

U.S. Customs and Border Protection



PROPOSED REVOCATION OF THREE RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF INFLATABLE AQUATIC ARTICLES FOR PHYSICAL RECREATION

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

ACTION: Notice of proposed revocation of three ruling letters and revocation of treatment relating to the tariff classification of inflatable aquatic articles for physical recreation.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke three ruling letters concerning tariff classification of inflatable aquatic articles for physical recreation 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 23, 2016.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke three ruling letters pertaining to the tariff classification of inflatable aquatic articles for physical recreation. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) K88277, dated August 17, 2004 (Attachment A), NY F84500, dated March 29, 2000, and NY N019683, dated November 26, 2007 (Attachment C), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the three identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY K88277 and NY F84500, CBP classified inflatable aquatic articles for physical recreation in heading 3926, HTSUS, specifically in subheading 3926.90.75, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Pneumatic mattresses and other inflatable articles, not elsewhere specified or included.” In NY N019683, CBP classified inflatable aquatic articles for physical recreation in heading 9506, HTSUS, specifically in subheading 9506.29.00, HTSUS, which provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof: Other.” CBP has reviewed NY K88277, NY F84500, and NY N019683 and has determined the ruling letters to be in error. It is now CBP’s position that inflatable aquatic articles for physical recreation are properly classified, by operation of GRIs 1 and 6, in heading 9506, HTSUS, specifically in subheading 9506.99.60, HTSUS, which provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY K88277, NY F84500, and NY N019683 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H225359, set forth as Attachment D to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 2, 2016

JACINTO JUAREZ
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY K88277

August 17, 2004

CLA-2-39:RR:NC:SP:221 K88277

CATEGORY: Classification

TARIFF NO.: 3926.90.7500

MR. KEVIN ANDERSON
WHAM-O INC.
5903 CHRISTIE AVENUE
EMERYVILLE, CA 94608

RE: The tariff classification of the Sea Doo Splash Island and the Sea Doo Paradise Peak from China.

DEAR MR. ANDERSON:

In your letter dated July 22, 2004, you requested a tariff classification ruling.

Photographs and descriptive literature were provided with your letter. The Sea Doo Splash Island (Item #62071-0101) and the Sea Doo Paradise Peak (Item #62098-0101) are plastic inflatable floats meant for use in calm open water. Splash Island resembles an inflatable trampoline. A small inflatable extension identified as an easy access platform provides access for the jumper as well as a seating area for a second person. Peak Island resembles an inflatable sliding pond. There are recesses on one side so that a person can climb to the top and then slide down the other side. The float portion underneath the sliding pond provides a shaded resting area that is large enough for several people. There is an easy access inflatable platform extension on the climbing part of the float, and an additional floating platform next to the resting area. Both the Sea Doo Splash Island and the Sea Doo Paradise Peak incorporate anchor bags and anchor ropes.

You suggest classification in subheading 9506.29.0040, Harmonized Tariff Schedule of the United States (HTS), which provides for other water sport equipment. However, this subheading is intended to cover such water sport articles as water skis, surf boards and body boards, sailboards, swim masks and flippers, underwater breathing tubes, swim training devices, and various other water sport equipment. The subject inflatable floats are not used in the performance or achievement of such similar sport/athletic water activities as are the aforementioned class of goods. Consequently, the merchandise is not classifiable in heading 9506, HTS. Note New York ruling letter F84500 dated March 29, 2000.

The applicable subheading for the Sea Doo Splash Island and the Sea Doo Paradise Peak will be 3926.90.7500, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of plastics...pneumatic mattresses and other inflatable articles, not elsewhere specified or included. The rate of duty will be 4.2 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 Joan Mazzola at 646-733-3023

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

NY F84500

March 29, 2000

CLA-2-95:RR:NC:2:224 F84500

CATEGORY: Classification

TARIFF NO.: 3926.90.7500

DEBRAH STARK
BLAIKLOCK (USA) INC.
2412 10TH AVENUE
PORT HURON MI 48060

RE: The tariff classification of certain aquatic recreational products from Canada.

DEAR MS. STARK:

In your letter dated March 6, 2000, you requested a tariff classification ruling on behalf of Active Recreational Sales, North York, ON.

One item, described as the H2O Mountain, is an inflatable object made of 1000 denier PVC designed to float on water. The H2O Mountain has climbing handles randomly placed on three sides presenting variable degrees of climbing difficulty in a recreational activity similar to a climbing wall. The fourth side acts as a slide into the water. The H2O Mountain comes in eight, 14 and 20-foot sizes.

A second item, the H2O Trampoline, is an inflatable water trampoline. The article comes in 10, 15 and 20-foot sizes and is made of 30 ounce, 1000 denier PVC around a multi-section steel framework.

The H2O Totter consists of an inflatable teeter totter-like device made of 1000 denier, 30 ounce PVC. Two to six people can climb on opposite ends of the totter device and rock back and forth, trying to avoid falling into the water.

The applicable subheading for these recreational water inflatables will be 3926.90.7500, Harmonized Tariff Schedule of the United States (HTSUS), the provision for pneumatic mattresses and other inflatable articles, not elsewhere specified or included. The general rate of duty will be 4.2 percent ad valorem.

Heading 9506, HTSUS, provides for, among other things, articles and equipment for gymnastics, athletics and other sports or outdoor games. The Explanatory Notes, the official interpretation of the HTSUS at the international level, state at EN 95.06 (B) that heading 9506 covers requisites for other sports and outdoor games, e.g....

(2) Water-skis, surf-boards, sailboards and other water-sport equipment, such as diving stages (platforms), chutes, divers' flippers and respiratory masks of a kind used without oxygen or compressed air bottles, and simple underwater breathing tubes (generally known as "snorkels") for swimmers or divers.

Although the Explanatory Notes contain a long list of articles that are classifiable in heading 9506, the inflatables subject of your inquiry are not specifically included, nor are they similar to the listed articles. The H2O Mountain, the H2O Trampoline and the H2O Totter are not requisite pieces of sports equipment within the scope of heading 9506. Specifically, they do not qualify for inclusion within the scope of the suggested subheading as other water-sport equipment. The suggested subheading, 9506.29.00, HTSUS, is

intended to cover such water sport articles as water skis, surf boards, swim masks and flippers, breathing tubes and swim training devices. The subject inflatable articles are not used in the performance or achievement of such or similar athletic water activities or as water sport training devices. Consequently, the submitted merchandise is not classifiable in heading 9506 of the HTSUS.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Tom McKenna (212) 637-7011.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

N019683

November 26, 2007

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

CATEGORY: Classification

TARIFF NO.: 9506.29.0080

MS. KAREN QUINTANA
NEW WAVE LOGISTICS DBA
NYK LOGISTICS
2417 E. CARSON STREET, SUITE 200
LONG BEACH, CA 90810

RE: The tariff classification of a Water Bouncer from China

DEAR MS. QUINTANA:

In your letter dated November 13, 2007, you requested a tariff classification ruling.

You are requesting the tariff classification on a product that is identified as a Water Bouncer; there is no designated item number for the inflatable tube. The Water Bouncer is constructed of 30 Gauge PVC and includes a ladder, a storage bag, and a pump. The platform across the top of the tube enables either children or adults to bounce on the platform before jumping into the water. The Water Bouncer which is 10 feet in diameter may be towed by a boat for use in deep water.

The applicable subheading for the Water Bouncer will be 9506.29.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for articles and equipment for general physical exercise, gymnastics, athletics, other sports...or outdoor games...parts and accessories thereof: water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof: other...other. The rate of duty will be free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Wayne Kessler at 646-733-3025.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT D]

HQ H225359
CLA-2 OT:RR:CTF:TCM H225359 EMS
CATEGORY: Classification
TARIFF NO.: 9506.99.6080

MR. KEVIN ANDERSON
WHAM-O INC.
5903 CHRISTIE AVENUE
EMERYVILLE, CA 94608

Re: Revocation of NY K88277, NY N019683, and NY F84500; Classification of Inflatable Aquatic Articles for Physical Recreation

DEAR MR. ANDERSON:

This is in reference to New York Ruling Letter (NY) K88277, dated August 17, 2004, issued to you concerning the tariff classification of two Sea Doo brand products, Splash Island and Paradise Peak, under the Harmonized Tariff Schedule of the United States (HTSUS). Both are plastic inflatable floats meant for use in calm open water. U.S. Customs and Border Protection (CBP) classified them under heading 3926, HTSUS, as other articles of plastics. We have reviewed NY K88277 and find it to be in error.

Upon reconsideration, we have determined that the appropriate classification for inflatable aquatic articles for physical recreation, like the ones in NY K88277, is under heading 9506, HTSUS, and, more specifically, subheading 9506.99, HTSUS, as other sports or outdoor games. Accordingly, we propose revocation of NY K88277 as well as two other rulings on similar inflatable aquatic articles. In NY F84500, dated March 29, 2000, CBP erred when classifying H2O Mountain, H2O Trampoline, and H2O Totter under heading 3926, HTSUS. In NY N019683, dated November 26, 2007, CBP properly classified a water bouncer under heading 9506, HTSUS, but erred when classifying it under subheading 9506.91, HTSUS, as articles for general physical exercise, gymnastics or athletics. The appropriate classification for the products described in NY F84500 and NY N019683 is the same as what we have determined for NY K88277, *i.e.*, under heading 9506, HTSUS, and, more specifically, subheading 9506.99, HTSUS, as other sports and outdoor games.

FACTS:

The subject merchandise at issue in NY K88277 consists of two Sea Doo brand products, Splash Island and the Paradise Peak, which are plastic inflatable floats meant to facilitate physical recreation in calm open water. Splash Island resembles a trampoline, and includes a small inflatable extension identified as an easy access platform provides access for the jumper as well as a seating area for a second person. Paradise Peak resembles a sliding pond. There are recesses (molded steps) on one side so that a person can climb to the top and then slide down the other side. The float portion underneath the sliding pond provides a shaded resting area that is large enough for several people. There is an easy access inflatable platform extension on the climbing part of the float, and an additional floating platform next to the resting area. Both Splash Island and Paradise Peak incorporate anchor bags and anchor ropes.

In addition to the original descriptive information set forth in NY K88277, we have reviewed representative product specific literature that is available on the Internet.¹ Splash Island has a 125" diameter (with a 72" diameter for the nylon jump area). It is constructed of 30 gauge PVC and has the following features (in addition to what was described in NY K88277): four soft vinyl handles, four swimmer ropes, and a wrap-around swimmer rope. The total weight limit for Splash Island is 1000 pounds and the jump surface weight limit is 235 pounds. Paradise Peak has the following dimensions: 10.5' x 7' x 7.5' and a 8' x 4' sliding surface. There are soft vinyl handles attached at various points on the molded steps as well as on the access platforms. The total weight limit for Paradise Peak is 600 pounds and the access platform and sliding surface are limited to 200 pounds.

ISSUES:

- (1) Whether the Splash Island and Paradise Peak Sea Doo brand products are classified under heading 3926, HTSUS, as other articles of plastics, or heading 9506, HTSUS, as other sports or outdoor games.
- (2) If these articles are classified under heading 9506, HTSUS, what is the correct subheading?

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. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. The HTSUS provisions under consideration are the following:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914: * * *
3926.90	Other: * * *
3926.90.7500	Pneumatic mattresses and other inflatable articles, not elsewhere specified or included

¹ Quality Adventure LLC's website, QualityInflatables.com, provides information on Splash Island and Peak Island. While both models are no longer in stock, the product information is considered representative for both products given that it is consistent with the other descriptive information previously provided in NY K88277. See "Sea-Doo Inflatable 125" Splash Island" at <http://qualityinflatables.com/seadooisland20031.html> (last visited December 29, 2015) and "Sea-Doo Inflatable Paradise Peak Island" at <http://www.qualityinflatables.com/62098.html> (last visited December 29, 2015). The Splash Island model depicted on the website does not appear to include a seating area, which is mentioned in the product description in NY K88277, but appears to be otherwise the same in terms of its design features.

*	*	*	
9506			Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:
	*	*	*
			Water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof
	*	*	*
9506.29.00			Other:
	*	*	*
9506.29.0080			Other
	*	*	*
9506.91.00			Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof
	*	*	*
9506.91.0030			Other
9506.99			Other:
9506.99.60			Other
	*	*	*
9506.99.6080			Other

The only applicable note is Legal Note 2(y) to Chapter 39, which provides as follows: "This chapter does not cover: ... [articles of chapter 95 (for example, toys, games and sports equipment)]."

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System (HS) 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. See T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989). The relevant ENs, which are for heading 9506, are the following:

(A) Articles and equipment for general physical exercise, gymnastics or athletics, e.g.,:

Trapeze bars and rings; horizontal and parallel bars; balance beams, vaulting horses; pommel horses; spring boards; climbing ropes and ladders; wall bars; Indian clubs; dumb bells and bar bells; medicine balls; rowing, cycling and other exercising apparatus; chest expanders; hand grips; starting blocks; hurdles; jumping stands and standards; vaulting poles; landing pit pads; javelins, discuses, throwing hammers and putting shots; punch balls (speed bags) and punch bags (punching bags); boxing or wrestling rings; assault course climbing walls.

(B) Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03), e.g.:

* * *

(2) Water-skis, surf-boards, sailboards and other water-sport equipment, such as diving stages (platforms), chutes, divers' flippers and respiratory masks of a kinds used without oxygen or compressed air in bottles, and simple underwater breathing tubes (generally known as "snorkels") for swimmers or divers.

* * *

(12) Equipment of a kind used in children's playgrounds (e.g., swings, slides, *see* saws and giant strides).

* * *

Issue 1: Classification at the Heading Level

By application of GRI 1 and Legal Note 2(y) to Chapter 39, the threshold inquiry is whether the inflatable aquatic articles for physical recreation are classifiable under heading 9506, HTSUS. If so, then classification under heading 3926 is precluded. We have determined that Splash Island and Paradise Peak are intended to facilitate physical recreation in the form of sports or outdoor games, as described in EN (B)(2) to heading 9506. Splash Island, which has a jump surface weight limit, is intended for bouncing and serving as a platform to bounce and jump into water. Paradise Peak is intended for climbing and sliding into water. While it may be possible to lounge upon these articles, that is not their primary function nor would a consumer buy such articles principally for this purpose. *Cf.* HQ 966929, dated March 23, 2004 (determining that the subject floating pool lounge was "not intended for use in connection with any sporting or athletic activity as are the items set forth in EN 95.06" and its "purpose is as a lounging device for relaxing in the water and not for any type of physical activity"). In short, Splash Island and Paradise Peak are akin to outdoor play equipment (albeit for use in calm open water) and are thus classifiable under heading 9506, HTSUS.

It is noteworthy that the substantial construction of Splash Island and Paradise Peak means that they are distinguishable from toys of heading 9503, HTSUS. Splash Island and Paradise Peak lack the "manipulative play value or frivolous amusement characteristic of a toy," which is a defining characteristic of articles of heading 9506 cited in NY N122501, dated October 6, 2010 (holding that a modular slide kit is not a toy of heading 9503). This is a critical distinction from the land-based inflatable play structures that CBP has classified as toy sports equipment of heading 9503. *See, e.g.*, HQ H097740, dated March 29, 2011 (classifying an inflatable land-based play structure, identified as the "Mega Bounce Trampoline," under heading 9503). While they are intended for bouncing/jumping and climbing/sliding, Splash Island and Paradise Peak are constructed of 30 gauge PVC, with anchoring systems, and they are designed to remain outdoors for extended periods of time. *Cf.* HQ 963284, dated June 12, 2001 (citing HQ 950758, dated January 3, 1992, wherein CBP found that a "Mini-Court" miniature basketball game was classified under subheading 9506.99 because "[i]t was not so flimsily constructed as to be an article for amusement, eligible for classification as a toy.")

Our determination to classify Splash Island and Paradise Peak under heading 9506, HTSUS, per the analysis above, does not rely on NY F84500, which was cited in NY K88277. Upon reconsideration, NY F84500 also appears to be in error. CBP incorrectly classified other inflatable aquatic articles for physical recreation, specifically H2O Mountain, H2O Trampoline, and H2O Totter, under heading 3926, HTSUS. In NY F84500, the products are described as follows:

One item, described as the H2O Mountain, is an inflatable object made of 1000 denier PVC designed to float on water. The H2O Mountain has climbing handles randomly placed on three sides presenting variable degrees of climbing difficulty in a recreational activity similar to a climbing wall. The fourth side acts as a slide into the water. The H2O Mountain comes in eight, 14 and 20-foot sizes.

A second item, the H2O Trampoline, is an inflatable water trampoline. The article comes in 10, 15 and 20-foot sizes and is made of 30 ounce, 1000 denier PVC around a multi-section steel framework.

The H2O Totter consists of an inflatable teeter totter-like device made of 1000 denier, 30 ounce PVC. Two to six people can climb on opposite ends of the totter device and rock back and forth, trying to avoid falling into the water.

In NY F84500, CBP rejected classification of these three products under heading 9506, HTSUS, because they did not satisfy the terms of subheading 9506.29, HTSUS. While it is true that subheading 9506.29, HTSUS, did not apply to the those three products (see analysis below), CBP did not consider the general applicability of heading 9506, HTSUS, and analyze its other subheadings, as appropriate. We have determined that H2O Mountain is similar to Paradise Peak, H2O Trampoline is similar to Splash Island, and H2O Totter is also used for comparable physical recreation on calm open water. Accordingly, these products are also classifiable under heading 9506, HTSUS, for the reasons set forth above.

Issue 2: Classification at the Subheading Level

Classification of Splash Island and Paradise Peak under heading 9506, HTSUS, is appropriate in light of the above, and so the next step in the classification analysis is to determine the proper subheading under the HTSUS. GRI 6 states that the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. The subheadings under consideration are as follows: 9506.29, HTSUS, which provides for other watersport equipment; 9506.91, HTSUS, which provides for other articles and equipment for general physical exercise, gymnastics or athletics; and 9506.99, which provides for articles and equipment for other sports or outdoor games.

Subheading 9506.29, HTSUS, is inapplicable because Splash Island and Paradise Peak are not water-sport equipment. As noted in NY K88277, and consistent with EN (B)(2) to heading 9506, “this subheading [9506.29] is intended to cover such water sport articles as water skis, surf boards and body boards, sailboards, swim masks and flippers, underwater breathing

tubes, swim training devices, and various other water sport equipment” and “[t]he subject inflatable floats are not used in the performance or achievement of such similar sport/athletic water activities as are the aforementioned class of goods.” While being towed by boats in order to perform will qualify an aquatic inflatable article for classification under subheading 9506.29, HTSUS, physical recreation in the form of jumping/bouncing and climbing/sliding in calm waters is not within its scope. *See* NY C88968, dated June 25, 1998 (classifying the following inflatable aquatic articles that are towable under subheading 9506.29: ski tubes, with two air chambers, and two large grab handles; Ski Rocket and Jet Towable, both having grab handles and separate harness systems for towing).

Subheading 9506.91, HTSUS, is inapplicable because Splash Island and Paradise Peak are not “[a]rticles and equipment for general physical exercise, gymnastics or athletics.” Neither the legal notes nor the ENs provide a definition of what is meant by this phrase, but EN (A) to heading 9506 provides some exemplars. None of those exemplars is comparable to jumping/bouncing and climbing/sliding for physical recreation on calm open water. With respect to Splash Island, we note that while land-based trampolines used for exercise and/or gymnastics are not specifically listed in EN (A), CBP has classified them under subheading 9506.91, HTSUS (*see, e.g.*, NY N144678, dated February 14, 2011). However, a trampoline-type device that is principally used for bouncing and jumping into water is distinguishable because it is not for general physical exercise, gymnastics or athletics; but, rather, it is an article for physical recreation. In this regard, Splash Island lacks the essential character of a traditional land-based trampoline and would not be classified under subheading 9506.91, HTSUS. The same is true for Paradise Peak, as climbing and sliding on calm open water are recreational in nature, as opposed to being for general physical exercise, gymnastics or athletics.

Because subheadings 9506.29 and 9506.91, HTSUS, are inapplicable, the classification of Splash Island and Paradise Peak falls under the residual “other” provision in subheading 9506.99, HTSUS. This determination is consistent with EN (B)(12) to heading 9506, HTSUS, which specifies that the heading covers “[e]quipment of a kind used in children’s playgrounds” and identifies the following as examples thereof: “swings, slides, *see* saws and giant strides.” Such equipment is for use in physical recreation that involves sports or outdoor games of heading 9506, HTSUS, other than those specifically covered by subheadings 9506.29 and 9506.91, HTSUS. The Court of International Trade has also previously determined that an article that is not classifiable in the other six-digit subheadings of heading 9506, HTSUS, but which “provide[s] users with meaningful exercise and a reasonable degree of physical activity” may be classified as other sport equipment under subheading 9506.99. *Streetsurfing LLC v. United States*, 11 F. Supp. 38 1287, 1302 - 04 (Ct. Int’l Trade 2014) (classifying waveboards under subheading 9506.99.60, HTSUS).

We note that classification of Splash Island and Paradise Peak under subheading 9506.99, HTSUS, is also consistent with other rulings on land-based playground equipment that facilitates physical recreation. *See, e.g.*, N260626, dated January 30, 2015 (classifying climbing structures under

subheading 9506.99, HTSUS); NY L86306, dated July 26, 2005 (classifying slides under subheading 9506.99, HTSUS); and N019537, dated November 26, 2007 (classifying a teeter totter under subheading 9506.99, HTSUS). Moreover, this rationale applies to the classification of H2O Mountain, H2O Trampoline, and H2O Totter, as described in NY F84500.

Our determination to classify Splash Island and Paradise Peak under subheading 9506.99, HTSUS, per the analysis above, does not rely on NY N019683. Upon reconsideration, NY N019683 appears to be in error. CBP incorrectly classified a water bouncer under subheading 9506.29, HTSUS, instead of subheading 9506.99, HTSUS. In NY N019683, the water bouncer was described as follows:

The Water Bouncer is [an inflatable tube] constructed of 30 Gauge PVC and includes a ladder, a storage bag, and a pump. The platform across the top of the tube enables either children or adults to bounce on the platform before jumping into the water. The Water Bouncer which is 10 feet in diameter may be towed by a boat for use in deep water.

We have determined that the water bouncer is similar to Splash Island and, thus, it is also classifiable under subheading 9506.99, HTSUS, for the reasons set forth above.

HOLDING:

By application of GRIs 1 and 6, the Splash Island and Paradise Peak Sea Doo brand products are classified under subheading 9506.99.6080, HTSUS, which provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: ... Other: ... Other: ... Other.” The 2016 column one, general rate of duty is 4 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY K88277, dated August 17, 2004, NY F84500, dated March 29, 2000, and NY N019683, dated November 26, 2007, are hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE**19 CFR PART 177****REVOCAION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF JEFFAMINE® D-2000**

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 JEFFAMINE® D-2000.

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 JEFFAMINE® D-2000 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. 24, on June 15, 2016. No comment were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 24, 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. 24, on June 15, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of JEFFAMINE® D-2000. As stated in the proposed notice, this action will cover New York Ruling Letter ("NY") N255361, dated August 13, 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 N255361, CBP classified JEFFAMINE® D-2000 in heading 3911, HTSUS, specifically in subheading 3911.90.90, HTSUS, which provides for "Petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones and other products specified in note 3 to this chapter, not elsewhere specified or included, in primary forms: Other: Other: Other." CBP has reviewed NY N255361 and has determined the ruling letter to be in error. It is now CBP's position that JEFFAMINE® D-2000 is properly classified, by operation of GRI

1, in heading 3907, HTSUS, specifically in subheading 3907.20.00, 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 polyethers.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N255361 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H262287, 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: July 27, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H262287

July 27, 2016

CLA-2 OT:RR:CTF:TCM H262287 NCD

CATEGORY: Classification

TARIFF NO.: 3907.20.0000

PATTI CORDO
DIRECTOR OF IMPORT
AMERICAN CARGO EXPRESS, INC.
2345 VAUXHALL RD.
UNION, NJ 07083

RE: Revocation of NY N255361; classification of JEFFAMINE® D-2000

DEAR MS. CORDO:

This is in reference to your letter of December 29, 2014, submitted on behalf of Huntsman Petrochemical LLC (“Huntsman”), requesting reconsideration of New York Ruling Letter (NY) N255361, dated August 13, 2014. NY N255361 was issued to Huntsman by U.S. Customs and Border Protection (CBP) in response to Huntsman’s July 17, 2014 request for a ruling as to the proper classification of the JEFFAMINE® D-2000 under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N255361, 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. 24, on June 15, 2016. No comments were received in response to the notice.

FACTS:

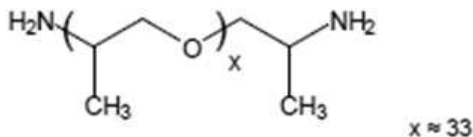
NY N255361 contains the following description of JEFFAMINE® D-2000 excerpted from a technical bulletin for the product:

JEFFAMINE D-2000 polyoxypropylenediamine (CAS-9046–10–0) is a member of a family of polyamines having repeat oxypropylene units in its backbone. It is a difunctional primary amine with an average molecular weight of approximately 2000. Its amine groups are located on secondary carbon atoms at the ends of an aliphatic polyether chain.

A more recent technical bulletin for JEFFAMINE® D-2000 states as follows:

JEFFAMINE D-2000 polyetheramine is characterized by repeating oxypropylene units in the backbone. As shown by the representative structure, JEFFAMINE D-2000 polyetheramine is a difunctional, primary amine with average molecular weight of about 2000. The primary amine groups are located on secondary carbon atoms at the end of the aliphatic polyether chains.

The “representative structure” referenced in this excerpt is depicted below:



In NY N255361, CBP classified JEFFAMINE® D-2000 in heading 3911, HTSUS, specifically in subheading 3911.90.90, HTSUS, which provides for “Petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones and other products specified in note 3 to this chapter, not elsewhere specified or included, in primary forms: Other: Other: Other.”

ISSUE:

Whether JEFFAMINE® D-2000 is properly classified in heading 3907, HTSUS, as an “other” polyether, or in heading 3911, HTSUS, as an “other” product specified in Note 3 to Chapter 39.

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

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

The HTSUS provisions under consideration are as follows:

3907 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

3911 Petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones and other products specified in note 3 to this chapter, not elsewhere specified or included, in primary forms:

3911.90 Other:

Other:

3911.90.90 Other

Heading 3907, HTSUS, provides, *inter alia*, for “other” polyethers. Note 3 to Chapter 39 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....

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.

Note 6 to Chapter 39 states as follows with respect to “primary forms”:

6. In headings 3901 to 3914, the expression “*primary forms*” applies only to the following forms:

- (a) Liquids and pastes, including dispersions (emulsions and suspensions) and solutions;
- (b) Blocks of irregular shape, lumps, powders (including molding powders), granules, flakes and similar bulk forms.

Pursuant to Note 3 to Chapter 39, heading 3907 applies to, among other products, synthetic polymers with an average of at least five monomer units. While a definition of “polymer” is absent from the HTSUS, the General EN to Chapter 39 describes “polymers” within the meaning of Note 3 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]¹.

With respect 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 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...

¹ 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).

Here, the technical bulletins pertaining to JEFFAMINE® D-2000 indicate that the product is in liquid form. It is consequently in a “primary form” pursuant to Note 6 to Chapter 39. Moreover, the technical bulletins and included representative structure indicate that JEFFAMINE® D-2000 contains, on average, thirty-three oxypropylene units as its repeating monomer units. Therefore, JEFFAMINE® D-2000 both meets the definition of a polymer and satisfies Note 3(c) to Chapter 39. Because its repeating units are oxypropylene monomers, it is, prior to any modification, a polyoxypropylene, which is specifically identified in EN 39.07 as an “other” polyether classifiable in heading 3907. While the original polyoxypropylene has in fact been modified to the effect that its appendages contain amine groups, Note 5 to Chapter 39 requires that JEFFAMINE® D-2000 be classified as if it were an unmodified polymer. As a chemically modified polyoxypropylene, JEFFAMINE® D-2000 is therefore classifiable as an “other” polyether in heading 3907, HTSUS. See NY N242035, dated June 14, 2013; NY N116392, dated August 5, 2010; and NY 804057, dated December 7, 1994 (all classifying polyoxypropylene derivatives in heading 3907, HTSUS).

We next consider whether JEFFAMINE® D-2000 is classifiable in heading 3911, HTSUS, which provides for “other products specified in note 3 to [Chapter 39], not elsewhere specified or included, in primary forms.” As discussed above, JEFFAMINE® D-2000 is in a primary form pursuant to Note 6 to Chapter 39, and can be described as “a polymer with an average of at least 5 monomer units” within the meaning of Note 3(c) to Chapter 39. It is therefore *prima facie* classifiable in heading 3911, HTSUS. However, because JEFFAMINE® D-2000 is more specifically described by heading 3907 as a particular type of polymer, i.e., a polyether, it is properly classified in heading 3907, HTSUS, rather than in heading 3911, HTSUS. See *R.T. Foods, Inc. v. United States*, 757 F.3d 1349, 1354 (Fed. Cir. 2014) (stating that a provision that contains the terms “not elsewhere specified or included” is a basket provision, in which classification of a given product “is only appropriate if there is no tariff category that covers the merchandise more specifically”).

HOLDING:

By application of GRI 1, JEFFAMINE® D-2000 is properly classified in heading 3907, HTSUS. It is specifically classified in subheading 3907.20.0000, HTSUSA (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 2016 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/.

EFFECT ON OTHER RULINGS:

New York Ruling Letter N255361, dated August 13, 2014, 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



GENERAL NOTICE

19 CFR PART 177

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF PLAY TABLES WITH DETACHABLE MOBILE SEATS

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

ACTION: Notice of modification of one ruling letter, and of revocation of treatment relating to the tariff classification of play tables with mobile seats.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning the tariff classification of a play tables with a mobile seat under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 43, on October 28, 2015. One untimely comment was received in support of that Notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 24, 2016.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 49, No. 43, on October 28, 2015, proposing to modify one ruling letter pertaining to the tariff classification of a play table with a detachable mobile seat. As stated in the Notice, this action will modify New York Ruling Letter (NY) N074173, dated September 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 modifying 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 N074173, CBP classified the “Around We Go! Activity Center” in heading 9401, HTSUS, specifically in subheading 9401.80.45, HTSUS, which provides for “Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Other seats: Of rubber or plastics: Other.” With respect to the “Around We Go! Activity Center”, CBP has reviewed NY N074173 and has determined the ruling letter to be in error. It is now CBP’s position that “Around We Go! Activity Center” is properly classified, by operation of GRIs 1 and 3(b), in heading 9503, HTSUS, specifically in subheading 9503.00.0071, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Labeled or determined by importer as intended for use by persons: Under 3 years of age.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N074173 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H166336, set forth as an attachment to this Notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is modifying 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: July 27, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H166336

July 27, 2016

CLA-2 OT:RR:CTF:TCM H166336 HvB/SKK

CATEGORY: Classification

TARIFF NO.: 9503.00.0071

DAMON V. PIKE
THE PIKE LAW FIRM, P.C.
246 SYCAMORE STREET
SUITE 215
DECATUR, GA 30030-3434

RE: Modification of NY N074173; tariff classification of play table with detachable mobile seat; toys.

DEAR MR. PIKE:

This is in response to your October 23, 2009 letter, on behalf of Kids II, Inc., requesting reconsideration of New York (NY) ruling letter N074173, dated March 25, 2009. At issue in that ruling was the classification of five styles of infant/toddler stationary entertainers, including one metal frame component part. In NY N074173, Customs and Border Protection (CBP) determined that the subject merchandise was classifiable as “seats (other than those of heading 9402) and parts thereof” under heading 9401, Harmonized Tariff Schedule of the United States (HTSUS).

In response to your request for reconsideration, we issued HQ H082619, dated July 31, 2013, which affirmed NY N074173, with respect to the classification of Items 1 through 4. In this letter, we address the classification of Item 5, described as the “Around We Go! Activity Station”, model numbers 6797 and 6938.

In your October 23, 2009 request, you assert that CBP’s classification of “Around We Go! Activity Station” in NY N074173 as “seats” in heading 9401, HTSUS, is erroneous as the stationary entertainer’s primary function is for entertainment and the merchandise is marketed as such. You suggest that the subject merchandise is properly classifiable under heading 9503, HTSUS, as “other toys; ... parts and accessories thereof.”

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the Customs Bulletin, Vol. 49, No. 43, on October 28, 2015. No comments were received in response to the notice. CBP received one untimely comment in support of this notice.

FACTS:

In NY N074173, the subject merchandise consisted of five styles of infant/toddler stationary entertainers. We classified and described Item 5 as follows:

Item 5: “Around We Go! Activity Station” - model numbers 6797 and 6938 are available under the Bright Starts line. The activity station has two primary components: (1) a plastic pedestal table that features over twenty toys; and (2) a plastic seat on two legs with wheels that is attached to the table. The mobile seat allows an infant to rotate 360 degrees around the table. The seat has a circular opening in the middle into which a cloth sling-type seat is inserted. As the child grows, the seat is easily removable but has no independent use of its own. Once the seat is outgrown, the play table remains as the sole useable component. Included with the item are electronic

elements that light up and project noises when the infant interacts with them. NY N074173 classified Item 5, if made of reinforced or laminated plastic, under subheading 9401.80.2010, HTSUS, which provides for “[S]eats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Other seats: Of rubber or plastic: Of reinforced or laminated plastics: Household.” If Item 5 is not made of reinforced or laminated plastics, the item was deemed classifiable under subheading 9401.80.4045, HTSUS, which provides for “[S]eats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Other seats: Of rubber or plastic: Other; Other.”

Below is a photo of the item:



ISSUE:

Whether the “Around We Go! Activity Station” is properly classifiable as a “Seat” in heading 9401, HTSUS, or as an “other toy” of heading 9503, 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.

The 2016 HTSUS provisions under consideration are the following:

- 9401** Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof
- 9503** Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

In understanding the language of 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).

EN 95.03 provides in relevant part:

(D) **Other toys.**

This group covers toys intended essentially for the amusement of persons (children or adults). However, toys which, on account of their design, shape or constituent material, are identifiable as intended exclusively for animals, e.g., pets, do not fall in this heading, but are classified in their own appropriate heading...

* * *

In your request for reconsideration of NY N074173, you argue that the subject merchandise is properly classifiable as "other toys" in heading 9503, HTSUS, because the principal use of the products is not its ability to restrain an infant, but instead to amuse the child. You argue that the articles at issue are may be distinguished from the stationary entertainer at issue in HQ 960859, dated June 5, 1998, in that the subject merchandise is developed, marketed and sold as toys, as opposed to "restraint articles".

CBP more recently addressed the issue of restraint versus amusement in classifying infant activity entertainers in HQ H082619, dated July 31, 2013, which concerned the classification of three plastic or metal infant jumpers and bouncers, that are also imported by the instant requestor, Kids' Inc. In HQ H082619, we ruled that the items primarily serve a utilitarian purpose of restraining a child and thus were classifiable in heading 9401, HTSUS, as "seats". However, the subject merchandise, Item 5 ("Around We Go! Activity Station") is distinguishable from HQ H082619, primarily because its physical characteristics are different.

Item 5 has two primary components: (1) a plastic pedestal table that features over 20 built-in toys; and (2) a detachable wheeled mobile plastic seat on two legs which affixes to the table and allows the child to rotate 360 degrees around the table in order to play with the various toys. The seat has a circular opening in the middle into which a cloth sling-type seat is inserted. As the infant becomes a toddler, the mobile seat is easily removable and the article becomes solely a play table. The stationary activity centers in HQ H082619 consisted of seats, and not did not feature tables. Thus, unlike the seats in in HQ H082619, the seat in the instant article is on wheels which allows the infant to move around the table.

Inasmuch as the instant "Around We Go! Activity Station" qualifies as a composite good with separable components, it must be classified accordingly. If imported alone, the seat would be classified in heading 9401, HTSUS,

which provides for “seats”. See HQ H082619, *supra*. The pedestal table features more than 20 interactive toys; these toys occupy the entire table. Thus, the table cannot be used as furniture and it does not provide any utilitarian value. See *Minnetonka Brands v. United States*, 24 C.I.T. 645 (Ct Int’l Trade 2000) in which the court held that an “object is only a toy if it is designed and used for amusement or play, rather than for practicality.”¹ See also HQ H253885, dated March 23, 2015, in which we held that “boo-boo” gel packs were not classified as toys. Therefore, if the pedestal table was imported separately, it would be classified in heading 9503, HTSUS, as “other toys” because it can only be used to entertain a child and it is inherently amusing, due to the variety of light-up and noise-producing interactive toys. The activity center is therefore *prima facie* classifiable in more than one heading. In such a situation, the GRIs direct us to apply GRI 3 to a “composite good.”

GRI 3 provides, in pertinent part, as follows:

When, by application of rule 2(b) [not applicable in this case] or any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description [...]
- (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.

...

The relevant ENs for GRI 3 provide:

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

...

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

¹ In several court cases that have defined the term “toy,” heading 9503, HTSUS, has been found to be a principal use provision. The CIT has provided factors which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. See *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), *cert. denied*, 429 U.S. 979 (hereinafter *Carborundum*).

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

In determining the essential character of the “Around We Go Activity Station,” CBP notes that the merchandise consists of a plastic chair that swivels around a pedestal table. When the child is restrained in the seat, she can “walk” 360 degrees around the toy table. The chair is detachable and may be removed once the child outgrows the manufacturer’s weight and height limits. Thus, the chair’s use is limited to the age and weight limits specified by the manufacturer (4 months and approximately 25 pounds). Unlike the chair, the table can be used alone, which is an attractive selling point to the ultimate purchaser, as parents get longer use out of the entertainer. Parents who reviewed the subject item on Walmart.com note this as a major selling point in their reviews of the item.² The table features electronic elements that light up and project noises when the infant interacts with them. The table also accounts for a majority of the items bulk and weight. We also note that the instant item retails at a slightly higher price than infant stationary entertainers that consist of merely a bouncer without a table, such as the stationary entertainers that we classified in HQ H082619. Consequently, CBP concludes that the pedestal toy table predominates the Activity Center by its role in relation to the use of the goods, as well as by bulk, weight, value, and visual appearance. Consequently, we conclude that the pedestal toy table imparts the “Around We Go! Activity Center” with its essential character, pursuant to GRI 3(b). Accordingly, Item 5 is classifiable as an “other toy” of heading 9503, HTSUS.

HOLDING:

By application of GRI 3(b), Item 5, the “Around We Go! Activity Station” is classifiable under subheading 9503.00.0071, HTSUSA, which provides for “[T]ricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof... Other: Labeled for use by persons under 3 years of age.” The rate of duty will be free.

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

² <http://www.walmart.com/ip/Bright-Starts-Zippity-Zoo-3-in-1-Around-We-Go/35846998>
(Last accessed July 14, 2015)

EFFECT ON OTHER RULINGS:

NY N074173, dated March 25, 2009, is hereby partially modified with respect to Item 5, identified as “Around We Go! Activity Station”.

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division


GENERAL NOTICE**19 CFR PART 177****REVOCAION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF HOSPITAL PATIENT TOPS
AND SHORTS**

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 hospital patient tops and shorts.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning the tariff classification of hospital patient tops and shorts under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 25, on June 22, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 24, 2016.

FOR FURTHER INFORMATION CONTACT: Tatiana Salnik Matherne, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International 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. 25, on June 22, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of hospital patient tops and shorts. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N257998, dated November 4, 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 N257998, CBP classified hospital patient tops in heading 6206, HTSUS, specifically in subheading 6206.40.30, HTSUS, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of man-made fibers: Other: Other," and the subject shorts in subheading 6204.63.35, HTSUS, which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other: Other: Other."

CBP has reviewed NY N257998 and has determined that ruling letter to be in error. It is now CBP's position that the subject hospital patient tops and shorts are properly classified, by operation of GRIs 1 and 6, in heading 6404, HTSUS. Specifically, the tops are classified in subheading 6204.23.0055, HTSUS, which provides for "Women's or girls' ... ensembles...: Ensembles: Of synthetic fibers: Other: Blouses and shirts: Other." The shorts are classified in subheading 6404.23.0045, HTSUS, which provides for "Women's or girls' ... ensembles...: Ensembles: Of synthetic fibers: Other: Shorts."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N257998 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H262283, 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: July 27, 2016

JACINTO JUAREZ
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

HQ H262283

July 27, 2016

CLA-2 OT:RR:CTF:TCM H262283 TSM

CATEGORY: Classification

TARIFF NO.: 6204.23.0045; 6204.23.0055.

MR. DOUG E STOKES
MEDICAL APPAREL LLC
22029 44TH P1 S
KENT, WA 98032

RE: Revocation of NY N257998; Classification of unisex hospital patient tops and shorts

DEAR MR. STOKES:

This letter is in response to your request for reconsideration of New York Ruling Letter (NY) N257998, issued to Medical Apparel LLC on November 4, 2014, concerning the tariff classification of unisex hospital patient tops and shorts. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the subject tops under subheading 6206.40.30, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Women’s or girls’ blouses, shirts and shirt-blouses: Of man-made fibers: Other: Other.” Furthermore, CBP classified the subject shorts under subheading 6204.63.35, HTSUS, which provides for “Women’s or girls’ suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other: Other: Other: Other.” For the reasons set forth below we hereby revoke NY N257998.

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. 25, on June 22, 2016, proposing to revoke NY N257998, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

NY N257998, issued to Medical Apparel LLC on November 4, 2014, describes the subject merchandise as follows:

The submitted unisex hospital patient top is constructed from 65% polyester and 35% cotton woven fabric. The top features a V-shaped front and back neckline, short sleeves, a left chest pocket, and a full front opening secured by a double row of snap closures. The garment is attached at the shoulders by three snap closures.

The submitted pair of unisex hospital patient shorts is constructed from 65% polyester and 35% cotton woven fabric. The shorts feature an elasticized waistband in the back and a tunnel draw string tightening at the front. Both sides of the shorts are joined together by a single row of four snap closures.

You explain that the subject tops and shorts, designed only for hospital use, are manufactured as one unit and are not sold separately. In your request for

reconsideration, you provided additional facts. You submitted copies of the marketing materials and invoices showing that the subject tops and shorts are packaged and sold together as single units in one bag, thus confirming that they are not sold separately.

In addition, you submitted samples of the tops and shorts at issue for our examination.

ISSUE:

What is the correct classification of the hospital patient tops and shorts under the HTSUS?

LAW AND ANALYSIS:

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

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

The HTSUS provisions under consideration are as follows:

6206	Women's or girls' blouses, shirts and shirt-blouses:			
		*	*	*
6204	Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear):			
		*	*	*
6204	Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear):			
		*	*	*
6207	Men's or boys singlets and other undershirts, underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles			
		*	*	*
6208	Women's or girls' singlets and other undershirts, slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles			
		*	*	*
6211	Track suits, ski-suits and swimwear; other garments			
		*	*	*

In a letter dated November 21, 2014, you argued that the subject merchandise should be classified as a two piece gown set, under one of the following: (1) heading 6207, HTSUS, which provides for "Men's or boys' singlets and other undershirts, underpants, briefs, nightshirts, pajamas, bathrobes,

dressing gowns and similar articles”; (2) heading 6208, HTSUS, which provides for “Women’s or girls’ singlets and other undershirts, slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles”; or (3) heading 6211, HTSUS, which provides for “Track suits, ski-suits and swimwear; other garments.”

You argued that the subject tops are not women’s or girls’ garments. You further argued that the tops are more like sleepwear/pajamas, and that they are intended for use only within a hospital setting. Moreover, you stated that the subject tops contain a pocket with an opening behind, which is specifically designed to hold a medical device such as a Telemetry or a Jackson Pratt Drain, and openings in the chest area that accommodate electrical wires that connect to monitor pads on the chest. In addition, you claimed that the subject tops were designed with many snaps for convenience during patient examinations, during MRI tests, CAT scans, x-rays, and for easy application of defibrillator pads for cardiac resuscitation, as well as during surgeries.

You also alleged that the subject shorts, designed to accompany the above-discussed tops, are not similar to the items provided for in subheading 6204.63.35, HTSUS. You claimed that the leg on the shorts was constructed to cover a Foley catheter leg bag, and that the shorts have a double row of four sets of plastic snaps, which help to accommodate different sized patients.

In NY N257998, the top was classified in heading 6206, HTSUS, a provision for women’s shirts, and the shorts were classified in heading 6204, HTSUS, a provision for women’s shorts.

You believe that the garments were confused for women’s or girls’ work/street/everyday clothing that is worn in public and professional everyday settings. However, this is not the case. The classification of garments within chapter 62, HTSUS, is governed, in relevant part, by Note 8 to Chapter 62, which provides that:

Garments of this chapter designed for left over right closure at the front shall be regarded as men’s or boy’s garments, and those designed for right over left closure at the front as women’s or girls’ garments. These provisions do not apply where the cut of the garment clearly indicates that it is designed for one or other of the sexes.

Garments which cannot be identified as either men’s or boy’s garments or as women’s or girls’ garments are to be classified in the headings covering women’s or girls’ garments.

We have examined the tops, and they are designed for right over left closure at the front. You confirm that the tops are unisex garments, and based upon our examination, we agree that the cut of the garment does not clearly indicate that it is designed for one or other of the sexes. Therefore, for purposes of classification in chapter 62, HTSUS, and pursuant to Note 8 to chapter 62, the tops are considered women’s or girls’ garments. We reach a similar conclusion regarding the shorts. We have examined the shorts and they cannot be identified as either men’s or boy’s garments or as women’s or girls’ garments. You confirm that the shorts are unisex garments. Therefore, for purposes of classification in chapter 62, HTSUS, and pursuant to Note 8 to chapter 62, the shorts are considered women’s or girls’ garments. Since the tops and shorts are not described as men’s or boys garments, they cannot be classified under heading 6207, which is a provision for “Men’s or boys singlets and other undershirts, underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles.”

Next, you argue that the top is not a “regular” shirt of heading 6206, HTSUS. Instead, you argue it is more like sleepwear, dressing gowns, or pajamas. You note the different design and construction features of the top, including a rear pocket designed to hold medical devices, including post-operative drains for collecting bodily fluids from surgical sites. You note openings in the front chest area designed to accommodate electrical wires used to connect to monitor pads on the chest, and to accommodate heart monitors and post-operative drains. You also note both garments were designed with plastic snaps to accommodate equipment used in a variety of medical examinations and procedures. You argue the shorts are not “regular” shorts of heading 6204, HTSUS. You note the shorts were designed and constructed to conceal a Foley catheter leg bag. You also note the double rows of plastic snaps to accommodate proper sizing, and that they do not have pockets or a fly opening. You also note that a hospital logo is embroidered on both the top and shorts. You conclude that the top and shorts are medical sleepwear/dressing “gowns” for patient use during hospital stays. As such, you propose classification of both garments under heading 6208, HTSUS, as women’s or girls’ pajamas or dressing gowns.

In a recent Informed Compliance Publication (ICP), CBP provided, in pertinent part, the following guideline for classification of garments having multiple uses, to include sleeping.

Certain garments are also marketed as having multiple uses that may include sleeping. Such garments would not be classified as sleepwear, but in the specific headings for the named articles.

See, CBP Informed Compliance Publication on Classification: Apparel Terminology under the HTSUS, June 2008. As you have indicated, the subject tops and shorts have been designed and are marketed for multiple uses, such as for patient examinations, and medical tests and procedures, they are not classified as pajamas in heading 6207, HTSUS, or heading 6208, HTSUS. *But see* NY N245694, dated September 26, 2013 (classifying men’s pants, designed and marketed to be worn only for sleeping, in heading 6207, HTSUS); NY N120470, dated September 24, 2010 (classifying men’s sleepwear in heading 6207, HTSUS); NY N256458, dated September 12, 2014 (classifying women’s two-piece pajama sets in heading 6208, HTSUS); and NY K87386, dated July 21, 2004 (classifying women’s pajama sets in heading 6208, HTSUS).

However, we do agree with your argument that both garments should be classified together under a single heading. Note 14 to Section XI, provides:

Unless the context otherwise requires, textile garments of different headings are to be classified in their own headings even if put up in sets for retail sale.

The submitted upper and lower garments would normally be classified separately. As per the terms of Note 14, to be classified together as a single article, there must be a heading and a subheading which specifically provides for those garments under a single classification.

Heading 6204, HTSUS, covers “Women’s or girls’ suits, ensembles . . . and shorts (other than swimwear). Subheading 6204.23.00, HTSUS, specifically provides for ensembles of synthetic fibers. Both garments are constructed from 65% polyester and 35% cotton woven fabric. Note 2(A) to Section XI and Subheading Note 2 to Section XI, when read together, require that textile

garments containing two or more textile materials be classified according to that material which predominates by weight.

The term “ensemble” as defined in Note 3(b) to chapter 62, HTSUS, provides as follows:

For the purposes of headings 6203 and 6204:

The term “ensemble” means a set of garments (other than suits and articles of heading 6207 or 6208) composed of several pieces made up in identical fabric, put up for retail sale, and comprising:

- one garment designed to cover the upper part of the body, with the exception of waistcoats which may also form a second upper garment, and

- one or two different garments, designed to cover the lower part of the body and consisting of trousers, bib and brace overalls, breeches, shorts (other than swimwear), a skirt or a divided skirt.

All of the components of an ensemble must be of the same fabric construction, style, color and composition; they also must be of corresponding or compatible size...

The above requirements for an ensemble make it clear that where the top and bottom portions are not identical in all material aspects, the garments are precluded from the ensemble classification. To qualify as an ensemble the subject merchandise must consist of a set of garments composed of several pieces made up in identical fabric, style, color, compatible size and put up for retail sale. Based upon our examination of the garments, we conclude that they are made of the identical fabric, are the same in color, composition and size, and are put together for retail sale.

Therefore, pursuant to Note 3(b) to Chapter 62, both the top and the shorts are described as a women’s or girls’ ensemble. They are described by heading 6204, HTSUS. As such, since the top and shorts are classified in heading 6204, HTSUS, they cannot be classified in heading 6211, HTSUS, which is a provision for, in relevant part, “other garments.”

HOLDING:

By application of GRIs 1 and GRI 6, the tops and shorts are classified as ensembles under heading 6204, HTSUS, and subheading 6204.23.00, HTSUS, which provides for “Women’s or girls’ ... ensembles...: Ensembles: Of synthetic fibers.”

The tops are classified in subheading 6204.23.0055, HTSUS, which provides for “Women’s or girls’ ... ensembles...: Ensembles: Of synthetic fibers: Other: Blouses and shirts: Other.” The 2016, column one rate of duty will be 26.9% *ad valorem*. This is the rate that would apply if the garments were entered separately and classified in subheading 6206.40.3030, HTSUS.

The shorts are classified in subheading 6404.23.0045, HTSUS, which provides for “Women’s or girls’ ... ensembles...: Ensembles: Of synthetic fibers: Other: Shorts.” The 2016, column one rate of duty will be 28.6% *ad valorem*. This is the rate that would apply if the garments were entered separately, and classified in subheading 6204.63.3532, HTSUS.

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

EFFECT ON OTHER RULINGS:

NY N257998, dated November 4, 2014, is REVOKED.

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

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division


GENERAL NOTICE**19 CFR PART 177****MODIFICATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF JEWELRY CHARMS
CONTAINING CUBIC ZIRCONIA STONES**

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

ACTION: Notice of modification of one ruling letter and of revocation of treatment relating to the tariff classification of jewelry charms containing cubic zirconia stones.

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 jewelry charms containing cubic zirconia stones. 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. 24, on June 15, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 24, 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. 24, on June 15, 2016, proposing to modify one ruling letter pertaining to the tariff classification of jewelry charms containing cubic zirconia stones. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N053948, dated April 9, 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 N053948, CBP classified two jewelry charms containing cubic zirconia stones in heading 7117, HTSUS, specifically in subheading 7117.19.90, HTSUS, which provides for "Imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other: Other." CBP has reviewed NY N053948 and has determined the ruling letter to be partially in error. It is now CBP's position that the subject jewelry charms are properly classified, by operation of GRI 1, in heading 7116, HTSUS, specifically in subheading 7116.20.05, HTSUS, which provides for "Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Articles of jewelry: Valued not over \$40 per piece."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N053948 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H063616, 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: July 27, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H063616

July 27, 2016

CLA-2 OT:RR:CTF:TCM H063616 NCD

CATEGORY: Classification

TARIFF NO.: 7116.20.0580

MS. MARLENE COLLINS
LIZ CLAIBORNE, INC.
ONE CLAIBORNE AVENUE
NORTH BERGEN, NJ 07047

RE: Modification of NY N053948; classification of jewelry charms containing cubic zirconia stones

DEAR MS. COLLINS:

This is in response to your letter of April 29, 2009, submitted on behalf of Liz Claiborne, Inc. (“Liz Claiborne”), requesting reconsideration of New York Ruling Letter (NY) N053948, dated April 8, 2009. NY N053948 was issued to Liz Claiborne by U.S. Customs and Border Protection (CBP) in response to Liz Claiborne’s March 5, 2009 letter requesting a ruling as to the proper classification of three types of jewelry charms, two of which contain cubic zirconia stones, under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N053948, have determined that it is partially incorrect, and, for the reasons set forth below, are modifying 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. 24, on June 15, 2016. No comments were received in response to the notice.

FACTS:

The jewelry charms at issue in NY N053948 were described by CBP, based upon inspection of samples and review of pictures and product specifications, as follows:

Style number YJRU3179 is a one inch long Bat charm composed of brass that is plated with rhodium and palladium. The bat figure features wings ornamented with glass gemstones and one cubic zirconium.¹ The back of the figure is inscribed “bite my couture.” The charm has a brass clasp and clip for attaching to the charm bracelet.

Style number YJRU3175 is a Mouse & Cheese charm. The mouse figure is composed of brass plated with a worn rhodium antique finish. The clasp and clip are composed of brass. The charm has a metal base inscribed with the trademark “Juicy Couture”. The sculpted cheese form is composed of plastic studded with one glass gemstone and three cubic zirconium gemstones.

Style number YJRU3181 is a cone-shaped Teepee charm measuring 1.25 inches high with a diameter of 1 inch at its widest point. This item is

¹ The term cubic zirconium, while commonly used, is a misnomer. The substance in reference to which this term is used is actually cubic zirconia, which is the cubic, crystalline form of zirconium dioxide. See RICHARD J. LEWIS, SR., HAWLEY’S CONDENSED CHEMICAL DICTIONARY 1353 (15th ed. 2007) (describing zirconium dioxide).

composed of brass that is plated with Ion gold and features a hinged bottom that opens to reveal a small figurine with a tribal headdress. The Teepee charm has brass ornamentation, and a brass clasp and clip for attaching to the charm bracelet. The bottom is inscribed “How Juicy.”

CBP classified all three types of charms in heading 7117, HTSUS, specifically in subheading 7117.19.90, HTSUS, which provides for “Imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other: Other.” In its April 29, 2009 letter, Liz Claiborne contends that two of the jewelry charm types, specifically Style Numbers YJRU3179 (“Bat charm”) and YJRU3175 (“Mouse & Cheese charm”), are instead properly classified in heading 7116, HTSUS, specifically subheading 7116.20.05, HTSUS, which provides for “Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Articles of jewelry: Valued not over \$40 per piece.” Liz Claiborne does not contest CBP’s classification of Style Number YJRU3181 (“Teepee charm”) in subheading 7117.19.90, HTSUS.

ISSUE:

Whether the jewelry charms containing cubic zirconia stones are properly classified in heading 7116, HTSUS, as articles of semiprecious stones or in heading 7117, HTSUS, as imitation jewelry.

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

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

The HTSUS provisions under consideration are as follows:

7116	Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed):
7116.20	Of precious or semiprecious stones (natural, synthetic or reconstructed): Articles of jewelry:

7116.20.05	Valued not over \$40 per piece
7117	Imitation jewelry:
	Of base metal, whether or not plated with precious metal:
7117.19	Other:
	Other:
7117.19.90	Other

We initially consider whether the subject jewelry charms are *prima facie* classifiable in heading 7116, HTSUS, which provides, *inter alia*, for articles of semiprecious stones. Note 2(b) to Chapter 71 states as follows:

Heading 7116 does not cover articles containing precious metal or metal clad with precious metal (other than as minor constituents).

EN 71.16 states, in relevant part, as follows:

This heading covers all articles (**other than** those **excluded** by Notes 2 (B) and 3 to this Chapter), wholly of natural or cultured pearls, precious or semi-precious stones, or consisting partly of natural or cultured pearls or precious or semi-precious stones, but **not** containing precious metals or metals clad with precious metal (**except** as minor constituents) (see Note 2 (B) to this Chapter).

It thus includes:

- (A) **Articles of personal adornment and other decorated articles** (e.g., clasps and frames for handbags, etc.; combs, brushes; earrings; cuff-links, dress-studs and the like) containing natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed), set or mounted on base metal (whether or not plated with precious metal), ivory, wood, plastics, etc.

With respect to the tariff term “semiprecious stone,” EN 71.04 states as follows:

These stones are used for the same purposes as the natural precious or semi-precious stones of the two preceding headings.

- (A) **Synthetic precious and semi-precious stones.** This expression covers a range of chemically produced stones which either:
- have essentially the same chemical composition and crystal structure as a particular natural stone (e.g., ruby, sapphire, emerald, industrial diamond, piezo-electric quartz); or
 - because of their colour, brilliance, resistance to deterioration, and hardness are used by jewellers, goldsmiths and silversmiths in place of natural precious or semi-precious stones, even if they do not have the same chemical composition and crystal structure as the stones which they resemble, e.g., yttrium aluminium garnet and synthetic cubic zirconia, both of which are used to imitate diamond.

According to the plain language of heading 7116 and the above-cited EN 71.16 excerpt, heading 7116 applies to articles of personal adornment that

contain precious or precious stones. The tariff term “semiprecious stone” is not defined in the HTSUS, but EN 71.04 identifies cubic zirconia as an example of such. It is CBP’s position, consistent both with EN 71.04 and with lexicographic sources, that cubic zirconia qualifies as a semiprecious stone for tariff classification purposes.² See Headquarters Ruling Letter (HQ) H007655, dated September 28, 2007 (citing EN 71.04 and Merriam Webster Dictionary in deeming zirconia a semiprecious stone); HQ 950769, dated December 31, 1991; NY N270890, dated December 3, 2015; and NY N270428, dated November 12, 2015. An article of personal adornment to which at least one cubic zirconia is affixed can therefore be described as a product of heading 7116, HTSUS. See HQ H007655; NY N270890; NY N270428; and NY N264240, dated May 11, 2015 (all of which classify articles containing single cubic zirconia stones in heading 7116).

Here, as stated in NY N053948 and confirmed by the pictures and product specifications enclosed with Liz Claiborne’s March 5, 2009 letter, the Bat and Mouse & Cheese charms each contain a cubic zirconia. Moreover, it is undisputed that both charms, while made primarily of base metal, do not contain any precious metal. Therefore, in accordance with the above-cited ENs and CBP precedent, both charms can be described as articles of semiprecious stones within the meaning of heading 7116, HTSUS, and are *prima facie* classifiable there. We note that the Teepee charm, which does not contain a cubic zirconia or any other type of precious or semiprecious stone, is not classifiable in heading 7116, HTSUS.

We next consider whether the subject charms are classifiable in heading 7117, HTSUS, which provides for imitation jewelry. Note 11 to Chapter 71 states as follows:

For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of note 9 above (but not including buttons or other articles of heading 9606, or dress combs, hair slides or the like, or hairpins, of heading 9615), not incorporating natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

EN 71.17 states, in pertinent part, as follows:

For the purposes of this heading, the expression **imitation jewelry**, as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment...**provided** they do not incorporate precious metal or metal clad with precious metal (except as plating or as minor constituents as defined in Note 2 (A) to this Chapter, e.g., monograms, ferrules and rims) nor natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed).

Pursuant to Note 11 to Chapter 71, as explained in EN 71.17, articles to which one or more precious or semiprecious stones are affixed cannot be

² 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).

described as imitation jewelry within the meaning of heading 7117, HTSUS. It is therefore CBP's position that such articles, including those incorporating cubic zirconia stones, are not classifiable in heading 7117. *See* HQ H007655 (ruling that necklaces and bracelets containing cubic zirconia stones are excluded from heading 7117 by application of Note 11 to Chapter 71); *see also* HQ 959831, dated April 1, 1997 ("The wax castings with diamonds or precious stones are excluded from classification in heading 7117 by virtue of chapter note 11, since they contain precious stones."); and NY N125019, dated October 14, 2010 ("By application of Legal Note 11 to Chapter 71, HTSUS, the subject merchandise containing a semi-precious "synthetic gemstone of CZ" is excluded from heading 7117, HTSUS.").

Here, as discussed above, the Bat and Mouse & Cheese charms at issue each contain a cubic zirconia, which is a semiprecious stone. In effect, they cannot be described as imitation jewelry within the meaning of heading 7117, HTSUS, and are accordingly excluded from the heading. We note that the Teepee charm, which contains a proportionally minor ion gold component but does not contain any precious or semiprecious stones, is properly classified in heading 7117, HTSUS.

HOLDING:

By application of GRI 1, the jewelry charms identified as Style Numbers YJRU3179 and YJRU3175 are properly classified in heading 7116, HTSUS, specifically in subheading 7116.20.0580, HTSUSA (Annotated), which provides for: "Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Articles of jewelry: Valued not over \$40 per piece: Other."³ The 2016 column one general rate of duty is 3.3% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

New York Ruling Letter N053948, dated April 8, 2009, is hereby MODIFIED as set forth above with respect to classification of the jewelry charms identified as Style Numbers YJRU3179 and YJRU3175, but the classification of the jewelry charm designated Style Number YJRU3181 remains in effect.

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

³ The subject charms are specifically classified in this subheading because they are each valued at less than \$40, as indicated by Liz Claiborne's submissions.

**PROPOSED REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERTAIN PLASTIC SHEETS
FROM CHINA**

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 certain plastic sheets from China.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning the tariff classification of certain plastic sheets 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 23, 2016.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of certain plastic sheets from China. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N262339, dated March 10, 2015 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY N262339, CBP classified the “CoverFab” product in heading 3921, HTSUS, specifically in subheading 3921.12.1950, HTSUSA,

which provides for “Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polymers of vinyl chloride: Combined with textile materials: Other: Other.” In that ruling letter, CBP also classified the “Safety Pool Fabric” product in heading 3921, HTSUS, specifically in subheading 3921.90.1950, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Other: Combined with textile material sand weighing not more than 1.492 kg/m²: Other: Other.” CBP has reviewed NY N262339 and has determined the ruling letter to be in error. It is now CBP’s position that the “Cover-Fab” product is properly classified, by operation of GRIs 1 and 6, in heading 3921, HTSUS, specifically in subheading 3921.12.1100, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polymers of vinyl chloride: Combined with textile materials: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Over 70 percent by weight of plastics,” and the “Safety Pool Fabric” product is classified in heading 3921, HTSUS, specifically in subheading 3921.90.1100, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Other: Combined with textile materials and weighing not more than 1.492 kg/m²: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Over 70 percent by weight of plastics.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N262339 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H264986, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 2, 2016

JACINTO JUAREZ
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N262339

March 10, 2015

CLA-2-39:OT:RR:NC:N4:421

CATEGORY: Classification

TARIFF NO.: 3921.12.1950; 3921.90.1950;
3919.90.5060; 3919.10.2055;
3920.62.0090

MS. JANE L. TAEGER
SAMUEL SHAPIRO & COMPANY, INC.
ONE CHARLES CENTER
100 NORTH CHARLES ST., SUITE 1200
BALTIMORE, MD 21201

RE: The tariff classification of plastic sheets from China

DEAR MS. TAEGER:

This ruling is being issued to correct Customs Ruling Number N261080, dated February 20, 2015. The ruling letter contains clerical errors. A complete corrected ruling follows.

In your letter dated January 15, 2015, you requested a tariff classification ruling on behalf of your client, DAF Products, Inc. Product information and samples were submitted for our review.

The request included five items, each a type of plastic sheeting. The first, identified as CoverFab, is constructed of cellular polyvinyl chloride (PVC) reinforced with polyester textile. You indicate that the product is 75 percent PVC and 25 percent polyester by weight. The product is used for shower and privacy curtains and is treated with an anti-bacterial agent. The sheet has a plastic coating on both sides of the product that can be easily seen with the naked eye. You do not indicate the size in which the product will be imported, but the sample appears to be a sheet of rectangular shape.

The second product is identified as Safety Pool Fabric. You state that the product is made of non-cellular, high density polyethylene (HDPE) and has been embossed to resemble a woven fabric. This is incorrect. The product is constructed of black interwoven strips of plastic measuring less than 5mm in width; this constitutes a textile. The textile has been coated on both sides with a colored plastic material that can be seen with the naked eye. You indicate that the product is imported in rolls with a length of 300 yards and a width of 73 inches, and has a weight of 237 grams per square meter.

The third product is identified as DAF Escape. The product is an adhesive-backed PVC film with a removable liner. You state that the product is used for printing and is imported in rolls with a width of 54 inches.

The fourth product is a clear, polyester, double-sided tape. The product has permanent adhesive on one side and a removable adhesive on the other with a removable backing. The product is one inch in width and is imported in 200 foot-long rolls.

The last product is identified as Backlit Polyester Film. You state that this product is an 8 mil, translucent, polyethylene terephthalate (PET) polyester sheet imported in 100 foot rolls. It is imported in widths of 50 and 60 inches. It is utilized for printing of items to be used with light boxes.

Each of the products herein meets the definition of sheets or film as set forth in Note 10 to Chapter 39. Each has a continuous surface and is imported

in rectangular shapes. The DAF Escape and Double Sided Tape both meet the requirements for heading 3919 as set forth in the Explanatory Notes; they both are pressure-sensitive, i.e., at room temperature, without wetting or other addition, they are permanently tacky (on one or both sides) and firmly adhere to a variety of dissimilar surfaces upon mere contact, without the need for more than finger or hand pressure.

You suggest that the Cover Fab product is classifiable under 3921.12.1100, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polymers of vinyl chloride: Combined with textile materials: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Over 70 percent by weight of plastics. However, the textile component of the CoverFab is polyester. In *Semperit Industrial Products vs. United States*, Slip-Op. 94-100, it was determined that the language "predominate by weight over any other single textile fiber" presupposed the existence of two or more classes of textile fibers. So, a product with polyester only cannot be classified under 3921.12.1100. The same decision governs the classification of the Safety Pool Fabric.

The applicable subheading for the CoverFab will be 3921.12.1950, HTSUS, which provides for Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polymers of vinyl chloride: Combined with textile materials: Other: Other. The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for the Safety Pool Fabric will be 3921.90.1950, HTSUS, which provides for Other plates, sheets, film, foil and strip, of plastics: Other: Combined with textile materials and weighing not more than 1.492 kg/m²: Other: Other. The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for the DAF Escape will be 3919.90.5060, HTSUS, which provides for Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls: Other: Other: Other. The rate of duty will be 5.8 percent ad valorem.

The applicable subheading for the Double Sided Tape will be 3919.10.2055, HTSUS, which provides for Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls: In rolls of a width not exceeding 20 cm: Other: Other: Other. The rate of duty will be 5.8 percent ad valorem.

The applicable subheading for the Backlit Polyester Film will be 3920.62.0090, HTSUS, which provides for Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials: Of polycarbonates, alkyd resins, polyallyl esters or other polyesters: Of poly(ethylene terephthalate): Other. The rate of duty will be 4.2 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 Laurel Duvall at laurel.duvall@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H264986
CLA-2 OT:RR:CTF:TCM H264986 PJG
CATEGORY: Classification
TARIFF NO.: 3921.12.1100, 3921.90.1100,
3919.90.5060, 3919.10.2055,
3920.62.0090

JANE L. TAEGER
SAMUEL SHAPIRO & COMPANY, INC.
ONE CHARLES CENTER
100 NORTH CHARLES STREET, SUITE 1200
BALTIMORE, MD 21201

RE: Revocation of NY N262339; tariff classification of plastic sheets from China

DEAR Ms. TAEGER:

On March 10, 2015, U.S. Customs and Border Protection (“CBP”) issued Samuel Shapiro & Company New York Ruling Letter (“NY”) N262339. The ruling was issued as a correction to a previously issued ruling letter, NY N261080, dated February 20, 2015, which pertained to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of five types of plastic sheeting from China that were identified as “CoverFab”, “Safety Pool Fabric”, “DAF Escape”, “Double Sided Tape”, and “Backlit Polyester Film.” We have since reviewed NY N262339 and determined it to be in error with respect to the “CoverFab” and the “Safety Pool Fabric.” Accordingly, NY N262339 is revoked¹.

FACTS:

On February 20, 2015, CBP issued NY N261080, a ruling pertaining to the tariff classification under the HTSUS of five types of plastic sheeting from China. They were identified as “CoverFab”, “Safety Pool Fabric”, “DAF Escape”, “Double Sided Tape”, and “Backlit Polyester Film.”

In NY N261080, the “CoverFab” was described as follows:

The ... CoverFab, is constructed of cellular polyvinyl chloride (PVC) reinforced with polyester textile. You indicate that the product is 75 percent PVC and 25 percent polyester by weight. The product is used for shower and privacy curtains and is treated with an anti-bacterial agent. The sheet has a plastic coating on both sides of the product that can be easily seen with the naked eye. You do not indicate the size in which the product will be imported, but the sample appears to be a sheet of rectangular shape.

In NY N261080, the “Safety Pool Fabric” was described as follows:

The product is constructed of black interwoven strips of plastic measuring less than 5 mm in width; this constitutes a textile. The textile has been coated on both sides with a colored plastic material that can be seen with

¹ In NY 261080, dated February 20, 2015, the “DAF Escape” was correctly classified in subheading 3919.90.5060, HTSUSA; the “Double Sided Tape” was correctly classified in subheading 3919.10.2055, HTSUSA; and the “Backlit Polyester Film” was correctly classified in subheading 3920.62.0090, HTSUSA.

the naked eye. You indicate that the product is imported in rolls with a length of 300 yards and a width of 73 inches, and has a weight of 237 grams per square meter.

NY N261080 also indicated that each of these products “has a continuous surface and is imported in rectangular shapes.” We further note that the “Safety Pool Fabric” is constructed of non-cellular, high density polyethylene (“HDPE”).

In NY N261080, CBP classified the “CoverFab” under subheading 3921.12.1100, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polymers of vinyl chloride: Combined with textile materials: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Over 70 percent by weight of plastics,” and classified the “Safety Pool Fabric” under subheading 3921.90.1100, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Other: Combined with textile materials and weighing not more than 1.492 kg/m²: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Over 70 percent by weight of plastics.”

After issuing NY N261080, CBP determined that the tariff classification of the “CoverFab” and the “Safety Pool Fabric” was impacted by the U.S. Court of International Trade’s decision in *Semperit Industrial Products v. United States*, 18 Ct. Int’l Trade 578, 586 (1994), in which the court determined that the term “predominate” in subheading 4010.91.15, HTSUS, which provides for “Conveyor or transmission belts or belting, of vulcanized rubber: Other: Of a width exceeding 20 cm: Combined with textile materials: With textile components in which man-made fibers predominate by weight over any other single textile fiber”, means two or more elements need to be the subject of comparison. As a result, CBP concluded that a product comprised of only polyester cannot be classified under subheading 3921.12.1100, HTSUSA. Therefore, CBP issued NY N262339, dated March 10, 2015, to correct the tariff classification for the “CoverFab” by classifying it under subheading 3921.12.1950, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polymers of vinyl chloride: Combined with textile materials: Other: Other.” CBP also corrected the tariff classification of the “Safety Pool Fabric” by classifying it under subheading 3921.90.1950, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Other: Combined with textile material and weighing not more than 1.492 kg/m²: Other: Other.”

ISSUE:

What is the proper classification of the “CoverFab” and “Safety Pool Fabric” products under the HTSUS?

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:

3921	Other plates, sheets, film, foil and strip, of plastics:
	Cellular:
3921.12	Of polymers of vinyl chloride:
	Combined with textile materials:
	Products with textile components in which man-made fibers predominate by weight over any other single textile fiber:
3921.12.1100	Over 70 percent by weight of plastics
	* * *
3921.12.19	Other
	* * *
3921.12.1950	Other
3921.90	Other:
	Combined with textile materials and weighing not more than 1.492 kg/m ² :
	Products with textile components in which man-made fibers predominate by weight over any other single textile fiber:
3921.90.1100	Over 70 percent by weight of plastics
	* * *
3921.90.19	Other
	* * *
3921.90.1950	Other

Note 10 to Chapter 39, HTSUS, provides as follows:

10. In heading 3920 and 3921, the expression “*plates, sheets, film, foil and strip*” applies only to plates, sheets, film, foil and strip (other than those of chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

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

The EN to Chapter 39, HTSUS, provides, in pertinent part, the following:

The following products are also covered by this Chapter:

* * *

(b) Textile fabrics and nonwovens, either completely embedded in plastics or entirely coated or covered on both sides with such

material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change in color.

* * *

The EN to 39.21 states, in pertinent part, as follows:

This heading covers . . . only cellular products or those which have been reinforced, laminated, supported or similarly combined with other materials.

According to Note 10 to this Chapter, the expression “plates, sheets, film, foil and strip” applies only to plates, sheets, film, foil and strip and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked (for example, polished, embossed, coloured, merely curved or corrugated), uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

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 as articles of headings 39.18, 39.19 or 39.22 to 39.26.

This relates to the classification of the “CoverFab” and “Safety Pool Fabric” products in heading 3921, HTSUS, at the eight digit level. In *Value Vinyls, Inc. v. United States*, 568 F.3d 1374, 1380 (Fed. Cir. 2009), the United States Court of Appeals for the Federal Circuit affirmed the finding of the Court of International Trade in *Value Vinyls, Inc. v. United States*, 31 Ct. Int’l Trade 1209 (2007), which held that “the definition and application of ‘predominate’ in *Semperit Industrial Products* does not apply to the goods of Chapter 39, HTSUS. Specifically, the United States Court of Appeals for the Federal Circuit found as follows:

The Court of International Trade did not err in holding that the definition and application of “predominate” in *Semperit* does not apply to these different goods and different HTSUS section. The complexity of the tariff schedule, the great variety of products in trade, and the constant barrage of new products, all support the obligation of the Court of International Trade to reach the “correct result” in the case at hand. *Jarvis Clark Co.*, 733 F.2d at 878. We conclude that the court correctly ruled that subheading 3921.90.11 embraces products whose textile component is made wholly of man-made fibers, and therefore applies to Value Vinyls’ goods.

Value Vinyls, Inc., 568 F.3d at 1380.

We note that in *Value Vinyls, Inc.*, 568 F.3d 1374 (Fed. Cir. 2009), the tariff language “Products with textile components in which man-made fibers predominate by weight over any other single textile fiber” for goods of Chapter 39, HTSUS, was at issue. Therefore, we believe that *Value Vinyls, Inc.* controls for purposes of classification in heading 3921, HTSUS, and specifically, in subheadings 3921.12.1100, HTSUSA, and 3921.90.1100, HTSUSA. The court held that the term “predominate,” as it relates to goods of Chapter 39, HTSUS, applies to circumstances wherein a single man-made fiber predomi-

nates by weight over any other single textile fiber. See *Value Vinyls, Inc.*, 568 F.3d at 1380. We find that both of the articles subject to this ruling are constructed predominately of man-made fibers. Specifically, the “CoverFab” is constructed of 75 percent cellular PVC and 25 percent polyester by weight, and the “Safety Pool Fabric” is constructed entirely of non-cellular HDPE.

In light of the court’s decision in *Value Vinyls, Inc.* and the material construction of the subject merchandise, we find that the “CoverFab” is appropriately classified in subheading 3921.12.1100, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polymers of vinyl chloride: Combined with textile materials: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Over 70 percent by weight of plastics.”

Similarly, in light of the court’s decision in *Value Vinyls, Inc.*, the material construction, and the weight of the subject merchandise, which is .237 kg/m², we find that the “Safety Pool Fabric” is appropriately classified in subheading 3921.90.1100, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Other: Combined with textile materials and weighing not more than 1.492 kg/m²: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Over 70 percent by weight of plastics.”

Our conclusion is consistent with HQ H260252, dated January 22, 2016, wherein this office classified a conveyor belt comprised of textile covered with a non-cellular polyurethane coating and imported in rectangular rolls in subheading 3921.90.25, HTSUS, which provides for “Other plates, sheets, film, foil and strip, of plastics: Other: Combined with textile materials and weighing more than 1,492 kg/m²: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber.”

HOLDING:

Under the authority of GRIs 1 and 6 the “CoverFab” product is classified in heading 3921, HTSUS, specifically in subheading 3921.12.1100, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polymers of vinyl chloride: Combined with textile materials: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Over 70 percent by weight of plastics,” and the “Safety Pool Fabric” product is classified in heading 3921, HTSUS, specifically in subheading 3921.90.1100, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Other: Combined with textile materials and weighing not more than 1.492 kg/m²: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Over 70 percent by weight of plastics.” The 2016 column one, general rate of duty for each of these tariff classifications is 4.2 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:


NY N262339, dated March 10, 2015, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**REVOCATION OF TWO RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF BUFFALO MILK
MOZZARELLA CHEESE**

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

ACTION: Notice of revocation of two ruling letters and revocation of treatment relating to the tariff classification of buffalo mozzarella.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters concerning the tariff classification of buffalo mozzarella 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. 24, on June 15, 2016. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 24, 2016.

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0347.

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*, Volume 50, No. 24, on June 15, 2016, proposing to revoke Headquarters Ruling Letter (“HQ”) 956094, dated May 3, 1994, and New York Ruling Letter (NY) 870353, dated January 28, 1992, in which CBP determined that the subject buffalo mozzarella was classified under subheading 0406.90.80, HT-SUS, which provides for “Cheese and curd: Other cheese: Other cheeses...: Other ...: Other.” No comments were received in response to this notice.

As stated in the proposed notice, this revocation 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 ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, (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 this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ 956094 and NY 870353, in order to reflect the proper classification of the buffalo milk mozzarella cheese under subheading 0406.10.95, HTSUS, which provides for “Cheese and curd: Fresh (unripened or uncured) cheese, including whey cheese, and curd: Other: Other: Other: Other,” according to the analysis contained in HQ H274747, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 1, 2016

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H274747

August 1, 2016

CLA-2 RR:CTF:TCM H274747 EGJ

CATEGORY: CLASSIFICATION

TARIFF NO.: 0406.10.95

SAMIR URDANETA
16370 SW 216
MIAMI, FL 33170

Re: Revocation of HQ 956094 and NY 870353: Classification of Buffalo Milk Mozzarella Cheese

DEAR MR. URDANETA:

This is in reference to Headquarters Ruling Letter (HQ) 956094, dated May 3, 1994, which was issued to you concerning the tariff classification of buffalo milk mozzarella cheese (buffalo mozzarella) under the Harmonized Tariff Schedule of the United States (HTSUS). In HQ 956094, U.S. Customs and Border Protection (CBP) classified the buffalo mozzarella under subheading 0406.90, HTSUS, which provides for cheeses which are not specified elsewhere. We have reviewed HQ 956094 and find it to be in error. For the reasons set forth below, we hereby revoke HQ 956094 and New York Ruling Letter (NY) 870353, dated January 28, 1992, which covers substantially similar merchandise.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice of the proposed action was published on June 15, 2016, in the *Customs Bulletin*, Vol. 50, No. 24. No comments were received in response to this notice.

FACTS:

In HQ 956094, the subject merchandise was described as “mozzarella cheese made from water buffalo milk.” In NY 870353, the subject merchandise was described as follows:

[It is] mozzarella cheese made from pure water buffalo milk, produced by C. Galdi SPA of Eboli, Italy. A sample of the product consisted of approximately eight ounces of a white cheese, in a retail plastic bag. The sample had the texture and mildly sweet, milky taste of a buffalo milk mozzarella cheese. An analysis by the Customs Laboratory at New York found the sample to consist, by weight, of 55.8 percent moisture, 28.4 percent fat (64.1 percent on a dry basis), 15.4 percent protein, and 0.8 percent salt, with a pH of 6.1. The sample was found to be made from buffalo milk.

ISSUE:

Is the buffalo mozzarella classified under subheading 0406.10, HTSUS, as a fresh cheese, or under subheading 0406.90, HTSUS, as a cheese that is not specified elsewhere?

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. Under GRI 6, 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 GRIs 1 through 5.

The HTSUS provisions at issue provide, in pertinent part, as follows:

0406	Cheese and curd:			
0406.10	Fresh (unripened or uncured) cheese, including whey cheese, and curd:			
	Other:			
	Other:			
	Other:			
0406.10.95	Other.			
		*	*	*
0406.90	Other cheese:			
	Other:			
	Other cheeses, and substitutes for cheese, including mixtures of the above:			
	Other, including mixtures of the above ...:			
0406.90.99 ¹	Other.			
		*	*	*

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

EN 04.06 states:

This heading covers all kinds of cheese, viz.:

- (1) Fresh cheese (including cheese made from whey or buttermilk) and curd. Fresh cheese is an unripened or uncured cheese which is ready for consumption shortly after manufacture (e.g., Ricotta, Broccio, cottage cheese, cream cheese, Mozzarella).

* * *

In both HQ 956094 and NY 870353, CBP classified buffalo mozzarella in residual subheading 0406.90, HTSUS, which covers cheeses which are not specifically provided for elsewhere in the nomenclature. However, we are of the view that buffalo mozzarella is a fresh cheese which is specifically described in subheading 0406.10, HTSUS. For support, we note the descriptions of mozzarella which are provided below:

¹ CBP classified the buffalo mozzarella in the very last cheese subheading, which was 0406.90.8075 in the 1992 and 1994 editions of the HTSUS. In the 2016 HTSUS, the very last subheading for cheese is 0406.90.99.

Many soft, unripened varieties of Italian cheese exist, but the two most important are Mozzarella and Ricotta ... Mozzarella cheese was traditionally made from the high fat milk of the water buffalo. In southern Italy, including areas a few miles from Naples, the water buffalo still supplies milk for this type of cheese. For many decades, however, Italians have made Mozzarella cheese from cow's milk and in this form it is highly acceptable. Frank Kosikowski, *Cheese and Fermented Milk Foods*, 153 (1966).

Mozzarella. Mozzarella is a soft, plastic-curd cheese that is made in some parts of Latium and Campania in southern Italy. It originally was made only from buffalo's milk, but now it is made also from cow's milk. It is made in much the same way as Caciocavallo and Scamorze; however, it more nearly resembles Scamorze, as both Mozzarella and Scamorze are eaten while fresh, with little or no ripening. Dairy Products Laboratory, U.S. Dept. of Agriculture, Agriculture Handbook No. 54, *Cheese Varieties and Descriptions* 80 (1969).

We also note the EN 04.06 specifically names mozzarella cheese as a type of fresh cheese. In NY N130960, dated November 5, 2010, and in NY K81170, dated November 19, 2003, CBP classified buffalo milk mozzarella cheese in subheading 0406.10, HTSUS. For all of the aforementioned reasons, we find that buffalo mozzarella is properly classified under subheading 0406.10, HTSUS, as a fresh cheese.

HOLDING:

By application of GRI 1 and GRI 6, the buffalo mozzarella is classified under subheading 0406.10.95, HTSUS, which provides for "Cheese and curd: Fresh (unripened or uncured) cheese, including whey cheese, and curd: Other: Other: Other: Other." The 2016 column one, general rate of duty is 8.5 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

HQ 956094, dated May 3, 1994, and NY 870353, dated January 28, 1992, are hereby revoked.

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

Sincerely,

JACINTO JUAREZ
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**MODIFICATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CERTAIN MEDICAL ALERT
BRACELETS**

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the tariff classification of certain medical alert bracelets.

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 two ruling letters and revoking one ruling letter concerning the tariff classification of cow’s milk mozzarella cheese under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 28, on July 15, 2015. One comment was received in opposition to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 24, 2016.

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch: (202) 325–0347.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

addition, both the trade community 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*, Volume 49, No. 28, on July 15, 2015, proposing to modify New York Ruling Letter (NY) G82337, dated October 6, 2000, in which CBP determined that the subject medical alert bracelets were classified in headings 6117 and 6217, HTSUS, as clothing accessories. One comment was received in opposition to the notice.

As stated in the proposed notice, this modification 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 ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, (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 this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY G82337, in order to reflect the proper classification of the medical alert bracelets under heading 7117, HTSUS, as imitation jewelry, according to the analysis contained in HQ H253887, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 2, 2016

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H253887

August 2, 2016

CLA-2 RR:CTF:TCM H253887 EGJ

CATEGORY: CLASSIFICATION

TARIFF NO.: 7117.90.90

JENNY FU

BROKERAGE MANAGER

HECYNY BROKERAGE SERVICES, INC.

19550 SOUTH DOMINGUEZ HILLS DRIVE

RANCHO DOMINGUEZ, CA 90220

Re: Modification of NY G82337; Classification of Certain Medical Alert Bracelets

DEAR Ms. FU:

This is in reference to New York Ruling Letter (NY) G82337, dated October 6, 2000, issued to you concerning the tariff classification of two styles of bracelets under the Harmonized Tariff Schedule of the United States (HTSUS). You submitted two styles of bracelets to U.S. Customs and Border Protection (CBP), one textile and rubber bracelet (Item 1), and one textile bracelet (Item 2).

We have reviewed NY G82337 and find it to be in error with regard to the classification of the Item 1 bracelet and the Item 2 bracelet with the metal piece. For the reasons set forth below, we hereby modify NY G82337 with regard to the classification of the Item 1 bracelet and the Item 2 bracelet with the metal piece.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice of proposed action was published on July 15, 2015, in the *Customs Bulletin*, Vol. 49, No. 28. One comment was received in opposition to the proposed modification.

FACTS:

In NY G82337, your ruling request included samples of the two different styles of bracelets. The Item 1 bracelet consists of neoprene rubber covered on both sides with knit nylon fabric. The Item 1 bracelet also includes a plastic buckle.

Item 2, composed of woven 100% nylon fabric, is a bracelet with a plastic buckle. Your ruling request stated that the bracelets are designed as medical alerts, and that depending on the order, some bracelets will be imported with a small metal piece attached to them.

ISSUE:

Is the Item 1 bracelet classified under heading 4015, HTSUS, as a rubber accessory, under heading 6117, HTSUS, as a knitted textile accessory, or under heading 7117, HTSUS, as imitation jewelry?

Is the Item 2 bracelet with the metal piece classified under heading 6217, HTSUS, as a woven textile accessory, or under heading 7117, HTSUS, as imitation jewelry?

cius stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

* * *

GRI 3 provides as follows:

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:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
- (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.
- (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

* * *

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

The ENs to GRI 3(b) provide, in pertinent part, that:

- (VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.
- (VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

* * *

EN 61.17 provides, in pertinent part, as follows:

This heading covers made up knitted or crocheted clothing accessories, not specified or included in the preceding headings of this Chapter or elsewhere in the Nomenclature. The heading also covers knitted or crocheted parts of garments or of clothing accessories, (**other than** parts of articles of **heading 62.12**).

The heading covers, *inter alia*:

- (1) **Shawls, scarves, mufflers, mantillas, veils** and the like.
- (2) **Ties, bow ties and cravats.**
- (3) **Dress shields, shoulder or other pads.**
- (4) **Belts of all kinds (including bandoliers) and sashes (e.g., military or ecclesiastical)**, whether or not elastic. These articles are included here even if they incorporate buckles or other fittings of precious metal or are decorated with pearls, precious or semi-precious stones (natural, synthetic or reconstructed).
- (5) **Muffs**, including muffs with mere trimmings of furskin or artificial fur on the outside ...

* * *

Note 2(a) to Chapter 40 states that goods of Section XI (Chapters 50–63) are excluded from classification in Chapter 40. Similarly, Note 3(g) to Chapter 71 states that goods of Section XI are excluded from classification in Chapter 71. If the Item 1 bracelet is *prima facie* classifiable as a textile accessory of heading 6117, HTSUS, then it is excluded from Chapters 40 and 71.

In NY G82337, CBP determined that the Item 1 bracelet was classified under heading 6117, HTSUS. As stated above, the Item 1 bracelet consists of neoprene rubber covered with knit nylon fabric. The bracelet also has a plastic buckle. According to the ruling request, some of these bracelets will be imported together with a base metal piece. The base metal piece will include medical alert information.

Note 1 to Chapter 61 states that the Chapter only applies to knitted or crocheted articles. Thus, this Note limits the goods classified in this chapter to goods which are almost entirely comprised of knitted or crocheted fabric. According to the ENs, the goods of Chapter 61 may include minor components other than knitted or crocheted textiles. For example, EN 61.17 states that knitted or crocheted belts remain classified in that heading, even if they incorporate metal buckles or fittings. EN 61.17 also states that knit muffs with mere trimmings of fur remain classified in that heading.

If the instant bracelet consists almost entirely of knitted fabric, but has some minor components of other materials, then it is classifiable under heading 6117, HTSUS. However, the Item 1 bracelet consists of knitted fabric, a plastic buckle, a neoprene rubber core and sometimes a base metal piece. The rubber core is an important component because it forms the structure of the bracelet. As the rubber core is an important component of the bracelet, the Item 1 bracelet is not *prima facie* classifiable as a textile accessory under heading 6117, HTSUS. Therefore, Note 2(a) to Chapter 40 and Note 3(g) to Chapter 71 do not exclude the bracelet from classification in those chapters.

Applying GRI 1, we note that heading 4015, HTSUS, provides for rubber accessories, while heading 6117, HTSUS, provides for knitted or crocheted textile accessories. Heading 7117, HTSUS, provides for imitation jewelry. Heading 4015, HTSUS, only covers the rubber portion of the bracelet, while heading 6117, HTSUS, only covers the textile portion of the bracelet. Unlike the other two headings, heading 7117, HTSUS, is not limited in scope by a named constituent material.

Note 11 to Chapter 71 defines imitation jewelry as articles of jewelry which do not incorporate natural or cultured pearls, precious or semiprecious stones, precious metal, or metal clad with precious metal. Note 9(a) to Chapter 71 states that “articles of jewelry” means small objects of personal adornment, such as necklaces, bracelets and rings. As the instant merchandise is a bracelet which does not incorporate pearls, precious stones or precious metal, it is classified as imitation jewelry of heading 7117, HTSUS.

Applying GRI 6, we note that subheading 7117.19.90, HTSUS, provides for imitation jewelry of base metal. Subheading 7117.90.90, HTSUS, provides for imitation jewelry of other materials. As the instant bracelet consists of rubber, textile and base metal, it is a composite good. Therefore, we must apply GRI 3(b) to classify the bracelet at the subheading level.

According to GRI 3(b), a composite good is classified according to the component which imparts the good’s essential character. In order to identify a composite good’s essential character, the U.S. Court of International Trade (CIT) has applied the factors listed in EN VIII to GRI 3(b) which are “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.” *The Home Depot v. United States*, 427 F. Supp. 2d 1278, 1293 (Ct. Int’l Trade 2006). With regard to the component which imparts the essential character, the CIT has stated it is “that which is indispensable to the structure, core or condition of the article, i.e. what it is.” *Id. citing A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971).

The Item 1 bracelet consists of knitted fabric, a neoprene rubber core and sometimes a base metal piece. The rubber core creates the form and structure of the bracelet; it also comprises most of the bracelet’s mass and weight. The knitted fabric covers the entire surface area of the bracelet and creates visual interest. The base metal piece is only included with some of the Item 1 bracelets, but it does include important medical alert information.

As each of the three components play an important role with regard to the Item 1 medical alert bracelet, we cannot determine which component imparts the essential character. Therefore, we shall apply GRI 3(c), which states that the subject merchandise shall be classified under the heading or subheading which occurs last in the HTSUS. The two applicable subheadings are 7117.19.90 and 7117.90.90, HTSUS. Therefore, the Item 1 bracelet shall be classified under subheading 7117.90.90, HTSUS, which provides for imitation jewelry of “other” materials.

Like the Item 1 bracelet, the Item 2 bracelet with the metal piece consists of both textile and another constituent material. Heading 6217, HTSUS, provides for woven textile accessories. If the Item 2 bracelet with the metal piece is *prima facie* classifiable under heading 6217, HTSUS, then Note 3(g) to Chapter 71 precludes the bracelet from classification in heading 7117, HTSUS.

However, like the Item 1 bracelet, the metal component of the Item 2 bracelet plays too large a role in relation to the use of a medical alert bracelet to be covered by heading 6217, HTSUS. The bracelet is sold as a medical alert bracelet. The metal piece will be engraved at a later date with important medical information related to the bracelet's purchaser. The metal piece is the reason that the bracelet is being purchased. Therefore, the Item 2 bracelet with the metal piece is not *prima facie* classifiable as a woven textile accessory under heading 6217, HTSUS. Therefore, Note 3(g) to Chapter 71 does not exclude it from classification in Chapter 71.

Like Item 1, the Item 2 bracelet is a composite good. Both the textile and the base metal piece play important roles. The textile provides the form and structure to the necklace, and has a larger visible surface area. The metal piece includes important medical information. Therefore, we cannot determine the essential character of the Item 2 bracelet with the metal piece. As such, it falls to be classified in subheading 7117.90.90, HTSUS, which provides for imitation jewelry of "other" materials by application of GRI 3(c).

We received one comment in opposition to the proposed modification. The commenter objected to classifying medical alert bracelets as "jewelry" because they are utilitarian articles; they are not for "personal adornment" as required by Note 9 to Chapter 71. Note 9 states, in relevant part, as follows: "For the purposes of heading 7113, the expression 'articles of jewelry' means: (a) Any small objects of personal adornment (for example, rings, bracelets, necklaces ...)..."

We disagree with the commenter. Note 9(a) to Chapter 71 specifically names "bracelets" as an example of jewelry. We do not need to reach the question of utility as bracelets are specifically named in the Note. We are of the view that medical alert bracelets are bracelets, and thus are described as articles of jewelry.

HOLDING:

By application of GRI 1, GRI 3(c) and GRI 6, the Item 1 bracelet is classified under subheading 7117.90.90, HTSUS, as "Imitation jewelry: Other: Other: Valued over twenty cents per dozen pieces or parts: Other: Other." The 2016 column one, general rate of duty is 11 percent *ad valorem*.

By application of GRI 1, GRI 3(c) and GRI 6, the Item 2 bracelet with the base metal piece is classified under subheading 7117.90.90, HTSUS, as "Imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other." The 2016 column one, general rate of duty is 11 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY G82337, dated October 6, 2000, is hereby modified with regard to the Item 1 bracelet and the Item 2 bracelet with the metal piece.

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

Sincerely,


JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**MODIFICATION OF TWO RULING LETTERS AND
REVOCAION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF COW'S MILK MOZZARELLA
CHEESE**

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

ACTION: Notice of modification of two ruling letters, revocation of one ruling letter and revocation of treatment relating to the tariff classification of cow's milk mozzarella cheese.

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 two ruling letters and revoking one ruling letter concerning the tariff classification of cow's milk mozzarella cheese 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. 24, on June 15, 2016. One comment was received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 24, 2016.

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch: (202) 325-0347.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and 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*, Volume 50, No. 24, on June 15, 2016, proposing to modify Headquarters Ruling Letter (HQ) 957175, dated July 11, 1995, and New York Ruling Letter (NY) E83545, dated August 23, 1999, in which CBP determined that the subject cow’s milk mozzarella cheese was classified in subheading 0406.90.95, HTSUS, which provides for “Cheese and curd: Other cheese: Other cheeses, and substitutes for cheese, including mixtures of the above: Other, including mixtures of the above ...: Other: Other: Containing cow’s milk (except soft-ripened cow’s milk cheese): Described in additional U.S. note 16 to this chapter and entered pursuant to its provisions.” One comment was received in support of the proposed modification. The commenter also pointed out a third ruling which classified mozzarella cheese in subheading 0406.90.95, HTSUS - NY J85348, dated June 12, 2003. We have added the third ruling to this revocation.

As stated in the proposed notice, this modification 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 ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, (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 this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying HQ 957175 and NY E83545, and revoking NY J85348, in order to reflect the proper classification of the cow's milk mozzarella cheese under subheading 0406.10.84, HTSUS, which provides for "Cheese and curd: Fresh (unripened or uncured) cheese, including whey cheese, and curd: Other: Other: Other: Other cheese and substitutes for cheese (except cheese not containing cow's milk, and soft ripened cow's milk cheese): Described in additional U.S. note 16 to this chapter and entered pursuant to its provisions." If the quantitative limits of subheading 0406.10.84, HTSUS, have been exceeded, then the mozzarella is properly classified in subheading 0406.10.88, HTSUS, which provides for "Cheese and curd: Fresh (unripened or uncured) cheese, including whey cheese, and curd: Other: Other: Other: Other cheese and substitutes for cheese (except cheese not containing cow's milk, and soft ripened cow's milk cheese): Other," according to the analysis contained in HQ H274749, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 2, 2016

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H274749

August 2, 2016

CLA-2 RR:CTF:TCM H274749 EGJ

CATEGORY: CLASSIFICATION

TARIFF NO.: 0406.10.84; 0406.10.88

ALEJANDRO C. GIANNOTTI
A.G. ENGINEERING
4848 LOOP CENTRAL
HOUSTON, TX 77081

Re: Modification of HQ 957175 and NY E83545, and Revocation of NY J85348: Classification of Cow's Milk Mozzarella Cheese

DEAR MR. GIANNOTTI:

This is in reference to Headquarters Ruling Letter (HQ) 957175, dated July 11, 1995, which was issued to you concerning the tariff classification of several types of cheeses, including cow's milk mozzarella cheese, under the Harmonized Tariff Schedule of the United States (HTSUS). In HQ 957175, U.S. Customs and Border Protection (CBP) classified the mozzarella under subheading 0406.90, HTSUS, which provides for cheeses which are not specified elsewhere. We have reviewed HQ 957175 and find it to be in error. For the reasons set forth below, we hereby modify HQ 957175 and New York Ruling Letter (NY) E83545, dated August 23, 1999, and we revoke NY J85348, dated June 12, 2003, with regard to the classification of cow's milk mozzarella cheese.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice of proposed action was published on June 15, 2016, in the *Customs Bulletin*, Vol. 50, No. 24. One comment was received in support of the proposed modification.

FACTS:

In HQ 957175, the subject merchandise was described as follows:

Mozzarella
Flavor: Soft, lightly developed
Consistency: Soft, rather consistent, lightly elastic
Texture: Smooth, thread-like dough
Color: Creamy white
Form: Parallelepiped or in 20kg block
Rind: Without rind, cryovac vacuum packed
Fat in dry matter: 36–40%
Moisture: 42%
Age: Fresh
Shell-life: Six months
Net weight: 3.5 and 20,000 kg ...

On April 4, 1995, you told Headquarters personnel the cheeses are all to be made from cow's milk.

In NY E83545, the subject merchandise was described as follows:

Mozzarella (whole milk) is a pasta filata cheese. The ingredients are whole milk, bacterial culture, rennet, and 1.4 percent salt. The pH is

5.2–5.3. The moisture content is 48 percent and the fat content is 23 percent. The milk to vat temperature is 32 degrees Centigrade, and the cooking temperature is 45 degrees Centigrade. Mozzarella does not contain lipase, and it has a characteristic bland taste.

ISSUE:

Is the cow’s milk mozzarella classified under subheading 0406.10, HTSUS, as a fresh cheese, or under subheading 0406.90, HTSUS, as an “other” cheese that is not specified elsewhere?

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. Under GRI 6, 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 GRIs 1 through 5.

The HTSUS provisions at issue provide, in pertinent part, as follows:

0406	Cheese and curd:	
0406.10	Fresh (unripened or uncured) cheese, including whey cheese, and curd:	
	Other:	
	Other:	
	Other:	Other cheese and substitutes for cheese (except cheese not containing cow’s milk, and soft ripened cow’s milk cheese):
0406.10.84		Described in additional U.S. note 16 to this chapter and entered pursuant to its provisions.
0406.10.88		Other.
	* * *	
0406.90	Other cheese:	
	Other cheeses, and substitutes for cheese, including mixtures of the above:	
	Other, including mixtures of the above ...:	
	Other:	
	Other:	Containing cow’s milk (except soft-ripened cow’s milk cheese):
0406.90.95		Described in additional U.S. note 16 to this chapter and entered pursuant to its provisions.

0406.90.97

Other.

* * *

Additional U.S. Note 16 to Chapter 4, HTSUS, provides as follows:

16. The aggregate quantity of cheeses and substitutes for cheese (except (i) cheese not containing cow's milk; (ii) soft ripened cow's milk cheese; (iii) cheese (except cottage cheese) containing 0.5 percent or less by weight of butterfat; and, (iv) articles within the scope of other import quotas provided for in additional U.S. notes 17 through 25, inclusive, to this chapter), the foregoing goods entered under sub-headings 0406.10.04, 0406.10.84, 0406.20.89, 0406.30.89 and 0406.90.95 in any calendar year shall not exceed the quantities specified in this note (articles the product of Mexico shall not be permitted or included under the aforementioned quantitative limitation and no such articles shall be classifiable therein).

	<u>Quantity (kg)</u>
Argentina	100,000
Australia	3,050,000
Canada	1,141,000
Costa Rica	1,550,000
EU 27	27,846,224
Iceland	323,000
Israel	673,000
New Zealand	11,322,000
Norway	150,000
Switzerland	1,720,000
Uruguay	250,000
Other countries or areas	201,635
Any country	300,000

Of the quantitative limitations provided for in this note for the EU 27, Portugal shall have access to a quantity of not less than 353,000 kilograms. Of the quantitative limitations provided for in this note for Israel, no more than 160,000 kilograms shall contain more than 3 percent by weight of butterfat.

Imports under these provisions require import licenses, in accordance with terms and conditions provided in regulations issued by the Secretary of Agriculture, subject to the approval of the United States Trade Representative (USTR). The regulations may provide for the reallocation among supplying countries or areas of unfilled quantities, subject to USTR approval.

* * *

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs

provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings at the international level. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 04.06 states:

This heading covers all kinds of cheese, viz.:

- (1) Fresh cheese (including cheese made from whey or buttermilk) and curd. Fresh cheese is an unripened or uncured cheese which is ready for consumption shortly after manufacture (e.g., Ricotta, Broccio, cottage cheese, cream cheese, Mozzarella).

* * *

In both HQ 957175 and NY E83545, CBP classified the mozzarella in residual subheading 0406.90, HTSUS, which covers cheeses which are not specifically provided for elsewhere in the nomenclature. However, we are of the view that mozzarella is a fresh cheese which is specifically described in subheading 0406.10, HTSUS. For support, we note the descriptions of mozzarella which are provided below:

Many soft, unripened varieties of Italian cheese exist, but the two most important are Mozzarella and Ricotta ... Mozzarella cheese was traditionally made from the high fat milk of the water buffalo. In southern Italy, including areas a few miles from Naples, the water buffalo still supplies milk for this type of cheese. For many decades, however, Italians have made Mozzarella cheese from cow's milk and in this form it is highly acceptable. Frank Kosikowski, *Cheese and Fermented Milk Foods*, 153 (1966).

Mozzarella. Mozzarella is a soft, plastic-curd cheese that is made in some parts of Latium and Campania in southern Italy. It originally was made only from buffalo's milk, but now it is made also from cow's milk. It is made in much the same way as Caciocavallo and Scamorze; however, it more nearly resembles Scamorze, as both Mozzarella and Scamorze are eaten while fresh, with little or no ripening. Dairy Products Laboratory, U.S. Dep't. of Agriculture, Agriculture Handbook No. 54, *Cheese Varieties and Descriptions* 80 (1969).

We also note that EN 04.06 specifically names mozzarella cheese as a type of fresh cheese. In NY N257393, dated October 3, 2014, and in NY N242316, dated June 5, 2013, CBP classified cow's milk mozzarella cheese in subheading 0406.10, HTSUS. For all of the aforementioned reasons, we find that the mozzarella is properly classified under subheading 0406.10, HTSUS, as a fresh cheese.

Additional U.S. Note 16 to Chapter 4 sets forth a quota which limits importations of goods classified under subheading 0406.10.84, HTSUS. If the mozzarella is imported in quantities that fall under the limit set forth in additional U.S. Note 16 to Chapter 4, it shall remain classified in subheading 0406.10.84, HTSUS. However, if the quantitative limits of additional U.S. Note 16 to Chapter 4, HTSUS, have been reached, the subject mozzarella will be classified in subheading 0406.10.88, HTSUS.

We received one comment in support of our proposed notice of modification, which was published on June 15, 2016, in the *Customs Bulletin*, Vol. 50, No. 24. The commenter identified a third ruling on cow's milk mozzarella which

should be revoked – NY J85348, dated June 12, 2003. In that ruling, CBP classified “Argentine mozzarella” in subheading 0406.90, HTSUS. The subject merchandise was described as follows:

The cheese in question is made from cow’s milk and called “Argentine Mozzarella cheese.” The ingredients are pasteurized cow’s milk, rennet, and starter. A sample cheese loaf, provided with this ruling request, was pale yellow in color and rindless. This cheese had a semi-soft, pliable body and a smooth interior with few mechanical openings. The milkfat content was said to be 30 percent (51–55 percent on a dry basis), with 42–46 percent moisture, and less than 1 percent salt. The sample of this Argentine Mozzarella cheese is a rectangular loaf of semi-soft cheese.

We agree with the commenter that this third ruling should be revoked, and that the subject Argentine mozzarella cheese should be classified in subheading 0406.10, HTSUS. Therefore, we have added this ruling to the instant revocation.

HOLDING:

If imported in quantities that fall within the limits described in additional U.S. Note 16 to Chapter 4, the mozzarella will be classified in subheading 0406.10.84, HTSUS, which provides for “Cheese and curd: Fresh (unripened or uncured) cheese, including whey cheese, and curd: Other: Other: Other: Other cheese and substitutes for cheese (except cheese not containing cow’s milk, and soft ripened cow’s milk cheese): Described in additional U.S. note 16 to this chapter and entered pursuant to its provisions.” The 2016 column one, general rate of duty is 10 percent *ad valorem*.

If the quantitative limits of Additional U.S. Note 16 to Chapter 4, HTSUS, have been reached, the mozzarella will be classified in subheading 0406.10.88, HTSUS, which provides for “Cheese and curd: Fresh (unripened or uncured) cheese, including whey cheese, and curd: Other: Other: Other: Other cheese and substitutes for cheese (except cheese not containing cow’s milk, and soft ripened cow’s milk cheese): Other.” The 2016 column one, general rate of duty is \$1.509 per kilogram. Furthermore, if classified in subheading 0406.10.88, HTSUS, the mozzarella will also be subject to the additional duty rates specified in subheadings 9904.06.38 - 9904.06.49, HTSUS, as applicable.

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

EFFECT ON OTHER RULINGS:

HQ 957175, dated July 11, 1995, and NY E83545, dated August 23, 1999, are hereby modified with respect to the classification of cow’s milk mozzarella cheese.

NY J85348, dated June 12, 2003, is hereby revoked.

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

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**PROPOSED MODIFICATION OF ONE RULING LETTER
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF AN AIRCRAFT ENGINE**

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

ACTION: Notice of proposed modification of one ruling letter, and revocation of treatment relating to the tariff classification of an aircraft engine.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter concerning tariff classification of an aircraft engine 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 23, 2016.

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

FOR FURTHER INFORMATION CONTACT: 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 modify one ruling letter pertaining to the tariff classification of an aircraft engine. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N264006, dated April 29, 2015 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

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

In NY N264006, CBP classified several models of engines. In relevant part, CBP classified the Rolls Royce M250-C20B model engine in heading 8411, HTSUS, specifically in subheading 8411.81.8000, HTSUSA, which provides for “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power not exceeding 5,000 kW: Other.” CBP has reviewed NY N264006 and has determined the ruling letter to be in error with respect to the Rolls Royce M250-C20B model engine. It is now CBP’s position that the engine is properly classified, by operation of GRIs 1 and 6, in heading 8411, HTSUS, specifically in subheading 8411.81.40, HTSUS, which provides for “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power not exceeding 5,000 kW: Aircraft turbines.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N264006 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H266007, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 2, 2016

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N264006

April 29, 2015

CLA-2-84:OT:RR:NC:N1:106

CATEGORY: Classification

TARIFF NO.: 8411.81.8000;

8411.11.4000; 8411.21.4000

EDWARD MACDONALD, SENIOR ICC ADMINISTRATOR
STANDARD AERO (SAN ANTONIO) INC.
TRADE COMPLIANCE
3523 GENERAL HUDNELL DRIVE
BUILDING 360, ROOM 213
SAN ANTONIO, TX 78226-2032

RE: Correction to Ruling Number N263195

DEAR MR. MACDONALD,

This replaces Ruling Number NY N263195, dated April 13, 2015, which contained factual errors. Pursuant to our email correspondence of April 20, 2015, you indicated that the M250-C20 is a model series, which includes the C20, C20B, C20F, C20J, C20S, & C20W model which are *all flight engines*.

You further clarified that the only model that the KS4 specification is built to, for shipboard power generation, is the C20B and that with *the exception of* the C20B model, the other model engines *are flight only* with no companion model. A complete corrected ruling follows.

In your letter dated February 4, 2015, you requested a tariff classification ruling.

The items being considered have been identified as the Rolls Royce Series A250/C20 Engines; a Rolls Royce B17 Engine and a Rolls Royce KS4 Engine.

You state in your request that StandardAero is a certified maintenance, repair and overhaul (MRO) facility for Rolls Royce Corporation. StandardAero has clients within North America and internationally. All of the engines shipped across borders are for repair, overhaul, test or rentals to be returned to the customer or StandardAero upon completion or use.

The Rolls Royce Series A250/C20 Engine is a turboshaft aircraft engine which is primarily designed for use with a helicopter. The engine's power measures 313 Kilowatts (kW).

The Rolls Royce B17 Engine is used solely in a Turbo propeller Aircraft. It contains a propeller mounted to the gearbox by a propeller box in order to drive the aircraft forward. The engine's power measures 313 kW.

In your request, you state that the Rolls Royce KS4 Engine is not a flight engine and can be found on various US Navy Ships that utilize the 501K Turbine Engine. The KS4 is an industrial engine used to start the 501K Turbine Engine models. The engine's power measures 313 kW.

In your ruling request, you suggested classification of the Rolls Royce A250-C20 Engine in heading 8411.11.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Turbojets, turbopropellers and other gas turbines, and parts thereof: Turbojets: Of a thrust not exceeding 25 kN: Aircraft turbines."

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 ... ”

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and the GRIs.

As you stated in our emails, the Rolls Royce A250/**C20B** Engine is used on a helicopter **and** used as a base for the KS4, therefore it cannot be classified solely as a Turbojet for aircraft.

The applicable classification subheading for the Rolls Royce A250/**C20B** Engine will be 8411.81.8000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power not exceeding 5,000 kW: Other.”

The applicable classification subheading for the remaining models of the A250/C20 series, which include the C20, C20F, C20J, C20S and the C20W (which are *all flight engines*) will be 8411.11.4000, HTSUS, which provides for “Turbojets, turbopropellers and other gas turbines, and parts thereof: Turbojets: Of a thrust not exceeding 25 kN: Aircraft turbines.”

The applicable classification subheading for Rolls Royce B17 Engine will be 8411.21.4000, HTSUS, which provides for “Turbojets, turbopropellers and other gas turbines, and parts thereof: Turbopropellers: Of a power not exceeding 1,100 kW: Aircraft turbines.”

In your ruling request, you suggested classification of the Rolls Royce KS4 Engine in heading 8411.81.4000, (HTSUS), which provides for “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power not exceeding 5,000 kW: Aircraft turbines.”

As you stated in your request, “*The KS4 is not a flight engine and can be found on various US Navy Ships that utilize the 501K Turbine Engine. The KS4 is an industrial engine used to start the 501K Turbine Engine models*”. Thus, it cannot be classified solely as an Aircraft turbine.

The applicable classification subheading for the Rolls Royce KS4 Engine will be 8411.81.8000, (HTSUS), which provides for, “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power not exceeding 5,000 kW: Other.”

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

If you have any questions regarding the ruling, please contact National Import Specialist Matthew Sullivan at matthew.sullivan@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H266007
CLA-2 OT:RR:CTF:TCM H266007 PJG
CATEGORY: Classification
TARIFF NO.: 8411.81.40

DONALD S. STEIN
GREENBERG TRAUERIG, LLP
2101 L STREET, N.W., SUITE 1000
WASHINGTON, DC 20037

RE: Modification of NY N264006; tariff classification of an aircraft engine

DEAR MR. STEIN:

This is in response to your request for reconsideration dated May 19, 2015, of New York (NY) ruling letter N264006, dated April 29, 2015, issued to your client, StandardAero (San Antonio) Inc. (“StandardAero”). In NY N264006, U.S. Customs and Border Protection (“CBP”) classified several models of engines. In relevant part, CBP classified the Model 250-C20B (“M250-C20B” or “C20B”)¹ engine in heading 8411, HTSUS, specifically, in subheading 8411.81.8000, HTSUS, which provides for “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power not exceeding 5,000 kW: Other.” The subject request for reconsideration concerns only the tariff classification of the Rolls Royce (“RR”) M250-C20B model engine. We have reconsidered NY N264006, and based upon the additional information that you have submitted with your request, we have determined that the holding in NY N264006 is in error with respect to the Rolls Royce M250-C20B model engine. Accordingly, NY N264006 is modified.

FACTS:

In NY N264006, the C20B model was described as one of six engine models in the Rolls Royce M250-C20 model series. In NY N264006, CBP classified the C20B model engine in 8411.81.8000, HTSUSA, which provides for “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power not exceeding 5,000 kW: Other.” This decision was based on statements made to CBP by StandardAero that the C20B model engine is used on a helicopter and as a base for the Rolls Royce KS4 engine, which is an industrial use engine that is used on U.S. Navy ships. Based on this information, CBP determined in NY N264006 that the Rolls Royce C20B model engine has a dual use, and therefore could not be classified as an “Aircraft turbine.”

In the reconsideration request, you have submitted additional information about the C20B model engine in the form of: a Federal Register Notice of Proposed Rulemaking showing that the C20B model engine is subject to the

¹ In NY N264006, CBP refers to the “Rolls Royce Series A250/C20 Engines” and the “M250-C20” model series. We note that Rolls Royce began to refer to the Allison 250 (“A250”) model series as the Model 250 (“M250”) model series after it acquired the Allison Engine Company. Therefore, any references to the engines of the “A250/C20” model series, the “A250-C20” model series, or the “M250-C20” model series in that ruling are referring to the same merchandise. The Rolls Royce M250-C20 model series of engines includes the following engine model numbers: C20, C20B, C20F, C20J, C20S, and C20W. The merchandise at issue in this ruling is the Rolls Royce M250-C20B engine, which is an engine model within the Rolls Royce M250-C20 model series of engines.

regulations of the Federal Aviation Administration, U.S. Department of Transportation; a series of documents showing the “evolution” of the Rolls Royce Model 250 series engine; and a Wikipedia entry describing the C20B model engine. In addition you have clarified previous statements made to CBP about the M250-C20B model engine, specifically, you state that “[i]t is solely used in a helicopter aircraft. It is not a dual use engine.” Moreover, you state that the Rolls Royce KS4 engine and the Rolls Royce M250-C20B engine “are unique and will never be commissioned to work each other’s end use.”

You have also supplemented your request for reconsideration with an excerpt from the RR M250-C20B Operation and Maintenance Manual 10W2 concerning the design of the M250-C20B engine and a depiction of the M250-C20B engine from the same manual (Figure 1). The excerpt provides, in pertinent part, the following:

A. Compressor

The compressor assembly consists of a compressor front support assembly, compressor rotor assembly, compressor case assembly, and compressor diffuser assembly. Air enters the engine through the compressor inlet and is compressed by six axial compressor stages and one centrifugal stage. The compressed air is discharged through the scroll type diffuser into two ducts which convey the air to the combustion section. (See Figure 2).

B. Combustion Section

The combustion section consists of the outer combustion case and the combustion liner. A spark igniter and a fuel nozzle are mounted in the aft end of the outer combustion case. Air enters the single combustion liner at the aft end, through holes in the liner dome and skin. The air is mixed with fuel sprayed from the fuel nozzle and combustion takes place. Combustion gases move forward out of the combustion liner to the first-stage gas producer turbine nozzle.

C. Turbine

The turbine consists of a gas producer turbine support, a power turbine support, a turbine and exhaust collector support, a gas producer turbine rotor and a power turbine rotor. The turbine is mounted between the combustion section and the power and accessory gearbox. The two-stage power turbine furnishes the output power of the engine. The expanded gas discharges in an upward direction through the twin ducts of the turbine and the exhaust collector support.

D. Power and Accessory Gearbox

The main power and accessory drive gear trains are enclosed in a single gear case. The gear case serves as the structural support of the engine. All engine components including the engine mounted accessories are attached to the case. A two-stage helical and spur gear set is used to reduce rotation speed from 33,290 rpm at the power turbine to 6016 rpm at the output drive spline. Accessories driven by the power turbine gear train are the airframe furnished power turbine tachometer-generator and the power turbine governor. The gas producer gear train drives the compressor, fuel pump, an airframe fur-

nished gas producer tachometer-generator, and gas producer fuel control. The starter drive and spare drive are in this gear train.

ISSUE:

What is the proper classification of the Rolls Royce M250-C20B model engine under the HTSUS?

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:

8411 Turbojets, turbopropellers and other gas turbines, and parts thereof:

Turbojets:

8411.11 Of a thrust not exceeding 25kN:

8411.11.40 Aircraft turbines

* * *

Other gas turbines:

8411.81 Of a power not exceeding 5,000 kW:

8411.81.40 Aircraft turbines

8411.81.80 Other

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

The EN to 84.11 states, in pertinent part:

The heading covers **turbo-jets, turbo-propellers and other gas turbines.**

The turbines of this heading are, in general, internal combustion engines which do not usually require any external source of heat as does, for example, a steam turbine.

...

(A) **TURBO-JETS**

A turbo-jet consists of a compressor, a combustion system, a turbine and a nozzle, which is a convergent duct placed in the exhaust pipe. The hot pressurised gas exiting from the turbine is converted to a high velocity gas stream by the nozzle. The reaction of this gas stream acting on the engine provides the motive force which may be used to power aircraft. In its simplest form the compressor and turbine are accommodated on a

single shaft. In more complex designs the compressor is made in two parts (a two spool compressor) in which the spool of each part is driven by its own turbine through concentric shafting. Another variation is to add a ducted fan usually at the inlet to the compressor and drive this either by a third turbine or connect it to the first compressor spool. The fan acts in the nature of a ducted propeller, most of its output bypassing the compressor and turbine and joining the exhaust jet to provide extra thrust. This version is sometimes called a “bypass fan jet”.

So-called “after-burning” appliances are auxiliary units for mounting in series with certain turbo-jet engines in order to boost their power output for short periods. These appliances have their own fuel supply and utilise the excess oxygen in the gases issuing from the turbo-jet.

* * *

(C) OTHER GAS TURBINES

This group includes industrial gas-turbine units which are either specifically designed for industrial use or adapt turbo-jets or turbo-propeller units for uses other than providing motive power for aircraft.

There are two types of cycles:

- (1) The simple cycle, in which air is ingested and compressed by the compressor, heated in the combustion system and passed through the turbine, finally exhausting to the atmosphere.
- (2) The regenerative cycle, in which air is ingested, compressed and passed through the air pipes of a regenerator. The air is pre-heated by the turbine exhaust and is then passed to the combustion system where it is further heated by the addition of fuel. The air/gas mixture passes through the turbine and is exhausted through the hot gas side of the regenerator and finally to the atmosphere.

There are two types of designs:

- (a) The single-shaft gas turbine unit, in which the compressor and turbine are built on a single shaft, the turbine providing power to rotate the compressor and to drive rotating machinery through a coupling. This type of drive is most effective for constant speed applications such as electrical power generation.
- (b) The two-shaft gas turbine unit, in which the compressor, combustion system and compressor turbine are accommodated in one unit generally called a gas generator, whilst a second turbine on a separate shaft receives the heated and pressurised gas from the exhaust of the gas generator. This second turbine known as the power turbine is coupled to a driven unit, such as a compressor or pump. Two-shaft gas turbines are normally applied where load demand variations require a range of power and rotational speed from the gas turbine.

These gas turbines are used for marine craft and locomotives, for electrical power generation, and for mechanical drives in the oil and gas, pipeline and petrochemical industries.

This group also includes other gas turbines without a combustion chamber, comprising simply a stator and rotor and which use energy from

gases provided by other machines or appliances (e.g., gas generators, diesel engines, free-piston generators) and compressed air or other compressed gas turbines.

* * *

You argue that the Rolls Royce M250-C20B model engine should be classified in subheading 8411.11.4000, HTSUSA, as “Turbojets, turbopropellers and other gas turbines, and parts thereof: Turbojets: Of a thrust not exceeding 25kN: Aircraft turbines,” because the merchandise is an aircraft engine and does not share the same end application and use as the KS4 Engine, which is an industrial use engine. Therefore, you indicate that the C20B model engine “is not a dual use engine.”

We agree that heading 8411, HTSUS is the appropriate heading for the tariff classification of the Rolls Royce M250-C20B model engine. We also note that each type of engine designated under heading 8411, HTSUS, is considered to be a “gas turbine,” but it is the specific construction and use of the gas turbine that determines whether that model is classified as a “Turbojet,” “Turbojet,” or “Other Gas Turbine.” See HQ H966934 (dated May 6, 2004).

We note that the power rating of “Turbojets” is measured in thrust, the units of which are given in pound thrust or Newtons, whereas the power rating of “Other gas turbine[,]” such as a turboshaft, is measured in Watts. See subheading 8411.11, HTSUS, and subheading 8411.81, HTSUS. The subject merchandise has a power rating that is measured in shaft horsepower (“shp”), which can be converted into Watts. Therefore, given its power rating, the subject merchandise cannot be classified in subheading 8411.11, HTSUS, as a turbojet engine.

Based upon the design of the subject merchandise, we find that the Rolls Royce M250-C20B model engine is a turboshaft engine. The description of the design of the merchandise that was provided as a supplement to the request for reconsideration is consistent with the simple cycle engine description provided in EN 84.11(C)(1) and the two-shaft gas turbine unit design described by EN 84.11(C)(b). According to its design and power rating of 313 kW, we find that it is classified under subheading 8411.81, HTSUS, which provides for “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power not exceeding 5,000 kW.” Based on the documentation that you provided in your request for reconsideration, we agree that the Rolls Royce M250-C20B model engine is only used as an aircraft engine for helicopters in its condition as imported, rather than as a dual-use engine designed for aircraft use and industrial use, as indicated in NY N264006. Therefore, the subject merchandise is not classified in subheading 8411.81.80, HTSUS, which would be appropriate for dual-use engines, rather, it is classified under subheading 8411.81.40, HTSUS, which provides for “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power not exceeding 5,000 kW: Aircraft turbines.”

HOLDING:

Under the authority of GRIs 1 and 6, the Rolls Royce M250-C20B engine is classified in heading 8411, HTSUS, specifically in subheading 8411.81.40, HTSUS, which provides for “Turbojets, turbopropellers and other gas tur-

bines, and parts thereof: Other gas turbines: Of a power not exceeding 5,000 kW: Aircraft turbines.” The 2016 column one, general rate of duty is Free.

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

EFFECT ON OTHER RULINGS:

NY N264006, dated April 29, 2015, is hereby MODIFIED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation

Division



**PROPOSED REVOCATION OF ONE RULING LETTER AND
MODIFICATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF NEXBTL RENEWABLE
DIESEL**

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

ACTION: Notice of proposed revocation of one ruling letter and modification of treatment relating to the tariff classification of NEXBTL Renewable Diesel

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 NEXBTL Renewable Diesel 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 23, 2016.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during

regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Peter Martin, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0048.

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 NEXBTL Renewable Diesel. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N250961, dated March 18, 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 eight 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 N250961, CBP classified NEXBTL R100 in heading 3824, HTSUS, specifically in subheading 3824.90.9290, HTSUS, which provides for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other." CBP has reviewed N250961 and has determined the ruling letter to be in error. It is now CBP's position that the subject NEXBTL R100 is classified by operation of GRI 1, in heading 2710, HTSUS, specifically in subheading 2710.19.45, which provides for "Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils: Other: Mixtures of hydrocarbons not elsewhere specified or included, which contain by weight not over 50 percent of any single hydrocarbon compound."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke N250961 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H258443, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 3, 2016

GREG CONNOR
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY N250961

March 18, 2014

CLA-2-38:OT:RR:NC:2:239

CATEGORY: Classification

TARIFF NO.: 3824.90.9290

MR. DAYNE DELAHOUSAYE
NESTE OIL US, INC.
1800 WEST LOOP SOUTH, SUITE 1700
HOUSTON, TEXAS 77027

RE: The tariff classification of NEXBTL Non-Ester Renewable Diesel from Finland, Singapore, or the Netherlands

DEAR MR. DELAHOUSAYE:

In your letter dated March 03, 2014 you requested a tariff classification ruling.

The instant product is called NEXBTL. NEXBTL consists of various paraffinic hydrocarbons.

Product literature states in part that:

“Unlike traditional biofuels, NEXBTL is a ‘dropin’ fuel and is fully compatible with existing fuel infrastructure, distribution systems, and engines. Proprietary hydrotreating technology converts vegetable oil and waste fats into premium-quality fuel. Therefore, NEXBTL renewable diesel is a pure hydrocarbon with significant performance and emission benefit”.

It is further stated that:

Hydrotreated Vegetable Oil (HVO) is a mixture of straight chain and branched paraffins – the simplest type of hydrocarbon molecules from the point of view of clean and complete combustion. Typical carbon numbers are C15 ... C18....HVO is also called Renewable diesel or HDRD (Hydrogenation Derived Renewable Diesel)”.

You suggest classification in heading 2710, HTSUS. However, NEXBTL 100% Hydrotreated Vegetable Oil does not meet the requirement in heading 2710 which provides for: “Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations.” Therefore, the product must be classified elsewhere in the tariff.

The applicable subheading for the NEXBTL Non-Ester Renewable Diesel will be 3824.90.9290, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other. The General rate of duty will be 5 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on 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 this ruling regarding Chapter 27, contact National Import Specialist Frank Cantone at (646) 733-3038, or for Chapter 38 contact, National Import Specialist Paul Hodgkiss at 646-733-3046.

Sincerely,

GWENN KLEIN KIRSCHNER

Acting Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H258443
CLA-2 OT:RR:CTF:TCM H258443 PTM
CATEGORY: Classification
Tariff No: 2710.19.4590

JACOB DWECK
SUTHERLAND, ASBILL & BRENNAN LLP
700 SIXTH ST. NW SUITE 700
WASHINGTON, DC 20001

RE: Revocation of NY N250961; Tariff Classification of Renewable Diesel

DEAR MR. DWECK,

We are writing in response to your correspondence, dated September 26, 2014, in which you request reconsideration of a ruling issued by U.S. Customs and Border Protection (“CBP”) of a ruling on behalf of your client, Neste Oil US, Inc. (“Neste”). Specifically, you request reconsideration of New York (“NY”) Ruling N250961, dated March 18, 2014 concerning the tariff classification of NEXBTL renewable diesel in the Harmonized Tariff Schedule of the United States (“HTSUS”). In NY N250961, we classified renewable diesel in subheading 3824.90.9290, HTSUS, which provides for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other.” We have reviewed N250961 and find it to be in error. For the reasons set forth below, we hereby revoke N250961.

FACTS:

NEXBTL is referred to as “renewable diesel” or “R100.”¹ NEXBTL is produced from vegetable oils and animal fats and is used to power diesel engines.

In N250961, we stated the following:

The instant product is called NEXBTL. NEXBTL consists of various paraffinic hydrocarbons.

Product literature states in part that:

Unlike traditional biofuels, NEXBTL is a ‘dropin’ fuel and is fully compatible with existing fuel infrastructure, distribution systems, and engines. Proprietary hydrotreating technology converts vegetable oil and waste fats into premium-quality fuel. Therefore, NEXBTL renewable diesel is a pure hydrocarbon with significant performance and emission benefit”.

It is further stated that:

Hydrotreated Vegetable Oil (HVO) is a mixture of straight chain and branched paraffins – the simplest type of hydrocarbon molecules from the point of view of clean and complete combustion. Typical carbon numbers are C15 ... C18...HVO is also called Renewable diesel or HDRD (Hydrogenation Derived Renewable Diesel)”.

¹ “R100” denotes that the product is not blended with petroleum diesel and is in its “neat” form. The 100 denotes the percentage of renewable diesel, in this case 100%.

You suggest classification in heading 2710, HTSUS. However, NEXBTL 100% Hydrotreated Vegetable Oil does not meet the requirement in heading 2710 which provides for: "Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations." Therefore, the product must be classified elsewhere in the tariff.

The applicable subheading for the NEXBTL Non-Ester Renewable Diesel will be 3824.90.9290, Harmonized Tariff Schedule of the United States (HTSUS)

Traditional diesel fuels are petroleum distillates rich in paraffinic hydrocarbons.² In the United States, the American Society for Testing and Materials Standard 975 establishes the standards for diesel fuel according to various criteria. These criteria include boiling range, cetane number, lubricity, cloud point, flash point, viscosity, aniline point, sulfur content, water content, ash content and carbon residue.³ Historically diesel fuel has been derived from petroleum hydrocarbons. As a result the D975 specification has evolved to define performance requirements for diesel engine fuels composed of conventional hydrocarbon oils refined from petroleum. However, the D975 standard does not require that fuels be derived from petroleum.⁴ The definition of a hydrocarbon oil in the ASTM D975 specification states it is a homogeneous mixture with elemental composition primarily of carbon and hydrogen, but that it may be manufactured from a variety of raw materials including petroleum, oil sands, natural gas, coal, and biomass.⁵ Additionally, the standard permits the inclusion of additives to hydrocarbon oils to enhance performance to meet the requirements of the D975 standard.⁶

The U.S. Department of Energy Alternative Fuels Data Center provides the following information concerning renewable diesel⁷:

Use: Renewable diesel is designed to substitute directly for petroleum diesel without modifying vehicle engines or fueling infrastructure. It may also be blended with conventional diesel.

Production: Renewable diesel can be produced from soybean, palm, canola or rapeseed oil; animal tallow; vegetable oil waste or brown trap grease; and other fats and vegetable oils. Producing renewable diesel involves hydrogenating triglycerides to remove metals and compounds with oxygen and nitrogen using existing refinery infrastructure that is used for conventional

² *Biodiesel and Other Renewable Diesel Fuels*, National Renewable Energy Laboratory, U.S. Department of Energy. Available at <http://www.nrel.gov/docs/fy07osti/40419.pdf>.

³ ASTM Designation D975, Standard Specification for Diesel Fuel Oils.

⁴ *Id.* Appendices §X7.4.

⁵ *Id.* § 3.1.3.

⁶ *Id.* §7.1.

⁷ *Hydrogenation-Derived Renewable Diesel*, Department of Energy – Energy Efficiency and Renewable Energy, Alternative Fuels Data Center, available at http://www.afdc.energy.gov/fuels/emerging_green.html.

petroleum.⁸ Dedicated hydrotreating facilities that do not produce conventional petroleum can also produce renewable diesel.

Distribution: Renewable diesel is compatible with existing fuel distribution systems. It can be distributed through modern infrastructure and transported through existing pipelines to dispense at fueling stations.

Benefits: Among other benefits, renewable diesel reduces carbon monoxide and hydrocarbons in the environment. Renewable diesel is flexible inasmuch as it is compatible with existing diesel distribution infrastructure (not requiring new pipelines, storage tanks or retail station pumps), can be produced using existing oil refinery capacity and does not require extensive new production facilities. Renewable diesel's high combustion quality results in similar or better vehicle performance compared to conventional diesel.⁹

The California Air Resources Board ("CARB") commissioned a report on the compatibility of renewable diesel with existing motor vehicle fuel specifications as set forth in the California Code of Regulations.¹⁰ The report concluded that renewable diesel met all applicable motor vehicle fuel specifications for diesel fuel. The State Water Resources Control Board of California and CARB issued a joint statement that stated that "renewable diesel should be treated the same as conventional CARB diesel for all purposes."¹¹

In connection with the request for reconsideration, Neste provided additional information. Neste states that NEXBTL consists of aliphatic hydrocarbon chains and is a mixture of hydrocarbons. No single hydrocarbon compound constitutes more than fifty percent by weight of NEXBTL. NEXBTL may be used in its pure "neat" form and can serve as a direct substitute for petroleum diesel. That is, it can be used in diesel engines without blending and without modification to the engine itself.

Several automobile manufacturers have examined renewable diesel and approved of its use in their vehicles. For example, Volvo Trucks North America issued a press release stating that it "after concluding truck and engine lab testing, approved the use of renewable diesel fuel for all its proprietary Volvo engines, offering environmental and cost-savings benefits to its consumers." Similarly, Mercedes-Benz trucks granted approval for the use of hydrotreated vegetable oil ("HVO")¹² fuel in its medium and heavy duty trucks.

NEXBTL renewable diesel is a distinct product from biodiesel, although they are both derived from renewable feedstocks. The technical definition of biodiesel is "a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the

⁸ *Id.*

⁹ *Id.*

¹⁰ Staff Report: Multimedia Evaluation of Renewable Diesel (May 2015), Available at http://www.arb.ca.gov/fuels/diesel/altdiesel/20150521RD_StaffReport.pdf.

¹¹ Joint Statement: Renewable Diesel Should Be Treated the Same as Conventional Diesel, Available at http://www.arb.ca.gov/fuels/diesel/altdiesel/07312013_RDjointstatement.pdf

¹² Renewable Diesel is treated as "Hydrotreated Vegetable Oil" in Europe for use in diesel engines. See Neste Renewable Diesel Handbook, available at https://www.neste.com/sites/default/files/attachments/neste_renewable_diesel_handbook.pdf.

requirements of ASTM D 6751.”¹³ Biodiesel is produced by through the process of transesterification, and contains esters. By contrast, NEXBTL is produced through hydrotreatment. The resulting renewable diesel contains solely hydrocarbons and no esters. Thus, biodiesel is produced using a different process, has different chemical properties and is subject to a different standard than renewable diesel.

In connection with this request for reconsideration, NESTE submitted four samples of NEXBTL “R100” renewable diesel to the CBP Laboratory and Scientific Services Directorate (“LSSD”). LSSD determined that the samples were comprised of aliphatic hydrocarbons with no aromatics. LSSD did note several differences between the samples of NEXBTL and petroleum diesel. For example, the R100 has a higher Cetane number (92.85) than petroleum diesel, the sample has no sulfur present compared to petroleum diesel, the R100 has no aromatics compared to petroleum diesel, and the R100 has little or no fossil carbon present compared to petroleum diesel.

ISSUE:

What is the tariff classification of NEXBTL renewable diesel?

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 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 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, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The HTSUS provisions at issue are as follows:

2710	Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils:
2710.19	Other:
2710.19.45	Mixtures of hydrocarbons not elsewhere specified or included, which contain by weight not over 50 percent of any single hydrocarbon compound
	* * *
3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

¹³ ASTM 975 §3.1.1.

3824.90 Other:
 3824.90.92 Other:

Because heading 3824, HTSUS covers only merchandise that is “not elsewhere specified or included,” the subject merchandise can be classified there by application of GRI 1 only if it is not *prima facie* classifiable in heading 2710, HTSUS. *See R.T. Foods, Inc. v. United States*, 757 F.3d 1349, 1354 (Fed. Cir. 2014) (stating that a provision that contains the terms “not elsewhere specified or included” is a basket provision, in which classification of a given product “is only appropriate if there is no tariff category that covers the merchandise more specifically”). Accordingly, we initially consider whether the subject merchandise is classifiable in heading 2710 HTSUS.

Heading 2710 covers oils obtained from geological sources. Note 2 to Chapter 27, HTSUS, states that:

References in heading 2710 to “petroleum oils and oils obtained from bituminous minerals” include not only petroleum oils and oils obtained from bituminous minerals, *but also similar oils*, as well as those consisting mainly of mixed unsaturated hydrocarbons, obtained by any process, provided that the weight of the nonaromatic constituents exceeds that of the aromatic constituents.
 (Emphasis added).

This heading contains three distinct categories of merchandise: 1) “petroleum oils and oils obtained from bituminous minerals, other than crude;” 2) “preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations;” and 3) “waste oils.” *See BP Products North America Inc. v. United States*, 716 F. Supp. 2d 1291, at 1294–1295 (Ct. Int’l Trade 2010). “Petroleum” is defined as ‘an oily flammable bituminous liquid that may vary from almost colorless to black, occurs in many places in the upper strata of the earth, is a complex mixture of hydrocarbons with small amounts of other substances, and is prepared for use as gasoline, naphtha, or other products by various refining processes.’¹⁴ NEXBTL is not a petroleum oil or an oil obtained from bituminous minerals as it is a hydrocarbon oil derived from the hydrotreatment of vegetable oils and animal fats rather than from geological sources. Furthermore, it cannot be characterized as a waste oil. However, Note 2 to Chapter 27 provides that the first two categories of the heading also covers “similar oils.” Consequently, the classification of R100 NEXBTL in heading 2710 HTSUS depends on whether the product is a “similar oil” to petroleum oils and oils obtained from bituminous minerals.

The term “similar oils” is not defined in the nomenclature. In *BP Products North America Inc. v. United States*, *supra*, the Court of Appeals for the Federal Circuit discussed the term “similar oils” when it addressed an argument regarding the aromatic constituency limitation contained in Note 2 to Chapter 27, HTSUS. The court stated:

¹⁴ Merriam Webster Dictionary, available at <http://www.merriam-webster.com/dictionary/petroleum>.

Statutory Chapter Note 2 provides that:

References in heading 2710 to 'petroleum oils and oils obtained from bituminous minerals' include not only petroleum oils and oils obtained from bituminous minerals, but also similar oils, as well as those consisting mainly of mixed unsaturated hydrocarbons, obtained by any process, provided that the weight of the nonaromatic constituents exceeds that of the aromatic constituents.

Note 2 of Chapter 27, HTSUS. This aromatic constituency limitation, therefore, has no application to petroleum oils because the exclusion applies only to the last antecedent, "similar oils." See *Finisar Corp. v. DirecTV Group, Inc.*, 523 F.3d 1323, 1336 (Fed. Cir. 2008) (stating that the doctrine of the last antecedent provides that "[r]eferential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent, which consists of the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence" (internal quotation marks and citation omitted)).

Thus, the court relied on the grammatical construction of Note 2 to Chapter 27 to conclude that "similar oils" may not contain more aromatic than non-aromatic content by weight. There was no further discussion as to what qualifies as a "similar oil." However, by this construction there is a limiting factor based on aromatic content. Because R100 contains no aromatic content, it is not precluded from qualifying as a "similar oil" within the meaning of Note 2 to Chapter 27.

In *Victoria's Direct LLC, v. United States*, the Court of Appeals for the Federal Circuit stated that "[a]pplying the phrase 'and similar articles' to the merchandise at issue, then, requires determining whether the merchandise, considering all of its features, shares the unifying characteristics of the particular heading."¹⁵ Thus, to be considered as "similar," merchandise must have "unifying characteristics" to the enumerated product. Furthermore, in determining the proper meaning of a tariff provision, the Courts have held that where the HTSUS does not expressly define a term, "the correct meaning of the term is its common commercial meaning." *Arko Foods Int'l, Inc. v. United States*, 654 F.3d 1361, 1364 (Fed. Cir. 2011). To determine the common commercial meaning, the Courts have directed that CBP may rely upon its own understanding of terms, and may consult lexicographic and scientific authorities. See *Airflow Tech., Inc. v. United States*, 524 F.3d 1287, 1291 (Fed. Cir. 2008). The Meriam-Webster Dictionary defines the word "similar" as follows:¹⁶

Full Definition of *similar*

1. having characteristics in common: strictly comparable
2. alike in substance or essentials

¹⁵ 769 F.3d 1102, 1110 (Fed. Cir. 2014)

¹⁶ Meriam-Webster Dictionary, available at <http://www.merriam-webster.com/dictionary/similar>.

In context, the term “similar oils” must mean oils that have characteristics in common with or are alike in substance or essentials to petroleum oils and oils of bituminous minerals. NEXBTL R100 renewable diesel is similar chemically to petroleum diesel inasmuch as both products are hydrocarbons.¹⁷ NEXBTL is so similar to petroleum diesel that it can be substituted directly for petroleum diesel without modification to a vehicle’s engine, which is evidenced by the fact that auto manufacturers such as Volvo have approved of its use in their engines. Furthermore, NEXBTL can be produced using existing refinery infrastructure that is used for conventional petroleum. NEXBTL may be transported and distributed in existing infrastructure such as pipelines and fuel dispensaries. Additional evidence of the similarity of renewable diesel and conventional diesel lies in the State Water Resources Control Board of California and CARB’s joint statement that “renewable diesel should be treated the same as conventional CARB diesel for all purposes.” Both products must meet the ASTM D975 standard for diesel at the retail level in order for them to be used. Consequently, we find that NEXBTL R100 has unifying characteristics with petroleum diesel and is alike in substance. Therefore, we find that NEXBTL is a “similar oil” to conventional petroleum diesel.

We note that NEXBTL R100, in its imported condition, may not meet the ASTM D975 criteria for lubricity. However, in this respect NEXBTL is similar to petroleum diesel. Petroleum diesel does not typically satisfy the lubricity requirement for the ASTM D975 standard at the point of manufacture because the lubricity additive is not added to petroleum diesel until just before it is delivered at the retail level. This is standard industry practice because diesel is transported using the same pipeline infrastructure that also carries jet fuel. The lubricity additive is a contaminant for jet fuel, therefore, it is not added to diesel until after it has been withdrawn from the pipeline. Consequently, ASTM D975 testing occurs at the retail level rather than prior to its importation. Similarly, NEXBTL R100 is mixed with an appropriate quantity of lubricity additive at the retail level. Both petroleum diesel and NEXBTL must meet the ASTM D975 standard in order for it to be used in the United States. ASTM D975 permits the inclusion of additives to hydrocarbon oils to enhance performance to meet the requirements, including lubricity, of the D975 standard. Consequently, the fact that NEXBTL requires the addition of lubricity additive post-importation in order to meet the ASTM D975 standard does not disqualify it from being defined as a “similar oil” to petroleum diesel classified under heading 2710 HTSUS.

LSSD noted several differences between petroleum diesel and the samples of R100. However, these differences do not change the fact that NEXBTL is interchangeable with petroleum diesel. For example, the cetane level of NEXBTL is higher than what is customary for petroleum diesel. However, the ASTM D975 specification only provides for a minimum cetane level (40) that the samples of NEXBTL exceeded (92.5). There was no fossil content or aromatic detected in the samples of NEXBTL. However, these differences are the result of the fact that the NEXBTL is derived from a different feedstock, vegetable and animal oils, than petroleum diesel. With respect to aromatic content, the ASTM D975 requires that product not exceed a maximum of 35% aromatic content by volume. NEXBTL contains no aromatic content, so the product is in compliance with the ASTM D975 specification for aromatic

¹⁷ As compared to biodiesel, which contains esters.

content. Note 2 to Chapter 27 does not require oils to be identical in order to be classified therein, they need only be “similar.” Because the differences identified do not affect the ability for NEXBTL to be used as a substitute for petroleum diesel, we find that they do not disqualify them from classification under heading 2710 HTSUS as “similar oils.”

The Explanatory Note to Chapter 38.26 provides further support for classification in heading 2710 HTSUS. EN 38.26, which covers biodiesel, states:

38.26 - Biodiesel and mixtures thereof, not containing or containing less than 70% by weight of petroleum oils or oils obtained from bituminous minerals.

Biodiesel consists of mono-alkyl esters of fatty acids of various chain lengths, immiscible with water, with a high boiling point, low vapour pressure and a viscosity similar to that of diesel oil produced from petroleum. Biodiesel is typically made by a chemical process called transesterification, whereby the fatty acids in oils or fats react with an alcohol (usually methanol or ethanol) in the presence of a catalyst to form the desired esters.

* * *

This heading **excludes**:

(a) Mixtures containing, by weight, 70% or more of petroleum oils or of oils obtained from bituminous minerals (heading 27.10).

(b) *Products derived from vegetable oils which have been fully deoxygenated and consist only of aliphatic hydrocarbon chains (heading 27.10).*

(Emphasis added).

NEXBTL is not biodiesel as biodiesel contains a different chemical structure, is produced via a different process and is subject to its own ASTM specification. However, the EN provides that products derived from vegetable oils which have been fully deoxygenated and consist only of aliphatic hydrocarbon chains are excluded from classification under heading 38.26, and that these products should be classified in heading 27.10. NEXBTL is fully deoxygenated and consists only of aliphatic hydrocarbon chains, and may be produced either from vegetable or animal oils. The exclusion of the EN states that products meeting this description should be classified in heading 27.10. Because NEXBTL meets the definition of the product described in the exclusion, the EN suggests that it should be classified in heading 27.10.

Based on the foregoing, we find that NEXBTL R100 is a “similar oil” within the meaning of Note 2 to Chapter 27 HTSUS and is *prima facie* classifiable in heading 2710. Consequently, classification in heading 3824 HTSUS is precluded.

HOLDING:

By application of GRI 1, NEXBTL is classified in heading 2710 HTSUS, and specifically in subheading 2710.19.45, which provides for “Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils: Other: Mixtures

of hydrocarbons not elsewhere specified or included, which contain by weight not over 50 percent of any single hydrocarbon compound.” The column one, general rate of duty is 10.5¢/bbl.

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

EFFECT ON OTHER RULINGS:

NY N250961 is hereby **REVOKED**

Sincerely,
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division



GENERAL NOTICE

19 CFR PART 177

**PROPOSED REVOCATION OF ONE RULING LETTER AND
MODIFICATION OF TWO RULING LETTERS, AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
CLASSIFICATION OF FLAVORED TEAS**

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

ACTION: Notice of proposed revocation of one ruling letter and modification of two ruling letters, and revocation of treatment relating to the classification of flavored teas.

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 CPB proposes to revoke one ruling letter and modify two ruling letters concerning the classification of flavored teas under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before September 23, 2016.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street,

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

FOR FURTHER INFORMATION CONTACT: Tatiana Salnik Matherne, Tariff Classification and Marking Branch: (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) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke one ruling letter and modify two ruling letters pertaining to the classification of flavored teas. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) NY N004103, dated December 28, 2006 (Attachment A); NY N041686, dated November 14, 2008 (Attachment B); and NY G87506, dated March 20, 2001 (Attachment C), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been found. This notice will cover any

rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends 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 his agents for importations of merchandise subsequent to this notice.

In NY N004103, NY N041686 and NY G87506, CBP classified Zen tea, Cucumber White Tea and Green Tea and Lemongrass in subheading 2101.20.90, HTSUS, which provides for "Extracts, essences and concentrates, of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof: Extracts, essences and concentrates, of tea or maté, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or maté: Other: Other: Other." We now believe that the Zen tea, Cucumber White Tea and Green Tea and Lemongrass, at issue in NY N004103, NY N041686 and NY G87506, are flavored teas classified in heading 0902, HTSUS, and subheading 0902.10.10, HTSUS, which provides for "Tea, whether or not flavored: Green tea (not fermented) in immediate packings of a content not exceeding 3 kg: Flavored."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N004103 and NY N041686, revoke NY G87506, and modify or revoke any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter ("HQ") H260569 (*see* Attachment D to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes 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: July 5, 2016

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

[ATTACHMENT A]

N004103

December 28, 2006

CLA-2-21:RR:NC:SP:232

CATEGORY: Classification

TARIFF NO.: 2101.20.9000; 9801.00.1097

Ms. PAMELA JOHNSON
STARBUCKS COFFEE COMPANY
PO BOX 34067
SEATTLE, WA 98124-1067

RE: The tariff classification of Zen Tea from Italy and Canada

DEAR Ms. JOHNSON:

In your letter dated November 30, 2006, you requested a tariff classification ruling. Your request also asks for the country of origin for marking purposes.

Green tea is imported into the United States and blended with lemon verbena, spearmint, lemongrass and natural lemon essence. The resulting product is a bulk tea blend called Zen Tea. The green tea is from China, the lemon verbena and the natural lemon essence are from the United States and foreign countries. the spearmint is from the United States and the lemongrass is from Guatemala. The bulk Zen Tea is exported to either Italy or Canada, where it is packaged into filter bags and retail cartons. The packaged tea blend is re-imported into the United States for sale at Starbucks retail stores and at grocery stores.

The applicable subheading for the Zen Tea will be 2101.20.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Extracts, essences and concentrates of coffee, tea or mate and preparations with a basis of these products or with a basis of coffee, tea or mate; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof: Extracts, essences and concentrates, of tea or mate, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or mate: Other: Other: Other. The rate of duty will be 8.5 percent ad valorem.

The Zen Tea, being of U.S. origin, will be eligible for entry as American Goods Returned. Provided the documentary requirements of 19 C.F.R. §10.1 are satisfied, the applicable subheading for the repackaged Zen Tea will be 9801.00.1097, Harmonized Tariff Schedule of the United States (HTSUS), which provides for products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad: other: other. Products in subheading 9801.00.1097 are free of duty.

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

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

The country of origin for marking purposes is defined at section 19 CFR 134.1(b), to mean the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of Part 134. A substantial transformation is effected when a manufacturer or processor converts or combines an article into a new and different article resulting in a change in name, character, or use.

In this case, the imported green tea blended together in the United States with the lemon verbena, spearmint, lemongrass and natural lemon essence has been substantially transformed into a product of the United States. Products of the United States are exempt from country of origin marking requirements.

The bulk Zen Tea, exported to either Italy or Canada, where it is packaged into filter bags and retail cartons has not been advanced in value or improved in condition. Therefore, the re-imported Zen Tea in retail containers remains a product of the United States.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Paul Hodgkiss at 646-733-3031.

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

[ATTACHMENT B]

N041686

November 14, 2008

CLA-2-21:OT:RR:E:NC:232

CATEGORY: Classification

TARIFF NO.: 2101.20.9000; 9801.00.1097

PAMELA M. JOHNSON
STARBUCKS COFFEE COMPANY
2401 UTAH AVE SOUTH
SEATTLE, WASHINGTON 98134

RE: The tariff classification and country of origin of Cucumber White filter bag Tea from Canada

DEAR MS. JOHNSON:

In your letter dated October 15, 2008 you requested a tariff classification ruling. You also requested a ruling on country of origin.

White tea grown in China is imported into the United States and blended with lime peel, dandelion leaf, black Darjeeling tea, cucumber, peppermint, lemon myrtle, natural flavors and lime essence oil. The resulting product is a bulk tea blend called Cucumber White Tea. The black tea is stated to be from India and the dandelion leaf is from China. The organic lemon myrtle is from Australia and the remaining ingredients listed are from the United States. The bulk Cucumber White Tea is exported to Canada, where it is packaged into filter bags and retail cartons. The packaged tea blend is re-imported into the United States for sale at Starbucks retail stores and at grocery stores.

The applicable subheading for the Cucumber White Tea will be 2101.20.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Extracts, essences and concentrates of coffee, tea or mate and preparations with a basis of these products or with a basis of coffee, tea or mate; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof: Extracts, essences and concentrates, of tea or mate, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or mate: Other: Other: Other. The rate of duty will be 8.5 percent ad valorem.

The Cucumber White Tea, being of U.S. origin, will be eligible for entry as American Goods Returned. Provided the documentary requirements of 19 C.F.R. §10.1 are satisfied, the applicable subheading for the repackaged Cucumber White filter bag Tea will be 9801.00.1097, Harmonized Tariff Schedule of the United States (HTSUS), which provides for products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad: other: other. Products in subheading 9801.00.1097 are free of duty.

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

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the

Bioterrorism Act can be obtained by calling FDA at telephone number (301) 575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 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 Frank Troise at (646) 733-3031.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT C]

NY G87506

March 20, 2001

CLA-2-21:RR:NC:SP:232 G87506

CATEGORY: Classification

TARIFF NO.: 2101.20.9000

MS. MAUREEN SPEKTOR BELL
LIBERTY RICHTER
400 LYSER AVENUE
SADDLE BROOK, NJ 07663-5910

RE: The tariff classification of Green Tea and Lemongrass from the United Kingdom

DEAR MS. SPEKTOR BELL:

In your letter dated February 19, 2001, you requested a tariff classification ruling.

You submitted descriptive literature with your request. You had previously sent product samples. The merchandise in question is “green tea and lemongrass” in tea bags, packed 50 to a box for retail sale. This product is said to contain 53 percent green tea, 30 percent lemon peel, 16 percent lemongrass, and 1 percent jasmine flowers.

The applicable subheading for the “green tea and lemongrass” will be 2101.20.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for Extracts, essences and concentrates of coffee, tea or mate and preparations with a basis of these products or with a basis of coffee, tea or mate; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof: Extracts, essences and concentrates, of tea or mate, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or mate: Other: Other: Other. The rate of duty will be 8.5 percent ad valorem.

The Food and Drug Administration may impose additional requirements on this product. You may contact the FDA at:

Food and Drug Administration
Implementation and Compliance Branch
HFF 314, 200 C Street, SW
Washington, D.C. 20204
(202) 205-5321

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides, in general, that all articles of foreign origin imported into the United States must be legibly, conspicuously, and permanently marked to indicate the English name of the country of origin to an ultimate purchaser in the United States. The implementing regulations to 19 U.S.C. 1304 are set forth in Part 134, Customs Regulations (19 CFR Part 134). The samples you have submitted do not appear to be properly marked with the country of origin. You may wish to discuss the matter of country of origin marking with the Customs import specialist at the proposed port of entry.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist John Maria at (212) 637-7059.

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

[ATTACHMENT D]

HQ H260569
 CLA-2 OT:RR:CTF:TCM H260569 TSM
 CATEGORY: Classification
 TARIFF NO.: 0902.10.10

Ms. TAMMIE G. KRAUSKOPF
 LAW OFFICES OF TAMMIE KRAUSKOPF, LLC
 821 HUNTLEIGH DR.
 NAPERVILLE, IL 60540

RE: Modification of NY N004103 and NY N041686; Revocation of NY G87506; Classification of Zen Tea, Green Tea and Lemongrass, and Cucumber White Tea.

DEAR Ms. KRAUSKOPF:

This is in response to your November 19, 2014, request for reconsideration of New York Ruling Letter (NY) N004103, dated December 28, 2006 and NY N041686, dated November 14, 2008.¹ In those rulings, the National Commodity Specialist Division found that Zen Tea and Cucumber White Tea, imported into the United States by your client, Starbucks Corporation, were classified under subheading 2101.20.90, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Extracts, essences and concentrates, of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof: Extracts, essences and concentrates, of tea or maté, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or maté: Other: Other.” For the reasons set forth below we hereby modify NY N004103 and NY N041686.² In addition, we hereby revoke NY G87506, dated March 20, 2001, which classified a Green Tea and Lemongrass under subheading 2101.20.90, HTSUS.

FACTS:

NY N004103, issued to Starbucks Coffee Company on December 28, 2006, describes the Zen Tea as follows:

Green tea is imported into the United States and blended with lemon verbena, spearmint, lemongrass and natural lemon essence. The resulting product is a bulk tea blend called Zen Tea.

NY N041686, issued to Starbucks Coffee Company on November 14, 2008, describes the Cucumber White Tea as follows:

White tea grown in China is imported into the United States and blended with lime peel, dandelion leaf, black Darjeeling tea, cucumber, peppermint, lemon myrtle, natural flavors and lime essence oil. The resulting product is a bulk tea blend called Cucumber White Tea.

¹ You also requested reconsideration of NY N004104, dated December 26, 2006, which will be addressed in HQ H275766.

² We note that NY N004103 and NY N041686 also concerned eligibility of the subject merchandise for entry under subheading 9801.00.10, HTSUS, as “Products of the United States returned after having been exported, without having been advanced in value or improved in condition while abroad,” which is not at issue in this modification.

NY G87506, issued to Liberty Richter Inc. on March 20, 2001, describes the Green Tea and Lemongrass as follows:

The merchandise in question is “green tea and lemongrass” in tea bags, packed 50 to a box for retail sale. This product is said to contain 53 percent green tea, 30 percent lemon peel, 16 percent lemongrass, and 1 percent jasmine flowers.

In your request, you explain that the Zen Tea consists of green tea which accounts for a very high proportion of the blend, and is flavored by the addition of various aromatic plants (such as lemon verbena, spearmint and lemongrass) and natural lemon essence. You explain that the Cucumber White Tea consists of white tea, which amounts to a high proportion of the blend, flavored by the addition of aromatic plants and fruits such as lime peel, lime essence and peppermint, as well as natural flavors which are sprayed on the tea during the blending operation. The teas are packaged into filter bags and retail cartons. The content of the immediate packings does not exceed 3 kg.

ISSUE:

Whether the Zen Tea, Green Tea and Lemongrass, and Cucumber White Tea are classified in heading 0902, HTSUS, as tea, or in heading 2101, HTSUS, as preparations with a basis of tea.

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 understanding the language of 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 Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

- 0902 Tea, whether or not flavored:
- 0902.10 Green tea (not fermented) in immediate packings of a content not exceeding 3 kg:
- 0902.10.10 Flavored
 - * * *
- 2101 Extracts, essences and concentrates, of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof:
- 2101.20 Extracts, essences and concentrates, of tea or maté, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or maté:

Other:

Other:

2101.20.90

Other

* * *

Note 1(c) to Chapter 21, HTSUS, states:

1. This Chapter does not cover:

(c) Flavored tea (heading 0902);

The ENs to heading 09.02, provide, in relevant part, as follows:

The heading covers the different varieties of tea derived from the plants of the botanical genus *Thea* (*Camellia*).

* * *

Tea which has been flavoured by a steaming process (during fermentation, for example) or by the addition of essential oils (e.g., lemon or bergamot oil), artificial flavourings (which may be in crystalline or powder form) or parts of various other aromatic plants or fruits (such as jasmine flowers, dried orange peel or cloves) is also classified in this heading.

* * *

The heading further **excludes** products **not** derived from the plants of the botanical genus *Thea* but sometimes called “teas,” e.g.:

(a) Maté (Paraguay tea) (**heading 09.03**).

(b) Products for making herbal infusions or herbal “teas.” These are classified, for example, in **heading 08.13, 09.09, 12.11** or **21.06**.

(c) Ginseng “tea” (a mixture of ginseng extract with lactose or glucose) (**heading 21.06**).

In your request, you argue that the Zen Tea at issue in NY N004103, and the Cucumber White Tea, at issue in NY N041686, are described by heading 0902, HTSUS, and should be classified in subheading 0902.10.10, HTSUS, which provides for “Tea, whether or not flavored: Green tea (not fermented) in immediate packings of a content not exceeding 3 kg: Flavored.” You argue that both the Zen Tea and the Cucumber White Tea are teas which have been flavored as described in the ENs of heading 0902, HTSUS, and that as such, they are excluded from heading 2101, HTSUS, by Note 1(c) to Chapter 21, which excludes flavored tea from that heading. In addition, you argue that the Zen Tea and the Cucumber White Tea are not preparations of heading 2101, HTSUS.

Note 1(c) to Chapter 21 excludes flavored tea, and directs classification in heading 0902, HTSUS. Therefore, our analysis begins with whether the Zen Tea, Cucumber White Tea, and Green Tea and Lemongrass are products of heading 0902, HTSUS.

Heading 0902, HTSUS, provides for “Tea, whether or not flavored.” According to the EN 09.02, heading 0902, HTSUS, covers the different varieties of tea derived from the plants of the botanical genus *Thea* (*Camellia*). The EN 09.02 also states that the heading further excludes products not derived from

the plants of the botanical genus *Thea* but sometimes called “teas”, and at paragraph (b) includes, in relevant part, “products for making. . . herbal “teas”.” The Zen Tea at issue in NY N004103 contains green tea; the Cucumber White Tea at issue in NY N042686 contains white tea and black Darjeeling tea; and the Green Tea with Lemongrass at issue in NY G87506 contains green tea. Green tea, black Darjeeling tea, and white tea (not fermented) are derived from the plants of the botanical genus *Thea* (*Camellia*).³ Therefore, they are not herbal “teas” as described by the EN 09.02.

The teas have also been flavored. In the Zen Tea at issue in NY N004103, various aromatic plants such as lemon verbena, spearmint, and lemongrass have been added to the green tea for flavoring. Natural lemon essence oil is also sprayed on the green tea and botanicals during the blending operation for added flavoring. In the Cucumber White Tea at issue in NY N042686, white and black Darjeeling tea has been blended with lime peel, dandelion leaf, cucumber, peppermint, lemon myrtle, natural flavors and lime essence oil for flavoring. In the Green Tea and Lemongrass at issue in NY G87506, green tea has been blended with lemon peel, lemongrass and jasmine flowers for flavoring. The ENs to heading 0902, HTSUS, state, in relevant part, that tea that has been flavored by the addition of essential oils, artificial flavorings, or parts of various other aromatic plants or fruits is also classified in heading 0902, HTSUS.

Accordingly, we conclude that the Zen Tea, Cucumber White Tea, and Green Tea with Lemongrass are classified in heading 0902, HTSUS, as “Tea, whether or not flavored.” They are excluded from classification in Chapter 21, HTSUS, by Note 1(c) to Chapter 21. See NY N250849, dated March 24, 2014; See also NY H84094, dated August 13, 2001.

HOLDING:

By application of GRIs 1 and 6, the Zen Tea, Cucumber White Tea, and Green Tea with Lemongrass are classified in heading 0902, HTSUS, and subheading 0902.10.10, HTSUS, which provides for “Tea, whether or not flavored: Green tea (not fermented) in immediate packings of a content not exceeding 3 kg: Flavored.” The 2016 column one, general rate of duty is 6.4% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N004103, dated December 28, 2006 and NY N041686, dated November 14, 2008, are MODIFIED. NY G87506, dated March 20, 2001, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

³ See <http://www.tealeafjournal.com/types-of-tea.html>.

**PROPOSED REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A CAM FASTENER AND
DOWEL COMPOSED OF ZINC**

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 cam fastener and dowel composed of zinc.

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 cam fastener and dowel made of zinc 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 23, 2016.

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

FOR FURTHER INFORMATION CONTACT: Reema Radwan, Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade, at (202) 325–7703.

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 cam fastener and dowel composed of zinc. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N259010, dated December 3, 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 ruling identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to 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 N259010, CBP classified a cam fastener and dowel composed of zinc in heading 9403, HTSUS, specifically in subheading

9403.90.80, HTSUS, which provides for “Other furniture and parts thereof.” CBP has reviewed NY N259010 and has determined the ruling letter to be in error. It is now CBP’s position that the cam fastener and dowel composed of zinc are properly classified, by operation of GRIs 1 and 6, in heading 7907, HTSUS, specifically in subheading 7907.00.60, HTSUS, which provides for “Other articles of zinc.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N259010 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H263900, 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: July 5, 2016

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N259010

December 3, 2014

CLA-2-94:OT:RR:NC:N4:433

CATEGORY: Classification

TARIFF NO.: 9403.90.8041

CHRISTOPHE BEAUREGARD
 CUSTOMS COMPLIANCE DEPARTMENT
 RICHELIEU HARDWARE LTD.
 7900 HENRI-BOURASSA BLVD. WEST
 ST-LAURENT, QC H4S 1V4
 CANADA

RE: The tariff classification of a cam fastener from a variety of countries.

DEAR MR. BEAUREGARD:

In your letter dated October 31, 2014, you requested a tariff classification ruling. As requested, the sample submitted will be returned to you.

The sample submitted is a cam fastener and dowel. The cam and dowel are entirely made of zinc. The shaft of the dowel is encased in plastic. The cam fits into a hole, usually in a wooden piece of furniture. The dowel also fits into a hole of a second piece of unassembled furniture that is placed perpendicular to the first piece. When the cam is tightened through a screwing action, it locks the dowel into place, thereby fastening the two pieces of furniture together. This product is used to fasten or bind parts of furniture together.

Your supplier suggests classification of the cam fastener and dowel in subheading 8302.42 of the Harmonized Tariff Schedule of the United States (HTSUS), which in pertinent part provides for “Base metal mountings, fittings, and similar articles suitable for furniture.” The cam fastener and dowel are used to join or affix two or more objects together. Headquarters ruling, HQ 950862 dated May 1, 1992, found that a cam fastener, tightened and released by torque, had the primary design characteristic of a screw. Consequently, screws are not considered to be mountings or fittings, and therefore do not fall under the purview of heading 8302, HTSUS.

You suggest classification in subheading 7907.00.6000 of the HTSUS. Heading 7907 of the HTSUS provides for “Other articles of zinc.” This heading covers a wide range of zinc articles that are not more specifically provided for elsewhere in the tariff schedule. However, we find that the zinc, cam fastener and dowel, not covered as a part for general use in the tariff schedule (see Section XV – Base Metals and Articles of Base Metal, Note 2) and not more specifically provided for elsewhere in the Nomenclature, to be classifiable in subheading 9403.90, HTSUS, the subheading covering parts of other furniture.

The applicable subheading for the zinc, cam fastener and dowel will be 9403.90.8041, HTSUS, which provides for “Other furniture and parts thereof: Parts: Other: Other: Other: Of metal: Other.” The rate of duty will be free.

You did not state the country of origin. The rate of duty provided above is the rate applicable when the merchandise is made in a country with which the United States has normal trade relations.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Neil H. Levy at E-Mail address: neil.h.levy@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H263900
 CLA-2 OT:RR:CTF:TCM H263900 RGR
 CATEGORY: Classification
 TARIFF NO.: 7907.00.60

MR. CHRISTOPHE BEAUREGARD
 CUSTOMS COMPLIANCE DEPARTMENT
 RICHELIEU HARDWARE LTD.
 7900 HENRI-BOURASSA BLVD. WEST
 ST-LAURENT, QC H4S 1V4 CANADA

RE: Request for reconsideration of NY N259010; Tariff classification of a cam fastener and a dowel composed of zinc

DEAR MR. BEAUREGARD:

This is in response to your letter, on behalf of Richelieu Hardware Ltd. (Richelieu), dated January 5, 2015, in which you request reconsideration of New York Ruling Letter (NY) N259010, dated December 3, 2014. Specifically, you request reconsideration on the tariff classification of a cam fastener and dowel made of zinc.

In NY N259010, the National Commodity Specialist Division of U.S. Customs and Border Protection (CBP) classified the cam fastener and dowel under subheading 9403.90.8041, Harmonized Tariff Schedule of the United States (HTSUS), which provides for, in pertinent part: "Other furniture and parts thereof: Parts: Other: Other: Other." Pursuant to your reconsideration request, dated January 5, 2015, we have reviewed NY N259010 and find it to be in error.

FACTS:

In NY N259010, based on a sample submitted by Richelieu, CBP described the cam fastener and dowel as entirely made of zinc, with the shaft of the dowel encased in plastic. The ruling states that the cam fits into a hole, usually in a wooden piece of furniture, and that the dowel also fits into a hole in a second piece of unassembled furniture that is placed perpendicular to the first piece. The dowel locks into place by the cam when the cam is tightened through a screwing action. The cam and dowel are used to fasten or bind parts of furniture together and may also be used to fasten other items such as wall shelving units.

ISSUE:

Whether the instant cam fastener and dowel are classified under subheading 9403.90.80 as "[o]ther furniture and parts thereof: [p]arts: [o]ther," or under subheading 7907.00.60 as "[o]ther articles of zinc: [o]ther."

LAW AND ANALYSIS:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRIs). GRI 1 provides, in part, that "for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes..." In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the HTSUS at the international level, may be utilized. 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 (Aug. 23, 1989).

The HTSUS headings under consideration are as follows:

- 9403: Other furniture and parts thereof:
- 7907: Other articles of zinc:

Chapter 94, Note 1(d) states that this chapter does not cover “[p]arts of general use as defined in Note 2 to Section XV, of base metal (section XV).” Section XV, Note 2(a) states that “[t]hroughout the tariff schedule, the expression ‘parts of general use’ means: [a]rticles of heading 7307, 7312, 7315, 7317 or 7318 and similar articles of other base metals.” Section XV, Note 3 also states that throughout the tariff schedule, the expression “base metals” includes zinc.

Accordingly, we must determine whether the instant cam fastener and dowel are classifiable in Section XV as “parts of general use” before we may address whether the instant articles are classifiable in Chapter 94, HTSUS, as other furniture and parts thereof. In relevant part, Section XV, Note 2, defines “parts of general use” to mean those articles classifiable in heading 7307, 7312, 7317, 7318 and similar articles of base metals. Heading 7318, HTSUS, includes screws, bolts and other fasteners, and similar articles of iron or steel. The subject cam fastener and dowel are made from zinc, which is a base metal pursuant to Section XV, Note 3. Thus, reading these Notes together, if we determine that the cam fastener and dowel are articles similar to fasteners of heading 7318, HTSUS, it cannot be classified as a “part” under heading 9403, HTSUS.

Heading 7318, HTSUS, covers Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel. In *Rocknel Fasteners v. the United States*, the Court of International Trade set forth the common and commercial meaning of bolts and screws: A bolt as “an externally threaded fastener designed for insertion through holes in assembled parts, and is normally intended to be tightened or released by torquing a nut. [A] screw [is defined] as “an externally threaded fastener capable of being inserted into holes in assembled parts, of mating with a preformed internal thread or forming its own thread, and of being tightened or released by torquing the head.” *See Rocknel Fastener v. United States*, 24 C.I.T. 900 (Ct. Int’l Trade 2000). We also note that in our past rulings, we have classified steel cam fasteners under heading 7318. For example, in Headquarters Rulings Letter (HQ) 950862, dated May 1, 1992, legacy Customs determined that a steel cam fastener, tightened and released by torque, had the primary design characteristics of a screw and is provided for in heading 7318. *See also*, NY I82967 (June 19, 2002); NY H86193 (Dec. 19, 2001); NY E84425 (July 13, 1990); NY D83927 (Nov. 12, 1998); NY D83177 (Oct. 14, 1998).

Heading 7318, HTSUS, covers Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel. *Fasteners v. the United States*, the Court of International Trade set forth the common and commercial meaning of bolts and screws: A bolt as “an externally threaded fastener designed for insertion through holes in assembled parts, and is normally intended to be tightened or released by torquing a nut. [A] screw [is defined] as “an externally threaded fastener capable of being inserted into holes in assembled parts, of mating with a preformed internal thread or forming its own thread, and of being tightened or released by torquing the head.” See *Rocknel Fastener v. United States*, 24 C.I.T. 900 (Ct. Int’l Trade 2000). We also note that in our past rulings, we have classified steel cam fasteners under heading 7318. For example, in Headquarters Rulings Letter (HQ) 950862, dated May 1, 1992, legacy Customs determined that a steel cam fastener, tightened and released by torque, had the primary design characteristics of a screw and is provided for in heading 7318. See also, NY I82967 (June 19, 2002); NY H86193 (Dec. 19, 2001); NY E84425 (July 13, 1990); NY D83927 (Nov. 12, 1998); NY D83177 (Oct. 14, 1998).

The cam fastener at issue fits into a hole, usually in a wooden piece of furniture, while the dowel also fits into a hole of a second piece of unassembled furniture that is placed perpendicular to the first piece. By tightening the cam through a screwing action while placing the unassembled parts of furniture perpendicular to each other, the dowel is locked into place, thereby fastening the two parts together. In addition to fastening parts of furniture together, the subject cam fastener and dowel can be used to fasten other items, such as well shelving units. The subject cam fastener and dowel are similar to steel cam fasteners that we have classified as “parts of general use” under heading 7318, HTSUS, in that they perform like steel cam fasteners, except that they are made of zinc instead of steel. We further note that in addition to fastening parts of furniture together, the cam fastener and dowel may be used to fasten other items such as wall shelving units. Thus, the subject merchandise is not designed for a specific article and meets the definition of a “part of general use” as described in General Note 2(a) to Section XV, HTSUS. According to General Explanatory Note (C), Section XV, HTSUS:

[P]arts of general use (as defined in Note 2 to this section) presented separately are not considered as parts of articles, but are classified in the headings of this Section as appropriate to them. This would apply, for example, in the case of bolts specialized for central heating radiators or springs specialized for motor cars. The bolts would be classified in heading 73.18 (as bolts) and not in heading 73.22 (as parts of central heating radiators). The springs would be classified in heading 73.20 (as springs) and not in heading 87.08 (as parts of motor vehicles).

Reading the above General EN together with General Note 1(d) to Chapter 94, HTSUS, which states that Chapter 94 does not cover “parts of general use, as defined in Note 2 to Section XV, of base metal. . . ,” we find that the cam fastener and dowel are excluded from classification under heading 9403, HTSUS, which covers parts of furniture. Further, Section XV requires that

parts of general use made of base metals are classified according to their constituent materials. Thus, the proper classification for the cam fastener and dowel made of zinc is heading 7907, HTSUS, as “[o]ther articles of zinc.”

Therefore, upon reconsideration, CBP has determined that the classification in NY N259010 of the subject cam fastener and dowel is revoked.

HOLDING:

Pursuant to GRIs 1 and 6, the cam fastener and dowel made of zinc is classified under heading 7907, HTSUS, and specifically provided for under subheading 7907.00.60, HTSUS, as “[o]ther articles of zinc: [o]ther.” The general, column one, rate of duty is 3% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N259010, dated December 3, 2014, is revoked.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE

19 CFR PART 177

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

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 a gemscriptor.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning the tariff classification of a gemscriptor 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. 22, on June 1, 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 24, 2016.

FOR FURTHER INFORMATION CONTACT: Peter Martin, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0048.

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. 22, on June 1, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of a gemscripator. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N210384, dated April 19, 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 N210384, CBP classified the gemscripator in heading 8464, HTSUS, specifically in subheading 8464.90.0120, HTSUS, which provides for "Machine tools for working stone, ceramics, concrete, asbestos-cement or like mineral materials or for cold working glass: Other...Other." CBP has reviewed N210384 and has determined the ruling letter to be in error. It is now CBP's position that gemscripator is properly classified, by operation of GRI 1, in heading 8456, HTSUS, specifically in subheading 8456.10.8000, HTSUS, which provides for "Machine tools for working any material by removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron-beam, ionic-beam or plasma arc processes; water-jet cutting machines: Operated by laser or other light or photon beam processes: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N210384 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H253888, 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: July 7, 2016

GREG CONNOR
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H253888

July 7, 2016

CLA-2

OT:RR:CTF:TCM H253888 PTM

CATEGORY: CLASSIFICATION

TARIFF NO: 8456.10.8000

Ms. TEENA MATHIS
 ZALE CORPORATION
 901 W. WALNUT HILL LANE
 IRVING, TX 75038

RE: Revocation of NY N210384; Tariff Classification of a Cold Laser Marker

DEAR Ms. MATHIS,

On April 19, 2012 we issued New York Ruling Letter (“NY”) N210384 in response to your ruling request concerning the tariff classification of a Gemscripitor. In N210384, we determined that the proper tariff classification of the Gemscripitor under the Harmonized Tariff Schedule of the United States (“HTSUS”) was under subheading 8464.90.0120, which provides for “Machine tools for working stone, ceramics, concrete, asbestos-cement or like mineral materials or for cold working glass: Other...Other.” We have reviewed N210384 and find it to be in error. For the reasons set forth below, we hereby revoke N210384.

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*, Vol. 50, No. 22, on June 1, 2016, proposing to revoke N210384, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

In N210384, we described the merchandise as follows:

The Gemscripitor Model #PS-300-R (“Gemscripitor”) is a cold laser marker. This diamond marking/inscription machine is a floor type unit mounted on castors. It runs on 240 volts, 50 – 60 Hz. The Gemscripitor is used to mark any type of gem on any side. It is also used for gem authentication and identification. This versatile unit allows the user to choose any letter or logo height (<25 microns to >2mm). The Gemscripitor comes equipped with a special table marking holder, a ring holder and a diamond holder. These holders are mounted internally during use.

At time of importation, the Gemscripitor is configured to incorporate a BLS Excimer UV laser unit, a positioning system and computer software. The cold UV laser technology is harmless for diamonds and no coatings or protection are needed. The positioning system of the Gemscripitor PS-300-R contains OWIS optical grade, high precision co-ordinate (X-Y-Z) tables. The X-Y-Z axes travel at 25mm and contain high precision stepper motors. The maximum working speed is 1mm/sec and the repeatability works on Z axis, 10µm (vertical) and the X – Y axis at 2µm (horizontal).

Thus, the Gemscriptor consists of a cold laser marker, work holders and positioning tables. The classification request for N210384 provided additional details:

The system is mounted on castors...The frame is isolated and the laser-marking unit vibration free... [the system performs]

- Gem authentication and identification
- Mark any type of gem, pears, etc. on any side
- Mark: Rounds, Fancies, Marquise, Emeralds, Princes of any size ...
- Inscribe on any type of gem
- Easy access to the working area, easy mount of the stones on a quick release magnetic holder.

The following is an image of the Gemscriptor:



ISSUE:

What is the proper tariff classification of the Gemscriptor?

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, GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

8456 Machine tools for working any material by removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron-beam, ionic-beam or plasma arc processes; water-jet cutting machines:

* * *

8464 Machine tools for working stone, ceramics, concrete, asbestos-cement or like mineral materials or for cold working glass:

Note 3 to Chapter 84, HTSUS provides:

A machine tool for working any material which answers to a description in heading 8456 and at the same time to a description in heading 8457, 8458, 8459, 8460, 8461, 8464 or 8465 is to be classified in heading 8456.

Therefore, if the subject merchandise is *prima facie* classifiable under heading 8456, HTSUS, it is classified under that heading regardless of whether it might be described by heading 8464, HTSUS.

The EN to heading 8456, HTSUS, provides, in pertinent part, the following:

The machine-tools of this heading are machines used for the shaping or surface-working of any material. They must meet three essential requirements:

- (i) They must work by removing material;
- (ii) They must carry out operations of the kind performed by machine-tools equipped with conventional tools;
- (iii) They must use one of the following seven processes: laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron beam, ionic-beam or plasma arc.

The plain text of heading 8456 covers machine tools that remove material by laser. The Gemscriptor at issue here is a cold laser marker. It incorporates a BLXS Excimer UV laser unit, positioning system and operating software. It comes equipped with a table marking table, ring holder and diamond holder that are mounted internally. The Gemscriptor is used to engrave gemstones. It operates by using a laser to remove trace amounts of material from the gem.

In order to meet the description of the EN for heading 84.56, the three afore-mentioned criteria must be satisfied. The Gemscriptor meets the first criteria inasmuch as it removes trace amounts of surface material from the gemstone by laser to mark the gems. It carries out operations, marking and engraving, that can be performed by machine-tools equipped with conventional tools. Finally, the Gemscriptor uses a cold-marking laser to perform its function. Because the three criteria are met, we find that the Gemscriptor is described by the EN for heading 84.56.

The EN to heading 84.67 is consistent with Note 3 to Chapter 84, *supra*, and states:

This heading also **excludes**:

* * *

- (c) Machine-tools for working any material by removal of material, by *laser or other light or photon beam*, ultrasonic or plasma arc processes and

other machines of **heading 84.56**
(Emphasis added)

Thus, heading 84.67 covers machining tools, but excludes those machining tools that work by removing material with a laser or other light or photon beams. The Gemscripator removes material with a cold-marking laser. Consequently, it is excluded from heading 84.67.

Prior CBP rulings have classified machines incorporating lasers with ancillary equipment in heading 8456 HTSUS. For example, in NY R00499 (July 9, 2004), CBP classified bench top and floor-standing laser marking machines in heading 8456 HTSUS. In HQ 087513 (Nov. 5, 1990), the legacy Customs Service classified an industrial laser in a fully enclosed machining station under heading 8456 HTSUS.¹ Based on the foregoing, we find that the Gemscripator is properly classified in heading 8456 HTSUS.

HOLDING:

By application of GRI 1, the Gemscripator is classified in heading 8456 HTSUS. Specifically, it is classified in subheading 8456.10.8000, which provides for “Machine tools for working any material by removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron-beam, ionic-beam or plasma arc processes; water-jet cutting machines: Operated by laser or other light or photon beam processes: Other.” The column one, general rate of duty is 2.4% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N210384 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,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

¹ We note that laser devices that do not include ancillary equipment of machining tools are classified under heading 9013 HTSUS. *See, e.g.* H237607 (Apr. 1, 2004) (classifying a laser marker “imported without the ancillary equipment necessary to create a machine tool” under heading 9013 HTSUS). The EN to heading 90.13 states that “the heading excludes lasers which have been adapted to perform quite specific functions by adding ancillary equipment consisting of special devices (e.g., work-tables, work-holders, means of feeding and positioning workpieces, means of observing and checking the progress of the operation, etc.) and which, therefore, are identifiable as working machines, medical apparatus, control apparatus, measuring apparatus, etc. Machines and appliances incorporating lasers are also excluded from the heading.”

**MODIFICATION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
APPLICABILITY OF SUBHEADING 9802.00.50, HTSUS, TO
RELABELED COMPUTER KEYBOARDS**

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 applicability of subheading 9802.00.50, Harmonized Tariff Scheduled of the United States (HTSUS), to certain relabeled computer keyboards.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying one ruling letter concerning the applicability of subheading 9802.00.50, HTSUS, to certain relabeled computer keyboards. Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify one ruling letter concerning the applicability of subheading 9802.00.50, HTSUS, to certain relabeled computer keyboards was published on May 4, 2016, in Volume 50, Number 18 of the *Customs Bulletin*. 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 24, 2016.

FOR FURTHER INFORMATION CONTACT: Antonio J. Rivera, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0226.

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify one ruling letter concerning the applicability of subheading 9802.00.50, HTSUS, to certain relabeled computer keyboards was published on May 4, 2016, in Volume 50, Number 18 of the *Customs Bulletin*. No comments were received in response to this notice.

As stated in the proposed notice, although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) L83879, dated May 9, 2005, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY L83879, CBP determined, in relevant part, that relabeling computer keyboards with new part numbers and UPC labels was not a repair or alteration eligible for duty free treatment under subheading 9802.00.50, HTSUS.

Based on our recent review of NY L83879, it is now CBP's position that relabeling computer keyboards with new part numbers and UPC labels is a repair or alteration eligible for duty free treatment under subheading 9802.00.50, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY L83879 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper treatment of relabeling computer keyboards under subheading 9802.00.50, HTSUS, pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) H268757 (Attachment). 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), the attached ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Dated: July 7, 2016

MYLES B. HARMON

Director

Commercial and Trade Facilitation Division

Attachment

HQ H268757

July 7, 2016

OT:RR:CTF:VS H268757 AJR
CATEGORY: CLASSIFICATION

MR. BRIAN JOHNSON
KEYTRONIC CORPORATION
4424 N. SULLIVAN ROAD
SPOKANE, WA 99216

RE: Modification of NY L83879; Subheading 9802.00.50, HTSUS; Relabeled computer keyboards

DEAR MR. JOHNSON:

This is in reference to New York Ruling Letter (“NY”) L83879, dated May 9, 2005, issued to you on behalf of KeyTronic Corporation of Spokane, Washington. At issue was the applicability of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (“HTSUS”), to computer keyboards and printed circuit board assemblies upon return to the United States from Mexico. In NY L83879, U.S. Customs and Border Protection (“CBP”) determined, in relevant part, that relabeling keyboards with new part numbers and UPC labels was not a repair or alteration eligible for duty free treatment under subheading 9802.00.50, HTSUS. It is now our position that such relabeling of keyboards was a repair or alteration eligible for duty free treatment under subheading 9802.00.50, HTSUS. For the reasons described in this ruling, we hereby modify NY L83879.

The applicability of subheading 9802.00.50, HTSUS, to the printed circuit board assemblies upon return to the United States from Mexico is unaffected.

FACTS:

NY L83879 stated, in relevant part, that computer keyboards were imported into the United States under subheading 8471.60.20, HTSUS, and then exported to Mexico to be relabeled with new part numbers, UPC labels, repacked and reimported to the U.S. for delivery. CBP found that relabeling keyboards with new part numbers and UPC labels was not a repair or alteration eligible for duty free treatment under subheading 9802.00.50, HTSUS, because relabeling did not advance the value or improve the condition of the keyboards.

ISSUE:

Whether computer keyboards relabeled in Mexico may be entered under subheading 9802.00.50, HTSUS?

LAW AND ANALYSIS:

Subheading 9802.00.50, HTSUS, provides a full or partial duty exemption for articles returned to the United States after having been exported to be advanced in value or improved in condition by means of repairs or alterations. Articles returned to the United States after having been repaired or altered in Mexico, whether or not pursuant to warranty, may be eligible for duty free treatment, provided the documentary requirements of section 181.64, CBP Regulations, (19 C.F.R. § 181.64), are satisfied. Section 181.64(a) states, in pertinent part:

‘Repairs or alterations’ means restoration, addition, renovation, redyeing, cleaning, reesterilizing, or other treatment which does not destroy the essential character of, or create a new and commercially different good from, the good exported from the United States.

Classification under subheading 9802.00.50, HTSUS, is precluded where: (1) the exported articles are not complete for their intended use and the foreign processing operation is a necessary step in the preparation or manufacture of finished articles; or (2) the operations performed abroad destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture. See *Guardian Indus. Corp. v. United States*, 3 Ct. Int’l Trade 9 (1982), and *Dolliff & Co., Inc., v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 F. Supp. 618 (1978), *aff’d*, 66 C.C.P.A. 77, C.A.D. 1225, 599 F.2d 1015 (1979).

CBP has previously held that marking or affixing a label to a product constitutes an acceptable alteration for purposes of subheading 9802.00.50, HTSUS. See Headquarters Ruling Letter (“HQ”) W563554, dated November 13, 2006 (t-shirts exported to Mexico for relabeling were entitled to tariff treatment under subheading 9802.00.50, HTSUS); HQ 562952, dated March 29, 2004 (belted jeans and pants exported to Mexico for inspection and tagging were entitled to duty free treatment under subheading 9802.00.50, HTSUS); HQ 559639, dated June 25, 1996 (flashlights exported to Mexico, where a product nameplate or label was affixed and the company’s logo and product name were pad-printed onto the flashlight, were entitled to duty free treatment under subheading 9802.00.50, HTSUS); HQ 557327, dated July 26, 1993 (vendor marking labels, flasher tags, hang tags, size tickets were operations that constituted an acceptable alteration under subheading 9802.00.50, HTSUS); HQ 555724, dated December 17, 1990 (air bag sensors exported to Mexico for relabeling and testing operations were eligible for treatment under subheading 9802.00.50, HTSUS); HQ 554996, dated June 30, 1988 (sunglasses exported for inspection, temple adjustment, and retagging were entitled to partial duty exemption under item 806.20, TSUS, the precursor to subheading 9802.00.50, HTSUS); and HQ 071159, dated March 2, 1983 (diodes exported to Mexico for marking and packaging operations were entitled to treatment under item 806.20, TSUS, as the printing operation had no more significance than a label for identification purposes).

After reviewing the above-referenced cases, we find that where labeling was found to be an acceptable alteration for purposes of subheading 9802.00.50, HTSUS, the labeling served an “identification purpose.” Namely, the identification informed anyone using the good that the good conformed to certain specifications. For instance, in HQ 071159 and HQ 559639, the labeling informed that the good conformed to the expectations of the brand identified; in HQ 557327, the labeling informed that the good conformed to the size identified by the label; and, in HQ 555724, the labeling informed that the good conformed to airbag requirements identified by the label. Similarly, the relabeling described in NY L83879 serves an identification purpose, informing that the keyboard conforms to the part and product code identified on the label.

Given the foregoing, relabeling the keyboards with new part numbers and UPC labels was a repair or alteration eligible for duty free treatment under

subheading 9802.00.50, HTSUS, as the identification purpose of the label advances the value or improves the condition of the keyboards.

HOLDING:

NY L83879 is modified to reflect that the relabeling of the keyboards with new part numbers and UPC labels was a repair or alteration eligible for duty free treatment under subheading 9802.00.50, HTSUS. The applicability of subheading 9802.00.50, HTSUS, to the printed circuit board assemblies upon return to the United States from Mexico is unaffected.

EFFECT ON OTHER RULINGS:

NY L83879, dated May 9, 2005, is hereby MODIFIED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF HOSPITAL BED AND CHAIR
MATTRESSES**

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

ACTION: Notice of proposed revocation of two ruling letters, and revocation of treatment relating to the tariff classification of hospital bed and chair mattresses.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke two ruling letters concerning tariff classification of hospital bed and chair mattresses 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 23, 2016.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke two ruling letters pertaining to the tariff classification of mattresses designed for placement upon hospital beds and chairs. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) H87018, dated January 9, 2002, (Attachment A), and NY E84866, dated July 27, 1999 (Attachment B), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP

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

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

In NY H87018 and NY E84866, CBP classified various mattresses designed for placement upon hospital beds and chairs in heading 9402, HTSUS, specifically in subheading 9402.90.00, HTSUS, which provides for "Medical, surgical, dental or veterinary furniture (for example, operating tables, examination tables, hospital beds with mechanical fittings, dentists' chairs); barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements; parts of the foregoing articles: Other." CBP has reviewed NY H87018 and NY E84866 and has determined the ruling letters to be in error. It is now CBP's position that the hospital bed and chair mattresses are properly classified, by operation of GRI 1, in heading 9404, HTSUS, specifically in subheading 9404.21.00, HTSUS, which provides for "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Mattresses: Of cellular rubber or plastics, whether or not covered."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY H87018 and NY E84866 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H276631, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 21, 2016

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY H87018
January 9, 2002
CLA-2-94:RR:NC:SP:233 H87018
CATEGORY: Classification
TARIFF NO.: 9402.90.0020

MR. LESLIE FITZPATRICK
VIRTUS LIMITED
ADAMSTOWN, LUCAN,
Co. DUBLIN, IRELAND

RE: The tariff classification of the Primaire Therapy Mattress Surface from Ireland.

DEAR MR. FITZPATRICK:

In your letter dated January 2, 2002, you requested a tariff classification ruling.

The submitted literature depicts the Primaire Therapy Mattress Surface, which will be sold to Hill-Rom Inc. The mattress mainly consists of a cover, zoned foam inner sections and air cushions. The foam comprises approximately 80% of the total weight of the complete mattress. The cover material is a polyurethane-coated nylon fabric with a zipper and straps attached. The straps hold the therapy mattress to the Hill-Rom bed frame. The zoned foam sections give different pressure care therapy and significantly reduce the risk of developing bedsores. The air cushions are also made from polyurethane material and are attached to the foam sections. The cushions have air supply fittings fitted to them. The mattresses and covers/foam cushions sections can only be used to make up a complete Hill-Rom hospital bed and have no other use. They are an integral part of the complete hospital bed.

The applicable subheading for the Primaire Therapy Mattress Surface will be 9402.90.0020, Harmonized Tariff Schedule of the United States (HTS), which provides for medical, surgical, dental or veterinary furniture (for example, operating tables, examination tables, hospital beds with mechanical fittings, dentists' chairs); barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements; parts of the foregoing articles: other, other. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 646-733-3036.

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

[ATTACHMENT B]

NY E84866

July 27, 1999

CLA-2-94:RR:NC:SP:233 E84866

CATEGORY: Classification

TARIFF NO.: 9402.90.0010

MR. LESLIE FITZPATRICK
VIRTUS LIMITED
ADAMSTOWN, LUCAN,
CO. DUBLIN, IRELAND

RE: The tariff classification of hospital bed mattresses from Ireland.

DEAR MR. FITZPATRICK:

In your letter dated July 19, 1999, you requested a tariff classification ruling.

The submitted literature depicts the following items to be imported:

1. A mattress for the Affinity Bed, a birthing bed that has been designed to meet the challenges of changing perinatal needs in the hospital.
2. A mattress for the TotalCare hospital bed and "chair," a system which has been designed for critical elderly patients to help them through the hospital faster with improved outcomes.

You will be manufacturing and selling the complete mattress for both beds (and parts of it) to Hill-Rom Inc.

The applicable subheading for the Affinity Bed and TotalCare hospital bed mattresses will be 9402.90.0010, Harmonized Tariff Schedule of the United States (HTS), which provides for medical, surgical, dental or veterinary furniture (for example, operating tables, examination tables, hospital beds with mechanical fittings, dentists' chairs); barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements; parts of the foregoing articles: other, hospital beds. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 212-637-7061.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

HQ H276631
CLA-2 OT:RR:CTF:TCM H276631 NCD
CATEGORY: Classification
TARIFF NO.: 9404.21.0095

LESLIE FITZPATRICK
VIRTUS LIMITED
ADAMSTOWN, LUCAN
Co. DUBLIN, IRELAND

RE: Revocation of NY H87018 and NY E84866; Classification of hospital bed and chair mattresses

DEAR MR. FITZPATRICK:

This is in reference to New York Ruling Letter (NY) H87018, issued to you by U.S. Customs and Border Protection (CBP) January 9, 2002. We have reviewed NY H87018, which involved classification of the Primeaire Therapy Mattress Surface under the Harmonized Tariff Schedule of the United States (HTSUS), and determined that it is incorrect. For the reasons set forth below, we are revoking that ruling.

We have additionally reviewed NY E84866, issued to you July 27, 1999, which similarly involved classification of two hospital bed and chair mattresses under the HTSUS. As with NY H87018, we have determined that NY E84866 is incorrect and, for the reasons set forth below, are revoking it.

FACTS:

In NY H87018, CBP described the Primeaire Therapy Mattress Surface at issue as follows:

The mattress mainly consists of a cover, zoned foam inner sections and air cushions. The foam comprises approximately 80% of the total weight of the complete mattress. The cover material is a polyurethane-coated nylon fabric with a zipper and straps attached. The straps hold the therapy mattress to the Hill-Rom bed frame. The zoned foam sections give different pressure care therapy and significantly reduce the risk of developing bedsores. The air cushions are also made from polyurethane material and are attached to the foam sections. The cushions have air supply fittings fitted to them. The mattresses and covers/foam cushions sections can only be used to make up a complete Hill-Rom hospital bed and have no other use. They are an integral part of the complete hospital bed.

In NY E84866, CBP stated as follows with respect to the subject mattresses:

The submitted literature depicts the following items to be imported:

1. A mattress for the Affinity Bed, a birthing bed that has been designed to meet the challenges of changing perinatal needs in the hospital.
2. A mattress for the TotalCare hospital bed and "chair," a system which has been designed for critical elderly patients to help them through the hospital faster with improved outcomes.

You will be manufacturing and selling the complete mattress for both beds (and parts of it) to Hill-Rom Inc.

In both NY H87018 and NY E84866, CBP classified the subject mattresses in subheading 9402.90.00, HTSUS, which provides for: “Medical, surgical, dental or veterinary furniture (for example, operating tables, examination tables, hospital beds with mechanical fittings, dentists’ chairs); barbers’ chairs and similar chairs, having rotating as well as both reclining and elevating movements; parts of the foregoing articles: Other.”

ISSUE:

Whether the subject mattresses are properly classified as medical furniture or parts thereof in heading 9402, HTSUS, or as articles of bedding in heading 9404, HTSUS.

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The 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:

9402	Medical, surgical, dental or veterinary furniture (for example, operating tables, examination tables, hospital beds with mechanical fittings, dentists’ chairs); barbers’ chairs and similar chairs, having rotating as well as both reclining and elevating movements; parts of the foregoing articles:
9402.90.00	Other
9404	Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered:
	Mattresses:
9404.21.00	Of cellular rubber or plastics, whether or not covered

Heading 9402, HTSUS, provides, *inter alia*, for medical furniture and parts thereof. Note 2 to Chapter 94 states as follows:

The articles (other than parts) referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground.

The following are, however, to be classified in the above-mentioned headings even if they are designed to be hung, to be fixed to the wall or to stand one on the other:

- (a) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture;
- (b) Seats and beds.

Note 3(b) to Chapter 94 states as follows:

- (b) Goods described in heading 9404, entered separately, are not to be classified in heading 9401, 9402 or 9403 as parts of goods.

With reference to Note 2 to Chapter 94, the General EN to Chapter 94 states, in pertinent part, as follows:

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

- (A) Any “movable” articles (not included under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafés, restaurants, laboratories, hospitals, dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.
- (B) The following:
 - (i) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture, designed to be hung, to be fixed to the wall or to stand one on the other or side by side, for holding various objects or articles (books, crockery, kitchen utensils, glassware, linen, medicaments, toilet articles, radio or television receivers, ornaments, etc.) and separately presented elements of unit furniture.
 - (ii) Seats or beds designed to be hung or to be fixed to the wall.

Pursuant to Note 2 to Chapter 94, as explained by the General EN to the chapter, the tariff term “furniture” applies to the following: Movable articles that are designed for placement on the floor; shelved articles and “unit furniture” designed to be hung, fixed to a wall, or placed adjacent or sub/superjacent to each other; separately-presented “unit furniture”; and seats or beds designed to be hung or fixed to a wall. The term “unit furniture” is not defined in the HTSUS, but the courts have held that it denotes “an item (a) fitted with other pieces to form a larger system or which is itself composed of smaller complementary items, (b) designed to be hung, to be fixed to the wall, or to stand one on the other or side by side, and (c) assembled together in various ways to suit the consumer’s individual needs to hold various objects or articles, but (d) excludes other wall fixtures such as coat, hat and similar

racks, key racks, clothes brush hangers, and newspaper racks.” See *Container Store v. United States*, 800 F. Supp. 2d 1329, 1337 (Ct. Int’l Trade 2011); see also *StoreWALL, LLC v. United States*, 644 F.3d 1358, 1363 (Fed. Cir. 2011) (endorsing definition of “unit furniture” adopted by Court of International Trade).

Here, the subject mattresses, while movable, are designed strictly for placement atop hospital beds and chairs rather than upon the floor. Moreover, because the mattresses are not designed for hanging, fixture to walls, or placement adjacent to each other, and are not designed to hold other articles, they do not qualify as “unit furniture” within the meaning of note 2 to Chapter 94. Nor can they be described as seats or beds designed for hanging or fixing to a wall. While they are designed for superjacent placement upon beds and chairs, which are furniture, they are not “shelved” articles. Accordingly, the mattresses do not meet any of the definitions of “furniture” set forth in Note 2 to Chapter 94, and cannot be classified as such in heading 9202, HTSUS.

As to whether the subject mattresses can be classified as parts of furniture within heading 9402, HTSUS, Note 3(b) to Chapter 94 precludes classification as such where classification in heading 9404, HTSUS, is possible. Heading 9404, HTSUS, provides, *inter alia*, for “articles of bedding..internally fitted with any material,” and explicitly lists mattresses as an exemplar of such articles. EN 94.04 states, in pertinent part, as follows:

This heading covers:

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

(1) Mattresses, including mattresses with a metal frame.

According to the plain language of heading 9404, HTSUS, as explained in EN 94.04, the heading applies to mattresses that are internally fitted with any material. Here, it is beyond dispute that the subject products are mattresses within the meaning of heading 9404. NY H87018 states that the Primeaire Therapy Mattress Surface consists of a fabric cover, air cushions, and foam inner sections, the last of which account for 80 percent of the total weight of the mattress. Moreover, our research indicates that both mattresses at issue in NY E84866 consist of polyurethane foam padding covered by fabric exteriors. All the subject mattresses are thus “internally fitted” for purposes of classification of heading 9404, and are consequently described by the heading. Therefore, by operation of Note 3(b) to Chapter 94, the subject mattresses are properly classified as articles of that heading rather than as parts of heading 9402, HTSUS. We note that this determination is consistent with various CBP rulings classifying mattresses and other articles of bedding in heading 9404, HTSUS, where they, like the subject merchandise, are designed for placement upon hospital beds. See NY N235215 and NY N235249, dated December 3, 2012; NY N217518, dated June 12, 2012; and NY 808052, dated March 24, 1995.

HOLDING:

By application of GRI 1, the subject mattresses are properly classified in heading 9404, HTSUS. They are specifically classified in subheading 9404.21.0095, HTSUSA (Annotated), which provides for: “Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Mattresses: Of cellular rubber or plastics, whether or not covered: Other.” The 2016 column one general rate of duty is 3.0% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

New York Ruling Letters H87018, dated January 9, 2002, and NY E84866, dated July 27, 1999, are hereby REVOKED in accordance with the above analysis.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division


GENERAL NOTICE
19 CFR PART 177

**REVOCATION OF THREE RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF SECURITY ANALYTICS
APPLIANCES**

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

ACTION: Notice of revocation of three ruling letters, and of revocation of treatment relating to the tariff classification of security analytics appliances.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking three ruling letters concerning the tariff classification of security analytics appliances which scan incoming data, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly,

CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 23, on June 8, 2016. No comments on 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 24, 2016.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 50, No. 23, on June 8, 2016, proposing to revoke three ruling letters pertaining to the tariff classification of security analytics appliances which scan incoming data. As stated in the proposed notice, this action covers New York Ruling Letters (NY) N213277, dated May 4, 2012, NY N247242, dated November 13, 2013, and NY N247732, dated December 3, 2013, as well

as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the three identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An 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 N213277, CBP classified the Blue Coat full proxy edition Proxy SG 900/9000 in heading 8517, HTSUS, specifically in subheading 8517.62.00, HTSUS, which provides for "Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other." Similarly, in NY N247242, CBP classified the Blue Coat full proxy edition of the Proxy SG in subheading 8517.62.00, HTSUS. Also, in NY N247732, CBP classified the Blue Coat SSL network device in subheading 8517.62.00, HTSUS.

CBP has reviewed NY N213277, NY N247242, and NY N247732 and has determined the ruling letters to be in error. It is now CBP's position that these products are properly classified, by operation of GRI 1, in heading 8543, HTSUS, specifically in subheading 8543.70.99, HTSUS, which provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other."¹

¹ In the June 8, 2016 notice, CBP proposed to classify the security analytics in HTSUS subheading 8543.70.9650, which reflected the 2015 HTSUS. The provision for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other" was moved to a new 8-digit subheading 8543.70.9960. Accordingly, CBP has updated the holding to reflect the current 2016 tariff. The duty rate was not changed.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N213277, NY N247242, and NY N247732, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H271470, 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: July 19, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H271470

July 19, 2016

CLA-2 OT: RR: CTF: TCM: H271470 ERB/HvB

CATEGORY: Classification

TARIFF NO.: 8543.70.9960

Ms. SOPHIA CHAN
COMPLIANCE ANALYST
BLUE COAT SYSTEMS
420 NORTH MARY AVENUE
SUNNYVALE, CA 94085

RE: Revocation of NY N213277, Revocation of NY N247242, Revocation of NY N247732; Tariff classification of Blue Coat Systems Security Analytics Appliances

DEAR Ms. CHAN:

U.S. Customs and Border Protection (CBP) issued Blue Coat Systems New York Ruling Letters (NY) N213277, dated May 4, 2012, NY N247242, dated November 13, 2013, and NY N247732, dated December 3, 2013. We have since reviewed these rulings and find them to be in error with respect to the classification of the various Blue Coat security system appliances.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the Customs Bulletin, Vol. 50, No. 23, on June 8, 2016. No comments were received in response to the notice.

FACTS:

NY N213277, dated May 4, 2012 stated the following:

The merchandise under consideration is a blue coat full proxy edition of an Internet proxy appliance. It is referred to as ProxySG 900/9000, which is part of blue coat's web security solutions that provides complete web security and WAN optimization.

The blue coat full proxy edition ProxySG 900/9000 delivers a scalable proxy platform architecture to secure web communications and accelerates the delivery of business applications. ProxySG 900/9000 enables flexible, granular, policy controls over content, user's applications, web applications and protocols. It provides the ability to deliver web security and acceleration in one solution to a branch office. This enables branch users to have access directly to the Internet, with the same security coverage as those users in the main office.

You have suggested that the classification of the blue coat full proxy edition ProxySG 900/9000 should be Harmonized Tariff Schedule of the United States (HTSUS) subheading 8471.80.9000, which provides for "Automatic data processing machines and units thereof...Other units of automatic data processing machines: Other: Other." However, the blue coat full proxy edition ProxySG 900/9000 is not an automatic data processing machine or a unit thereof. Rather, it provides architecture for secure web (Internet) communications, WAN (Wide Area Network) optimization, and accelerates the delivery of web-enabled business applications. It is not covered by heading 8471 when presented separately, even

if it meets all of the conditions in Note 5 (C). Note 5 (D) (ii) to Chapter 84, HTSUS, excludes apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network). Apparatus that executes these functions are provided for within heading 8517. As such, subheading 8471.80.9000 is inapplicable.

The applicable subheading for the blue coat full proxy edition ProxySG 900/9000 will be 8517.62.0050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other.” The rate of duty will be free.

NY N247242, dated November 13, 2013, and NY N247732, dated December 3, 2013, classified substantially similar goods in the same subheading as the goods of NY N213277¹.

ISSUE:

Whether merchandise which receives data, processes data, and transmits data over a wired or wireless network is classified in heading 8471 as automatic data processing machines, in heading 8517 as apparatus for communication in a wireless network, or whether it is classified in heading 8543 as other electrical apparatus.

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

¹ NY N247242 described the merchandise as follows: The merchandise under consideration is the SG-S500 ProxySG, which is part of Blue Coat’s security solution that provides complete web security and WAN optimization for businesses. The ProxySG delivers a scalable proxy platform architecture to secure web communications and accelerate the delivery of business applications. The applicable subheading for the SG-S500 ProxySG will be 8517.62.0050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other. The rate of duty will be free. NY N247732 described the merchandise as follows: The merchandise under consideration is the Blue Coat SSL Visibility appliances, which provide existing security appliances used for intrusion detection and prevention (IDS/IPS), forensics, compliance and data loss with access to the decrypted plaintext of SSL flows. These devices enable network appliance manufacturers to provide their security applications with visibility into both SSL and non-SSL network traffic and to increase their application performance to avoid becoming the cause of reduced network throughput. Moreover, these network devices allow inspection capabilities to network security architecture. The applicable subheading for the Blue Coat SSL network devices will be 8517.62.0050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other. The rate of duty will be free.

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 in their appropriate order.

The HTSUS headings under consideration are the following:

- 8471 Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included
- 8517 Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof:
- 8543 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:

Note 3 to Section XVI which covers Chapter 85, provides, in part, that unless the context otherwise requires, machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component which performs the principal function.

Note 5 (A) to Chapter 84 states:

- (A) For the purposes of heading 8471, the expression “automatic data processing machines” means machines capable of:
 - (i) Storing the processing program or programs and at least the data immediately necessary for the execution of the program;
 - (ii) Being freely programmed in accordance with the requirements of the user;
 - (iii) Performing arithmetical computations specified by the user; and
 - (iv) Executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run.

Note 5 (D) to Chapter 84 states, in relevant part:

- (D) Heading 8471 does not cover the following when presented separately, even if they meet all of the conditions set forth in Note 5(C) above:
 - (ii) Apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network);

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. *See* T.D. 89–90, 54 Fed. Reg. 35127 (August 23, 1989).

The ENs to heading 8517, HTSUS, state, in relevant part:

This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of

an electric current or optical wave flowing in a wired network or by electro-magnetic waves in a wireless network. The signal may be analogue or digital. The networks, which may be interconnected, include telephony, radio-telephony, radio-telegraphy, local and wide area networks.

The subject appliances are user specific data processing devices. The function of these network security devices is to receive, record, and process data in an effort to ensure a secure network environment. They run security programs against the incoming data to check for security issues, to ensure a secure network environment. If or once a threat is identified, it is flagged for the user or monitor. The appliances are not freely programmable. While they operate within a network, the network would transmit and receive data without these devices. These appliances scan and identify threats, pursuant to an algorithm. This is why such large amounts of data storage are needed and included with the product.

Note 5(A) to Chapter 84 defines “automatic data processing machines” as articles which satisfy four enumerated requirements. The merchandise described in NY N213277, NY N247242, and NY N247732 are not freely programmable, and therefore do not meet the terms of Note 5(A), and are excluded from classification in heading 8471, HTSUS. Furthermore, as the subject appliances communicate identified threats within a specified network (whether wired or wireless), they are also excluded from heading 8471, pursuant to Note 5(D) to Chapter 84.

Note 3 to Section XVI states that machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component which performs the principal function. As noted above, the subject appliances have multiple key functions. The first function is to process incoming transmissions to identify threats. The processing function is described by the heading text of 8543, HTSUS. The second function is to communicate those threats to the system or the user. This function is described as the transmission of data in a wired or wireless network, of goods of heading 8517, HTSUS.

In HQ W967550, dated January 28, 2008, this office classified a similar product which had two functions, one each in heading 8517 and 8543, HTSUS. There we noted that Additional U.S. Rule of Interpretation 1(a) was relevant when determining the “principal use” of the class or kind of good to which an imported good belongs. In citing the “Carborundum Factors”², CBP found that the functions (so-called primary and secondary by the importer) were in fact equal. In applying the General ENs to Section XVI with respect to multi-function and composite machines: “Where it is not possible to determine the principal function, and where, as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply GRI 3(c)”. GRI 3(c) provides that goods cannot be classified by reference to GRI 3(a) or (b) must be classified in the heading which occurs last in numerical order among those which equally merit consideration.

² The Carborundum factors include: (1) general physical characteristics, (2) expectation of the ultimate purchaser, (3) channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), (4) use in the same manner as merchandise which defines the class, (5) economic practicality of so using the import, and (6) recognition in the trade of this use. *United States v. Carborundum Co.*, 63 C.C.P.A.98, 102, 536 F.2d 373, 377 (1976).

Here, the two functions work in tandem and are necessary for the security appliances to work. The appliances must identify incoming threats, *and* transmit and communicate those threats within the network to the end-user by reproducing the data. One without the others is useless. As such, no single principal function can be identified, and classification pursuant to GRI 3(c) is appropriate. Under GRI 3(c) the Blue Coat full proxy Proxy SG900/9000 appliance, SG-S500 Proxy SG appliance, and the Blue Coat SSL Visibility appliance are provided for in heading 8543, HTSUS, which is the last in the tariff of the headings under consideration.

HOLDING:

By application of GRI 1, the subject merchandise is classified in heading 8543, HTSUS. Specifically, it is provided for in subheading 8543.70.9960, HTSUSA (Annotated) which provides for, “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other.” The 2016 column one, general rate of duty for merchandise of this subheading is 2.6% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N213277, dated May 4, 2012, is REVOKED.

NY N247242, dated November 13, 2013, is REVOKED.

NY N247732, dated December 3, 2013, is REVOKED.

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

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**MODIFICATION OF TWO RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERAMIC DINNERWARE**

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

ACTION: Notice of modification of two ruling letters, and of revocation of treatment relating to the tariff classification of ceramic dinnerware.

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 inter-

ested parties that U.S. Customs and Border Protection (CBP) is modifying HQ H169055 and HQ H226264, both dated January 3, 2014, concerning tariff classification of ceramic dinnerware 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. 22, on June 1, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 24, 2016.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 50, No. 22, on June 1, 2016, proposing to modify two ruling letters pertaining to the tariff classification of ceramic dinnerware. As stated in the proposed notice, this

action will cover Headquarters Ruling Letters (“HQ”) H169055 and H226264, dated January 3, 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 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 have advised CBP during the comment period.

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

In HQ H169055 and HQ H226264, CBP classified two ceramic plates, items VE-9 and RO-5, in heading 6911, HTSUS, as porcelain tableware, and a ceramic platter, item RO-12, in heading 6912, HTSUS, as ceramic tableware, other than porcelain or china. CBP has reviewed HQ H169055 and HQ H226264 and has determined the ruling letters to be in error with respect to these three styles. It is now CBP’s position that items VE-9 and RO-5 are properly classified, by operation of GRI 1, in heading 6912, HTSUS, specifically in subheading 6912.00.20, HTSUS, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Hotel or restaurant ware and other ware not household ware.” Item RO-12 is classified in heading 6911, HTSUS, specifically in subheading 6911.10.10, HTSUS, which provides for “Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Hotel or restaurant ware and other ware not household ware.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying HQ H169055 and HQ H226264 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H252124, 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: July 18, 2016

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H252124

July 18, 2016

CLA-2 OT:RR:CTF:TCM HQ H252124 CKG

CATEGORY: Classification

TARIFF NO.: 6911.10.10; 6912.00.20

EDMUND MACIOROWSKI
101 WEST LONG LAKE ROAD
BLOOMFIELD HILLS, MICHIGAN 48304

Re: Modification of HQ H169055 and HQ H226264; classification of ceramic dinnerware

DEAR MR. MACIOROWSKI:

This is in response to your letter of February 28, 2014, requesting the reconsideration of Headquarters Ruling Letters (HQ) H169055 and H226264, both dated January 3, 2014, filed on behalf of Marck & Associates, Inc., contesting Customs and Border Protection's (CBP) classification of ceramic dinnerware in subheadings 6911.10.10, HTSUS, and 6912.00.20, HTSUS. Specifically, you contest the classification of all of the items pertaining to the Granada, Roma, Sydney, Valencia, Verona and York styles in heading 6911, HTSUS, as porcelain ceramic tableware, and you contest the classification of all items pertaining to the Brighton, Dover, Granada, Roma, Sydney, Valencia, Verona and York styles in subheadings 6911.10.10, HTSUS, and subheading 6912.00.20, HTSUS, as ceramic tableware for hotel or restaurant use.

We have reconsidered both rulings, and for the reasons set forth below we are modifying HQ H169055 with respect to the classification of item number VE-9 (Verona plate), and H226264 with respect to the classification of item numbers RO-5 (Roma plate) and RO-12 (Roma platter).

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify HQ H169055 and HQ H226264 was published on June 1, 2016, in Volume 50, Number 22 of the Customs Bulletin. No comments were received in response to this notice.

FACTS:

The subject merchandise consists of eight styles of ceramic dinnerware: Brighton, Dover, Granada, Roma, Sydney, Valencia, Verona, and York. Various samples of each style were sent to the U.S. Customs and Border Protection ("CBP") laboratory for testing. Separate laboratory reports were issued for each item. The Brighton style items at issue consist of six plates (Item #s

BR-5, BR-6, BR-7, BR-8, BR-9, and BR-16)¹, and one platter (BR-13)². All have a finished white body, are translucent and absorb less than 0.5% of their weight in water. CBP's laboratory found that these items do not contain phosphorous, and all meet the definition of porcelain found in Additional U.S. Note 5(a) to Chapter 69, HTSUS. Furthermore, they all contain a logo on the back identifying them as "ITI, China, 5-1." You acknowledge that the Brighton line of Marck's merchandise is made of porcelain, and do not contest their classification at the 4-digit heading level in heading 6911, HTSUS.

The Dover style items at issue here are: one saucer (DO-2)³, five bowls (DO-4, DO-10, DO-11, DO-24, and DO-120)⁴, five plates (DO-5, DO-7, DO-8, DO-16, DO-31)⁵, and a platter (DO-34)⁶. These items all contain a logo on the back identifying them as "ITI, China, 5-1." In addition, many of the samples obtained by the CBP laboratory contained an adhesive label affixed to the back of the plate that read "International Tableware, Inc.," and identified the item by item number, style, and item type. CBP's laboratory found that the items of the Dover line meet the definition of porcelain within the meaning of Additional U.S. Note 5(a) to Chapter 69, HTSUS. You acknowledge that the Dover line of Marck's merchandise is made of porcelain, and do not contest their classification at the heading level in heading 6911, HTSUS.

¹ Item Number BR-5 has a diameter of approximately 13.9 centimeters and a thickness of approximately 5.4 millimeters. It is glazed with a raised, round, unglazed ridge on the bottom. Item Number BR-6 measures 22.78 centimeters in diameter, 0.58 centimeters in thickness, and has a clear glaze. Item Number BR-7 measures 18.27 centimeters in diameter and 0.59 centimeters in thickness. It has a clear glaze. Style Number BR-8 measures approximately 22.9 centimeters in diameter and has a thickness of approximately 4.9 millimeters. It is a glazed plate with a raised, round, unglazed ridge on the bottom. Style Number BR-9 has a diameter of approximately 21.4 centimeters and is approximately 6.2 millimeters in thickness. It is a glazed plate with a raised, round, unglazed ridge on the bottom. Item Number TBR-16 measures 26.18 centimeters in diameter, 0.65 centimeters in thickness, and has a clear glaze.

² Item Number BR-13 measures 11 ½ inches by nine inches and contains a clear glaze.

³ Item Number DO-2 is a double well saucer with a clear glaze. It measures 15.35 centimeters in diameter and 0.64 centimeters in thickness.

⁴ Item Number DO-24 is a glazed bowl with a raised, round, unglazed ridge at the bottom. It has a diameter of approximately 12.5 centimeters and a thickness of approximately 6.5 millimeters. Style Number DO-11 is a glazed bowl with a raised, round, unglazed ridge on the bottom. It has a diameter of approximately 4.9 centimeters and a thickness of approximately 5.1 millimeters. Style Number DO-10, is a glazed bowl that measures 16.0 centimeters in diameter. Item Number DO-4 has a diameter of approximately 10.0 centimeters and a thickness of approximately 6.6 millimeters. Item number DO-120, the Dover Pasta Bowl, measures approximately 12 inches in diameter. It has a shallow indentation in the middle that measures approximately eight inches in diameter and one inch in depth.

⁵ Item Number DO-5 measures 13.96 centimeters in diameter and 0.57 millimeters in thickness. Style Number DO-7 is a glazed plate with a raised, round, unglazed, ridge on the bottom. It measures approximately 17.7 centimeters in diameter and has a thickness of approximately 5.2 millimeters. Item Number DO-8 measures 22.78 centimeters in diameter and 0.58 centimeters in thickness. Item number DO-16 measures approximately 10.5 inches in diameter, weighs 822.63 grams and has an average rim thickness of 6.39 millimeters.

⁶ Style Number DO-34 is a white oval plate with a clear glaze. It measures 24.38 centimeters in length, 19.08 centimeters in width, and has a thickness of 0.66 centimeters.

The Granada style items at issue here are a plate (GR-9)⁷, a platter (GR-12)⁸, two saucers (GR-2, GR-2" C")⁹ and a bowl (GR-11)¹⁰. They are glazed and beige with brown spots and have a dark brown trimming. The laboratory concluded that the Granada bowl and two saucers met the definition of porcelain within the meaning of Note 5(a) to Chapter 69, HTSUS, but that the Granada plate and the Grenada platter were not translucent.

In addition to the laboratory reports issued by CBP's New York laboratory, the Port sent a sample of the Granada plate to CBP's laboratory in Chicago for analysis. The resulting laboratory report determined that the plate was "composed of porcelain ceramic" and had a water absorption value of 0.08 percent by weight.

The items from the Roma style at issue here are: a serving dish (WRO-8-AW)¹¹, three plates (RO-3, RO-5, RO-8)¹², three bowls (RO-10, RO-11, WRO-15)¹³, and a platter (RO-12)¹⁴. They are all plain and white. Following testing, the CBP laboratory determined that item WRO-8-AW was not translucent and absorbs 4.1% percent of its weight in water. The laboratory concluded that it meets the definition of earthenware of Additional U.S. Note 5(c) to Chapter 69, HTSUS. The laboratory found that item RO-8 was translucent in several millimeters, and absorbs approximately 0.46% of its weight in water. The laboratory concluded that it meets the definition of porcelain of Additional U.S. Note 5(a) to Chapter 69, HTSUS. The laboratory found that items RO-3 and RO-5 were not translucent and absorbed more than .5% of their weight in water, and thus conformed to the definition of stoneware put forth in Additional U.S. Note 5(a) to Chapter 69, HTSUS.

⁷ Item Number GR-9 is glazed and weighs 712 grams. It has a diameter of approximately 8 millimeters.

⁸ Item Number GR-12 "C" measures 9.75 inches long by 8.5 inches wide. It has a clear glaze, weighs 666.80 grams, and has an average rim thickness of 7.46 millimeters.

⁹ Item numbers GR-2 and GR-2 "C" both measure approximately 6 inches in diameter with an indentation in the center that measures 2.5 inches in diameter and is suitable for containing a cup.

¹⁰ Item Number GR-11 measures approximately 4.63 inches in diameter, 3.2 centimeters in height, and the rim is approximately 4.1 millimeters thick. It weighs approximately 177.6 grams.

¹¹ Item Number WRO-8-AW is the Roma Welsh Rarebit Plate. It measures approximately 8.5 inches long by 4.25 inches wide, has small handles on each side to facilitate handling, and weighs 425 grams.

¹² Style Number RO-3, is plate and has a raised, round, unglazed ridge on the bottom. It has a diameter of approximately 22.2 centimeters and a thickness of approximately 5.7 millimeters. Style Number RO-5 has a clear glaze. Item number RO-8 is a glazed plate and measures approximately nine inches in diameter.

¹³ Item Number RO-10 is a bowl with a clear glaze. It measures 16.66 centimeters in diameter and 6.25 centimeters in depth and has a lip that measures 0.60 centimeters in thickness. Item Number RO-11 is glazed bowl, with a raised, round, unglazed ridge on the bottom. Item Number WRO-15 is a bowl and has a clear glaze. It measures 14.12 centimeters in thickness and 6.45 centimeters in depth and its lip is 0.50 centimeters in thickness. It has a diameter of approximately 12.0 centimeters and a thickness of approximately 4.5 millimeters.

¹⁴ Style Number RO-12 is a glazed platter and measures 18.6 centimeters by 26.9 centimeters.

One platter from the Sydney style is at issue here (SY-12).¹⁵ It is a plain white platter with shallow scalloped edges. The rim is edged in black. Following testing, the laboratory found that this platter is a glazed clay ceramic that has a white body and is translucent in a thickness of several millimeters. It absorbs 0.20% of its weight in water. The laboratory concluded that it meets the definition of porcelain of Additional U.S. Note 5(a) to Chapter 69, HTSUS.

One item of the Valencia style, a plate (VA-7), is at issue here.¹⁶ The sample received by the CBP laboratory contains a logo on the back of the plate, whose black lettering read “ITI China 6–2.” After testing, the lab found that the plate is white in color and absorbs 0.18% of its weight in water and conforms to the definition of porcelain of Note 5(a) to Chapter 69, HTSUS.

Three items of the Verona style are at issue here: a fruit bowl (VE-11)¹⁷, a plate (VE-9)¹⁸, and a platter (VE-34)¹⁹. They are ivory-colored with green trim. Following testing, the CBP laboratory found that item VE-11 (fruit bowl) absorbed 0.04% of its weight in water and concluded that it meets the definition of porcelain of Additional U.S. Note 5(a) to Chapter 69, HTSUS. The CBP laboratory retested the bowl, and the laboratory confirmed its findings that it meets the definition of porcelain set forth in Note 5(a). The laboratory found that item VE-9 has a white body, is a glazed clay ceramic, is translucent and absorbs approximately 0.55% of its weight in water. The laboratory found that the platter (VE-34) has an off-white body, is not translucent, and absorbs 0.14% of its weight in water.

One item of the York Style, a grapefruit bowl (Y-10), is at issue here.²⁰ It is a white bowl with shallow ridges around the rim. It is stamped on the back with the phrase “ITI China 7–1.” Following testing, the laboratory found that it is not translucent and that it absorbs 0.29% of its weight in water. Its elemental composition is consistent with a clay-based product.

Marck also sent samples of the Granada Bowl (item GR-11) and the Roma Oval Welsh Rarebit (item number WRO-8-AW), to an independent expert for testing. The resulting report, issued on April 30, 2013 by William D. Carty, Ph.D., of Ceramic Engineering & Materials Consulting and Testing Services, concluded that the GR-11 had a thickness of 3.94 millimeters, an average light transmission of 0.4%, and was opaque, not translucent, and not porcelain. This report concluded that the WRO-8-AW had a thickness of 4.00 millimeters, an average light transmission of 0.4%, was opaque, not translucent, and not porcelain.

In HQ H169055, CBP classified the Dover Bowl (item number DO-120), the Dover Plate (item number DO-16), the Granada Bowl (GR-11), Granada Saucers (GR-2 and GR-2C), the Roma Plate (item number RO-8), the Sydney Platter (item number SY-12), the Verona Bowl (item number VE-11), and the Verona Plate (item number VE-9) in heading 6911, HTSUS, specifically subheading 6911.10.10, HTSUS, which provides for “Tableware, kitchen-

¹⁵ Item Number SY-12 measures approximately 9.88 inches long by 7.25 inches wide. Its rim is approximately 7.7 millimeters thick. The platter and it weighs approximately 696.5 grams.

¹⁶ Style Number VA-7 is glazed and measures 18.4 centimeters in diameter.

¹⁷ Item Number VE-11 measures approximately 4.75 inches in diameter.

¹⁸ Item Number VE-9 measures 9.75 inches in diameter

¹⁹ Item number VE-34 measures approximately 9.25 inches long by 6.38 inches wide.

²⁰ Item Number Y-10 measures approximately 6.25 inches in diameter.

ware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Hotel or restaurant ware and other ware not household ware.” The Roma Bowl (item number WRO-8-AW), the Granada Plate (item number GR-9), the Granada Platter (item number GR-12), the Verona Platter (item number VE-34), and the York Bowl (item number Y-10) were classified in heading 6912, HTSUS. They are specifically provided for in subheading 6912.00.20, HTSUS, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Hotel or restaurant ware and other ware not household ware.”

In HQ H226264, CBP classified five Brighton Plates (items BR-5, TBR-16, BR-6, BR-8, BR-9), the Dover Saucer (DO-2), four Dover Bowls (items DO-24, DO-11, DO-10, and DO-4), four Dover Plates (items DO-8, DO-31, DO-5, and DO-7), the Dover Platter (DO-34), The Brighton Platter (BR-13), a Brighton Plate (BR-7), two Roma Bowls (WRO-15 and RO-10), a Roma Plate (RO-5), and a Valencia Plate (VA-7) in heading 6911, HTSUS, specifically in subheading 6911.10.10, HTSUS, which provides for “Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Hotel or restaurant ware and other ware not household ware.” A Roma Plate, Bowl and Platter (items RO-3, RO-11, and RO-12) were classified in heading 6912, HTSUS, specifically in subheading 6912.00.20, HTSUS, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Hotel or restaurant ware and other ware not household ware.”

ISSUE:

1. Whether the subject merchandise is classified in heading 6911, HTSUS, as porcelain tableware, or under heading 6912, HTSUS, as other ceramic tableware.
2. Whether the subject merchandise is classified in subheadings 6911.10.10, HTSUS, and 6912.00.20, HTSUS, as hotel or restaurant ware, and not as household ware.

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, GRIs 2 through 6 may then be applied in 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 the GRIs.

The HTSUS provisions under consideration are as follows:

6911	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:
6911.10	Tableware and kitchenware:

6911.10.10	Hotel or restaurant ware and other ware not household ware: Other: Other: Available in specified sets: In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of this chapter is over \$56:
6911.10.37	Aggregate value not over \$200
	* * *
6912.00	Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other:
6912.00.20	Hotel or restaurant ware and other ware not household ware: Other: Available in specified sets:
6912.00.39	In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of this chapter is over \$38
	* * * * *

Additional U.S. Note 5 to Chapter 69, HTSUS, states, in pertinent part, the following:

For the purposes of headings 6909 through 6914:

- (a) The terms “*porcelain*,” “*china*” and “*chinaware*” embrace ceramic ware (other than stoneware), whether or not glazed or decorated, having a fired white body (unless artificially colored) which will not absorb more than 0.5 percent of its weight of water and is translucent in thicknesses of several millimeters. The term “*stoneware*” as used in this note, embraces ceramic ware which contains clay as an essential ingredient, is not commonly white, will absorb not more than 3 percent of its weight of water, and is naturally opaque (except in very thin pieces) even when absorption is less than 0.1 percent...
- (c) The term “*earthenware*” embraces ceramic ware, whether or not glazed or decorated, having a fired body which contains clay as an essential ingredient, and will absorb more than 3 percent of its weight of water.

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 (Aug. 23, 1989).

The EN to heading 6911, HTSUS, provides as follows:

See the Explanatory Note to heading 69.12.

The EN to heading 6912, HTSUS, provides, in pertinent part:

Tableware, kitchenware, other household articles and toilet articles are classified in heading 69.11 if of porcelain or china, and in heading 69.12 if of other ceramics such as stoneware, earthenware, imitation porcelain (see General Explanatory Note to sub-Chapter II).

The General Explanatory Note to sub-Chapter II of heading 6912, HTSUS, provides, in pertinent part:

(I) PORCELAIN OR CHINA

Porcelain or china means hard porcelain, soft porcelain, biscuit porcelain (including parian) and bone china. All these ceramics are almost completely vitrified, hard, and are essentially impermeable (even if they are not glazed). They are white or artificially colored, translucent (except when of considerable thickness), and resonant.

Hard porcelain is made from a body composed of kaolin (or kaolinic clays), quartz, feldspar (or feldspthoids), and sometimes calcium carbonate. It is covered with a colorless transparent glaze fired at the same time as the body and thus fused together.

Soft porcelain contains less alumina but more silica and fluxes (e.g., feldspar). Bone china, which contains less alumina, contains calcium phosphate (e.g., in the form of bone ash); a translucent body is thus obtained at a lower firing temperature than with hard porcelain. The glaze is normally applied by further firing at a lower temperature, thus permitting a greater range of underglaze decoration...

* * * *

We first address classification at the heading level as between headings 6911, HTSUS, and 6912, HTSUS. In the Internal Advice Rulings at issue, CBP classified the following styles in heading 6911, HTSUS, as porcelain tableware: BR-5, BR-6, BR-7, BR-8, BR-9, BR-13, BR-16, DO-2, DO-4, DO-5, DO-7, DO-8, DO-10, DO-11, DO-16, DO-24, DO-31, DO-34, DO-120, GR-2, GR-2C, GR-11, RO-5, RO-8, RO-10, WRO-15, SY-12, VA-7, VE-9, and VE-11. The following styles were classified in heading 6912, HTSUS, as non-porcelain tableware: RO-3, RO-11, RO-12, WRO-8-AW, GR-9, GR-12, VE-34, and Y-10.

The CBP Laboratory found that all of the Brighton and Dover styles at issue as well as styles GR-2, GR-2C, GR-11, RO-8, RO-10, RO-12, WRO-15, SY-12, VA-7, and VE-11, met the definition of porcelain as set out in Additional U.S. Note 5(a) to Chapter 69. Styles GR-12, RO-3, RO-5, WRO-8-AW, RO-11, VE-9, VE-34, and Y-10 were found by the CBP Laboratory to lack one or more of the criteria for porcelain required in Additional U.S. Note 5(a) to Chapter 69. Style GR-9 was tested by two different laboratories; the CBP NY lab found that the Granada plate was not porcelain because it was not translucent, and the CBP Chicago lab concluded that the plate was “composed of porcelain ceramic” and had a water absorption value of 0.08 percent by weight. As these reports differ in their conclusions regarding whether the Granada plate was porcelain or not, in HQ H169055, CBP set aside the

findings of the Chicago lab and found in favor of the importer—i.e., that the plate was not made of porcelain and therefore not classified in heading 6911, HTSUS.

You claim that styles GR-2, GR-2C, GR-11, RO-8, RO-10, RO-12, WRO-15, SY-12, VA-7, and VE-11 are not porcelain and that the CBP Laboratory results were in error. Our position on applying the results of CBP Laboratory tests on the exact merchandise at issue in a classification dispute is made clear in HQ H226264, HQ H169055, and numerous other cases. Pursuant to 28 U.S.C. § 2639(a)(1) (1994), CBP enjoys a statutory presumption of correctness. Thus, an importer has the burden to prove by a preponderance of the evidence that a Customs decision was incorrect. *Ford Motor Company v. United States*, 157 F.3d 849, 855 (Fed. Cir. 1998); *American Sporting Goods v. United States*, 27 C.I.T. 450; 259 F. Supp. 2d 1302; 25 Int'l Trade Rep. (BNA) 1345; 2003 Ct. Intl. Trade LEXIS 45. Furthermore, it is “well settled that the methods of weighing, measuring, and testing merchandise used by customs officers and the results obtained are presumed to be correct.” *Aluminum Company of America v. United States*, 60 C.C.P.A. 148, 151, 477 F.2d 1396, 1398 (1973) (“Alcoa”). Absent a conclusive showing that the testing method used by the CBP laboratory is in error, or that the Customs’ laboratory results are erroneous, there is a presumption that the results are correct. See *Exxon Corp. v. United States*, 462 F. Supp. 378, 81 Cust. Ct. 87, C.D. 4772 (1978). “If a prima facie case is made out, the presumption is destroyed, and the Government has the burden of going forward with the evidence.” *Alcoa*, 477 F.2d at 1399; *American Sporting Goods*, 27 C.I.T. 450. Furthermore, in HQ 955711, dated July 21, 1994, CBP held that “where there is a conflict between results obtained by a Customs laboratory and those obtained by private or independent laboratories, Customs will, in the absence of evidence that the testing procedure or methodology used by the Customs laboratory was flawed, accept the Customs laboratory report.” See e.g., HQ H233587, dated March 30, 2014, and HQ 955711. See also HQ 953769, dated July 22, 1993.

You allege the following errors in the methodology of the CBP Laboratory: First, you contend that, the CBP Laboratory erred in testing less than five samples of each style for water absorption/porosity, contrary to the requirements of ASTM C373²¹. However, we first note that what ASTM C373 actually requires is that 5 specimens of 3” by 3” be tested. The CBP Laboratory of New York, for each style, tested five pieces taken from the samples provided by Marck (“five broken pieces were ground on one surface, dried at 148° C, cooled, weighed, boiled in distilled water for five hours, and soaked”). Second, you claim that the CBP Laboratory did not report the average water absorption value of five samples, as required by ASTM C373 (as opposed to simply taking the value of a single sample). While we acknowledge that it is not made clear in the Laboratory Reports, we have confirmed that the water absorption/porosity value reported by the CBP Laboratory in each Laboratory Report was in fact the average absorption value of all five pieces of each

²¹ ASTM C373 is the standard test method for determining water absorption, bulk density, apparent porosity, and apparent specific gravity of fired unglazed whiteware products, glazed or unglazed ceramic tiles, and glass tiles. This method generally involves heating, drying, boiling, then soaking broken or cut pieces of ceramic to determine the mass gained by the sample from any water it absorbed during this process.

sample, as required by ASTM C373. Thus, the CBP Laboratory followed the correct procedure pursuant to ASTM C373 with regard to the number of pieces tested and the reported value of water absorption.

You further argue that outdated ASTM methods were used to determine porosity and color: specifically, you contend that the CBP Lab should have used the more recent ASTM C373–88 instead of ASTM C373–00, and ASTM D1535–12 instead of D-1535²². Again, we have confirmed that the CBP Laboratory used the latest ASTM method applicable at the time of testing—in this case, ASTM C373–88 (the standard in effect from 2006 to 2014), ASTM D1535–12 or ASTM D1535–12a for those tests conducted in 2012, and ASTM D1535–08e1 for those tests conducted in 2011.

You further contest the findings of the CBP Laboratory that the Grenada items were white in color. We note that when the CBP Laboratory refers to the tested styles as having a “white” body, that is simply in the context of Additional U.S. Note 5 to Chapter 69, which requires that “porcelain” have “a fired white body (unless artificially colored)”. Thus, the reference to the color does not take into account any glaze or coloring added to the clay body. The CBP Laboratory used ASTM method D1535 on a piece of each style at issue to determine the color of the body, using “simulated daylight illumination” to determine where on the Munsell Color Chart the sample fell.

As noted above, the CBP Laboratory followed all the proper procedures and test methods when testing the instant merchandise. However, you insist that the results of the CBP Laboratory cannot be correct, because all of the merchandise of each style are produced in the same batch, with the same materials and method, and with the same equipment. You conclude that the findings of the CBP Laboratory that some of the items in each style are porcelain while others are not (e.g., GR-9 and GRI-12 v. GR-11, RO-8, R-10, RO-12 and WRO-15 v. RO-3, RO-5, and RO-11) must therefore be incorrect. However, we note that even if all of the merchandise of each style are produced in the same batch, this does not rule out all possibility of manufacturing defects or inconsistencies due to mechanical or human error. In addition, we note that the Verona fruit bowl (VE-11) was tested twice by the CBP Laboratory, and both tests confirmed that the item is made of porcelain. Finally, as noted in HQ H226264 and HQ H169055, the independent laboratory tests do not state which test was used to confirm that the two tested styles were not porcelain, nor do they address the water absorption or color of the two tested styles. As the water absorption is particularly important for a determination of whether an article is porcelain or not (*see e.g.*, Tile Council of North America “What are the Differences Between Porcelain Tiles and Non-Porcelain Tiles?”²³), we find the results of the independent laboratory reports to be unpersuasive.

There also appears to be a fundamental misunderstanding over the meaning of “porcelain” for the purposes of the HTSUS. The tariff defines “porcelain” in Note 5(a) to Chapter 69, HTSUS, as follows: “(a)The terms “porcelain,” “china” and “chinaware” embrace ceramic ware (other than stoneware), whether or not glazed or decorated, having a fired white body (unless artifi-

²² ASTM D1535 is the standard test method for specifying color by the Munsell System. This system is based on the color-perception attributes hue, lightness, and chroma, and involves observing the color of an object under certain daylight or simulated daylight conditions and comparing it to Munsell chips in hue, chroma and value charts.

²³ <http://www.tcnatile.com/faqs/59-porcelain.html>

cially colored) which will not absorb more than 0.5 percent of its weight of water and is translucent in thicknesses of several millimeters.” You argue that because the subject merchandise is not fired twice, it is not porcelain. We find no support for this claim anywhere in the HTSUS, and note that common definitions of the term “porcelain” do not require that it be fired twice. See e.g., <http://www.merriam-webster.com/dictionary/porcelain> (“porcelain: a hard, fine-grained, sonorous, nonporous, and usually translucent and white ceramic ware that consists essentially of kaolin, quartz, and a feldspathic rock and is fired at a high temperature”; http://www.oxforddictionaries.com/us/definition/american_english/porcelain (“A white *vitrified translucent ceramic; china*). See also Tile Council of North America (“Porcelain tile is defined as an impervious tile with a water absorption of 0.5% or less as measured by the ASTM C373 test method.”)²⁴ In any case, regardless of whether a ceramic article is fired once or twice or ten times, if it meets the definition of porcelain set out in Note 5(a) to Chapter 69, it is porcelain for the purposes of tariff classification.

Finally, we note that Marck has already conceded that all items of the Brighton and Dover lines are indeed porcelain, which was confirmed by the CBP Lab. These styles thus serve as a useful control group—if the CBP Lab’s methodology was flawed, it is likely it would have yielded inconsistent results for those styles.

In summary, we find that you have not overcome the presumption of correctness afforded to the CBP Laboratory. We thus continue to uphold the findings of the CBP Laboratory with respect to the styles at issue, with the exception of style GR-9, which we agree is not porcelain pursuant to the findings of the first test conducted by the CBP New York Laboratory.

However, you observe, and we agree, that there are inconsistencies in the rulings themselves with respect to the classification of three of the styles at issue. In HQ H169055, item VE-9 was classified in heading 6911, HTSUS, despite the finding of the CBP Laboratory that this style absorbed more than 0.5% of its weight on water. Similarly, in HQ H226264 styles RO-5 and RO-12 were erroneously classified in headings 6911 and 6912, respectively, contrary to the findings of the CBP Laboratory (which found that RO-5 absorbed more than .5% of its weight in water and therefore met the definition of stoneware and not porcelain, and that style RO-12 met all the criteria for classification as porcelain under Additional U.S. Note 5(a) to Chapter 69. We therefore modify HQ H169055 and HQ H226264 with respect to items VE-9, RO-5 and RO-12, in order to reflect their correct classification, as follows: Item VE-9 is correctly classified in heading 6912, HTSUS, item RO-5 is classified in heading 6912, HTSUS, and item RO-12 is classified in heading 6911, HTSUS.

With respect to the issue of whether the subject merchandise is classified as tableware for hotel/restaurant or as tableware for “other” (i.e., household) use, we reiterate our findings from HQ H169055 and HQ H226264. In both rulings, we found that the *Carborundum* factors weighed in favor of classification of the instant articles as hotel or restaurant ware. We noted that the physical characteristics, specifically the fact that most of the styles at issue were white or off-white and plain, round, stackable, glazed, heavy and durable dishes which had been vitrified, were indicative of high-volume, com-

²⁴ <http://www.tcnatile.com/products-and-services/porcelain-certification-program.html>

mercial use. We agree that in particular the heaviness, durability and thickness of the instant merchandise makes it particularly suitable for restaurant or hotel use. *See also* HQ H155796, dated August 15, 2012, which concluded that similar Marck Dinnerware products were classified in subheading 6911.10.10, HTSUS, as porcelain dinnerware for hotel or restaurant use.

As noted in HQ H169055 and HQ H226264 and as confirmed by additional research, we find significant evidence that the specific items at issue, the general styles at issue, and the goods supplied by ITI in general, are overwhelmingly advertised and sold for restaurant/commercial use, with very little to no evidence supporting Marck's position that they are principally used in the household. First, the International Tableware, Inc. line is clearly geared primarily towards commercial use, in the "foodservice marketplace". As noted in the ITI catalog: "From the trendy eatery, to universities, to casinos, to your favorite breakfast spot -- ITI is there." In addition, the ITI catalog features a "foodservice information" page for restaurants to estimate their dinnerware needs ("To figure your exact needs (i.e. dozen for your initial order quantity), multiply the number of seats in your restaurant by the ordering factor, then divide by 12.")

In addition to the characterization of ITI products in the ITI catalog as geared for commercial use, we observe that ITI products are recognized as restaurant ware by the foodservice industry, and run in the same channels of trade as other commercial dinnerware. For example, internet searches for "International Tableware" as well as for the specific styles at issue--e.g., "Dover dinnerware", "Valencia dinnerware", "Brighton dinnerware", "Roma dinnerware", etc., all yield several pages of links to restaurant supply stores. Such general searches yield effectively no results for home kitchen/dining ware sites. Similarly, searching specifically for these styles on the sites of restaurant supply stores and warehouses reveal that all or most of these styles can be found on all such sites, whereas these styles are not sold on home kitchen/dining-ware retail sites or home-kitchen departments of major retailers, such as Sam's Club²⁵, Target, JC Penney, Walmart, Sears, Bed, Bath & Beyond, Crate & Barrel, Macy's, Williams-Sonoma, or Bloomingdale's. Restaurant supply companies which carry all or most of the specific ITI styles and merchandise at issue include, for example: *Redds* Restaurant Equipment Discounters, which sells all the styles at issue (Brighton, Dover, Granada, Roma, Sydney, Valencia, Verona, and York) as "Restaurant China and Dinnerware"²⁶; *Instawares* ("Restaurant Supply Superstore")²⁷; *Restaurant Supply Pro* (describes all styles as "porcelain")²⁸; *Food Service Warehouse* ("Restaurant Equipment At Your Fingertips"): the first results for Food Service Warehouse under the category "restaurant china" (sorting by "most popular") are International Tableware products – Dover, Granada, Verona, Roma styles. "Brighton" is available under "basic china dinnerware", "Syd-

²⁵ Although in HQ H226264 we observed that some items of the Granada line were available at Sam's Club, these items are no longer available for sale on that site.

²⁶ See <http://www.reddsequip.com/vendor.cfm/6850,ITI%20%20International%20Tableware%20Dinnerware,XX>

²⁷ See <http://www.instawares.com/international-tableware-inc.0.2181.0.0.htm?No=361&Rpp=72&af=manufacturer:2181&view=list>

²⁸ See http://www.restaurantsupplypro.com/prod_detail_list/international-tableware

ney” is available under “formal china dinnerware” and “York” under “embossed china dinnerware”²⁹; Burkett Restaurant equipment and supplies (lists ITI under “restaurant equipment manufacturers”).³⁰ These styles are all sold by the above restaurant supply vendors by the case—(3 dozen). We further note that all styles are described as being “microwave and dishwasher safe”, as well as “dent, break and chip resistant.” The only direct-to-consumer point of sale appears to be amazon.com³¹, where all the ITI styles at issue are also sold in bulk—starting at a dozen of each item up to three dozen each. As noted in HQ H169055 and HQ H226264, bulk sales are indicative of commercial use. At the lower range of bulk sales—e.g., a dozen—there may be some fungibility between household and commercial use. This overlap decreases significantly when each item is sold in cases of three dozen each, as a typical household is rather unlikely to purchase two or three dozen of each plate, cup, saucer, bowl, platter, etc. Marck further acknowledged in its original submissions for the Internal Advice Requests that the purchaser of the specific shipment at issue was a restaurant supply company.

In your request for reconsideration, you repeat the claim that 60–65% of the total merchandise sold by Marck is for household use. You further argue that we should not limit our *Carborundum* analysis only to the specific styles at issue, but rather that it is the principal use of all Marck products that should be determinative of the classification of the instant items. We addressed this claim in HQ H169055 and HQ H226264, and we do not intend to revisit that argument here: “In the present case, Marck, in its November 7 submission, presented data in support of its claim that 60–65% of its merchandise is for household use. In examining this data and the list of companies to which Marck sells, we found that Marck sells a significant percentage of its merchandise to companies that emboss logos on it and resell it. Marck attributes these sales to household use. We disagree with this assessment, as a logo is one factor in favor of commercial use.” Thus, even assuming, *arguendo*, that we were persuaded by the argument that we should consider only the principal use of all Marck products in total, it is not clear that this data even supports the claim that most of Marck’s products are for household use. In any case, absent a clear showing that Marck is overwhelmingly dedicated to either the household or the commercial market, the most general class of merchandise we would use for an analysis based on *United States. v. Carborundum Co.*, is the ITI line of merchandise, to which the instant merchandise clearly belongs, but which also encompasses a great many styles which are not currently at issue. As our research indicates that ITI products are overwhelmingly marketed and sold for commercial use, the class or kind of merchandise to which the instant products belong is principally used in commercial applications such as restaurants and hotels.

²⁹ See <http://www.foodservicewarehouse.com/dining/restaurant-china/c3234.aspx>

³⁰ See <http://www.baseequipment.com/International-Tableware-Inc-s/1458.htm>

³¹ See http://www.amazon.com/s/ref=nb_sb_noss_2?url=node%3D367155011&field-keywords=ITI&rh=n%3A1055398%2Cn%3A284507%2Cn%3A13162311%2Cn%3A367147011%2Cn%3A367155011%2Ck%3AITI

You further claim that Marck's dinnerware had been rejected for restaurant use by the Bob Evans restaurant chain because it was not considered sufficiently strong to withstand the rigors of repeated, high volume use. However, there was no indication of which specific style was evaluated by Bob Evans, or what exactly the Marck products were being compared to. In any case, we note that the merchandise at issue is advertised as "dent, break and chip resistant", and "chip and scratch resistant", and that it is marketed and sold for restaurant/commercial use. Indeed, the ITI catalog notes that all ITI stoneware and porcelain is "oven proof, microwave safe, and "manufactured to withstand the rigors of repeated commercial dish machines." We can only assume, despite your claims to the contrary, that the instant merchandise is generally considered suitable for commercial use by the restaurant supply vendors selling it for such use, and by the customers ultimately purchasing it for such use. Furthermore, we note that porcelain in general is more brittle and breakable than other types of dinnerware such as bone china or melamine—the latter of which is more likely to be favored by casual, high-volume chains such as Bob Evans, whereas higher end establishments are more likely to favor porcelain or bone china for a more elegant solution. So the choice by Bob Evans not to purchase Marck dinnerware, even assuming, as you claim, that the goods in question were rejected because of their lack of durability, is not persuasive.

We thus affirm the findings of HQ H169055 and HQ H226264 that the instant merchandise is hotel or restaurant ware.

HOLDING:

By application of GRI 1, items BR-5, BR-6, BR-7, BR-8, BR-9, BR-13, TBR-16, DO-2, DO-4, DO-5, DO-7, DO-8, DO-10, DO-11, DO-16, DO-24, DO-31, DO-34, DO-120, GR-2, GR-2C, GR-11, RO-8, RO-10, RO-12, SY-12, WRO-15, VA-7 and VE-11 are classified in heading 6911, HTSUS, are classified in heading 6911, HTSUS. They are specifically provided for in subheading 6911.10.10, HTSUS, which provides for "Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Hotel or restaurant ware and other ware not household ware." The applicable duty rate is 25% *ad valorem*.

By application of GRI 1, items GR-9, GR-12, RO-3, RO-5, RO-11, WRO-8-AW, VE-9, VE-34, and Y-10 are classified in heading 6912, HTSUS. They are specifically provided for in subheading 6912.00.20, HTSUS, which provides for "Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Hotel or restaurant ware and other ware not household ware." The applicable duty rate is 28% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

HQ H169055, dated January 3, 2014, is modified with respect to the classification of item VE-9. HQ H226264, dated January 3, 2014, is modified with respect to the classification of items RO-5 and RO-12.

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



GENERAL NOTICE

19 CFR PART 177

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN PLASTIC PIPES

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 certain plastic pipes.

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 certain plastic pipes 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. 24, on June 15, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 24, 2016.

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

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 50, No. 24, on June 15, 2016, proposing to modify one ruling letter pertaining to the tariff classification of certain plastic pipes. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N235599, dated December 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 N235599, CBP classified certain plastic pipes in heading 3917, HTSUS, specifically in subheading 3917.22.00, HTSUS, which provides for “Tubes, pipes and hoses and fittings therefor (for example, joints, elbows, flanges), of plastics: Tubes, pipes and hoses, rigid: Of polymers of ethylene.” CBP has reviewed NY N235599 and has determined the ruling letter to be in error. It is now CBP’s position that certain plastic pipes are properly classified, by operation of GRIs 1 and 6, in heading 3917, HTSUS, specifically in subheading 3917.40.00, HTSUS, which provides for “Tubes, pipes, and hoses and fittings therefor (for example, joints, elbows, flanges), of plastics: Fittings.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N2355999 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H260228, 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: July 20, 2016

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H260228

July 20, 2016

CLA-2 OT:RR:CTF:TCM H260228 GA

CATEGORY: Classification

TARIFF NO.: 3917.40.00

MS. JAMIE JOINER
JOINER LAW FIRM
JP MORGAN CHASE BUILDING
712 MAIN STREET, SUITE 1600
HOUSTON, TX 77002

RE: Modification of NY N235599; Classification of certain plastic pipes

DEAR MS. JOINER:

This letter concerns New York Ruling Letter (“NY”) N235599, dated December 17, 2012, issued to you on behalf of your client DBHL, Inc., concerning the tariff classification of plastic pipes from Mexico, under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N235599, U.S. Customs and Border Protection (CBP) classified a 4 pipe sections: Product HP9005, Product P9046A, Product P9790, and Product PP9816W, all used in plumbing applications. In that ruling, CBP classified Product HP9005, Product P9790, and Product PP9816W in subheading 3917.22.0000, HTSUSA, which provides for “Tubes, pipes, and hoses and fittings therefor (for example, joints, elbows, flanges), of plastics: Tubes, pipes and hoses, rigid: Of polymers of propylene.” Product P9046A was classified in subheading 3917.23.0000, HTSUSA, which provides for Tubes, pipes, and hoses and fittings therefor (for example, joints, elbows, flanges), of plastics: Tubes, pipes and hoses, rigid: Of polymers of vinyl chloride.” We have reviewed NY N235599 and find the portion that relates to the classification of Product PP9816W to be in incorrect. The classification of Product HP9005, Product P9046A, and Product P9790 remains unmodified. The reasons set forth below, we hereby modify N235599.

On June 15, 2016, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1), as amended by section 623 of Title VI, notice of the proposed action was published in the *Customs Bulletin* Vol. 50, No. 24. No comments were received in response to this notice.

FACTS:

In NY N235599, the subject merchandise were described as follows:

Product HP9005, described as a plastic wall tube. The tube/pipe section is made of polypropylene plastic and has an inner diameter of 1 ¼ inches. A similar style is available with an inner diameter of 1 ½ inches. The pipe is curved at one end and has a ball joint finishing at the curved end.

Product P9046A was described as a double slip joint trap offset. It is made of polyvinyl chloride plastic and has an inner diameter of 1 ½ inches. It is available in lengths of 12 to 14 inches. The offset pipe section is threaded at both ends. A wing-nut and washer are assembled on each end.

Product P9790 was described as an extension tube with slip joint. The pipe section is made of polypropylene and is threaded on one end where a wing-nut and washer are connected. The component is generally used in

bathroom or kitchen sinks when a drain pipe needs to be extended or lengthened. When used in connection with a P-trap, the extension directs water into the drain system in a house of building. The pipe has an inner diameter of 1¼ inches and measures 6 inches in length. Similar styles are available in diameters of 1 ¼ inches or 1 ½ inches and in lengths from 6 inches to 16 inches.

Product PP9816W was described as a branch tailpiece with a nut. It is made of polypropylene plastic and has a diameter of ½ inches. It measures 8 inches in length. The branch tailpiece is a specially designed portion of drain pipe with a fitting at one end and a branch extends from the bottom. It allows a dishwasher drain to be connected directly to a drain assembly.

ISSUE:

Whether the plastic branch tailpiece for drainage is classified in subheading 3917.22, HTSUS, as a pipe, or in subheading 3917.40, HTSUS, as a fitting.

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.

There is no dispute that the product is appropriately classified in heading 3917, HTSUS. At issue is the applicable six-digit subheading. Therefore, we must apply GRI 6 to determine the correct classification of the merchandise. GRI 6 provides:

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 HTSUS provisions under considerations are as follows:

- 3917 Tubes, pipes and hoses and fittings therefor (for example, joints, elbows, flanges), of plastic:
 - Tubes, pipes and hoses, rigid:
 - 3917.22.00 Of polymers of propylene
 - 3917.40.00 Fittings

* * * * *

The text of heading 3917, HTSUS, covers tubes, pipes and hoses and fittings therefor (for example, joints, elbows, flanges), of plastics. Neither the Harmonized Tariff Schedule of the United States (HTSUS), nor the Explanatory Notes (ENs) to the HTSUS, provide a definition of the term pipe “fit-

tings.” A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meanings, which are presumed to be the same. *Nippon Kogasku (USA) Inc. v. United States*, 69 C.C.P.A. 89, 673 F. 2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 C.C.P.A. 128, 673 F. 2d 1268 (1982).

Webster’s Third New International Dictionary (unabridged; 1961) defines “fitting” as “something used in fitting up: accessory, adjunct, attachment . . . a small often standardized part (as a coupling, valve, gauge) entering into the construction of a boiler, steam, water or gas supply installation or other apparatus . . .” For over 25 years, CBP has relied on the plumbing trade practice that cut-to-length steel pipes sections, less than 12 inches in length, are regarded as fittings and not tubes or pipes. *See* HQ 951940, dated July 31, 1992. Here, Product PP9816W, described as the branch tailpiece measures 8 inches in length. Therefore, the branch tailpiece is properly classified as a fitting rather than a pipe.

HOLDING:

By application of GRIs 1 and 6, we find the Product PP9816W to be properly classified under heading 3917, HTSUS, specifically, in subheading 3917.40.00, HTSUS, which provides for “Tubes, pipes, and hoses and fittings therefor (for example, joints, elbows, flanges), of plastics: Fittings.” The duty rate is 5.3 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N235599, dated December 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,

GREG CONNOR

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 A TWIN POSTER BED SHIPPED COMPLETE OR ITS HEADBOARD, FOOTBOARD AND SIDE RAILS SHIPPED SEPARATELY FROM CHINA

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

ACTION: Notice of modification of one ruling letter and of revocation of treatment relating to the tariff classification of a twin poster bed shipped complete or its headboard, footboard and side rails shipped separately from China.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning tariff classification of a twin poster bed shipped complete or its headboard, footboard and side rails shipped separately from China under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 24, on June 15, 2016. One comment was received in response to the notice. The commenter pointed out that the subject merchandise may be subject to antidumping duties or countervailing duties.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 24, 2016.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 50, No. 24, on June 15, 2016, proposing to modify one ruling letter pertaining to the tariff classification of a twin poster bed shipped complete or its headboard, footboard and side rails shipped separately from China. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N220458, dated June 8, 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 N220458, CBP classified a twin poster bed shipped complete or its headboard, footboard and side rails, when shipped separately in

heading 9403, HTSUS, specifically in subheading 9403.50, HTSUS, which provides for “Other furniture and parts thereof: Wooden furniture of a kind used in the bedroom.” CBP has reviewed NY N220458 and has determined the ruling letter to be in error. It is now CBP’s position that separately shipped headboard, footboard and side rails are properly classified, by operation of GRIs 1, 3(b) and 6, in heading 9403, HTSUS, specifically in subheading 9403.90.70, HTSUS, which provides for “Other furniture and parts thereof: Parts: Other: Of wood” by application of GRIs 3(b) and 6. By application of GRIs 1 and 6, the side rails are classified in subheading 9403.90.70, HTSUS.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N220458 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H230217, 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: July 20, 2016

GREG CONNOR
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H230217

July 20, 2016

CLA-2 OT:RR:CTF:TCM H230217 GA

CATEGORY: Classification

TARIFF NO.: 9403.90.70

MS. DENISE N. YAPP
IMPORTS ENTRY/CLASSIFICATION COORDINATOR
ASHLEY FURNITURE INDUSTRIES, INC.
ONE ASHLEY WAY
ARCADIA, WI 54612

RE: Modification of NY N220458; Classification of a twin poster bed shipped complete or its headboard, footboard and side rails shipped separately from China.

DEAR MS. YAPP:

This is in reference to New York Ruling Letter (“NY”) N220458, dated June 8, 2012, issued to Ashley Furniture Industries, Inc. (“Ashley”) concerning the tariff classification of a twin poster bed shipped complete or its headboard, footboard and side rails shipped separately from China, under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N220458, U.S. Customs and Border Protection (CBP) determined that the bed when shipped complete, and the headboard and footboard and side rails when shipped separately are classified in subheading 9403.50.9045, HTSUSA, which provides for “Other furniture and parts thereof: Wooden furniture of a kind used in the bedroom: Other: Other: Beds: Other.” We have reviewed NY N220458 and find the portion that relates to the classification of the headboard and footboard and rails when shipped separately to be in error. The classification of the bed when shipped complete remains unmodified. For the reasons set forth below, we hereby modify NY N220458.

On June 15, 2016, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1), as amended by section 623 of Title VI, notice of the proposed action was published in the *Customs Bulletin* Vol. 50, No. 24. One comment was received in response to the notice. The commenter pointed out that the subject merchandise may be subject to antidumping duties or countervailing duties.

FACTS:

In NY N220458, the subject merchandise was described as follows:

When imported complete, the furniture piece is referenced as the B188 Exquisite Twin Poster Bed. The items consist of the following: B188-77 twin poster headboard, B188-74 twin poster footboard, and B188-81 twin poster rails. These items may be shipped together to make a complete bed or shipped separately.

The B188-77 twin poster headboard is constructed of an outer-structure of a cast poly frame and poly-posts with wood cores, and has an inner-structure of a cushion insert covered in faux leather (PU) vinyl with a wood core. Photos indicate that the underlying wood is completely covered by either the poly material or vinyl material.

The B188–74 twin poster footboard is constructed of an outer-structure of a cast poly frame and poly-posts with wood cores, and has an inner-structure of a cushion insert covered in faux leather (PU) vinyl with a wood core. Photos indicate that the underlying wood is completely covered by either the poly material or vinyl material.

The B188–81 twin poster rails (side rails) are constructed of wood.

ISSUE:

Whether the headboard and footboard are classified in subheading 9403.50, HTSUS, as wooden furniture of a kind used in the bedroom, or in subheading 9403.90, HTSUS, as parts of furniture.

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.

There is no dispute that the merchandise is appropriately classified in heading 9403, HTSUS. At issue is the applicable six-digit subheading. Therefore, we must apply GRI 6 to determine the correct classification of the merchandise. GRI 6 provides:

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.

In light of the fact that the subject headboard and footboard consists of more than one material, classification at the subheading level is governed by GRIs 3 and 6. GRI 3 provides, in pertinent part, as follows:

When, by application of rule 2(b) or for any other reason, good 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.

* * * *

The HTSUS provisions under consideration are as follows:

9403	Other furniture and parts thereof:
9403.50	Wooden furniture of a kind used in the bedroom:

9403.90 Parts:
 9403.90.70 Of wood:
 * * * *

The Explanatory Notes to the Harmonized Commodity Description and Coding System (ENs) represent 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. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to GRI 3(b) provide, in pertinent part, that:

- (VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.
- (VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

* * * * *

Under GRI 3(b), composite goods must be classified according to the material or component that imparts the article with its essential character. The “essential character” of an article is “that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int’l Trade 2005). EN VIII to GRI 3(b) explains that “[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.” Recent court decisions on the essential character for GRI 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the goods. See *Estee Lauder, Inc. v. United States*, 815 F. Supp. 2d 1287, 1296 (Ct. Int’l Trade 2012); *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).

The headboard features wood components that cost more than the acrylic components and weigh significantly more than the acrylic components. The footboard features acrylic components that cost more, but weigh significantly less than the wood components. Although the headboard and footboard have detailed and ornate designs covered in acrylic, the wood components, provide the structure and shape of the headboard and footboard. It is the bulk and weight of the underlying wood that allows for the detailed and ornate designs of the acrylic to be impressed onto the surface of the headboard and footboard.

In accord with the meaning of “essential character” under GRI 3(b), we agree with the conclusion set forth in NY N220458 that wood is the essential component of the headboard and footboard. Therefore, the aforementioned

components when imported together, constitute an unassembled article of wooden bedroom furniture of subheading 9403.50, HTSUS.

However, the headboard, footboard, and side rails (which are composed entirely of wood) when shipped separately do not constitute bedroom furniture of subheading 9403.50, HTSUS. Rather, they are properly classified as parts of furniture of wood under subheading 9403.90, HTSUS.

HOLDING:

By application of GRIs 1, 3(b), and 6, the headboard, footboard and side rails, when shipped separately are classified in heading 9403, HTSUS, specifically in subheading 9403.90.70, HTSUS, which provides for “Other furniture and parts thereof: Parts: Other: Of wood” by application of GRIs 3(b) and 6. By application of GRIs 1 and 6, the side rails are classified in subheading 9403.90.70, HTSUS. The general column one rate of duty is “Free.”

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

The merchandise in question may be subject to antidumping duties or countervailing duties. We note that the International Trade Administration is not necessarily bound by a country of origin or classification determination issued by CBP, with regard to the scope of antidumping orders or countervailing duties. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the 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 ACE, the system of record for AD/CVD messages, or the AD/CVD Search tool at <http://addecvd.cbp.gov/index.asp?ac=home>.

EFFECT ON OTHER RULINGS:

NY N220458, dated June 8, 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,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**MODIFICATION OF THE NATIONAL CUSTOMS
AUTOMATION PROGRAM (NCAP) TEST CONCERNING
THE AUTOMATED COMMERCIAL ENVIRONMENT (ACE)
PORTAL ACCOUNTS TO ESTABLISH THE PROTEST FILER
ACCOUNT AND CLARIFICATION THAT THE TERMS AND
CONDITIONS FOR ACCOUNT ACCESS APPLY TO ALL ACE
PORTAL ACCOUNTS**

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

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection’s (CBP’s) plan to modify the National Customs Automation Program (NCAP) test concerning Automated Commercial Environment (ACE) Portal Accounts to establish the ACE Protest Filer Account. After CBP deploys the ACE Protest Module test at a later date, participants with an ACE Protest Filer Account will be able to file an electronic protest in ACE. This document also clarifies that CBP’s previously published terms and conditions governing access to and use of the NCAP test of ACE Portal Accounts apply to all ACE Portal Accounts, including all ACE Portal Account types created after the previously published terms and conditions. All other aspects of the ACE Portal Accounts Test remain the same as set forth in previously published **Federal Register** notices.

DATES: The modifications and clarifications of the ACE Portal Account Test made by this notice are effective on August 8, 2016.

The clarification to the terms and conditions applies to all ACE Portal Accounts regardless of when the account was created.

ADDRESSES: Comments concerning this notice and any aspect of the modified ACE Portal Account Test may be submitted at any time during the testing period via email to Josephine Baiamonte, ACE Business Office (ABO), Office of Trade at *josephine.baiamonte@cbp.dhs.gov*. In the subject line of your email, please indicate, “Comment on ACE Portal Account Test FRN”.

FOR FURTHER INFORMATION CONTACT: For technical questions related to the application or requests for an ACE Portal Account, including ACE Protest Filer Accounts, contact the ACE Account Service Desk by calling 1–866–530–4172, selecting option 1, then option 2, or by emailing *ACE.Support@cbp.dhs.gov* for assistance.

SUPPLEMENTARY INFORMATION:

I. Automated Commercial Environment (ACE)

A. *The National Customs Automation Program*

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization in the North American Free Trade Agreement (NAFTA) Implementation Act (Customs Modernization Act) (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (19 U.S.C. 1411). Through NCAP, the thrust of customs modernization was on trade compliance and the development of ACE, the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace specific legacy ACS functions and add new functionality.

The procedures and criteria applicable to participation in the ACE Portal Account Test remain in effect unless otherwise explicitly changed by this notice.

B. *ACE Portal Accounts*

On May 1, 2002, the former U.S. Customs Service, now CBP, published a general notice in the **Federal Register** (67 FR 21800) announcing a plan to conduct an NCAP test of the first phase of ACE. The test was described as the first step toward the full electronic processing of commercial importations with a focus on defining and establishing an importer's account structure. That general notice announced that importers and authorized parties would be allowed to access their customs data via an Internet-based Portal Account. The notice also set forth eligibility criteria for companies interested in establishing ACE Portal Accounts.

Subsequent general notices expanded the types of ACE Portal Accounts. On February 4, 2004, CBP published a general notice in the **Federal Register** (69 FR 5360) that established ACE Truck Carrier Accounts. On September 8, 2004, CBP published a general notice in the **Federal Register** (69 FR 54302) inviting customs brokers to participate in the ACE Portal Account Test generally and informing interested parties that once they had been notified by CBP that their

request to participate in the ACE Portal Account Test had been accepted, they would be asked to sign and submit a “Terms and Conditions” document. CBP subsequently contacted those participants and asked them to also sign and submit an ACE Power of Attorney form and an Additional Account/ Account Owner Information form. On October 18, 2007, CBP published a general notice in the **Federal Register** (72 FR 59105) announcing the expansion of the ACE Portal Account Test to include the additional following ACE account types: Carriers (all modes: Air, rail, sea); Cartman; Lighterman; Driver/Crew; Facility Operator; Filer; Foreign Trade Zone (FTZ) Operator; Service Provider; and Surety. More recently, on October 21, 2015, CBP published a general notice in the **Federal Register** (80 FR 63817) announcing the creation of the Exporter Portal Account.

C. Terms and Conditions for Access to the ACE Portal Account

On May 16, 2007, CBP published a general notice in the **Federal Register**(72 FR 27632) announcing changes to the terms and conditions that must be followed as a condition for access to the ACE Portal Account and announcing that the terms and conditions in that notice superseded and replaced the “Terms and Conditions” document previously signed and submitted to CBP by all ACE Portal Account Owners. The principal changes to the ACE “Terms and Conditions” included a revised definition of “Account Owner” to permit either an individual or a legal entity to serve in this capacity, new requirements relating to providing notice to CBP when there has been a material change in the status of the Account and/or Account Owner, and explanatory provisions as to how the information from a particular account may be accessed through the ACE Portal when that account is transferred to a new owner. Prior to the publication of the May 16, 2007 Notice, all parties wishing to establish an ACE Portal Account had to sign and submit to CBP a “Terms and Conditions” document prior to accessing the ACE Portal. The “Terms and Conditions” document set forth the obligations and responsibilities of all parties establishing and accessing an ACE Portal Account. Because the “Terms and Conditions” document that all ACE Portal Accounts had to execute was standard and identical, and due to the burden on the trade to sign and submit the document to CBP and on CBP to track and maintain the documents submitted, CBP decided to replace the “Terms and Conditions” document and instead publish the terms and conditions in the May 16, 2007 Notice. That notice made the terms and conditions therein applicable to all ACE Portal Accounts. The terms and conditions published in that notice superseded, replaced and rendered null and void all previously signed and submitted “Terms and Conditions” documents. The terms and conditions set

forth in the notice also appear on the introductory screen for the ACE Portal and must be accepted by any party seeking access to an ACE Portal Account.

On July 7, 2008, CBP published a general notice in the **Federal Register** (73 FR 38464) which revised the terms and conditions set forth in the May 16, 2007 Notice regarding the period of Portal inactivity which will result in termination of ACE Portal Account access for the inactive user. The July 7, 2008 Notice provided that if forty-five (45) consecutive days elapse without an Account Owner, Proxy Account Owner, or an Account User accessing the ACE Portal Account, access to the ACE Portal Account will be terminated. The time period for allowable ACE Portal Account inactivity was previously ninety (90) days.

The failure of a Proxy Account Owner or an Account User to access the ACE Portal for a period of forty-five (45) days consecutively will result in the termination of access to the ACE Portal for the Proxy Account Owner or Account User. Inactivity will not result in termination of the ACE Portal Account, but will terminate ACE Portal Account access for the inactive user. Access may be restored by calling the Help Desk or by following the “forgot your password” prompt found on the ACE Portal log-in page. Access may only be restored upon re-authorization by the Account Owner.

D. ACE Non-Portal Accounts

CBP has also permitted certain parties to participate in ACE without establishing ACE Portal Accounts, *i.e.*, “Non-Portal Accounts”. On October 24, 2005, CBP published a general notice in the **Federal Register** (70 FR 61466) announcing that CBP would no longer require importers to establish ACE Portal Accounts in order to deposit estimated duties and fees as a part of a Periodic Monthly Statement (PMS). CBP decided it would only require importers to establish a Non-Portal Account to participate in PMS.

On March 29, 2006, CBP published another general notice in the **Federal Register** (71 FR 15756) announcing that truck carriers who do not have ACE Portal Accounts may use third parties to transmit truck manifest information on their behalf electronically in the ACE Truck Manifest system via Electronic Data Interface (EDI) messaging. Truck carriers who elect to use this transmission method will not have access to operating data and will not receive status messages on ACE transactions, nor will they have access to integrated ACE Portal Account data from multiple system sources.

II. Protest

Pursuant to 19 U.S.C. 1514, certain parties may file a protest to challenge a CBP decision regarding the classification, appraisement, rate and amount of duties chargeable, certain charges and exactions,

the exclusion of merchandise, the liquidation of an entry, and the refusal to pay a claim for drawback, within 180 days of the date of liquidation, *i.e.*, the date on which CBP's decision becomes final. The CBP regulations implementing the protest statute are codified in part 174 of title 19 of the Code of Federal Regulations (19 CFR 174).

Parties authorized to file a protest include importers or consignees for an entry, or their sureties; persons paying any charge or exaction; persons seeking entry or delivery; persons filing a claim for drawback; exporters or producers of the merchandise subject to a determination of origin under section 202 of the NAFTA Implementation Act, if the exporter or producer completed and signed a NAFTA Certificate of Origin covering the merchandise; or the authorized agent of any of these persons. *See* 19 CFR 174.12(a). When a protest is filed by a person acting as an agent for the principal that agent must have a power of attorney that grants authority to the agent to make, sign and file a protest on behalf of the protesting party in accordance with 19 CFR 174.3.

III. Authorization for the ACE Portal Account Test

The Customs Modernization Act authorizes the Commissioner of CBP to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The ACE Portal Account Test, as modified in this notice, is authorized pursuant to 19 CFR 101.9(b), which provides for the testing of NCAP programs or procedures. *See* Treasury Decision (T.D.) 95–21.

IV. Modification of the ACE Portal Account Test

A. Protest Filer Account

This document announces the modification of the ACE Portal Account Test to establish the Protest Filer Account. CBP will conduct a test of the ACE Protest Module functionality at a later date in which a party with an established Protest Filer Account will be able to submit an electronic protest to ACE for processing by CBP. CBP anticipates publishing a subsequent notice in the **Federal Register** to announce initiation of the ACE Protest Module test.

The owner of an ACE Protest Filer Account will have the ability to create and maintain through the ACE Portal information regarding the name, address, and contact information for the corporate and individual account owner for the Protest Filer Account. Protest filers will use the existing account structure established for other accounts within the ACE Portal.

New ACE users without an existing Portal Account will be required to apply to establish a new ACE Protest Filer Account, as explained in

Section B.1 below. An application to establish an ACE Protest Filer Account by new ACE users requires the account owner to provide information required to complete the account setup process. Existing ACE Portal Account owners should follow instructions in Section B.2 below. Current ACE account holders must request a protest filer account view within their existing Portal Account to access the ACE Protest Module functions.

ACE Portal Account Test participants must agree to the previously published “Terms and Conditions for Account Access of the Automated Commercial Environment (ACE) Portal,” as clarified by this notice. *See* 72 FR 27632 (May 16, 2007) and 73 FR 38464 (July 7, 2008). New ACE users will be prompted to accept these Terms and Conditions during the application process. Upon completion of the application process, the applicant will receive an email message and be prompted to log in with the protest filer’s username and password which will create the ACE Protest Filer Account. Once an account is created, the protest filer will be provided with “protest filer view” from the protest filer home page.

B. Establishing a Protest Filer Account

1. New ACE Portal Account Owner

Parties who do not have an ACE Portal Account may apply for a Protest Filer Account according to the instructions online at: <http://www.cbp.gov/trade/automated/getting-started/using-ace-secure-data-portal>. Applicants will be required to complete an on-line application and provide the “Organization Information” and “ACE Account Owner” information listed below and certify that the applicant has read and agrees to the Terms and Conditions. The account validation process will begin once all steps have been completed.

Organization Information:

- (1) Protest Filer Number (Employer Identification Number, Social Security Number, or CBP Assigned Number)
- (2) Organization Name
- (3) Organization Type
- (4) End of Fiscal Year (month and day)
- (5) Mailing Address

ACE Account Owner:

- (1) Name
- (2) Date of Birth

- (3) Email Address
- (4) Telephone Number
- (5) Fax Number (optional)

Once the applicant completes and submits the Protest Filer Account application, the applicant will receive an email message to confirm submission of the application and direct the applicant how to log on to ACE to complete the account. Applicants who have not received an email message within 24 hours should contact the ACE Account Service Desk. The “Application to Use the Automated Commercial Environment” is an approved information collection under OMB control number 1651–0105. Comments are currently being accepted concerning the renewal of this information collection. *See* 81 FR 38727 (June 14, 2016).

2. Existing ACE Portal Account Owners

Parties that have an existing ACE Portal Account may request a Protest Filer Account through their established ACE Portal Account. A Protest Filer Account may be created under existing accounts by navigating to the Protest Filer view under the Accounts tab of the ACE Portal (available in all existing ACE Portal Accounts), selecting Create a Protest Filer, and following the step by step guided creation process to complete the account set up. Additional training materials on general account maintenance are available at <https://www.cbp.gov/trade/ace/training-and-reference-guides>. For additional assistance on ACE Accounts, contact the ACE Service Desk.

V. Clarification of the ACE Portal Account Test

At the time CBP published the May 16, 2007 Notice setting forth the terms and conditions governing the administration, access, and use of ACE Portal Accounts and the responsibilities and obligations applicable to all parties accessing ACE Portal Accounts, there were three types of ACE Portal Accounts: Importer; broker; and carrier. Subsequently, CBP created additional account types, such as the surety, foreign trade zone operator, and exporter accounts, and as established by this notice, the Protest Filer Account. This notice clarifies that the terms and conditions that CBP has published governing ACE Portal Account access and use, and any modifications thereof that CBP publishes, apply to all ACE Portal Accounts and account types regardless of when the account was established or the account type created. All other aspects of the ACE Portal Accounts Test remain the same as set forth in previously published **Federal Register** notices.

VI. Comments

All interested parties are invited to comment on any aspect of this modification and clarification of the ACE Portal Account Test for the duration of the test. CBP requests comments and feedback on all aspects of this test and this clarification in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this test.

VII. Misconduct Under the Test

A test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, or discontinuance from participation in the ACE Portal Account Test, as modified by this notice, for any of the following:

- (1) Failure to follow the terms and conditions of this test;
- (2) Failure to exercise reasonable care in the execution of participant obligations;
- (3) Failure to abide by applicable laws and regulations that have not been waived; or
- (4) Failure to deposit duties, taxes or fees in a timely manner.

If the Director, Business Transformation Division, ACE Business Office (ABO), Office of Trade, finds that there is a basis for discontinuance of test participation privileges, the test participant will be provided a written notice proposing the discontinuance with a description of the facts or conduct warranting the action. The test participant will be offered the opportunity to appeal the Director's decision in writing within 10 calendar days of receipt of the written notice. The appeal must be submitted to the Executive Director, ABO, Office of Trade, by emailing *Deborah.Augustin@cbp.dhs.gov*.

The Executive Director will issue a decision in writing on the proposed action within 30 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed discontinuance of a test participant's privileges will not take effect unless the appeal process under this paragraph has been concluded with a written decision adverse to the test participant.

In the case of willfulness or those in which public health, interest, or safety so requires, the Director, Business Transformation Division, ABO, Office of Trade, may immediately discontinue the test participant's privileges upon written notice to the test participant. The notice will contain a description of the facts or conduct warranting the immediate action. The test participant will be offered the opportunity to appeal the Director's decision within 10 calendar days of receipt of

the written notice providing for immediate discontinuance. The appeal must be submitted to the Executive Director, ABO, Office of Trade, by emailing *Deborah.Augustin@cbp.dhs.gov*. The immediate discontinuance will remain in effect during the appeal period. The Executive Director will issue a decision in writing on the discontinuance within 15 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

VIII. Development of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004); 70 FR 5199 (February 1, 2005).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).

- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of National Customs Automation Program (NCAP) Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).
- Modification of National Customs Automation Program Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE)

Cargo Release to Allow Importers and Brokers to Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System: 79 FR 36083 (June 25, 2014).
- Announcement of eBond Test: 79 FR 70881 (November 28, 2014).
- eBond Test Modifications and Clarifications: Continuous Bond Executed Prior to or Outside the eBond Test May Be Converted to an eBond by the Surety and Principal, Termination of an eBond by Filing Identification Number, and Email Address Correction: 80 FR 899 (January 7, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System Relating to Animal and Plant Health Inspection Service (APHIS) Document Submissions: 80 FR 5126 (January 30, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the use of Partner Government Agency Message Set through the Automated Commercial Environment (ACE) for the Submission of Certain Data Required by the Environmental Protection Agency (EPA): 80 FR 6098 (February 4, 2015).
- Announcement of Modification of ACE Cargo Release Test to Permit the Combined Filing of Cargo Release and Importer Security Filing (ISF) Data: 80 FR 7487 (February 10, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning ACE Cargo Release for Type 03 Entries and Advanced Capabilities for Truck Carriers: 80 FR 16414 (March 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Air Cargo Test: 80 FR 39790 (July 10, 2015).
- National Customs Automation Program (NCAP) Concerning Remote Location Filing Entry Procedures in the Automated Commercial Environment (ACE) and the Use of the Document Image

System for the Submission of Invoices and the Use of eBonds for the Transmission of Single Transaction Bonds: 80 FR 40079 (July 13, 2015).

- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set Regarding Types of Transportation Modes and Certain Data Required by the National Highway Traffic Safety Administration (NHTSA): 80 FR 47938 (August 10, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Vessel Cargo Test: 80 FR 50644 (August 20, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency Message Set through the Automated Commercial Environment (ACE): 80 FR 52051 (August 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test: 80 FR 54305 (September 9, 2015).
- International Trade Data System Test Concerning the Electronic Submission to the Automated Commercial Environment of Data Using the Partner Government Agency Message Set: 80 FR 59721 (October 2, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Document Image System (DIS) Regarding Future Updates and New Method of Submission of Accepted Documents: 80 FR 62082 (October 15, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Cargo Release for Entry Type 52 and Certain Other Modes of Transportation: 80 FR 63576 (October 20, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Entry Summary, Accounts and Revenue (ESAR) Test of Automated Entry Summary Types 51 and 52 and Certain Modes of Transportation: 80 FR 63815 (October 21, 2015).

- Modification of the National Customs Automation Program Test Concerning the Automated Commercial Environment Portal Account to Establish the Exporter Portal Account: 80 FR 63817 (October 21, 2015)
- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set Regarding the Toxic Substances Control Act (TSCA) Certification Required by the Environmental Protection Agency (EPA): 81 FR 7133 (February 10, 2016).
- Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Certain Electronic Entry and Entry Summary Filings: 81 FR 10264 (February 29, 2016).
- Modification of the National Customs Automation Program (NCAP); Test Concerning the Partner Government Agency Message Set for Certain Data Required by the Environmental Protection Agency (EPA): 81 FR 13399 (March 14, 2016).
- Cessation of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency (PGA) Message Set Through the Automated Commercial Environment (ACE): 81 FR 18634 (March 31, 2016).
- Automated Commercial Environment (ACE); Announcement of National Customs Automation Program Test of the In-Transit Manifest Pilot Program: 81 FR 24837 (April 27, 2016).
- Announcement of National Customs Automation Program (NCAP) Test Concerning the Submission through the Automated Commercial Environment (ACE) of Certain Import Data and Documents Required by the U.S. Fish and Wildlife Service: 81 FR 27149 (May 5, 2016).
- Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Certain Electronic Entry and Entry Summary Filings Accompanied by Food and Drug Administration (FDA) Data: 81 FR 30320 (May 16, 2016).
- Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange

(EDI) System for Processing Electronic Entry and Entry Summary Filings: 81 FR 32339 (May 23, 2016).

- Notice Announcing the Automated Commercial Environment (ACE) Protest Module as the Sole CBP-Authorized Method for Filing Electronic Protests: 81 FR 49685 (July 28, 2016).

Dated: August 2, 2016.

BRENDA B. SMITH,
*Executive Assistant Commissioner,
Office of Trade.*

[Published in the Federal Register, August 08, 2016 (81 FR 52453)]



NOTICE OF REVOCATION OF CUSTOMS BROKERS' LICENSES; CORRECTION

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

ACTION: Revocation of customs brokers' licenses; correction.

SUMMARY: This document corrects twelve errors in the list of customs brokers' licenses revoked by operation of law, without prejudice, for failure to file a triennial status report that U.S. Customs and Border Protection (CBP) published in the **Federal Register** on January 6, 2016. The twelve errors consist of nine omissions and three erroneous revocations.

DATES: This correction is effective on August 10, 2016.

FOR FURTHER INFORMATION CONTACT: Julia D. Peterson, Branch Chief, Broker Management, Office of Trade, (202) 863-6601, julia.peterson@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and section 111.30(d) of title 19 of the Code of Federal Regulations (19 CFR 111.30(d)), a customs broker's license will be revoked by operation of law, without prejudice, for failure to file a triennial status report. On January 6, 2016, U.S. Customs and Border Protection (CBP) published in the **Federal Register** (81 FR 498) a list of customs brokers' licenses revoked under 19 CFR 111.30(d) in alphabetical order by name with the names grouped according to the ports of issuance. That document contained twelve (12) errors in the list of revoked customs brokers' licenses. Specifically, nine (9) customs

brokers' names were omitted from the list of revoked customs brokers' licenses and three (3) customs brokers' names were erroneously included in the list of revoked customs brokers' licenses. This correction is being issued to identify the omitted customs brokers whose licenses were revoked by operation of law, without prejudice, for failure to file a triennial status report, and to identify the customs brokers whose licenses were erroneously revoked and have been reinstated.

Correction

In the **Federal Register** of January 6, 2016, in the document at 81 FR 498:

Beginning on page 498, in the list of revoked customs broker licenses, add the entries for the following nine (9) customs brokers in alphabetical order by name and grouped according to the ports of issuance:

Anderson	Jamie L.	20454	Anchorage.
Anderson	Kirk	23689	Minneapolis.
Anderson	Steven J	13365	Minneapolis.
Braun	Holly	11508	Minneapolis.
Franzen	Steve	16626	Minneapolis.
Nielsen	Kelli	20185	Minneapolis.
Runeberg	Diane	10162	Minneapolis.
Senn	Ronald	06226	Minneapolis.
Stromgren	Linda	06237	Minneapolis.

Also on page 498, remove the entry for the following customs brokers:

Godfrey	Kimberly	12089	Atlanta.
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On page 504, remove the entry for the following customs brokers:

Tolbert	Shawn	12568	Savannah.
Wallace	Laura	20785	Washington, DC.

Dated: August 2, 2016.

BRENDA B. SMITH,
*Executive Assistant Commissioner,
 Office of Trade.*

AGENCY INFORMATION COLLECTION ACTIVITIES:**Request for Information**

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

ACTION: 30-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: Passenger List/Crew List (Form I-418). 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 September 6, 2016 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to ira_submission@omb.eop.gov or faxed to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional 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 email (CBP_PRA@cbp.dhs.gov). 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: This proposed information collection was previously published in the **Federal Register** (81 FR 33543) on May 26, 2016, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. 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 (Public Law 104-13; 44 U.S.C. 3507). 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 costs 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: Passenger List/Crew List.

OMB Number: 1651-0103.

Form Number: Form I-418.

Abstract: CBP Form I-418 is prescribed by CBP, for use by masters, owners, or agents of vessels in complying with Sections 231 and 251 of the Immigration and Nationality Act (INA). This form is filled out upon arrival of any person by commercial vessel at any port within the United States from any place outside the United States. The master or commanding officer of the vessel is responsible for providing CBP officers at the port of arrival with lists or manifests of the persons on board such conveyances. CBP is currently working to allow for electronic submission of the information on CBP Form I-418. This form is provided for in 8 CFR 251.1 and 251.3. A copy of CBP Form I-418 can be found at <https://www.cbp.gov/newsroom/publications/forms?title=i-418&=Apply>.

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

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 48,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Hours: 48,000.

Dated: August 1, 2016.

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

[Published in the Federal Register, August 05, 2016 (81 FR 51924)]