

\* \* \* \* \*

In accord with the definition of “goods put up in sets for retail sale” provided in the ENs, CBP finds that the Metal/Wood Door Kit and Wood Door Kit are properly classifiable as retail sets by application of GRI 3(b), because the Kits satisfy the criteria described by EN (X) to GRI 3(b). First, as described above, each of the Kits consist of at least two different articles which are, *prima facie*, classifiable in different headings. Second, there is no dispute that the Kits are “put up together” to enable a user to carry out the specific activity of cutting holes in wood and metal doors so that a door locksets can be installed into the door. Third, as described in ruling letter NY J82340, the component articles of each Kit are packaged together in a plastic clamshell, and in their condition as imported, the Kits are suitable for sale directly to users without repacking. As such, the Kits are classifiable by

application of GRI 3(b) as “goods put up in sets for retail sale,” and shall be classified as if they consisted of the material or component which gives each Kit its essential character.

Pursuant to the text of GRI 3(b), goods put up in sets for retail sale must be classified as if they consisted of the material or component which “gives them their essential character.”<sup>1</sup> The phrase “essential character” carries specific meaning in the context of tariff classification, and the courts have defined “essential character” as, “that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int’l Trade 2005).

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

Consistent with the guidance provided by the courts and the ENs to GRI 3, CBP observes that the essential character of a retail set is informed by the use or role of those component articles that are integral to the overall function of the set. Relevant to the classification of the instant Kits, for example, CBP has previously concluded that among the component articles of a bi-metal hole saw kit (consisting of 6 steel holes saws, 2 mandrels, and 1 mandrel adapter), the steel hole saws imparted the retail set with its “essential character,” based on findings by CBP that the hole saws were integral to the activity of cutting holes for door locksets and predominated the hole saw kit by quantity, value, and bulk. See Headquarters Ruling Letter (“HQ”) H097658, dated December 31, 2013. Accordingly, CBP classified the bi-metal hole saw kit as if it consisted of the 6 steel hole saws and ruled, by application of GRI 3(b), that the kit was properly classified under heading 8202, HTSUS, specifically subheading 8202.99.00.

Similar to the analysis set forth in ruling letter HQ H097658, this office finds that the instant Newell Rubbermaid Metal/Wood Door Kit and Wood Door Kit, each contain separately classifiable articles consisting of 2 hole saws, 1 mandrel, 1 router bit, 1 double-sided jig, and 3 plastic templates. Moreover, inasmuch as the Newell Rubbermaid Kits are “put up together” to carry out the same activity as the hole saw kits at issue in HQ H097658—namely, the activity of cutting holes in wood and metal doors so that a door locksets can be installed into the door, CBP observes that the 2 hole saws included in each of the Newell Rubbermaid Kits are integral to the function of the retail sets. Specifically, it is the hole saws that cut material

<sup>1</sup> EN VIII to GRI 3(b) explains that “[t]he factor which determines essential character will vary as between different kinds of goods,” and may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods. See EN VIII to GRI 3(b).

away from doors so that door locksets can be installed therein; each of the remaining component articles—the mandrel, router bit, jig, and template—function in supporting roles that facilitate the cutting operation of the hole saw upon the target door. Accordingly, CBP finds that the role of the hole saws in relation to the use of Kits supports a determination that the hole saws impart the Kits with their essential character. *See* EN VIII to GRI 3(b).

Additionally, Newell Rubbermaid has provided information showing that the hole saws predominate the other component articles of the Metal/Wood Door Kit and Wood Door Kit by both weight and cost. Among the component pieces of the Metal/Wood Door Kit, the 2 bi-metal hole saws represent approximately 46% of the weight and 57% of the cost of the Kit, while each of the remaining component articles (mandrel, router bit, jig, and templates) individually account for less than 23% of the weight and 24% of the cost of the Kit. Similarly, among the component pieces of the Wood Door Kit, the 2 carbon hole saws represent approximately 34% of the weight and 32% of cost of the Kit, while the remaining component articles (mandrel, router bit, jig, and templates) individually account for less than 28% of the weight and 23% of the cost of the Kit. Based upon an analysis of the weight and cost of the component pieces in relations to the Kits as a whole, CBP finds that the hole saws impart the Kits with their essential character, because the hole saws are the heaviest and most valuable component articles included in the Kits.

Inasmuch as the component article bi-metal and carbon steel hole saws are integral to the function of the Metal/Wood Door Kit and Wood Door Kit and predominate both Kits by both weight and cost, CBP finds that the hole saws impart the Kits with their essential character. Accordingly, by application of GRI 3(b), the Kits are classifiable as if they consisted of the hole saws, which are described under the terms of heading 8202, HTSUS, as saw blades.

In classifying the instant Newell Rubbermaid Kits under heading 8202, HTSUS, by application of GRI 3(b), CBP observes that this decision is distinguishable from several previously published CBP ruling letters in which CBP applied GRI 3(c) to classify a variety of lock installation kits because it did not possess sufficient information to determine the essential character of the kits by application of GRI 3(b). For example, in ruling letter HQ 963775, dated November 21, 2000, CBP classified a lock installation kit consisting of a hole saw for cutting a hole for the lock mechanism, a wood spade bit for cutting a hole for the latch mechanism, and a mandrel pilot drill bit—under heading 8207, HTSUS, the heading which comes last in numerical order amongst those headings that merit equal consideration, because CBP was unable to determine whether the hole saw, wood spade bit, or mandrel imparted the lock installation kit with its essential character. Similarly, in ruling letters NY H80305, dated May 23, 2001, and NY J87960, dated August 26, 2003, CBP classified hole saw kits for door lockset installation under 8207, HTSUS, by application of GRI 3(c), because the importer did not provide sufficient information for CBP to make a determination as to which of component articles imparted the sets with their essential characters. Here, by contrast, importer Newell Rubbermaid has provided CBP with a detailed description of the instant Kits and their component articles, thereby enabling CBP to determine that the hole saw component articles impart each Kit with their essential character under a GRI 3(b) analysis.

CBP additionally notes that it is declining to revoke ruling letter NY E84551, dated July 28, 1999, because the ruling does not involve merchandise that is substantially similar to the instant Newell Rubbermaid Kits at



issue in ruling letter NY J82340. Unlike the Newell Rubbermaid Kits, the lock installation kit identified in ruling letter NY E84551 consisted of a single bit, hole saw, and mandrel. Moreover, as NY E84551 does not contain a material or value breakdown description of the component articles, CBP does not possess sufficient information to determine the essential character of the merchandise under a GRI 3(b) analysis. Consequently, CBP finds that the facts presented in ruling letter NY E84551 substantially differ from those contained in NY J82340. Accordingly, CBP observes that the conclusions reached in ruling letter NY E84551 do not conflict with the analysis set forth in this decision, and CBP therefore declines to revoke ruling letter NY E84551.

**HOLDING:**

By application of GRI 1 and 3(b), the Newell Rubbermaid Metal/Wood Door Kit and Wood Door Kit are classified under heading 8202, HTSUS, specifically subheading 8202.99.00, which provides for “Handsaws, and metal parts thereof; blades for saws of all kinds (including slitting, slotting or toothless saw blades), and base metal parts thereof: Other saw blades, and parts thereof: Other (including parts).” The 2016 column one, general rate of duty is *free*.

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


**EFFECT ON OTHER RULINGS:**

In accordance with the above analysis, ruling letter NY J82340, dated March 25, 2003, is hereby MODIFIED.

*Sincerely,*

MYLES B. HARMON,  
*Director*

*Commercial Trade and Facilitation Division*



**PROPOSED REVOCATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF A BATTERY POWERED  
TRANSFER TROLLEY**

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

**ACTION:** Notice of proposed revocation of one ruling letter, and revocation of treatment relating to the tariff classification of a battery powered transfer trolley.

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

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

**DATES:** Comments must be received on or before September 16, 2016.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10<sup>th</sup> Floor, Washington, DC 20229-1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

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

## **SUPPLEMENTARY INFORMATION:**

### **BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of a battery powered transfer trolley. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N274106, dated April 1, 2016 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N274106, CBP classified a battery powered transfer trolley in heading 8704, HTSUS, specifically in subheading 8704.90.00, HTSUS, which provides for “Motor vehicles for the transport of goods: Other, with spark-ignition internal combustion piston engine: Other.” CBP has reviewed NY N274106 and has determined the ruling letter to be in error. It is now CBP’s position that a battery powered transfer trolley is properly classified, by operation of GRIs 1 and 6, in heading 8709, HTSUS, specifically in subheading 8709.11.00, HTSUS, which provides for “Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles: Vehicles: Electrical.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N274106 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H275962, set forth as Attachment B to this

notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 27, 2016

JACINTO JUAREZ

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N274106

April 1, 2016

CLA-2-87:OT:RR:NC:N1:101

CATEGORY: Classification

TARIFF NO.: 8704.90.0000

LISA BRANDENBERGER

LEE HARDEMAN CUSTOMS BROKER, INC.

277 SOUTHFIELD PARKWAY, SUITE 135

FOREST PARK, GA 30297

RE: The tariff classification of a battery powered transfer trolley from China

DEAR MS. BRANDENBERGER:

In your letter dated March 22, 2016 you requested a tariff classification ruling on behalf of your client, Consolidated Safety Services, Inc., located in Fairfax, Virginia.

The item under consideration has been identified as a battery powered transfer trolley designed to run on either standard gauge rails or wheels. In your request you state that the trolley in the instant shipment will be used in a mock training facility owned by the United States Government to carry items such as monitors and cameras into tunnels (both above and underground). This is done in order to test rail operations for the purposes of your project. You state that only the rail traversing capabilities will be utilized.

You state that the track section that the trolley will be used on, which *is not* being imported, is approximately 1500 feet long and that the trolley itself measures 3000x2000x450mm with a load rating of two (2) tons.

In your request you suggest classification of the transfer trolley in 8709.11.0060. This office disagrees for the following reasons: 8709 provides for "Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods...." You did not provide any evidence that this vehicle is designed to be used in such a manner

Per the Explanatory Notes (ENs) to 87.09 the main features common to the vehicles of this heading which generally distinguish them from the vehicles of heading 87.01, 87.03 or 87.04 may be summarised as follows:

- (1) Their construction and, as a rule, their special design features, make them unsuitable for the transport of passengers or for the transport of goods by road or other public ways.
- (2) Their top speed when laden is generally not more than 30 to 35 km/h.
- (3) Their turning radius is approximately equal to the length of the vehicle itself.

Vehicles of this heading do not usually have a closed driving cab, **the accommodation for the driver** often being no more than a platform on which he stands to steer the vehicle. Certain types may be equipped with a protective frame, metal screen, etc., over the driver's seat.

Classification of goods in the Harmonized Tariff Schedule of the United States (HTSUS) is governed by the General Rules of Interpretation (GRIs).

GRI 1. states “ ... classification shall be determined according to the terms of the headings ... ” Heading 8704.90 provides for “Motor vehicles for the transport of goods: Other”.

General Note 3. (h) (vi) to the HTSUS states “ ... a reference to “headings” encompasses subheadings indented thereunder.” 8704.90.0000 provides for “Motor vehicles for the transport of goods: Other”

The applicable subheading for the battery powered transfer trolley will be 8704.90.000, HTSUS, which provides for “Motor vehicles for the transport of goods: Other”. The general rate of duty will be 25%.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Matthew Sullivan at [matthew.sullivan@cbp.dhs.gov](mailto:matthew.sullivan@cbp.dhs.gov).

*Sincerely,*

DEBORAH C. MARINUCCI

*Acting Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H275962  
CLA-2 OT:RR:CTF:TCM H275962 PJG  
CATEGORY: Classification  
TARIFF NO.: 8709.11.00

LISA BRANDENBERGER  
LEE HARDEMAN CUSTOMS BROKER, INC.  
277 SOUTHFIELD PARKWAY, SUITE 135  
FOREST PARK, GEORGIA 30297

RE: Revocation of NY N274106; tariff classification of a battery powered transfer trolley

DEAR Ms. BRANDENBERGER:

On April 1, 2016, U.S. Customs and Border Protection (“CBP”) issued to you New York Ruling Letter (“NY”) N274106. The ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of a battery powered transfer trolley. NY 274106 states that you did not provide any evidence to support your claim that the vehicle was classified in heading 8709, HTSUS, as a works truck. We have reconsidered NY N274106 based upon the additional evidence submitted with your request.

**FACTS:**

In NY N274106, the subject battery powered transfer trolley was described as follows:

The item under consideration has been identified as a battery powered transfer trolley designed to run on either standard gauge rails or wheels. In your request you state that the trolley in the instant shipment will be used in a mock training facility owned by the United States Government to carry items such as monitors and cameras into tunnels (both above and underground). This is done in order to test rail operations for the purposes of your project. You state that only the rail traversing capabilities will be utilized.

You state that the track section that the trolley will be used on, which is not being imported, is approximately 1500 feet long and that the trolley itself measures 3000x2000x450mm with a load rating of two (2) tons.

In your request for reconsideration you explain that the transfer trolley at issue is model number KPX-2T, which is similar to the “foundry plant use railroad electric transfer cart” and the “painting line apply large load capacity rail car”. These can be found on the website <http://bfbtransporter.com/product/>.

According to the website, the “foundry plant use railroad electric transfer cart” model number KPX-2T has the following specifications: a rated load (t) of 2; a table size (mm) of 2000x1500x450; a running speed (min) of 0–25; a battery capacity (Ah) of 180; a battery voltage (V) of 24; a running time when full load of 4.32; and a reference weight (t) of 2.8. The “painting line apply large load capacity rail car” model number KPX-2T has these same specifications, plus the following: a wheel base (mm) of 1200; a rail inner gauge (mm) of 1200; a wheel diameter (mm) of  $\phi$ 270; a wheel quantity of 4; a ground

clearance (mm) of 50; a motor power of 1; a running distance for one charge (km) of 6.5; a max wheel load (KN) of 14.4; and a recommended rail model of P15.

The model that is at issue in this case was customized to reflect the needs of the ultimate purchaser, the Environmental Protection Agency (“EPA”). Along with your request for reconsideration, you provide a brochure containing a photograph of a model called the “battery powered transfer trolley” and its product specifications. You indicate that the specifications on the brochure reflect the specifications of the instant merchandise. According to the product specifications on the brochure, the “battery powered transfer trolley” is controlled by remote and pendant control, has a running speed of 50 meters/minute, a running distance of 500 meter, a motor power of 1 kilowatts, and a maximum wheel load of 14.4 kilonewtons. You indicate that subject merchandise weighs approximately 2.5 tons and is designed for a straight track and is not designed to be used on a flat surface.

You have also submitted a document entitled “PGA Message Set for the National Highway Traffic Safety Administration (NHTSA)” that you found on [www.cbp.gov](http://www.cbp.gov), which defines motor vehicle as “a vehicle that is driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways.” You state that the subject trolley “is not manufactured primarily for use on public streets, roads or highways.” You further indicate that “the wheels nor the rails are made for use on public roads, rather, they are manufactured to run on a typical warehouse floor. The product will be used in a mock training facility owned by the US Government, not on public roads.” You note that the mock training facility has 1100 feet of standard gauge rail track.

Lastly, you submit a letter from the EPA indicating that they purchased the battery powered transfer trolley “to support an upcoming study looking at the remediation of a rail system that has been contaminated with a biological agent.” They also provided the following information:

The transport trolley is designed to travel on standard gauge rail tracks and is not designed to operate on any other surface. The transport trolley has standard track wheels that are set at a distance of 4 feet 8.5 inches to be able to move up and down train tracks.

The piece of equipment will be used at a Department of Defense facility to facilitate the decontamination of a subway system. The trolley will not be used on any other surface or location.

#### **ISSUE:**

Whether the subject battery powered transfer trolley is classifiable in heading 8704, HTSUS, as “Motor vehicles for the transport of goods”, or in heading 8709, HTSUS, as “Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles.”

#### **LAW AND ANALYSIS:**

Classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) is made in accordance with the General Rules of Interpretation (“GRI”). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative



Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The 2016 HTSUS provisions under consideration are as follows:

- 8704** Motor vehicles for the transport of goods:
- 8709** Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles:

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

EN to 87.04 states, in pertinent part:

The classification of certain motor vehicles in this heading is determined by certain features which indicate that the vehicles are designed for the transport of goods rather than for the transport of persons (heading 87.03). These features are especially helpful in determining the classification of motor vehicles, generally vehicles having a gross vehicle weight rating of less than 5 tonnes, which have either a separate closed rear area or an open rear platform normally used for the transport of goods, but may have rear bench-type seats that are without safety seat belts, anchor points or passenger amenities and that fold flat against the sides to permit full use of the rear platform for the transport of goods. Included in this category of motor vehicles are those commonly known as “multipurpose” vehicles (e.g., van-type vehicles, pick-up type vehicles and certain sports utility vehicles). The following features are indicative of the design characteristics generally applicable to the vehicles which fall in this heading:

- (a) Presence of bench-type seats without safety equipment (e.g., safety seat belts or anchor points and fittings for installing safety seat belts) or passenger amenities in the rear area behind the area for the driver and front passengers. Such seats are normally fold-away or collapsible to allow full use of the rear floor (van-type vehicles) or a separate platform (pick-up vehicles) for the transport of goods;
- (b) Presence of a separate cabin for the driver and passengers and a separate open platform with side panels and a drop-down tailgate (pick-up vehicles);
- (c) Absence of rear windows along the two side panels; presence of sliding, swing-out or lift-up door or doors, without windows, on the side panels or in the rear for loading and unloading goods (van-type vehicles);
- (d) Presence of a permanent panel or barrier between the area for the driver and front passengers and the rear area;
- (e) Absence of comfort features and interior finish and fittings in the cargo bed area which are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays).

EN to 87.09 states, in pertinent part:

This heading covers a group of self-propelled vehicles of the types used in factories, warehouses, dock areas or airports for the short distance transport of various loads (goods or containers) or, on railway station platforms, to haul small trailers.

Such vehicles are of many types and sizes. They may be driven either by an electric motor with current supplied by accumulators or by an internal combustion piston engine or other engine.

The main features common to the vehicles of this heading which generally distinguish them from the vehicles of heading 87.01, 87.03 or 87.04 may be summarised as follows:

- (1) Their construction and, as a rule, their special design features, make them unsuitable for the transport of passengers or for the transport of goods by road or other public ways.
- (2) Their top speed when laden is generally not more than 30 to 35 km/h.
- (3) Their turning radius is approximately equal to the length of the vehicle itself.

Vehicles of this heading do not usually have a closed driving cab, the accommodation for the driver often being no more than a platform on which he stands to steer the vehicle. Certain types may be equipped with a protective frame, metal screen, etc., over the driver's seat.

The vehicles of this heading may be pedestrian controlled.

**Works trucks** are self-propelled trucks for the transport of goods which are fitted with, for example, a platform or container on which the goods are loaded.

Works trucks of heading 8709, HTSUS, have certain design features which distinguish them from the vehicles of heading 8704, HTSUS. *See* EN 87.04. Among these are their construction and special design features which make them unsuitable for the transport of goods by road or other public ways; their top speed when laden is generally not more than 30 to 35 km/h; their turning radius is approximately equal to the length of the vehicle itself; vehicles of heading 8709, HTSUS, do not usually have a closed driving cab, the accommodation for the driver often being no more than a platform to stand. Certain types may be equipped with a protective frame or metal screen; such works trucks are normally fitted with a platform or container on which the goods are loaded.

In HQ H180102, CBP found that the Goldhofer self-propelled modular transporters (SPMTs) are "works trucks" because of their "extreme weight, slow laden speed, small turning radius, and inability to operate on public roads." The Goldhofer SPMTs had the following features: speed of 4.8s km/hr; turning radius of 28.9 feet; and total length of 29.53 feet. *See id.* Upon review of the physical characteristics and operating capabilities of the battery powered transfer trolley, there is no dispute that the subject merchandise, like the merchandise in HQ H180102, is also identifiable as "works trucks." The self-propelled transfer trolley's slow laden speed of 3 km/hour, standard track wheels, straight track design, and battery power, are specialized design

features that make it unsuitable for the transport of passengers or goods by road or other public ways. The transfer trolley is clearly distinguishable from vehicles of heading 87.01, 87.03, or 87.04. *See* EN 87.09. Moreover, while the subject merchandise weighs 2.5 tons (less than 5 tons), it does not have the following design features that would indicate that it is classifiable as a motor vehicle under heading 8704, HTSUS: bench-type seats or passenger amenities; a separate cabin for the driver and passengers; doors; a separate open platform with side panels and drop-down tailgate; a permanent panel or barrier between the area for the driver and front passengers and the rear area; a separate cargo bed area. *See* EN 87.04. In fact, the subject merchandise consists of a flat platform without seats, and therefore, does not have the ability to carry passengers, a driver, or goods by road or other public ways.

Heading 8709, HTSUS, covers vehicles of a kind used in the environments specified in the text. This is a provision governed by “use.” *See Group Italglass U.S.A., Inc. v. United States*, 17 CIT 226, 228 (1993). As such, it is the principal use of the class or kind of vehicle to which the battery powered transfer trolley belongs that governs classification here. We find that the trolley has many of the design features listed in the EN 87.09. We conclude that the trolley belongs to the class or kind of vehicles principally used as a works trucks of heading 8709, HTSUS.

Accordingly, the subject merchandise is classified in heading 8709, HTSUS, specifically under subheading 8709.11.00, HTSUS, as “Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles: Vehicles: Electrical.”

#### **HOLDING:**

Under the authority of GRIs 1 and 6 the battery powered transfer trolley model KPX-2T is classified in heading 8709, HTSUS, specifically in subheading 8709.11.00, HTSUS, as “Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles: Vehicles: Electrical.” The 2016 column one, general rate of duty is Free.

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

#### **EFFECT ON OTHER RULINGS:**

NY N274106, dated April 1, 2016, is REVOKED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**REVOCAION OF ONE RULING LETTER AND  
REVOCAION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF CERTAIN GARMENT  
HANGERS**

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

**ACTION:** Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of certain garment hangers.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of certain garment hangers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 20, on May 18, 2016. One comment in support of our proposal to revoke NY N255930 was received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 17, 2016.

**FOR FURTHER INFORMATION CONTACT:** Tatiana Salnik Matherne, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0351.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 50, No. 20, on May 18, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of certain garment hangers. As stated in the proposed notice, this action will cover New York Ruling Letter ("NY") N255930, dated August 20, 2014, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In NY N255930, CBP classified garment hangers, imported separately, in heading 3923, HTSUS, specifically in subheading 3923.90.00, HTSUS, which provides for "Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Other." However, CBP concluded that when imported with garments, the garment hangers at issue were classified together with those garments. CBP has reviewed NY N255930 and has determined the ruling letter to be in error. It is now CBP's position that the garment hangers at issue are properly classified, by operation of GRI

5(b), in heading 3923, HTSUS, specifically in subheading 3923.90.00, HTSUS, whether imported separately or with garments.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N255930 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H258772, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 22, 2016

JACINTO JUAREZ  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H258772

June 22, 2016

CLA-2 OT:RR:CTF:TCM H258772 TSM

CATEGORY: Classification

TARIFF NO.: 3923.90.00

MR. MARK J. SEGRIST, ESQ.

SANDLER, TRAVIS &amp; ROSENBERG, P.A.

225 WEST WASHINGTON STREET, STE. 1640

CHICAGO, IL 60622

RE: Revocation of NY N255930; Classification of imported garment hangers.

DEAR MR. SEGRIST:

This is in reference to New York Ruling Letter (NY) N255930, issued to Sears Holding Management Corporation on August 20, 2014, concerning tariff classification of imported garment hangers. In that ruling, the National Commodity Specialist Division found that plastic hangers imported by your client, Sears Holding Management Corporation, when imported separately, are classified under subheading 3923.90.00, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Other.” However, when imported with garments, the subject hangers were found to be classified with those garments and to be dutiable at the same rate of duty as those garments. Upon additional review, we have found this to be incorrect. For the reasons set forth below we hereby revoke NY N255930.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 50, No. 20, on May 18, 2016, proposing to revoke NY N255930, and any treatment accorded to substantially identical transactions. One comment in support of our proposal to revoke NY N255930 was received in response to this notice.

**FACTS:**

NY N255930, issued to Sears Holding Management Corporation on August 20, 2014, describes the subject merchandise as follows:

Five samples were included with your request. All are hangers made of black plastic with an integral plastic top hanging hook. KMTN15 and KMTR15 are 15 inch top hangers. KMT17 and KMTNR17 are 17 inch top hangers. KMBP12 is a 12 inch bottom hanger with metal spring clips.

**ISSUE:**

What is the correct classification of the subject plastic garment hangers when imported separately and when imported carrying garments?

**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:

3923	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics:
3923.90.00	Other
	*       *       *

GRI 5(b), HTSUS, provides as follows:

(b) Subject to the provisions of rule 5(a) above [which are not pertinent here], packing materials and packing containers entered with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

It has long been CBP's position that actual reuse of the imported hangers is not necessary, and is not required, as long as the hangers are of a type suitable for repetitive use. "Suitable for reuse" does not mean merely that the specific hangers are strong enough to be reused, but also that there exists a commercial viability for that reuse. Once it is determined that the particular hanger style is suitable for reuse, there is no need for any importer to provide evidence that hangers of that style are suitable for reuse, and the benefit of separate classification is afforded to all importers of those hangers, even if the hangers are never actually reused. In HQ 964963,<sup>1</sup> HQ 964964 and HQ 964948, all dated June 19, 2001, CBP ruled that certain plastic hangers that were of substantial construction and that were used in hanger recovery systems for the repeated international transport of garments, were suitable for repetitive use for the conveyance of goods within the meaning of GRI 5(b). Accordingly, CBP concluded that these hangers could be classified separately in subheading 3923.90.00, HTSUS, even when imported with garments. Documents were provided to verify the claim that a substantial portion of the hangers that were the subject of those rulings were forwarded to a hanger supply company and then sorted, sanitized and sold to garment vendors for use in packing, shipping, and transporting other garments. In HQ 964963, CBP noted that actual reuse of the hangers is not necessary as long as the hangers are substantial and are of the class or kind of goods used repetitively for the conveyance of garments.

In NY H86527 and NY H86752, CBP classified separately from the accompanying garments hangers that were part of both the "floor ready" and "hanger recovery" programs of the "VICS." Hangers in the "floor ready" program are those hangers that are ready for sale when received at a retail selling location. Hangers in the "hanger recovery" program are hangers of substantial construction and suitable for international shipment of garments, that are resold for reuse for that function. It should be emphasized that it was only because of the hangers' suitability for reuse in the hanger

<sup>1</sup> We note that in this ruling CBP modified HQ 961973, dated August 12, 1999, but not with respect to the conclusion that the hangers at issue were clearly suitable for repetitive use within the meaning of GRI 5(b).



recovery program that they were classified separately from the accompanying garments in both NY H86527 and NY H86752.

Sears Holding Management Corporation provided the following information demonstrating that the hangers at issue are suitable for repetitive use within the meaning of GRI 5(b): (1) the subject hangers are made entirely of durable molded plastic and are specially designed by the manufacturer for international transit and multiple international reuse cycles; (2) Sears Holding Management Corporation has successfully obtained from CBP HQ 961973, dated August 13, 1999, in which CBP found that hangers substantially similar in construction to the ones at issue here were clearly suitable for repetitive use within the meaning of GRI 5(b); (3) just like the hangers at issue in HQ 961973, the subject hangers were specifically constructed and tested to be used approximately seven to nine times during their useful life; (4) the subject hangers meet and exceed the VICS hanger guidelines, and were specifically designed for international transit and multiple reuse cycles; and (5) upon comparing the subject hangers to the hangers at issue in HQ H079697, dated October 26, 2009 (which were found to be substantial, suitable for and capable of repeated use), the manufacturer of the subject hangers found that they exceeded, in both strength and durability, those at issue in HQ H079697.

Upon review, we find that the record supports a finding that the hangers at issue are strong enough to be reused and that there exists a commercial viability for that reuse, and that hangers of similar construction are reused repeatedly for commercial shipment of garments. Accordingly, it is our position that the hangers at issue are clearly suitable for repetitive use within the meaning of GRI 5(b). Therefore, we conclude that they are separately classified (whether imported separately or with garments) in subheading 3923.90.00, HTSUS, which provides for “Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Other.”

#### **HOLDING:**

By application of GRI 5(b), we find that the subject hangers are classified under heading 3923, HTSUS. Specifically, they are classified in subheading 3923.90.00, HTSUS, which provides for “Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Other.” The 2016 column one, general rate of duty 3% *ad valorem*.

#### **EFFECT ON OTHER RULINGS:**

NY N255930, dated August 20, 2014, is hereby REVOKED.

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

*Sincerely,*

JACINTO JUAREZ

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**NOTICE OF REVOCATION OF A RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF A SNOWMAN GIFT BAG  
FROM CHINA**

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

**ACTION:** Notice of revocation of a ruling letter and treatment concerning the tariff classification of a Snowman Gift Bag from China.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of a snowman gift bag from China under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on November 11, 2015, in the Customs Bulletin, Vol. 49, No. 44. No comments were received in response to this notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 17, 2016.

**FOR FURTHER INFORMATION CONTACT:** Dwayne S. Rawlings, Tariff Classification and Marking Branch, (202) 325–0092.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws.

In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 49, No. 44, on November 11, 2015, proposing to revoke New York Ruling Letter (NY) N050455, dated February 3, 2009, pertaining to the tariff classification of a snowman gift bag from China (hereinafter “gift bag”). No comments were received in response to the notice. As stated in the proposed notice, this action will cover any rulings on the subject 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 above. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this action.

In NY N050455, CBP classified a gift bag in heading 4819, HTSUS, specifically subheading 4819.20.00, HTSUS, which provides for “Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; ...: Folding cartons, boxes and cases, of non-corrugated paper or paperboard.” It is now CBP’s position that the article is properly classified in subheading 4819.40.00, HTSUS, which provides for “Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; ...: Other sacks and bags, including cones.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N050455 and any other ruling not specifically identified, in order to reflect the

proper analysis contained in Headquarters Ruling (HQ) H058795 (Attachment). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: February 19, 2016

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H058795

February 19, 2016

CLA-2 OT:RR:CTF:TCM H058795 DSR

CATEGORY: Classification

TARIFF NO.: 4819.40.00

MS. SANDY WIECKOWSKI, MANAGER  
EXPEDITORS TRADEWIN, LLC  
11101 METRO AIRPORT CENTER DRIVE  
BUILDING M-2, SUITE 110  
ROMULUS, MI 48174

RE: Revocation of New York Ruling Letter N050455; classification of a snowman gift bag from China

DEAR Ms. WIECKOWSKI,

This is in response to your March 2, 2009, request for reconsideration, made on behalf of Hallmark Cards, Inc., of New York Ruling Letter (NY) N050455, dated February 3, 2009, which pertains to the classification of a snowman gift bag from China, under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed the ruling and find it to be incorrect.

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 Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on November 11, 2015, in the *Customs Bulletin*, Vol. 49, No. 44. No comments were received in response to the notice. Therefore, NY N050455 is revoked for the reasons set forth in this ruling.

**FACTS:**

The item is a novelty gift bag that consists of a paper bag sandwiched between two die-cut paperboard pieces shaped as identical snowmen heads and faces, with hats. The paper bag is attached to the paperboard pieces. The hats of the snowmen form handles. The paper bag acts as a means to bring the two paperboard cutouts together so as to make them easier to store or display. The item will be marketed and sold at retail as a gift bag. It is marked with country of origin China. The item measures approximately 5 ½" long by 2 15/16" wide by 5 15/16" high, and the die-cut snowmen measure approximately 6" long by 10 1/8" high.

In NY N050455, Customs and Border Protection (CBP) classified the item under subheading 4819.20.00, HTSUS, which provides for "Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers ...: Folding cartons, boxes and cases, of non-corrugated paper or paperboard."

In your request for reconsideration, you assert that the gift bag is properly classified under subheading 4819.50.40, HTSUS, which provides for "Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers ...: Other packing containers, including record sleeves: Other."

**ISSUE:**

Whether the gift bag is properly classified under (1) subheading 4819.20.00, HTSUS, which covers folding cartons, boxes and cases, of non-corrugated paper or paperboard; (2) subheading 4819.40.00, HTSUS, which covers other sacks and bags, including cones; or (3) subheading 4819.50.40, HTSUS, which covers other packing containers, including record sleeves, other.

**LAW AND ANALYSIS:**

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

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

The 2015 HTSUS provisions at issue are as follows:

<b>4819</b>	Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like: * * *
<b>4819.20.00</b>	Folding cartons, boxes and cases, of non-corrugated paper or paperboard: * * *
<b>4819.40.00</b>	Other sacks and bags, including cones: * * *
<b>4819.50</b>	Other packing containers, including record sleeves: * * *
<b>4819.50.40</b>	Other. * * *

There is no dispute that the item is classified under heading 4819, HTSUS. The issue is the proper classification at the 8-digit subheading level. As a result, GRI 6 applies. GRI 6 states:

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

The EN's for heading 48.19 provide the following EN concerning the boxes, cartons, and bags of the heading: "This group covers containers of various kinds and sizes generally used for the packing, transport, storage or sale of merchandise, whether or not also having a decorative value." (See the *Harmonized Commodity Description and Coding System*, Vol. 2, p.685–86.)

In your reconsideration request, you assert that the gift bag does not meet the definition of a "box" put forth by *Webster's Third New International Dictionary*, which you state defines a box as a rigid, typically rectangular receptacle with a lid or cover in which something non-liquid is kept for storage or shipping. Relying upon that definition, you assert that because the gift bag does not possess a lid or cover and has handles, it should not be classified as a folding box under subheading 4819.20, HTSUS.

We agree that the instant gift bag is not an item contemplated by subheading 4819.20.00, HTSUS, but for different reasons. The reliance upon the definition put forth by *Webster's Third New International Dictionary* is unnecessary. EN 48.19 specifically defines *folding* cartons and boxes, in relevant part, as "containers assembled or intended to be assembled by means of glue, staples, etc., on one side only, the construction of the container itself providing the means of forming the other sides, although, where appropriate, additional means of fastening, such as adhesive tape or staples may be used to secure the bottom or lid." There is no indication in the language of heading 4819, HTSUS, nor in EN 48.19, that a box classifiable under subheading 4819.20.00, HTSUS, must contain a lid and cannot possess die-cut handles. See HQ 557462, dated September 13, 1994 (CBP classified an open-ended, laminated gift box and a laminated, foldable pyramid box with a cord handle, under subheading 4819.20.00, HTSUS); NY F82117, dated January 18, 2000 (individually packaged folding cartons of non-corrugated paperboard that, when assembled, possessed tapered closures at the top and protruding handles, classified in subheading 4819.20.00, HTSUS). Further, and most importantly, the characteristic of the gift bag that provides its shape and form is the paper bag, and no assembly is needed in order to form the paper bag.

Subheading 4819.40.00 covers other sacks and bags, including cones. The terms "sacks" and "bags" are not defined in the tariff. If a tariff term is not defined in either the HTSUS or its legislative history, then "the term's correct meaning is its common meaning." *Mita Copystar America v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod America Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult "dictionaries, scientific authorities, and other reliable information sources" and "lexicographic and other materials." *C.J. Tower & Sons v. United States*, 69 C.C.P.A. 128, 673 F.2d 1268, 1271 (1982); *Simod* at 1576. For instance, a "bag" is defined by the *Oxford English Dictionary* as "A receptacle made of some flexible material closed in on all sides except at the top (where also it generally can be closed); a pouch, a small sack." <http://www.oed.com> (last visited June 25, 2015); see also [www.merriamwebster.com/dictionary/bag](http://www.merriamwebster.com/dictionary/bag) (last visited June 26, 2015) ("a container made of thin material (such as

paper, plastic, or cloth) that opens at the top and is used for holding or carrying things”). The gift bag at issue is a flexible paper container used for packing purposes by consumers who purchase them at retail to package and carry gifts. As such, it squarely meets the definition of a “bag” classified in subheading 4819.40.00, HTSUS.

Subheading 4819.50, HTSUS, covers other packing containers, including record sleeves. Examples of such items are provided within the text of subheadings 4819.50.20, 4819.50.30 and 4819.50.40, HTSUS, to wit: sanitary food and beverage containers, record sleeves, fiber drums, cans, tubes and similar containers, and rigid boxes and cartons. The subject gift bag is clearly not one of those types of merchandise and subheading 4819.50, HTSUS, is not the proper classification for the gift bag.

You have also asked whether this product is subject to antidumping duties or countervailing duties (AD/CVD). Written decisions regarding the scope of AD/CVD orders are issued by the Enforcement and Compliance unit in the International Trade Administration, Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection. You can contact them at <http://www.trade.gov/ia/> (click on “Contact Us”). For your information, you can view a list of current AD/CVD cases at the United States International Trade Commission website at <http://www.usitc.gov> (click on “Antidumping and countervailing duty investigations”), and you can search AD/CVD deposit and liquidation messages using the AD/CVD Search tool at <http://www.cbp.gov> (click on “Import” and “AD/CVD”).

### **HOLDING:**

By application of GRI 1 (and GRI 6), the gift bag is classified under subheading 4819.40.00, HTSUS, which provides for “Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like: Other sacks and bags, including cones.” The column one general rate of duty is “Free.”

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

### **EFFECT ON OTHER RULINGS:**

New York Ruling Letter N050455, dated February 3, 2009, is hereby RE-VOKED.

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

*Sincerely,*

ALLYSON MATTANAH

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



## GENERAL NOTICE

### 19 CFR PART 177

#### MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF PRINTED CIRCUIT BOARD SWITCH ASSEMBLIES

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

**ACTION:** Notice of modification of one ruling letter and revocation of treatment relating to the tariff classification of printed circuit board switch assemblies.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning tariff classification of printed circuit board switch assemblies under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 18, on May 4, 2016. One comment supporting the proposed modification was received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 17, 2016.

**FOR FURTHER INFORMATION CONTACT:** Dwayne Rawlings, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0092.

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are

**“informed compliance”** and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 50, No. 18, on May 4, 2016, proposing to modify one ruling letter pertaining to the tariff classification of printed circuit board switch assemblies. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N202228, dated February 17, 2012, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In NY N202228, CBP classified printed circuit board switch assemblies identified as Part Number 02–08903/20565 and Part Number 02–08903/20567 in heading 8536, HTSUS, specifically in subheading 8536.50.9031, HTSUSA (Annotated), which provides for “Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits ... for a voltage not exceeding

1,000 V: Other switches: Other: Other: Push-button: Rated at not over 5 A: Momentary contact.” CBP has reviewed NY N202228 and has determined the ruling letter to be in error. It is now CBP’s position that the printed circuit board switch assemblies are properly classified, by operation of GRI 1, in heading 8537, HTSUS, specifically in subheading 8537,10.90, HTSUS, which provides for “Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517: For a voltage not exceeding 1,000 V: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N202228 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H250002, which is attached to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 15, 2016

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H250002

June 15, 2016

CLA-2 OT:RR:CTF:TCM H250002 DSR

CATEGORY: Classification

TARIFF NO.: 8537.10.90

MS. PAULA M. CONNELLY  
 LAW OFFICES OF PAULA M. CONNELLY  
 12 ALFRED STREET, SUITE 300  
 WOBURN, MA 01801

RE: Modification of NY N202228; tariff classification of printed circuit board switch assemblies from Canada

DEAR MS. CONNELLY:

This is in reference to New York Ruling Letter (NY) N202228 issued to you on February 17, 2012, regarding the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of three printed circuit board assemblies (“PCBAS”) identified as Part Numbers 02–080902/20565, 02–08903/20567 and 02092402/20943. The ruling classified Part Numbers 02–080902/20565 and 0208903/20567 under subheading 8536.50.9031, HTSUSA (Annotated), which provides for “Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V:...: Other switches: Other: Other: Push-button: Rated at not over 5 A: Momentary contact.” Part Number 02–092402/20943 was classified under subheading 8537.10.9070, HTSUSA, which provides for “Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of 8535 or 8536, for electrical control or the distribution of electricity, ...: For a voltage not exceeding 1,000 V: Other: Other: Other.”

We have reviewed the tariff classifications of Part Number 02–080902/20565 and Part Number 02–08903/20567 and have determined that the cited ruling is in error with regard to those parts. Therefore, NY N202228 is modified for the reasons set forth in this ruling.

**FACTS:**

In NY N202228, the items under consideration were three printed circuit board assemblies (PCBAs) identified as Part Numbers 02–080902/20565, 02–08903/20567 and 02–092402/20943. A sample of each item was included with your ruling request. The three PCBAs consist of a printed circuit board measuring approximately 3 inches in length by ½ inch in width mounted onto a plastic base forming a connector housing. The three PCBAs function as analog selection devices for various electric control modules in a motor vehicle. Part Number 02–080902/20565 contains one momentary contact push-button micro switch, resistors, light emitting diode (LED) indicator lights and a six-prong rectangular connector. Part Number 02–08903/20567 contains two momentary contact push-button micro switches, resistors, LED indicator lights and a six-prong rectangular connector. Part Number 02–092402/20943 contains three momentary contact push-button micro switches, resistors, LED indicator lights and an eight-prong rectangular connector.

**ISSUE:**

Whether Part Number 02–080902/20565 and Part Number 02–080903/20567 are classified under heading 8536, HTS, which provides for “Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V ... ;” or under heading 8537, HTS, which covers “Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8537, for electric control or the distribution of electricity...”

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI’s). 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 based on GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI’s 2 through 6 may then be applied in order.

In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs are not dispositive or legally binding and, as a rule, cannot limit or restrict the scope of the legal texts to which they correspond. Instead, the ENs provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89 80, 54 Fed. Reg. 35127 (August 23, 1989). The HTSUS provisions under consideration are as follows:

- 8536** Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes), for a voltage not exceeding 1,000 V; connectors for optical fibers, optical fiber bundles or cables  
\* \* \*
- 8537** Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517  
\* \* \*

In HQ 966607 (June 2, 2004), CBP examined the relationship between headings 8536 and 8537, HTSUS, and stated:

. . . heading 8537, HTSUS, reads, in pertinent part, ‘[b]oards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of Heading 8535 or 8536, for electric control or the distribution of electricity ...’ It is Customs (sic) position that a plain reading of this text would indicate that multiples of one type of apparatus are covered by this heading. The wording of the heading itself does not specifically refer to two or more ‘types’ of apparatus of Heading 8536, only two or more apparatus of Heading 8536. We see no reason to read additional words into heading 8537 which will narrow the scope of the heading.

Both articles in question consist of a printed circuit board mounted onto a plastic base forming connector housing. Part Number 02–080902/20565 contains one momentary contact push-button micro-switch, resistors, LEDs indicator lights and a six-prong connector. Part Number 02–080903/20567 contains two momentary contact push-button micro-switches, resistors, LED indicator lights and a six-prong rectangular connector. The articles clearly meet the terms of heading 8537, HTSUS, in that they consist of multiples of apparatus named in heading 8536 (one switch and one connector, and two switches and a connector, respectively), mounted on a base.

We note that in NY N202228, we relied upon language contained in EN 85.37<sup>1</sup> that explained that “simple” switch assemblies (*i.e.*, those consisting of two switches and a connector), are excluded from heading 8537, HTS. We erroneously viewed that exclusion in a way that conflicts with the plain text of heading 8537. When the cited language is properly read in concert with the text of heading 8537, HTS, it is clear that the phrase “simple switch assemblies” refers to two individual switches simply connected together to form a single unit with a double switch, and does not contemplate articles that contain multiples of articles classified in heading 8536 and that are mounted onto boards, panels or other bases. The comment received in response to this notice agrees that the subject printed circuit board switch assemblies are properly classified in subheading 8537.10.90, HTSUS.

Therefore, we conclude that NY N202228 misinterpreted the scope of heading 8537, HTSUS, by misinterpreting the meaning of the phrase “simple switch assembly” provided for in EN 85.37. Part Number 02–080902/20565 and Part Number 02080903/20567 considered in that ruling are therefore properly classified in heading 8537, HTS.

#### **HOLDING:**

By application of GRI 1, Part Number 02–080902/20565 and Part Number 02080903/20567 are classified in heading 8537, HTS. Specifically, they are classified under subheading 8537.10.90, HTSUS, which provides for “Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517: For a voltage not exceeding 1,000 V: Other.” The column one, general rate of duty is 2.7% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at [www.usitc.gov/tata/hts](http://www.usitc.gov/tata/hts).

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<sup>1</sup> EN 85.37 states that heading 8537, HTS, excludes “[s]imple switch assemblies, such as those consisting of two switches and a connector (heading 85.35 or 85.36).”

**EFFECT ON OTHER RULINGS:**

NY N202228, dated February 17, 2012, is hereby modified.

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

*Sincerely,*

ALLYSON MATTANAH

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Record of Vessel Foreign Repair or Equipment Purchase**

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

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

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Record of Vessel Foreign Repair or Equipment Purchase (CBP Form 226). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

**DATES:** Written comments should be received on or before October 3, 2016 to be assured of consideration.

**ADDRESSES:** All submissions received must include the OMB Control Number 1651-0027 in the subject box, the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: [CBP\\_PRA@CBP.DHS.GOV](mailto:CBP_PRA@CBP.DHS.GOV), email should include OMB Control number in Subject.

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

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, or via telephone (202) 325-0123. Please note contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs please contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP Web site at <https://www.cbp.gov/>. For additional help: <https://help.cbp.gov/app/home/search/1>.

**SUPPLEMENTARY INFORMATION:**

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

**Title:** Record of Vessel Foreign Repair or Equipment Purchase.

**OMB Number:** 1651-0027.

**Form Number:** CBP Form 226.

**Abstract:** 19 U.S.C. 1466(a) provides for a 50 percent *ad valorem* duty assessed on a vessel master or owner for any repairs, purchases, or expenses incurred in a foreign country by a commercial vessel registered in the United States. CBP Form 226, Record of Vessel Foreign Repair or Equipment Purchase, is used by the master or owner of a vessel to declare and file entry on equipment, repairs, parts, or materials purchased for the vessel in a foreign country. This information enables CBP to assess duties on these foreign repairs, parts, or materials. CBP Form 226 is provided for by 19 CFR 4.7 and 4.14 and is



accessible at: <https://www.cbp.gov/document/forms/form-226-record-vessel-foreign-repair-or-equipment-purchase>.

**Current Actions:** This submission is being made to extend the expiration date with no change to the burden hours or to the information collected on Form 226.

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 100.

**Estimated Number of Responses per Respondent:** 11.

**Estimated Number of Total Annual Responses:** 1,100.

**Estimated Time per Response:** 2 hours.

**Estimated Total Annual Burden Hours:** 2,200.

Dated: August 1, 2016.

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

[Published in the Federal Register, August 4, 2016 (81 FR 51459)]

